
STATUTORY INSTRUMENTS

2002 No. 1985

The Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002

PART IV

DETERMINATION OF CLAIMS

Power to determine a claim without a hearing

29.—(1) The tribunal may determine a claim or any particular issue without a hearing—

- (a) if the parties so agree in writing; or
- (b) in the circumstances described in regulations 15 or 25.

(2) The provisions of regulation 31(2) shall apply in respect of the determination of a claim, or any particular issue, under this regulation.

Hearings to be in private: arrangements and exceptions

30.—(1) A hearing shall not be in private if—

- (a) both the parent and the responsible body request that the hearing be in public; or
- (b) the President or, at a hearing, the tribunal orders that the hearing should be in public.

(2) The following persons (as well as the parties and their representatives and witnesses) shall be entitled to attend the hearing of a claim, even though it is in private—

- (a) the child;
- (b) subject to the provisions of paragraph (9) below, any person named by the parent in response to the enquiry under regulation 20(b) unless the President has determined that any such person should not attend the hearing and has notified the parent accordingly;
- (c) a parent of the child who is not a party to the claim;
- (d) the clerk to the tribunal and the Secretary of the Tribunal;
- (e) the President and a member of the chairmen's or lay panel (when not sitting as a member of the tribunal);
- (f) a member of the Council on Tribunals;
- (g) a person undergoing training as a member of the chairmen's or lay panel or as a clerk to the tribunal;
- (h) a person acting on behalf of the President in the training or supervision of clerks to tribunals;
- (i) an interpreter;
- (j) any person giving other necessary assistance to a person entitled to attend the hearing further to this regulation.

(3) The tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of a claim which is held in private.

(4) Without prejudice to any other powers it may have, the tribunal may exclude from the hearing, or part of it—

- (a) a person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing;
- (b) a person, including the child, whose presence is likely, in the opinion of the tribunal, to make it difficult for any person to adduce the evidence or make the representations necessary for the proper conduct of the hearing;
- (c) a representative or witness whom a party omitted to name, without reasonable cause, in response to the enquiry by the Secretary of the Tribunal under regulation 20.

(5) For the purposes of arriving at its decision a tribunal shall, and for the purposes of discussing a question of procedure may, notwithstanding anything contained in these Regulations, order all persons to withdraw from the sitting of the tribunal other than the members of the tribunal and any of the persons mentioned in sub-paragraphs (d) to (g), or, as their respective duties require, sub-paragraphs (i) and (j), of paragraph (2).

(6) Except as provided in paragraphs (7) and (8) none of the persons mentioned in sub-paragraphs (a) to (j) of paragraph (2) or paragraph (3) shall, save in the case of the persons specified in sub-paragraphs (d), (i) and (j) of paragraph (2) as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal.

(7) The tribunal may permit the child to give evidence and to address the tribunal on the subject matter of the claim.

(8) The tribunal may permit a parent of the child who is not a party to the claim to address the tribunal on the subject matter of the claim.

(9) Where the parent has named more than two persons in response to the enquiry under regulation 20(b) only two persons shall be entitled to attend the hearing unless the President, or, at a hearing, the tribunal gives permission for a greater number to attend.

Failure of parties to attend a hearing

31.—(1) If a party fails to attend or be represented at a hearing of which he had been duly notified, the tribunal may—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the claim in the party's absence; or
- (b) adjourn the hearing.

(2) Before disposing of a claim in the absence of a party, the tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation the notice of claim and the parties' statements of their cases shall be treated as representations in writing.

Procedure at a hearing

32.—(1) At the beginning of the hearing the chairman shall explain the order of proceedings which the tribunal proposes to adopt.

(2) The tribunal shall conduct the hearing in such manner as it considers the most suitable to the clarification of the issues and generally to the just handling of the proceedings; it shall, as far as appears to it appropriate, seek to avoid formality in its proceedings.

(3) The tribunal shall determine the order in which the parties are heard and the issues determined.

- (4) The tribunal may, if it is satisfied that it is just and reasonable to do so, permit—
 - (a) the parent to rely on grounds not stated in his notice of claim or the statement of his case;
 - (b) the responsible body to rely on grounds not specified in its statement of its case.

