

## SCHEDULE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND HEALTH AND EDUCATION CHAMBER RULES OF PROCEDURE 2018

## PART 3

### Procedure in respect of disability claims under paragraph 8 of schedule 17 of the 2010 Act.

#### Interpretation

**60.** In this Part of these Rules—

“case statement period” means the period referred to in rule 64(2);

“claim” means a claim under paragraph 8 of Schedule 17 of the 2010 Act and “claimant” shall be construed accordingly;

“party” means either the claimant or responsible body in respect of any claim made to the First-tier Tribunal;

“Register” means the Register of Claims to the First-tier Tribunal kept in pursuance of rule 100;

“response” means a written response submitted by a responsible body under rule 66; and

“responsible body” has the same meaning as in section 85(9) of the 2010 Act.

#### Claim

**61.—**(1) A claim to the First-tier Tribunal shall be made by notice in writing and shall be signed by the claimant or, at the discretion of the First-tier Tribunal, a claim transmitted by electronic means may be accepted without the claimant’s signature.

(2) The claim shall state—

- (a) the name, address, telephone number, date of birth and nature of the disability of the person to whom the claim relates;
- (b) the name, address and telephone number of the claimant, if the claimant is not the person to whom the claim relates;
- (c) the address to which correspondence should be sent to the claimant, if different;
- (d) the name, address and telephone number of the responsible body;
- (e) the name, address and profession of any representative appointed by the claimant, and, where available, the representative’s telephone number, fax number and electronic address;
- (f) the main facts on which the claimant intends to rely; and
- (g) details of the alleged contravention of Chapter 1 of Part 6 of the 2010 Act.

(3) The claimant must send a copy of the claim to the Equality and Human Rights Commission.

(4) The First-tier Tribunal shall not consider a claim unless the claim has been received by the First-tier Tribunal before the end of the period of six months beginning when the act complained of was done. Conduct extending over a period is to be treated as done at the end of the period.

(5) The First-tier Tribunal may consider any claim which is out of time under paragraph (4) if, in all the circumstances of the case, it considers that it is just and equitable to do so.

### **Action upon receiving a claim**

**62.** On receiving a claim the First-tier Tribunal shall—

- (a) enter the details of such matters specified in rule 61(2) in the Register and such other information as the Chamber President may from time to time direct under section 74(2) of the 2014 Act;
- (b) send a copy of the claim and of any accompanying documents to the responsible body, together with a notice in writing giving the case number of the claim from the Register, and including information, as appropriate to the claim, about the means and time for submission of a response, the consequences of failure to do so, and the right to receive a copy of the decision; and
- (c) acknowledge receipt and provide the claimant with a notice in writing giving the case number of the claim, and including information as appropriate to the claim, about the time for the responsible body to submit a response, the right to withdraw the claim, and the right to receive a copy of the decision.

### **Sufficiency of reasons for claim**

**63.—**(1) If the claim does not state grounds of claim which a legal member considers sufficient to enable the responsible body to respond to it, the legal member shall direct the claimant to send further and better particulars of the grounds of claim to the First-tier Tribunal within 10 working days of the receipt of notice of such direction by the claimant in accordance with rule 104.

(2) Rules 71 and 73 shall apply to a direction under paragraph (1).

(3) Further and better particulars of the grounds of claim sent in response to a direction made under paragraph (1) shall, if a legal member is satisfied that, together with the claim, such particulars should be sufficient to enable the responsible body to respond to it, be treated as part of the claim.

(4) Where a legal member has made a direction under paragraph (1), a copy of that direction shall be sent to the responsible body with confirmation that the case statement period will not commence until the direction has been complied with.

### **Case statement period and statement of claimant's case**

**64.—**(1) Where rule 63 does not apply or a legal member is satisfied under rule 63(3), the First-tier Tribunal shall send notice in writing to both parties advising them of the dates of the case statement period.

(2) The case statement period shall be the period of 30 working days beginning on the date on which notice under paragraph (1) is taken to have been received in accordance with rule 104.

(3) Before the end of the case statement period, the claimant must submit all written evidence to be relied on and which has not already been submitted and may submit to the First-tier Tribunal a written statement of the claimant's case, which may include the views of the person to whom the claim relates.

(4) The claimant may amend the claim, submit a supplementary written statement of the claimant's case or amend a supplementary written statement, if permission is given by a legal member or the First-tier Tribunal at a hearing after having first sought and taken account of the views of the responsible body.

(5) The claimant shall submit to the First-tier Tribunal a copy of every amendment and supplementary statement for which permission is given.

(6) Subject to paragraphs (7) and (8), on the application of either party or on the legal member's own initiative, a legal member may make an order shortening or extending the case statement period in any claim.

(7) Before making an order under paragraph (6), the legal member shall seek oral or written representations from the parties on the issue of shortening or extending the case statement period.

