
STATUTORY INSTRUMENTS

2005 No. 690

The Pensions Regulator Tribunal Rules 2005

PART 3

Hearings

Determination without oral hearing

21.—(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 20(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.

(3) If the Tribunal decides that a restriction on public pronouncement is desirable—

- (a) the Tribunal may take any steps, including any one or more of the steps specified in paragraph (4);
- (b) any step taken under this paragraph shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

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

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

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

Public hearings and directions for private hearings

22.—(1) In this rule, “hearing” means any hearing under these Rules but does not include—

- (a) any determination under rule 21(1); or
- (b) 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 that might result from a hearing in public,
if 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 all of a hearing should be in private, the Tribunal shall consider whether only part of the hearing should be 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 5 of Schedule 4; 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

23.—(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

24.—(1) Subject to the 2004 Act, the 2005 Order 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 Regulator when the Regulator's determination was made.

(4) If a party fails to attend or be represented at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no good and sufficient reason for the absence—

- (a) hear and determine the application or reference in the party's absence; or
- (b) adjourn the hearing,

and may give any directions it thinks fit (including orders regarding the payment of costs under rule 26).

Decisions of Tribunal

25.—(1) Subject to paragraph (2) and to rule 21(3), 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.

(3) If the Tribunal decides that a restriction on public pronouncement is desirable—

- (a) the Tribunal may take any steps, including any one or more of the steps specified in paragraph (4);
- (b) any step taken under this paragraph shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

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

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

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

(6) The Secretary shall as soon as may be practicable—

- (a) whether there has been an oral hearing or not, send a notification of the decision to each of the parties to the reference; and
- (b) subject to any steps taken under paragraph (2), under rule 21(3) or any direction given under rule 22(11), enter the decision in the register.

(7) Every notification of a decision determining a reference which is sent to the parties shall be accompanied by a notification of—

- (a) any provision of the 2004 Act or 2005 Order (as appropriate) relating to appeals from the Tribunal; and

- (b) the time within which and the place at which an application for permission to appeal may be made.

Costs

26.—(1) In this rule, “costs order” means an order under paragraph 13 of Schedule 4 that a party pay the whole or part of the costs or expenses incurred by another party.

(2) In this rule, “paying party” and “receiving party” mean, respectively, the parties against whom and in whose favour the Tribunal makes or considers making a costs order.

(3) 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.

(4) Where the Tribunal makes a costs order it may order—

- (a) that an amount fixed by the Tribunal shall be paid to the receiving party by way of costs or expenses; or
- (b) that the costs shall be assessed or expenses shall be taxed—
 - (i) in England and Wales, by a costs officer;
 - (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, on such basis as the Tribunal shall specify.

Review of Tribunal’s decision

27.—(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 or foreseen,

the Tribunal may review and set aside the relevant decision.

(2) An application for the purposes of paragraph (1) shall be made—

- (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
- (b) by way of written application filed not later than 14 days after the notification of the decision is sent to the party making the application,

stating the grounds on which the application is based.

(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) The decision of the Tribunal whether or not to set aside the decision shall be recorded in a certificate signed by the Chairman.

(6) If, having reviewed the decision, the decision is set aside—

- (a) the Tribunal shall—
 - (i) substitute such decision as it thinks fit; or

- (ii) order a re-hearing before either the same or a differently constituted Tribunal; and
 - (b) the certificate of the Chairman recording the decision in accordance with paragraph (5) shall be sent to the Secretary who shall immediately—
 - (i) make such correction as may be necessary in the register; and
 - (ii) shall send a copy of the entry so corrected to each party.
- (7) If, having reviewed the decision, the decision is not set aside, the Secretary shall notify each of the parties in writing to this effect.