(5) If at or after the beginning of a hearing a member of the tribunal other than the chairman is absent, the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal shall be deemed to be properly constituted and the decision of the tribunal shall be taken by those two members.

Late written evidence

33.—(1) At the beginning of the hearing, a party may submit further written evidence which satisfies the conditions set out in paragraph (2) unless the tribunal, after considering any representations from the other party, is of the opinion that it would be contrary to the interests of justice.

- (2) The conditions referred to in paragraph (1) are that—
 - (a) the evidence was not, and could not reasonably have been, available to that party before the end of the case statement period;
 - (b) a copy of the evidence was sent or delivered to the Secretary of the Tribunal and to the other party without undue delay and, in any event, at least 5 working days before the hearing; and
 - (c) the extent and form of the evidence is such that, in the opinion of the tribunal, it is not likely to impede the efficient conduct of the hearing.

(3) If paragraph (1) does not apply, the tribunal may give a party permission to submit further written evidence at the hearing if it is of the opinion that—

- (a) the case is wholly exceptional; and
- (b) unless the evidence is admitted, there is a serious risk of prejudice to the party seeking to rely on it.

(4) Before the hearing the tribunal may refer to copies of evidence sent to the Secretary of the Tribunal under paragraph (2)(b) above for the purpose of considering whether or not it satisfies the conditions in paragraph (2); but if the evidence is not admitted the tribunal shall disregard it in determining the claim.

Evidence at a hearing

34.—(1) In the course of the hearing the parties shall be entitled to give evidence, to call witnesses, to question any witness and to address the tribunal both on the evidence, including the written evidence submitted before the hearing, and generally on the subject matter of the claim:

Provided that neither party will be entitled to call more than five witnesses to give evidence orally (in addition to any witness whose attendance is required pursuant to paragraph (2)) unless the President or, at a hearing, the tribunal grants a party permission to call a greater number of witnesses.

(2) Evidence before the tribunal may be given orally or by written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any maker of any written statement:

Provided that a party shall only be entitled to give evidence by written statement if such evidence is submitted with the notice of claim or the statement of his case or in accordance with regulation 33.

- (3) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant.

(4) The tribunal may require any witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in due form, or may require any evidence given by written statement to be given by a statement of truth.

Adjournments and directions

35.—(1) The tribunal may from time to time adjourn the hearing.

(2) When a hearing is adjourned—

- (a) the tribunal may give directions to be complied with before or at the resumed hearing;
- (b) the chairman may announce provisional conclusions reached by the tribunal. The provisional conclusions are not a decision of the tribunal.

(3) A direction under paragraph (2)(a) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the claim.

(4) If a party fails to comply with such a direction, the tribunal shall take account of that fact when determining the claim or deciding whether to make an order for costs.

Decision of the tribunal

36.—(1) A decision of the tribunal may be taken by a majority and where the tribunal is constituted by two members under regulation 32(5) the chairman shall have a second or casting vote.

(2) The decision of the tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, shall be recorded forthwith in a document which, save in the case of a decision by consent, shall also contain, or have annexed to it, a statement of the reasons (in summary form) for the tribunal's decision, and each such document shall be signed and dated by the chairman.

(3) Neither a decision given orally nor the document referred to in paragraph (2) shall contain any reference to the decision being by majority (if that be the case) or to any opinion of a minority.

(4) Every decision of the tribunal shall be entered in the records.

(5) As soon as may be the Secretary of the Tribunal shall send a copy of the document referred to in paragraph (2) to each party, accompanied by guidance, in a form approved by the President, about the circumstances in which there is a right to appeal against a tribunal decision and the procedure to be followed.

(6) Where, under regulation 12 a parent has appointed a representative the Secretary of the Tribunal shall send a copy of the documents referred to in paragraph (5) to the parent as well as to the representative.

(7) Every decision shall be treated as having been made on the date on which a copy of the document recording it is sent to the parent (whether or not the decision has previously been announced at the end of the hearing).