(8) A legal member may only make an order under paragraph (6) if satisfied that—

- (a) both parties will have sufficient time to prepare their cases; and
- (b) it is fair and just to do so.

(9) In the case of any claim where permission is given by a legal member under paragraph (4) the legal member giving permission may extend the case statement period if satisfied that it is fair and just to do so.

(10) If, at the time permission is granted under paragraph (4), the responsible body is not entitled to take any part in the proceedings in accordance with rule 66(4), the giving of permission shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, as a legal member or the First-tier Tribunal at the hearing may consider appropriate, so that the responsible body can be represented.

### **Distribution of documents by the First-tier Tribunal**

**65.**—(1) Subject to paragraph (2), the First-tier Tribunal shall—

- (a) forthwith send to the responsible body a copy of any amendment to the claim received during the case statement period;
- (b) at the end of the case statement period, and in so far as copies have not already been sent, send to each party—
  - (i) a copy of any amendment to the claim or response;
  - (ii) any statement of case submitted by the other party; and
  - (iii) the written evidence of the other party;
- (c) forthwith send to the other party copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with rule 64(3) or 66(3)) or other documents received from a party after the end of the case statement period.

(2) If, after the closure of the case statement period, any amendment, supplementary statement, written representation, written evidence or other document or application is delivered to the First-tier Tribunal, the First-tier Tribunal shall—

- (a) where the parties agree to the late submission, send a copy of it to the other party; or
- (b) where the parties do not agree to the late submission, send a copy of it to the other party to enable the parties to make representations on its admission within such time limits as may be determined by a legal member or by the First-tier Tribunal at a hearing.

(3) Where any individual has been called under rule 80, the First-tier Tribunal shall send to them a copy of all of the documentation submitted by the claimant under rule 64(3) and (5).

### **Response**

**66.**—(1) The responsible body shall submit a response to the First-tier Tribunal within the last ten working days of the case statement period.

(2) The response shall be signed and dated on behalf of the responsible body and shall state—

- (a) the name and address of the responsible body;
- (b) the address to which correspondence should be sent, if different;
- (c) the response to the grounds stated in the claim;

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- (d) the basis on which the claim is resisted;
  - (e) which facts as set out in the claim or in any statement of case under rule 64 are admitted and which are disputed;
  - (f) any further facts on which the responsible body propose to rely; and
  - (g) the name, address and profession of any representative appointed by the responsible body, and, where available, the representative's telephone number, fax number and electronic address.
- (3) The responsible body must submit along with the response all written evidence to be relied on.
- (4) A responsible body who does not submit a response shall not be entitled to take any part in the proceedings, except—
- (a) to make an application under rule 71 for a direction requiring the claimant to provide further information on the grounds on which the claimant relies and any facts and submissions relevant thereto, to enable the responsible body to respond;
  - (b) to apply under rule 75 for an extension of the time appointed under this rule for the response; or
  - (c) in exceptional circumstances at the discretion of a legal member or the First-tier Tribunal at a hearing.
- (5) In exceptional circumstances the responsible body may amend the response if permission is given by a legal member or the First-tier Tribunal at a hearing.
- (6) The responsible body shall submit to the First-tier Tribunal a copy of every amendment for which permission is given.

#### **Withdrawal of claim**

- 67.—**(1) A claimant may withdraw any claim made to the First-tier Tribunal—
- (a) at any time before the hearing of the claim by sending to the First-tier Tribunal a notice to that effect signed by the claimant or by the representative of the claimant; or
  - (b) at the hearing of the claim.
- (2) Upon receipt of any such notice, the First-tier Tribunal shall send a copy to the responsible body.
- (3) Upon withdrawal of the claim, a legal member or the First-tier Tribunal at a hearing shall make an order dismissing the claim.

#### **Withdrawal of opposition**

- 68.—**(1) The responsible body may withdraw their opposition to the claim—
- (a) at any time before the hearing of the claim by sending to the First-tier Tribunal a notice to that effect signed on their behalf; or
  - (b) at the hearing of the claim.
- (2) Upon receipt of any such notice, the First-tier Tribunal shall send a copy to the claimant.

#### **Preliminary matters**

- 69.—**(1) A legal member or, at the start of a hearing, the First-tier Tribunal may, either on the application of a party or on their own initiative, consider and determine any preliminary or incidental issue arising from a claim which must be determined prior to the substantive hearing of the claim, and which cannot be determined by the giving of directions under rule 71.

(2) Before any such issue is determined by a legal member or the First-tier Tribunal, the legal member or the First-tier Tribunal may direct that—

- (a) notice is given to the parties giving them an opportunity to submit representations in writing within a specified period; or
- (b) notice is given requiring the parties to appear before a legal member or the First-tier Tribunal for a preliminary hearing on that issue.

### **Suspension of proceedings**

**70.**—(1) A legal member or the First-tier Tribunal at a hearing may, on the application of either party, or on their own initiative, suspend such proceedings if it would be fair and just to do so.

