
STATUTORY INSTRUMENTS

2019 No. 1185

The Solicitors (Disciplinary Proceedings) Rules 2019

PART 6

HEARINGS AND COSTS

Publication of cause lists

34.—(1) A cause list will be published on the Tribunal’s website before the case is due to be heard.

(2) Any party or other person who claims to be affected by an application may apply to the Tribunal for the cause list to be anonymised on the grounds of—

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

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

(3) Any person making an application under paragraph (2) must serve a copy of that application together with a Statement in support on all parties to the proceedings, and—

- (a) the application must be served no later than 28 days before the hearing in relation to which the application is made; and
- (b) must be made using the prescribed form.

(4) The Tribunal may in its discretion consider the application on the papers or list it for an oral hearing.

(5) If the Tribunal is satisfied that either of the grounds in paragraph (2) are met, the Tribunal must direct that the cause list be anonymised in such a way that appears to it to be just and proper.

Public or private hearings

35.—(1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.

(2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to 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 hearing.

(3) Any person who makes an application under paragraph (2) must serve a copy of that application and a Statement in support on all parties to the proceedings. If there is no objection to the application from any of the parties, the Tribunal will consider the application on the papers unless it considers that it is in the interests of justice for the application to be considered at an oral hearing.

(4) If the Tribunal decides that the application made under paragraph (2) is to be considered at an oral hearing, that hearing will take place in private unless the Tribunal directs otherwise.

(5) The Tribunal may, before or during a hearing, direct without an application from any party 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) the Tribunal considers that a hearing in public would prejudice the interests of justice.

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

- (a) whose conduct the Tribunal considers is disrupting or likely to disrupt the hearing;
- (b) whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) whose attendance at the hearing would otherwise prejudice the overriding objective of these Rules.

(7) Other than a party to the proceedings, a factual witness is excluded from the hearing until their evidence has been given, unless the parties agree or the Tribunal directs otherwise.

(8) Save in exceptional circumstances, where the Tribunal disposes of proceedings following a hearing held in private, it must announce its decision in a public session.

(9) The Tribunal may make a direction prohibiting the disclosure or publication of any matter likely to lead to the identification of any person whom the Tribunal considers should not be identified.

(10) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that—

- (a) the disclosure would be likely to cause any person serious harm; and
- (b) it is in the interests of justice to make such a direction.

Proceeding in absence

36. If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing.

Application for re-hearing

37.—(1) At any time before the Tribunal's Order is sent to the Society under rule 42(1) or within 14 days after it is sent, a party may apply to the Tribunal for a re-hearing of an application if—

- (a) the party neither attended in person nor was represented at the hearing of the application; and
- (b) the Tribunal determined the application in the party's absence.

(2) An application for a re-hearing under this rule must be made using the prescribed form accompanied by a Statement setting out the facts upon which the applicant wishes to rely together with any supporting documentation.

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

Evidence and submissions during the hearing

38.—(1) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation and may administer an oath or affirmation for that purpose.

- (2) The Tribunal may, at any hearing, dispense with the strict rules of evidence.
- (3) Without restriction on the general powers in Parts 2 and 3 of these Rules, the Tribunal may, pursuant to the overriding objective set out in rule 4(1), give directions in relation to—
 - (a) the provision by the parties of statements of agreed matters;
 - (b) issues on which it requires evidence to be given or submissions to be made and the nature and manner of the evidence or submissions it requires;
 - (c) the time at which any evidence or submissions are to be given or made;
 - (d) the time allowed during the hearing for the presentation of any evidence or submission;
 - (e) the time allowed for cross-examination of a witness.

Recording of the hearing

- 39.**—(1) All hearings of the Tribunal will be electronically audio-recorded.
- (2) Where hearings of the Tribunal are held in public, a copy of the recording must be disclosed to any person on request, subject to any direction by the Tribunal in relation to the release of the recording.
- (3) Where a hearing is held in private, a copy of the electronic recording may only be disclosed to the parties and only on the provision of an undertaking that the recording or any transcript of the hearing or any part of it will not be made public.

Decisions

- 40.**—(1) The Tribunal may announce its decision at the conclusion of the hearing or may reserve its decision for announcement at a later date. In either case the announcement must be made in public unless rule 35(8) applies.
- (2) As soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings, the Tribunal must provide to each party a judgment containing written reasons for its decision, signed by a member of the Tribunal.
- (3) As soon as reasonably practicable following a case management hearing, the Tribunal will provide to each party a memorandum containing written reasons for its decisions, signed by a member of the Tribunal.
- (4) Decisions on applications made during the course of a substantive hearing will be announced in a public session and the written reasons will be contained in the judgment issued at the conclusion of the proceedings.
- (5) The Tribunal or a clerk may, at any time, correct a clerical error or omission in a judgment or memorandum.

Sanction

- 41.**—(1) At the conclusion of the hearing, the Tribunal must make a finding as to whether any or all of the allegations in the application have been substantiated.
- (2) If the Tribunal makes a finding that any or all of the allegations in the application have been substantiated, the Tribunal must ask—
 - (a) the clerk whether any allegations were found to have been substantiated against the respondent in any previous disciplinary proceedings before the Tribunal; and
 - (b) the Society (in those cases where the Society is the applicant) whether it has imposed any sanction against the respondent in respect of conduct which has not been the subject of any previous disciplinary proceedings before the Tribunal.

(3) The respondent will be entitled to make submissions by way of mitigation, including character references, in respect of the sanction, if any, to be imposed by the Tribunal.

(4) The Tribunal will have regard to its guidance on sanctions in force at the time when determining the appropriate sanction.

The Order

42.—(1) The making of the Order that contains the Tribunal’s decision must be announced by the Tribunal pursuant to Rule 40(1) and a copy of the Order signed by a member of the Tribunal must be sent by the Tribunal to the Society as soon as reasonably practicable following the hearing.

(2) An Order takes effect once it has been announced by the Tribunal in public session or in private where rule 35(8) applies.

Costs

43.—(1) At any stage of the proceedings, the Tribunal may make such order as to costs as it thinks fit, which may include an order for wasted costs.

(2) The amount of costs to be paid may either be decided and fixed by the Tribunal following summary assessment or directed by the Tribunal to be subject to detailed assessment by a taxing Master of the Senior Courts.

(3) Without prejudice to the generality of paragraph (1), the Tribunal may make an order as to costs in circumstances where—

- (a) any application, allegation or appeal is withdrawn or amended;
- (b) some or all of the allegations are not proved against a respondent;
- (c) an appeal or interim application is unsuccessful.

(4) The Tribunal will first decide whether to make an order for costs and will identify the paying party. When deciding whether to make an order for costs, against which party, and for what amount, the Tribunal will consider all relevant matters including the following—

- (a) the conduct of the parties and whether any or all of the allegations were pursued or defended reasonably;
- (b) whether the Tribunal’s directions and time limits imposed were complied with;
- (c) whether the amount of time spent on the matter was proportionate and reasonable;
- (d) whether any hourly rate and the amount of disbursements claimed is proportionate and reasonable;
- (e) the paying party’s means.

(5) If the respondent makes representations about the respondent’s means, the representations must be supported by a Statement which includes details of the respondent’s assets, income and expenditure (including but not limited to property, savings, income and outgoings) which must be supported by documentary evidence.