
STATUTORY INSTRUMENTS

2011 No. 2346

**The Solicitors Disciplinary Tribunal
(Appeals and Amendment) Rules 2011**

PART 3

Appeal procedure

Notice of appeal

6.—(1) An appellant must start proceedings for an appeal by sending or delivering a notice of appeal to the Tribunal.

(2) In the case of a Schedule 2 appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision in question under paragraph 14B(4) of Schedule 2 to the Administration of Justice Act 1985.

(3) In the case of a section 44E appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision in question under section 44D(4) of the 1974 Act.

(4) The notice of appeal must set out—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the basis on which the appellant has standing to start proceedings before the Tribunal;
- (e) the name and address of the respondent;
- (f) details of the decision or act to which the proceedings relate;
- (g) the result the appellant is seeking;
- (h) the grounds on which the appellant relies;
- (i) whether the appellant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate; and
- (j) any further information or documents required by a practice direction.

(5) The appellant must send or deliver with the notice of appeal a copy of any written record of the decision in respect of which the appeal is made, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(6) The appellant must send or deliver three additional copies of the notice of appeal and any accompanying documents to the Tribunal at the same time as the appellant sends or delivers the notice of appeal to the Tribunal.

(7) The appellant must send or deliver a copy of the notice of appeal and any accompanying documents to the respondent at the same time as the appellant sends or delivers the notice of appeal to the Tribunal.

Response to notice of appeal

7.—(1) The respondent must send or deliver to the Tribunal a response to the notice of appeal so that it is received no later than the date on which expires the period of 28 days beginning with the date on which the respondent received the notice of appeal.

(2) The response must set out at least—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or a direction given under these Rules; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document sent or delivered with the response.

(4) The respondent must send or deliver with the response—

- (a) a copy of any written record of the decision, in respect of which the appeal is made, and any statement of reasons for that decision, that the appellant did not send or deliver with the notice of appeal and the respondent has or can reasonably obtain; and
- (b) any documents relied upon by the respondent in making the decision in respect of which the appeal is made and which the respondent considers are relevant to the appeal.

(5) If the respondent sends or delivers the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 9(2)(a), the response must include a request for an extension of time and the reason why the response was not sent or delivered in time.

(6) The respondent must send or deliver three additional copies of the response and any accompanying documents to the Tribunal at the same time as the respondent sends or delivers the response to the Tribunal.

(7) The respondent must send or deliver a copy of the response and any accompanying documents to the appellant at the same time as it sends or delivers the response to the Tribunal.

Appellant's reply

8.—(1) The appellant may send or deliver to the Tribunal—

- (a) a reply to the respondent's response; and
- (b) any additional documents relied upon by the appellant in the reply.

(2) Any reply and additional documents must be sent or delivered to the Tribunal so that they are received no later than the date on which expires the period of 14 days beginning with the date on which the appellant received the notice from the respondent.

(3) If the appellant sends or delivers a reply to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 9(2)(a) the reply must include a request for an extension of time and the reason why the reply was not sent or delivered in time.

(4) The appellant may send or deliver with the reply a list of documents on which the appellant relies in support of the appeal, and which the appellant did not send or deliver with the notice of appeal.

(5) The appellant must send or deliver three additional copies of the reply and any accompanying documents to the Tribunal at the same time as the appellant sends or delivers the reply to the Tribunal.

(6) The appellant must send or deliver a copy of any reply and any accompanying documents to the respondent at the same time as the appellant sends or delivers the reply to the Tribunal.

(7) If the appellant has sent or delivered a list of documents under paragraph (4), the appellant must within 7 days of receiving a request from the respondent or the Tribunal—

- (a) send or deliver to the respondent or Tribunal a copy of any document specified in the list (and in the case of the Tribunal, any additional copies of the document requested by the Tribunal, up to a maximum of four in number); or
- (b) make such document available to the respondent or Tribunal to read or copy.

Directions and case management

9.—(1) The Tribunal may give a direction in relation to the conduct or disposal of appeal proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(2) In particular, and without restricting the general powers in paragraph (1) and rule 18, the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment (or of any rule made under another enactment) containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 15 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions which are relevant to the proceedings to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) require a party to provide a skeleton argument;
- (k) decide the place and time of any hearing;
- (l) make requirements about documentation and inspection;
- (m) stay proceedings;
- (n) suspend the effect of its own decision pending the determination by the High Court of an application for permission to appeal against, and any appeal of, that decision.

(3) A clerk may appoint a time and place for the review of the progress of the matter and shall notify the parties of the date, time and place of any such review.