(2) Any such suspension may be indefinite or for such specified period as the legal member or the First-tier Tribunal may consider appropriate.

### **Directions**

**71.**—(1) A legal member may, at any time before the hearing, either on the written application of a party or on the legal member's own initiative, give such directions to either or both parties as the legal member may consider necessary or expedient to further the overriding objective in the consideration of the claim and may in particular—

- (a) direct a party to provide any further information or particulars;
- (b) direct a party to produce any document which may reasonably be required and which it is in the power of that party to produce;
- (c) direct that a party shall supply a list of documents and a list of witnesses whom that party intends to call to give evidence at the hearing, on such date before the hearing as may be specified;
- (d) give directions as to the dates by which any documents or other evidence which any party is intending to rely on or produce shall be submitted;
- (e) where a party has notified that they do not wish to attend a hearing, give a direction as to the date by which that party shall send any written representations on the case to the First-tier Tribunal;
- (f) give a direction on—
  - (i) any issues on which evidence is required;
  - (ii) the nature of the evidence so required;
  - (iii) the way in which the evidence is to be provided to the First-tier Tribunal; and
  - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.

(2) Where an application is made by a party for a direction under paragraph (1), it shall be made in writing to the First-tier Tribunal specifying the direction sought and the basis for the application.

(3) On receipt of such an application, the First-tier Tribunal shall, unless the application is accompanied by the written consent of the other party, send a copy of the application to the other party inviting the party to make written representations on it within 10 working days or such other period as may be specified by a legal member.

(4) Where a party objects to the application, a legal member shall consider the objection and, if considered necessary for deciding the application, may afford the parties an opportunity to be heard.

(5) The First-tier Tribunal shall give notice to the parties of any direction to any party required to comply with it and shall—

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- (a) include a statement of the possible consequences of failure to comply as mentioned in rule 73; and
- (b) unless the party to whom the direction is addressed had consented to the application, contain a statement to the effect that that party may apply to a legal member under rule 72 to have that direction varied or set aside.
- (6) When making a direction under paragraph (1)(b) a legal member may—
  - (a) impose a condition on the supply of a document that the party receiving the document shall treat it as confidential and shall use it only for the purposes of the claim; and
  - (b) require, before the direction takes effect, a written undertaking to that effect from that party.

### **Varying or setting aside of directions**

**72.**—(1) Where a party to whom a direction is given under rule 71 was not afforded the opportunity to be heard before the direction was given and did not consent to the relative application, that party may apply at any time before the First-tier Tribunal has determined the claim to a legal member, by notice to the First-tier Tribunal, for the direction to be varied or set aside, but a legal member shall not vary it or set it aside without first notifying the other party and considering any representations made by that party.

(2) An application under paragraph (1) may be considered by a legal member alone or with such other members of the First-tier Tribunal as the legal member considers appropriate.

### **Failure to comply with a direction**

**73.**—(1) If any direction given to a party under rule 71 is not complied with by that party within any period specified in the direction, a legal member or the First-tier Tribunal at a hearing, may—

- (a) where the party in default is the claimant, dismiss the claim either in whole or in part;
- (b) where the party in default is the responsible body, determine the claim without a hearing; or
- (c) where appropriate, direct that a party in default take no further part in the proceedings.

(2) In this rule the expression “party in default” means the party who failed to comply with the direction.

### **Power to dismiss**

**74.**—(1) Without prejudice to the powers of the First-tier Tribunal at a hearing, a legal member may, at any time before the hearing of a claim, direct that the First-tier Tribunal serves notice on the claimant stating that it appears that the claim should be dismissed on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that the claim—

- (a) is made otherwise than in accordance with these Rules;
- (b) is not, or is no longer, within the jurisdiction of the First-tier Tribunal; or
- (c) is frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the claimant within such period as may be specified (being not less than 5 working days) to make representations in writing as to why the claim should not be dismissed and shall explain that the claimant may request a hearing.

(4) After expiry of the period specified in paragraph (3), and subject to paragraph (5), a legal member may order that the claim be struck out on one or more of the grounds specified in paragraph (2) or for want of prosecution.

(5) Before making an order under paragraph (4) a legal member shall consider any representations under paragraph (3) and may afford the claimant the opportunity of a hearing.

(6) Any decision to dismiss a claim under this rule shall be recorded in summary form in a document signed by the legal member and a copy of that document shall be sent by the First-tier Tribunal to each of the parties, and details of the decision entered in the Register.

### **Extension of time**

**75.—**(1) Where these Rules or any direction made under them require or authorise a party or other person to do something within a period of time, a legal member or the First-tier Tribunal at a hearing may, in exceptional circumstances, on the application of that party or other person, or on their own initiative, and even if the period has expired, grant such further period as the legal member or the First-tier Tribunal may consider appropriate.