Application or proposal for review of tribunal's decision

37.—(1) A party may apply to the Secretary of the Tribunal for the decision of the tribunal to be reviewed on the grounds that—

- (a) its decision was wrongly made as a result of an error on the part of the tribunal staff;
- (b) a party, who was entitled to be heard at the hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear;
- (c) there was an obvious error in the decision; or
- (d) the interests of justice require.

- (2) An application that a decision of the tribunal be reviewed shall—
 - (a) be made not later than 10 working days after the date on which the decision was sent to the parties;
 - (b) be in writing stating the grounds in full.
- (3) An application that a decision of the tribunal be reviewed may be refused by the President, or by the chairman of the tribunal which decided the case, if in his opinion it has no reasonable grounds of success.
- (4) Unless an application that a decision of the tribunal be reviewed is refused in accordance with paragraph (3), it shall be determined, after the parties have had an opportunity to be heard, by the tribunal which made the decision or, where that is not practicable, by a tribunal appointed by the President.
- (5) The tribunal may on its own initiative propose to review its decision on any of the grounds referred to in paragraph (1), in which case—
 - (a) the Secretary of the Tribunal shall serve notice on the parents not later than 10 working days after the date on which the decision was sent to them; and
 - (b) the parties shall have an opportunity to be heard.
- (6) If, on the application of a party or on its own initiative, the tribunal is satisfied as to any of the grounds referred to in paragraph (1)—
 - (a) it shall order that the whole or a specified part of the decision be reviewed; and
 - (b) it may give directions to be complied with before or at the hearing of the review.
- (7) A direction under paragraph (6) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the review.
- (8) If a party fails to comply with such a direction, the tribunal shall take account of that fact when determining the review or deciding whether to make an order for costs.

Review of tribunal's decision

- 38.**—(1) A tribunal which reviews all or part of a decision may—
 - (a) by certificate under the chairman's hand set aside or vary that decision and substitute such other decision as it thinks fit; or
 - (b) order a rehearing before the same or a differently constituted tribunal.
- (2) If the decision is set aside or varied, the Secretary of the Tribunal shall alter the entry in the records to conform to the chairman's certificate and shall notify the parties accordingly.

Review of the President's decision

- 39.**—(1) On the application of a party to the Secretary of the Tribunal or on his own initiative, the President may review and set aside or vary any decision of his if he is satisfied that—
 - (a) the decision was wrongly made as a result of an error on the part of the tribunal staff;
 - (b) there was an obvious error in the decision; or
 - (c) the interests of justice so require.
- (2) An application by a party for a review under paragraph (1) shall be made—
 - (a) in writing stating the grounds in full;
 - (b) not later than 10 working days after the date on which he was notified of the decision.
- (3) Where the President proposes to review his decision on his own initiative he shall serve notice of that proposal on the parties not later than 10 working days after they were notified of the decision.

(4) The parties shall have an opportunity to be heard on any application or proposal for review under this regulation and the review shall be determined by the President.

(5) If any decision is set aside or varied under this regulation the Secretary of the Tribunal shall alter the entry in the records and shall notify the parties accordingly.

(6) Where, in accordance with regulation 7(4), the President decides under paragraph 10(3) of Schedule 3 to the 1995 Act that a claim will not be considered out of time, the decision shall be capable of being reviewed under this regulation on the application of a parent as if he were party to a claim and in such a case the responsible body shall not be entitled to be heard or notified.

Orders for costs and expenses

40.—(1) The tribunal shall 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 (including a parent who has withdrawn his claim or a responsible body which has withdrawn its opposition to the claim) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting a claim was wholly unreasonable;
- (b) against a party who has failed to attend or be represented at a hearing of which he has been duly notified; or
- (c) against the responsible body where it has not delivered a statement of its case under regulation 13.

(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 Secretary of State under section 28J(5) of the 1995 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.

(3) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(4) An order under paragraph (1) may require the party against whom it is made to pay the other party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of such costs as assessed if not otherwise agreed.

(5) An order under this regulation for costs to be assessed shall allow the County Court to make a detailed assessment of fast track trial costs either on the standard or indemnity basis as the order may specify in accordance with the Civil Procedure Rules 1998.