

SCHEDULE 5

Regulation 4(5)

APPEALS AND APPLICATIONS FOR LEAVE UNDER ARTICLE 42 (APPLICATIONS AGAINST INCLUSION IN THE LIST) OF THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS (NORTHERN IRELAND) ORDER 2003

Initiating an appeal

1.—(1) A person who wishes to appeal to the Care Tribunal under Article 42(1)(a) of the 2003 Order, against a decision to include him in the DWVA (NI) list must do so by application in writing to the Care Tribunal.

(2) An application under this paragraph must be received by the Secretary no later than the first working day after the expiry of three months from the date of the letter informing the applicant of the decision.

(3) An application under this paragraph may be made on the application form available from the Secretary to the Care Tribunal.

(4) An application under this paragraph must –

- (a) give the applicant's name, date of birth and full postal address;
- (b) give the reasons why the applicant believes he should not be included in the DWVA (NI) list;
- (c) give the name, address and profession of the person (if any) representing the applicant;
- (d) give the address within the United Kingdom to which the Secretary should send documents concerning the appeal;
- (e) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative; and
- (f) be signed and dated by the applicant.

Applying for leave to appeal

2.—(1) An application for leave –

- (a) to appeal to the Care Tribunal under Article 42(1)(b) of the 2003 Order against a decision not to remove the applicant from the DWVA (NI) list under Article 35 of that Order; or
- (b) to have the issue of the applicant's inclusion in the DWVA (NI) list determined under Article 42 (2) of the 2003 Order by the Care Tribunal,

must be made in writing to the Secretary.

(2) An application under sub-paragraph (1)(a) must be received by the Secretary no later than the first working day after the expiry of three months from the date of the letter informing the applicant of the decision.

(3) An application under this paragraph may be made on the application form available from the Secretary to the Care Tribunal.

(4) An application under this paragraph must –

- (a) give the applicant's name, date of birth and full postal address;
- (b) give sufficient information to make it clear whether the appeal falls within sub-paragraph (1)(a) or (b);
- (c) give the reasons why the applicant believes the decision was wrong or, as the case may be, why he believes he should not be included in the DWVA (NI) list;

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- (d) give the dates of any previous appeal under Article 42 of the 2003 Order and (where applicable) application for leave, which the applicant has made to the Care Tribunal;
- (e) give details of any new evidence or material change of circumstances since that appeal and (where applicable) application for leave was determined which might lead the Care Tribunal to a different decision;
- (f) in the case of an application to have the issue of his inclusion in the DWVA (NI) list determined by the Care Tribunal, give details of any civil or criminal proceedings relating to the misconduct of which the applicant is alleged to have been guilty;
- (g) give the name, address and profession of the person (if any) representing the applicant;
- (h) give the address within the United Kingdom to which the Care Tribunal should send documents concerning the appeal and the application for leave;
- (i) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative; and
- (j) be signed and dated by the applicant.

Acknowledgement and notification of application

- 3.—(1) On receiving an application, the Secretary to the Care Tribunal must –
- (a) immediately send an acknowledgement of its receipt to the applicant; and
 - (b) subject to the following provisions of this paragraph, enter particulars of the application and the date of its receipt in the records and send a copy of it, together with any documents supplied by the applicant in support of it, to the respondent.
- (2) If the Chairman is of the opinion that the applicant is asking the Care Tribunal to do something which it cannot do, he may notify the applicant in writing –
- (a) of the reasons for his opinion; and
 - (b) that the application will not be entered in the records unless within five working days the applicant notifies the Chairman in writing that he wishes to proceed with it.
- (3) If in the Secretary's opinion there is an obvious error in the application –
- (a) he may correct it;
 - (b) he shall notify the applicant accordingly; and
 - (c) unless within five working days of receipt of notification under head (b) the applicant notifies the Secretary in writing that he objects to the correction, the application shall be amended accordingly.