(2) Where such a further period has been granted, reference in these Rules to the period of time shall be construed as a reference to the period of time as so extended, and, unless the further period is granted by the First-tier Tribunal at a hearing at which both parties are either present or represented, the First-tier Tribunal shall give notice to each of the parties of any such extension.

### **Consolidation of claims**

**76.—**(1) Where more than one claim relates to the same person, or requires a decision on substantially the same issue, a legal member may order that such claims be heard at the same hearing.

(2) A legal member may make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the legal member to be fair and just to do so and, before an order is made, the parties to each claim affected shall have the opportunity to be heard, and to have their views taken into account, either by a legal member alone or with such other members of the First-tier Tribunal as the legal member may consider appropriate.

(4) A legal member must not make an order under this rule if it would cause a breach of any of the rules in this Part or the rules in Part 2.

### **Consolidation of hearings of claims and references**

**77.—**(1) Where a reference under section 18(1) of the 2004 Act and a claim relate to the same person, and the other party to the reference and the claim is also the same, the person or, where the claim was made by the person's parent, the parent or the other party may apply to the First-tier Tribunal for an order that such a claim and reference be heard at the same hearing.

(2) A legal member may—

(a) make an order under paragraph (1);

(b) make an order varying or revoking an earlier order made under paragraph (1).

(3) An order under this rule shall only be made if it appears to the legal member to be fair and just to do so and, before an order is made, the parties have had the opportunity to be heard, and to have their views taken into account, either by a legal member alone or with such other members of the First-tier Tribunal as the legal member may consider appropriate.

(4) A legal member must not make an order under this rule if it would cause a breach of any of the rules in this Part or the rules in Part 2.

## **Recovery of documents**

**78.**—(1) Subject to the provisions of the 2004 Act and to paragraph (2), the First-tier Tribunal or a legal member may, on the application of any party or on their own initiative, direct that a citation be sent to any person requiring them to produce to the First-tier Tribunal, by such date as may be specified, any document in their custody, or under their control.

(2) The citation must explain that it is an offence under the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 to refuse or fail to produce any such document without reasonable excuse or to deliberately alter, conceal or destroy any document which that person is required by the citation to produce, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where such a citation has been duly served on a person and that person fails to comply within the time specified in the citation, a legal member or the First-tier Tribunal at a hearing may—

- (a) where the person in default is the claimant, dismiss the claim without a hearing or further hearing; or
- (b) where the person in default is the responsible body, order that the responsible body take no further part in the proceedings.

(4) In the exercise of the power conferred under paragraph (1) regard shall be had to the need to protect any matter that relates to intimate personal or financial circumstances of any person or consists of information communicated or obtained in confidence.

## **Witnesses and citation of witnesses**

**79.**—(1) Where a party wishes to call witnesses to attend a hearing to give evidence, that party shall, prior to the end of the case statement period, provide to the First-tier Tribunal a list of the names and addresses of such witnesses.

(2) A party may not call and lead evidence from any witness who is not included on their list of witnesses except with the permission of a legal member or the First-tier Tribunal at a hearing.

(3) Subject to the provisions of the 2004 Act and to paragraph (5), the First-tier Tribunal or a legal member may, on the written application of any party made not later than 8 working days before the hearing, or on their own initiative, direct that citation be sent to any person whose details are included in either party's list of witnesses under paragraph (1) requiring that person to attend any hearing, including any adjourned hearing, of the First-tier Tribunal at such time and place as may be specified in the citation, for the purpose of giving evidence.

(4) The citation must explain that it is an offence under the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 without reasonable excuse to fail to attend the First-tier Tribunal proceedings as required by the citation or to refuse or fail, whilst attending proceedings as so required, to answer any question and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) No individual shall be required so to attend unless—

- (a) they have been given at least 5 working days' notice of the hearing or, if less than 5 such days, they have informed the First-tier Tribunal that they accept such notice as they have been given; and
- (b) the necessary expenses of their attendance are paid or tendered to them by the party seeking their attendance.

(6) At the hearing of a claim, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the First-tier Tribunal both on the evidence and generally on the subject matter of the claim.



## **Expert evidence**

**80.**—(1) The First-tier Tribunal or a legal member may, if any issue arises in relation to a claim on which, in the opinion of the First-tier Tribunal or a legal member, it would be desirable for the First-tier Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on any matter.

(2) The First-tier Tribunal must supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing or resumed hearing.

(3) If the First-tier Tribunal or a legal member sees fit, it, he or she may direct that the expert shall attend the hearing and give evidence.

## **Specified individual**

**81.** On the application of either party or on its own initiative the First-tier Tribunal or a legal member may call any individual having a sufficient interest in the matter before the First-tier Tribunal to attend a hearing and give evidence.

## **Notice of hearing**

**82.**—(1) The First-tier Tribunal shall, after consultation with the parties, fix the date, time and place of the hearing and, not less than 10 working days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as the First-tier Tribunal thinks fit.