(4) A clerk may refer to the Tribunal any matter for a decision or directions and the Tribunal may itself or on the application of any party make a decision on such terms as to the Tribunal shall appear just—

- (a) to adjourn any hearing listed for directions or for a substantive hearing;
 - (b) to agree to the amendment of any document or the correction of any matter;
 - (c) to make any directions which shall appear necessary or appropriate to secure the timely hearing of the appeal.
- (5) Any hearing under this rule shall be held in public unless rules 23(2) or (3) applies.

Practice directions

10.—(1) The Tribunal(or a panel of Tribunal members consisting of not less than 5 members of whom no fewer than 2 shall be lay members) may give such notices or make such directions concerning the practices or procedures of the Tribunal as are consistent with these Rules and as shall seem appropriate.

(2) The Tribunal shall promulgate notices or directions given or made under paragraph (1) under the authority of the President.

Failure to comply with rules, practice directions or tribunal directions

11.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction given under these Rules does not of itself render void the appeal or any step taken in the appeal.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction given under these Rules, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 12;
- (d) otherwise barring or restricting a party's participation in the appeal.

(3) The Tribunal may not bar or restrict a party's participation in the appeal under paragraph (2)(d) without first giving the party an opportunity to make representations in relation to the proposed action.

Striking out a party's case

12.—(1) The Tribunal must strike out the whole or a part of an appeal if the Tribunal does not have jurisdiction in relation to the appeal or that part of it.

(2) The Tribunal may strike out the whole or a part of an appeal if—

- (a) the appellant has failed to comply with a direction given under these Rules which stated that failure by the appellant to comply with the direction could lead to the striking out of the appeal or part of it;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the appeal fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(3) The Tribunal may not strike out the whole or a part of the appeal under paragraph (1) or (2)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(4) If the appeal, or part of it, has been struck out under paragraph (2)(a), the appellant may apply for the appeal, or part of it, to be reinstated.

(5) An application under paragraph (4) must be made in writing and received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent notification of the striking out to the appellant.

(6) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the whole or a part of the appeal is to be read as a reference to the striking out of the whole or a part of the response to the appeal; and
- (b) a reference to an application for the reinstatement of an appeal which has been struck out is to be read as a reference to an application for the reinstatement of a response to an appeal which has been struck out.

Addition, substitution and removal of parties

13.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to an appeal by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

Prevention of disclosure or publication of documents and information

14.—(1) The Tribunal may make a decision prohibiting the disclosure or publication of—

- (a) specified documents or information relating to any appeal proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be sent or delivered to the second party; and
- (b) send or deliver to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Tribunal's consent.

(6) The Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

(8) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send notice that a party has made an application for a direction under paragraph (6) to each other party.

(9) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of a decision made under paragraph (1) or a direction given under paragraph (2) or (6).

Lead cases

15.—(1) This rule applies if—

- (a) two or more appeals have been started before the Tribunal;
- (b) in each such appeal the Tribunal has not made a decision finally disposing of all issues in the proceedings; and
- (c) the appeals give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more appeals falling under paragraph (1) as a lead case or lead cases; and
- (b) staying the other appeals falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send or deliver a copy of that decision to each party in each of the related appeals; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) No later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent or delivered a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related appeal.

(5) The Tribunal must give directions in respect of appeals which are stayed under paragraph (2)(b), providing for the disposal of or further directions in those appeals.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another appeal or other appeals are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related appeals should be set aside or amended.

Withdrawal

16.—(1) Subject to paragraph (2), an appellant may give notice of the withdrawal of its appeal, or any part of it, and the respondent may do likewise in respect of its case against the appeal—

- (a) at any time before a hearing to consider the disposal of the appeal (or, if the Tribunal disposes of the appeal without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or

(b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal, which may be given subject to such order relating to costs as the Tribunal shall think fit.

(3) A party which has withdrawn its appeal or case against the appeal may apply to the Tribunal for the appeal or case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal no later than the date on which expires the period of 28 days beginning with—

(a) the date on which the Tribunal received the notice under paragraph (1)(a); or

(b) the date of the hearing at which the appeal or case was withdrawn orally under paragraph (1)(b).

(5) The Tribunal must notify each party in writing of a withdrawal under this rule.

Consent orders

17.—(1) The Tribunal may, at the request of the parties and only if it considers it appropriate, make a consent order disposing of the appeal proceedings and making such other appropriate provision as the parties have agreed.

(2) Despite any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

General powers of Tribunal

18.—(1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

(2) The Tribunal may dispense with any requirements of these Rules in respect of notices, statements or other documents, witnesses, service or time in any case where it appears to the Tribunal to be just so to do.