Response to application

- 4.—(1) The Secretary must send the information provided by the applicant under paragraph 1 or 2, as the case may be, to the respondent together with a request that he respond to the application within 20 working days of receiving it.
- (2) If the respondent fails to respond as directed, he shall not be entitled to take any further part in the proceedings.
- (3) The response must –
- (a) acknowledge that the respondent has received a copy of the application;
 - (b) indicate whether or not he opposes it, and if he does, why;
 - (c) provide the following information and documents –

- (i) the name, address and profession of the person (if any) representing the respondent and whether the Secretary should send documents concerning the appeal or, as the case may be, application for leave, to the representative rather than to the respondent;
- (ii) copies of any letters informing the applicant of the decision which is the subject of the appeal or, as the case may be, application for leave;
- (iii) copies of any information submitted with a reference under Articles 36(1), 37(1), 38(1) and 39 of the 2003 Order and of any observations submitted on it by the applicant.

(4) The Secretary must without delay send to the applicant a copy of the response and the information and documents provided with it.

Misconceived applications for leave, appeals etc.

5.—(1) The Chairman may at any time strike out the appeal or, as the case may be, application for leave, on the grounds that –

- (a) it is made otherwise than in accordance with paragraph 1 or 2 (as the case may be);
- (b) it is outside the jurisdiction of the Care Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an appeal or application for leave, as the case may be, under this paragraph, the Chairman must –

- (a) invite the parties to make representations on the matter within such period as he may direct;
- (b) if within the period specified in the direction the applicant so requests in writing, afford the parties an opportunity to make oral representations; and
- (c) consider any representations the parties may make.

(3) Where the Chairman strikes out an appeal or application for leave made under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.

(4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal or application for leave (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.

(5) An application under paragraph (4) must –

- (a) be made not later than 10 working days after the date upon which notice of determination was sent to the applicant; and
- (b) must be in writing stating the grounds in full.

(6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.

(7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Grant or refusal of leave

6.—(1) The Chairman shall grant or refuse leave in relation to an application under paragraph 2 without a hearing, as he sees fit.

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- (2) Subject to paragraph 7, if the Chairman refuses leave the application shall be dismissed.
- (3) The Secretary must without delay notify the parties in writing of the Chairman's decision, and if he has refused leave –
 - (a) must notify them of his reasons for doing so; and
 - (b) must inform the applicant of his right to request a reconsideration of the decision under paragraph 7.

Reconsideration of leave

- 7.—(1) The Chairman must reconsider a decision to refuse leave if within ten working days after receipt of a notice under paragraph 6(3) the Care Tribunal receives a written request to do so from the applicant.
- (2) If in his request under sub-paragraph (1) the applicant has asked to make representations about leave at a hearing, the Secretary must fix a hearing for those representations to be heard.
- (3) The Secretary must notify the respondent of any hearing fixed for the purpose of considering whether to grant leave, and the applicant and the respondent may appear or be represented by any person at that hearing.
- (4) If the Chairman again refuses leave after reconsideration –
 - (a) he must give his reasons for doing so in writing; and
 - (b) the Secretary must without delay send to the parties a copy of the Chairman's decision and if he has refused leave his reasons for doing so.

Further information to be sent by the applicant and respondent

- 8.—(1) As soon as the respondent has provided the information set out in paragraph 4, or as soon as leave has been granted under paragraph 6 or 7, the Secretary must write to each party requesting that he send to the Care Tribunal, within 20 working days after the date on which he receives the Secretary's letter, the following information –
 - (a) the name of any witness whose evidence the party wishes the Care Tribunal to consider (and whether the party may wish the Care Tribunal to consider additional witness evidence from a witness whose name is not yet known) and the nature of that evidence;
 - (b) whether the party wishes the Chairman to give any directions or exercise any of his powers under Part IV of these Regulations;
 - (c) whether the party wishes there to be a preliminary hearing with regard to directions;
 - (d) a provisional estimate of the time the party considers will be required to present his case;
 - (e) the earliest date by which the party considers he would be able to prepare his case for hearing; and
 - (f) in the case of the applicant, whether he wishes his case to be determined without a hearing.
- (2) Once the Secretary has received the information referred to in sub-paragraph (1) from both parties, he must without delay send a copy of the information supplied by the applicant to the respondent and that supplied by the respondent to the applicant.

Changes to further information supplied to the Care Tribunal

- 9.—(1) Either party, within 5 working days of receiving the further information in respect of the other party from the Secretary, may ask the Secretary in writing to amend or add to any of the information given under paragraph 8(1).

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(2) If the Secretary to the Care Tribunal receives any further information under sub-paragraph (1) from either party he must, without delay, send a copy of it to the other party.