(2) The First-tier Tribunal shall include in or with the notice of hearing—

- (a) information and guidance as to attendance at the hearing of the parties, their witnesses and any persons whom they may wish to be present at the hearing in support, the lodging of documents, and the right of representation or assistance as provided for in rules 4 and 5;
- (b) a statement explaining the possible consequences of non-attendance by a party, unless that party has stated in writing that they wish to withdraw the claim or withdraw the response, and of the consequences of the failure to name a representative or witness whom the party may wish to attend;
- (c) an invitation to notify the First-tier Tribunal if a party or a witness may require the attendance of an interpreter or other person to give other necessary assistance at the hearing or may require any other particular arrangements to be made; and
- (d) a statement explaining the right to make representations in writing provided for under rule 84(6) by—
  - (i) a claimant who does not attend and is not represented at the hearing; or
  - (ii) a responsible body if they are not represented at the hearing and if they have submitted a response, unless they have stated in writing that they do not resist the claim or have withdrawn opposition to the claim.

(3) The First-tier Tribunal may alter the date, time or place of any hearing provided that the parties are given at least 5 working days' notice (or such shorter time as the parties may agree) of any altered hearing date, time or place.

(4) An altered hearing date shall not (unless the parties so agree) be earlier than the date previously fixed.

(5) Nothing in this rule shall oblige the First-tier Tribunal, in relation to the arrangements for any hearing, to consult with or send notice to any party who is not entitled to be present or represented at that hearing.

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(6) In this rule, “working day” has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

### **Power to decide claim without hearing**

**83.**—(1) A legal member may, in any of the circumstances referred to in paragraph (2), decide the claim without a hearing.

(2) For the purposes of paragraph (1) the circumstances are—

- (a) where no response is submitted to the First-tier Tribunal within the time appointed by rule 66 or any extension of time allowed under rule 75;
- (b) where the responsible body states in writing that they do not resist the claim;
- (c) where the responsible body withdraws their opposition to the claim; or
- (d) where both parties agree in writing to dispense with a hearing.

(3) In deciding a claim under paragraph (1) the legal member shall do so on the basis of the notice of claim, any response, any statement of case, any supplementary written statement of case and any written evidence submitted in accordance with the Rules.

(4) The First-tier Tribunal shall, after receipt of a claim which is to proceed without a hearing in accordance with this rule, send to the parties—

- (a) information and guidance; and
- (b) an indication of when the legal member expects to be able to notify the parties of the decision of the legal member.

### **Attendance at hearings**

**84.**—(1) Subject to the provisions of this rule, any hearing before the First-tier Tribunal shall be in private.

(2) A legal member or the First-tier Tribunal at a hearing may, on the application of the claimant or on their own initiative, make an order that a hearing or part of a hearing be held in public.

(3) An order shall not be made under paragraph (2) in any of the circumstances referred to in paragraph (4).

(4) Those circumstances are that a public hearing—

- (a) would prejudice the welfare, wellbeing or interests of the person to whom the claim relates;
- (b) would not, in all the circumstances, allow the fair hearing of the claim; or
- (c) would not be fair or just.

(5) The First-tier 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.

(6) A claimant or responsible body who does not intend to attend or be represented at the hearing may, not less than 5 working days before the hearing, submit additional written representations in support of their case.

(7) The following persons, as well as the parties and their representatives, shall be entitled to attend the hearing of a claim held in private—

- (a) the person to whom the claim relates, where the person is the claimant;
- (b) a parent of the person to whom the claim relates where the person is not the claimant;
- (c) an individual attending to support a party;
- (d) an individual appointed under rule 89(4);

- (e) a witness, but only for the purpose of giving evidence;
  - (f) the Chamber President and a member of the First-tier Tribunal (when not sitting as a member of the First-tier Tribunal);
  - (g) a member of staff of the Scottish Courts and Tribunals Service;
  - (h) an interpreter;
  - (i) a person giving necessary assistance to a person entitled to attend the hearing.
- (8) Without prejudice to any other powers it may have, the First-tier Tribunal may exclude from the hearing, or any part of it—
- (a) a person whose conduct has disrupted or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing;
  - (b) a person whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for anyone to present evidence or make representations necessary for the proper conduct of the hearing;
  - (c) a representative who was not notified to the First-tier Tribunal in the claim, response or in accordance with rule 4;
  - (d) a witness not included in the list of witnesses submitted by either party in accordance with rule 79(1).

### **Conduct of the hearing**

**85.**—(1) At the beginning of the hearing the legal member shall explain the procedure which the First-tier Tribunal proposes to adopt.

(2) At the hearing of a claim, the parties shall, subject to the provisions of these Rules, be entitled to be present and be heard, to give evidence, to call witnesses, to question witnesses and to address the First-tier Tribunal both on the evidence and generally on the subject matter of the claim, provided that neither party shall be entitled to call more than five witnesses to give evidence in person in addition to the claimant, unless, in exceptional circumstances, permitted to do so by a legal member, or the First-tier Tribunal at a hearing.

