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WELSH STATUTORY INSTRUMENTS

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**2012 No. 322**

**The Special Educational Needs  
Tribunal for Wales Regulations 2012**

**PART D**

**MISCELLANEOUS**

**Orders for costs and expenses**

**71.**—(1) The President or the Chair of the tribunal panel which decided the case must not normally make an order in respect of costs and expenses, but may, subject to paragraph (3), make such an order—

- (a) against a party if the President or the Chair is of the opinion that a party has been responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided or that the party's conduct in making or resisting the appeal or claim was unreasonable;
- (b) against a representative if the President or the Chair is of the opinion that the representative is responsible for improper, unreasonable or negligent action or omission, or for any failure to comply with a direction or any delay which with diligence could have been avoided;
- (c) against a party who has failed to attend or be represented at a hearing of which that party has been duly notified;
- (d) against the local authority or responsible body where it has not submitted a case statement under regulation 21;
- (e) against the local authority or the responsible body where the President or the Chair considers that the disputed decision was unreasonable.

(2) Any order in respect of costs and expenses may be made—

- (a) as respects any costs and expenses incurred, or any allowances paid; or
- (b) as respects the whole, or any part, of any allowance (other than allowances paid to members of the Tribunal) paid by the Welsh Ministers to any person for the purposes of, or in connection with, a person's attendance at a Tribunal hearing.

(3) An order for costs may be made on the application of a party or on the President's or the Chair's own initiative.

(4) A party making an application for an order under paragraph (3) must—

- (a) submit a written application and a schedule of costs claimed to the Secretary of the Tribunal; and
- (b) serve a copy of the application and schedule of costs on the person against whom it is proposed that the order is made.

(5) An application for an order under paragraph (3) may be made at any time during the appeal or the claim but may not be made later than 28 days from the date on which the tribunal panel—

- (a) issued the decision notice recording the decision which finally disposed of all issues in the appeal or the claim;
  - (b) upon withdrawal of the appeal or the claim, made an order dismissing the appeal or the claim;
  - (c) following the local authority's concession to the appeal, issued the decision notice.
- (6) An application for an order under paragraph (3)—
- (a) must be refused by the President or the Chair if a party is asking the Tribunal to consider a matter which is outside its powers;
  - (b) may be refused in whole or part by the President or the Chair if, in the President's or the Chair's opinion, the whole or part of it has no reasonable chance of success.
- (7) Unless an application for an order is refused under paragraph (6), it must be determined after the party and the person against whom it is proposed that the order is made have had an opportunity to be heard by the President or the Chair.
- (8) If an order is made under paragraph (3), the President or the Chair may give directions to be complied with before or at the costs hearing.
- (9) If a party fails to comply with a direction given under paragraph (8) the President or the Chair may take account of that fact when deciding whether to make an order for costs.
- (10) An order under paragraph (3) may require the party or representative against whom it is made to pay a party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the appeal or claim or the whole or part of such costs as assessed if not otherwise agreed.
- (11) An order under this regulation for costs to be assessed must allow the county court to make a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 either on the standard basis or if specified in the order on the indemnity basis .