Disclosure, evidence and submissions

19.—(1) Without restriction on the general powers in rule 9 and 18, the Tribunal may give directions in relation to an appeal as to—

(a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;

(b) the provision by parties of statements of agreed matters;

(c) issues on which it requires evidence or submissions;

(d) the nature of the evidence or submissions it requires;

(e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;

(f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;

(g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—

(i) orally at a hearing; or

(ii) by written submissions or witness statement; and

(h) the time at which any evidence or submissions are to be sent or delivered.

(2) The Tribunal may—

(a) admit evidence whether or not—

- (i) the evidence would be admissible in a civil trial in the United Kingdom; or
- (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction given under these Rules or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction given under these Rules or a practice direction; or
 - (iii) it would otherwise be unfair, disproportionate or unnecessary in the interests of justice to admit the evidence.
- (3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Written evidence

20.—(1) The Tribunal may in its discretion, in respect of a whole case or of any particular fact or facts, proceed and act upon evidence given by Statement.

(2) Every Statement upon which any party proposes to rely shall be sent or delivered to the clerk and to all other parties no later than 21 days before the date fixed for the hearing of the appeal together with a notice in the form of Form 1 in the Schedule.

(3) Any party on whom a notice has been served under paragraph (2) and who requires the attendance, at the hearing, of the witness in question shall, no later than 9 days before the date of the hearing require, in writing, the other party to produce the witness at the hearing.

(4) If no party requires the attendance of a witness in accordance with the provisions of this rule, the Tribunal may accept the Statement in question in evidence.

(5) If any party intends to call as a witness any person who has not produced a Statement, he must, no later than 10 days before the date fixed for the hearing, notify the clerk and any other party to the proceedings of his intention and forthwith send or deliver a copy of a written proof of evidence to the other party and lodge five copies of the proof with the clerk.

(6) In this rule, “Statement” means a written statement (including a witness statement) containing a statement that the party putting forward or making the Statement believes the facts stated in the Statement are true.

Decision with or without a hearing

21.—(1) The Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.

(2) Despite anything to the contrary in these Rules, if the Tribunal holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Tribunal may dispose of the proceedings without holding any further hearing.

Listing of appeal hearing

22.—(1) Unless the Tribunal has made directions in respect of the hearing of an appeal, a clerk shall appoint a date for the hearing by the Tribunal and shall give notice of the date to the parties.

(2) The hearing shall not, unless all the parties have agreed or the Tribunal has so ordered, take place sooner than the date on which expires the period of 28 days beginning with the date of service of the notice appointing the date of the hearing.

Public or private hearings

23.—(1) Subject to paragraphs (2) and (3) every appeal hearing shall take place in public.

(2) Any party and any person who claims to be affected by an appeal may seek a decision from the Tribunal that the hearing or part of it be conducted in private on the grounds of—

- (a) exceptional hardship; or
- (b) exceptional prejudice,

to a party, a witness or any person affected by the appeal.

(3) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private and make such decision as shall appear to it to be just and proper.

(4) The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private if—

- (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or
- (b) in the Tribunal's view a hearing in public would prejudice the interests of justice.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to the requirement at rule 14(9); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Decisions

24.—(1) The Tribunal may announce a decision orally at a hearing of or relating to an appeal or may reserve its decision for announcement at a later date. In either case the announcement shall be made in public.

(2) Subject to rule 14(9), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings—

- (a) an order stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

(4) An order under paragraph (2)(a) shall be signed by a member of the Tribunal upon the announcement of the decision and shall, subject to paragraph (5), be filed forthwith with the Society.

(5) The Tribunal may suspend the filing of an order under paragraph (2)(a) if it appears to the Tribunal that there is good reason to do so, in which event the decision shall not take effect until the order is filed with the Society.

(6) Subject to rule 14(9), the Tribunal may publicise a decision in such manner as it thinks fit.

Re-hearing where a party neither appears nor is represented

25.—(1) At any time before the date on which expires the period of 14 days beginning with the date on which an order was provided to the party under rule 24(2), a party may apply to the Tribunal for a re-hearing of an appeal if—

- (a) he neither attended in person nor was represented at the hearing of the appeal in question; and
- (b) the Tribunal determined the appeal in his absence.

(2) An application for a re-hearing under this rule shall be made in the form of Form 2 in the Schedule and shall be supported by a statement setting out the facts upon which the applicant wishes to rely.

(3) If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing shall be held before a Panel comprised of different members from those who heard the original appeal.