(3) The First-tier Tribunal may permit a parent of a claimant to address it on the subject matter of the claim.

(4) The First-tier Tribunal may, if it is satisfied that it is fair and just to do so, permit—

- (a) the claimant to rely on grounds not stated in the claim or in any statement of case; or
- (b) the responsible body to rely on grounds not specified in the response.

(5) If, at or after the beginning of a hearing, a member of the First-tier Tribunal other than the legal member is absent, the hearing may, with the consent of the parties, be conducted by the legal member and the remaining member and in that event the First-tier Tribunal shall be deemed to be properly constituted, and the decision of the First-tier Tribunal shall be taken by the legal member and that member (see regulation 2(4) of S.S.I. 2018/ ).

(6) In the absence of the consent referred to in paragraph (5) the hearing shall be postponed.

(7) Except in so far as expressly permitted by these Rules to give evidence or to address the First-tier Tribunal none of the persons mentioned in rule 84(5) or (7) shall, save in the case of persons mentioned in rule 84(7)(h), take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the First-tier Tribunal.

(8) For the purposes of arriving at its decision the First-tier Tribunal shall, and for the purposes of discussing a question of procedure, may, notwithstanding anything contained in these Rules order all persons to withdraw from the sitting of the First-tier Tribunal other than the legal member and ordinary members of the First-tier Tribunal and any of the persons mentioned in rule 84(7)(f) and (g).

### **Evidence at hearing**

**86.**—(1) Evidence at a hearing may be given in person or by written statement, but, subject to the provisions of these Rules, the First-tier Tribunal may at any stage of the proceedings require the personal attendance of the maker of a written statement.

(2) A party shall only be permitted to give evidence by written statement if such statement is submitted prior to the expiry of the case statement period or at any other time with the consent of the other party and with the approval of a legal member or the First-tier Tribunal at a hearing.

(3) A legal member or the First-tier Tribunal may at the start of a hearing, on the application of either party or on their own initiative, determine that a witness be allowed to give evidence by telephone, video link or any other means of communication, if satisfied that this would not prejudice the achievement of the overriding objective.

### **Postponement of hearing**

**87.**—(1) A legal member may, on their own initiative, or on application by either party, postpone any hearing.

(2) The First-tier Tribunal shall notify the parties of the date, time and place of any subsequent hearing following postponement.

### **Adjournment of hearing**

**88.**—(1) The First-tier Tribunal may from time to time adjourn a hearing.

(2) A hearing shall not be adjourned solely on account of the failure of a witness to appear unless the First-tier Tribunal, on cause shown, so directs.

(3) When the hearing is adjourned, a legal member or the First-tier Tribunal may give directions to be complied with, before or at the resumed hearing.

(4) Such directions may require a party to provide such particulars or evidence as may reasonably be required for the determination of the claim.

(5) If a party fails to comply with such a direction, the First-tier Tribunal shall take account of that fact when determining the claim or deciding whether to make an order for expenses.

(6) The First-tier Tribunal shall notify the parties of the date, time and place for the resumed hearing.

### **Children**

**89.**—(1) Any child who is a claimant may give evidence.

(2) Any child of 12 years of age or over who is not a claimant may give evidence.

(3) A child under 12 years of age who is not a claimant may only give evidence where a legal member or the First-tier Tribunal considers—

(a) that the evidence of the child is necessary to enable a fair and just hearing of the claim; and

(b) that the welfare, wellbeing and interests of the child will not be prejudiced by so doing.

(4) Where a child gives evidence in person, a legal member or the First-tier Tribunal may appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.

(5) The First-tier Tribunal shall pay such reasonable fees, expenses or allowances as the Chamber President may determine to any person appointed under this rule.

## **Views of the Child**

**90.** Where a parent of a child submits a claim under paragraph 8 of schedule 17 of the 2010 Act relating to that child for whose school education an authority are responsible to the First-tier Tribunal, the First-tier Tribunal is required to seek the views of that child.

## **Late evidence**

**91.** At the start of a hearing, where a party proposes to submit further documents not already lodged as productions, or to call a witness not on their list of witnesses, the First-tier Tribunal, after considering any representations from the other party, may allow that proposal if it is satisfied that, in all the circumstances, it would be fair and just to do so.

## **Restricted reporting orders**

**92.**—(1) If it appears appropriate to do so a restricted reporting order may be made by a legal member or the First-tier Tribunal at a hearing.

(2) A restricted reporting order is an order limiting or prohibiting the publishing of any matter.

(3) specified in the order, which may include matter likely to lead members of the public to identify the claimant or any child under 16 years of age or other individual, where it is considered that they should not be identified.

(4) In this rule “publishing” includes, without prejudice to the generality of that expression—

(a) publishing any matter in a programme service, as defined by section 201 of the Broadcasting Act 1990; and

(b) causing any matter to be published.

(5) An order under this rule may be made in respect of a limited period and may be varied or revoked by a legal member or the First-tier Tribunal before or at the hearing.

## **Failure of parties to attend**

**93.**—(1) If a party fails to attend or be represented at a hearing of which they have been duly notified, the First-tier 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 the claim in the absence of a party, the First-tier Tribunal shall consider the claim, any response, any statement of case, any supplementary written statement of case and any written evidence submitted in accordance with the Rules.

## **Decisions on claims**

**94.**—(1) A decision of the First-tier Tribunal on a claim may be reached by a majority, but where the Tribunal is constituted by a legal member and one ordinary member in terms of the First-tier Tribunal for Scotland Health and Education Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 the legal member shall have a second or casting vote.

(2) The decision of the First-tier Tribunal may be given orally at the end of the hearing or may be reserved and, in any event, whether there has been a hearing or not, the Tribunal shall inform each party of the decision which shall as soon as may be practicable be recorded in a document signed by the legal member which contains a full statement of the facts found by the Tribunal and the reasons for the decision.

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(3) The First-tier Tribunal shall—

- (a) as soon as practicable after it is prepared send a copy of the document referred to in paragraph (2) to each party and send notice about the circumstances in which there is a right to appeal under paragraph 11 of schedule 17 of the 2010 Act against a decision of the First-tier Tribunal; and
- (b) enter such details in the Register as the Chamber President may from time to time direct under section 74(2) of the 2014 Act.

**Further procedure on appeal**

**95.**—(1) If any appeal against a decision of the First-tier Tribunal is allowed by either the First-tier Tribunal or the Upper Tribunal, the entry relating to the decision in the Register shall be altered to reflect that and the parties shall be notified accordingly.

(2) If by order of the Upper Tribunal a claim is remitted back to the First-tier Tribunal, and subject to any directions or orders of the Upper Tribunal made paragraph 11(3) of schedule 17 of the 2010 Act, the First-tier Tribunal shall notify the parties that, during such period as a legal member may specify each party may submit a supplementary statement of case and further written evidence.

(3) If an appeal against an order to dismiss a claim is allowed, the First-tier Tribunal shall notify the parties—

- (a) in the case where the case statement period had not expired before the order to dismiss took effect—
  - (i) that a new case statement period shall be commenced in accordance with rule 64; and
  - (ii) that, within the new period, the parties may submit the documentation referred to in sub paragraph (b) in respect of a statement of case or evidence submitted before the dismissal took effect; or
- (b) in any other case, that each party may within such period as the legal member may specify submit a supplementary statement of case along with any further written evidence.

(4) The First-tier Tribunal shall forthwith send a copy of all statements and written evidence received from a party in accordance with this rule to the other party.

**Miscellaneous**

**96.**—(1) Subject to the provisions of the 2014 Act and these Rules, the First-tier Tribunal may regulate its own procedure.

(2) The First-tier Tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

**Change of responsible body**

**97.**—(1) A legal member or the First-tier Tribunal at a hearing may order that, for all the purposes of the claim, a new responsible body be substituted for, or be added to the claim with, the original responsible body.

(2) The claimant, the original responsible body and the new responsible body shall have an opportunity to be heard before an order is made under paragraph (1).

(3) When an order is made under paragraph (1)—

- (a) the First-tier Tribunal shall notify the claimant, the original responsible body and the new responsible body;
- (b) where a new responsible body is substituted for the original responsible body, the original responsible body shall no longer be a party;

- (c) the new responsible body shall become a party;
- (d) the First-tier Tribunal shall send to a new responsible body copies of all the documents and written evidence relating to the claim duly received by the First-tier Tribunal from the claimant or from the original responsible body; and
- (e) the legal member or the First-tier Tribunal shall give directions as to further procedure and in particular may set new dates for the new case statement period or for any hearing.

#### **Power to exercise functions of a legal member**

**98.**—(1) Any function of a legal member may be exercised by the Chamber President or by any other legal member selected by the Chamber President.

(2) Where the Chamber President or a legal member determines any preliminary or incidental matter alone, then unless the interests of fairness and justice require that particular claim to be determined by the First-tier Tribunal with the same legal member, the claim may be considered by the First-tier Tribunal with a different legal member, if the Chamber President considers it necessary or expedient.

(3) Subject to rule 102(3), if the circumstances referred to in paragraph (4) occur after the decision of a legal member or of the First-tier Tribunal, the functions of the legal member for the completion of the proceedings may be exercised by the Chamber President or any other legal member.

(4) The circumstances referred to in paragraph (3) are—

- (a) the death or incapacity of the legal member; or
- (b) the legal member ceasing to be a member of the First-tier Tribunal.

#### **Power to exercise functions of an ordinary member**

**99.**—(1) If either of the circumstances referred to in paragraph (2) occur after the decision of the First-tier Tribunal, the functions of that Tribunal may be undertaken by the legal member and the remaining ordinary member.

(2) The circumstances referred to in paragraph (1) are—

- (a) the death or incapacity of an ordinary member; or
- (b) such a member ceasing to be a member of the First-tier Tribunal.

(3) This rule shall not apply to the First-tier Tribunal—

- (a) when constituted with a legal member and one ordinary member in accordance with rule 85(5); or
- (b) in relation to which the Chamber President or another legal member is acting in place of the legal member in accordance with rule 98(3).

#### **Register**

**100.**—(1) The First-tier Tribunal shall keep a Register of Claims to the First-tier Tribunal.

(2) There shall be entered in the Register a note of all claims, and the entry for each case shall contain the following particulars where appropriate—

- (a) the names and addresses of the parties;
- (b) brief details of the nature of the claim;
- (c) the date of any hearing including any hearing on preliminary or incidental matters, and, where appropriate, the nature of the hearing and any hearing at which the legal member sat alone;

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- (d) details of any directions or orders issued; and
  - (e) the document in terms of which the decision of the First-tier Tribunal has been recorded under rule 94(2).
- (3) The Register or any part of it may be kept in electronic form.

### **Publication**

**101.**—(1) The Chamber President shall make such arrangements as the Chamber President considers appropriate for the publication of decisions of the First-tier Tribunal.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the Chamber President or a legal member considers that to be appropriate bearing in mind—

- (a) the need to safeguard the welfare, wellbeing and interests of the person to whom the claim relates or of any other person;
- (b) the need to protect the private life of any person;
- (c) any representations on the matter which any person has provided in writing to the First-tier Tribunal at any time prior to publication under the arrangements made under paragraph (1).

(4) A decision of the First-tier Tribunal shall be published in such a manner as to protect the anonymity of the person to whom the claim relates.

### **Irregularities**

**102.**—(1) Any irregularity resulting from failure, at any time before the First-tier Tribunal has determined the claim, to comply with any provision of, or direction made under, these Rules shall not by itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the First-tier Tribunal, the First-tier Tribunal may, and shall, if it considers that any person has been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Where these Rules require the legal member to sign a document, and where by reason of death or incapacity the legal member is unable to do so, the other members of the First-tier Tribunal hearing the claim, whom failing the Chamber President, shall sign it and certify that the legal member is unable to sign.

### **Proof of documents and certification of decisions**

**103.**—(1) A document purporting to be a document issued by or on behalf of the Chamber President, a legal member, or the First-tier Tribunal shall, unless the contrary is proved, be deemed to be a document so issued.

(2) A document purporting to be certified by the First-tier Tribunal as a true copy of a document containing a decision of the First-tier Tribunal shall, unless the contrary is proved, be sufficient evidence of its contents.

### **Manner and time of service of notices etc.**

**104.**—(1) A notice given under these Rules shall be in writing and a person required under these Rules to notify a matter to the First-tier Tribunal shall do so in writing.

(2) Notices and documents required by these Rules to be sent or delivered to the First-tier Tribunal may be sent by post, by fax or by electronic communication to or be delivered at the address of the First-tier Tribunal or such other address as the First-tier Tribunal may notify.



- (3) Any citation under rule 78 or 79 shall—
- (a) be posted by first class recorded or special delivery post properly addressed and pre-paid to the addressee at their ordinary or last notified address; and
  - (b) be deemed, unless the contrary is proved, to have been received on the second working day after posting.
- (4) Any notice or document, other than a citation under rule 78 or 79, required or authorised to be given or sent under these Rules shall, subject to the provisions of paragraph (6) be deemed to have been given or sent if it was—
- (a) sent by first class post properly addressed and pre-paid to the addressee at their ordinary or last notified address; or
  - (b) transmitted by fax or communicated electronically to a fax number or electronic address specified by the addressee.
- (5) Any such notice or document as is referred to in paragraph (4), shall, unless the contrary is proved, be deemed to have been received—
- (a) where sent by first class post, on the second working day after posting; or
  - (b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form.
- (6) Any such notice or document as is referred to in paragraph (4) shall not be transmitted by fax or electronic communication to a person unless that person has confirmed in writing that notices or documents will be considered to have been duly sent if transmitted or communicated to a specified fax number or electronic address.
- (7) A person may at any time by notice to the First-tier Tribunal change their address for service under these Rules.
- (8) Where for any sufficient reason service of any document or the giving of any notice cannot be effected in the manner prescribed under this rule, a legal member or the First-tier Tribunal may dispense with service or make an order for substituted service in such manner as may be deemed fit and such service shall have the same effect as service in the manner prescribed under this rule.
- (9) In this rule, “working day” has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

### **Signature of documents**

**105.** Where any of these Rules requires a document to be signed, that requirement shall be satisfied—

- (a) if the signature is written; or
- (b) subject to rule 61(1) in the case of a document which is communicated electronically in accordance with these Rules by the electronic signature of the individual who is required to sign it.