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STATUTORY INSTRUMENTS

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**2007 No. 90**

**The Claims Management Services Tribunal Rules 2007**

**PART 2**

**Preliminary matters**

**Appeal notice**

**4.—(1)** A appeal must be made by way of a written notice (“the appeal notice”) signed, dated and filed by the appellant.

(2) An appeal notice under paragraph (1) must be filed no later than 28 days beginning with the date on which the decision being appealed against was given.

(3) The appeal notice must state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative;
- (c) the address for service;
- (d) that the notice is an appeal notice; and
- (e) the issues concerning the Regulator’s decision that the appellant wishes the Tribunal to consider.

(4) In paragraph (3)(a), “address” in respect of a corporation means the address of the registered or principal office.

(5) Except when there is a good reason why it is not possible, a copy of the Regulator’s decision relating to the appeal must be filed with the appeal.

(6) The appellant may make an application for directions with the appeal notice including one for a direction under rule 17(2) (the suspension of effect of a decision) or for a direction under rule 12(n) (that the register include no or limited particulars of the appeal).

(7) Where the time limit for making an appeal under paragraph (2) has expired, the appellant must include with the appeal notice an application for a direction under rule 12(e) to extend the time limit for making an appeal.

(8) An application under paragraph (7) must include a statement of the reasons for the delay in making the appeal.

(9) At the same time as he files the appeal notice under paragraph (1), the appellant must send a copy of that notice (and of any application in accordance with paragraphs (6) and (7)) to the Regulator.

(10) Where an application is made under paragraph (6) or (7), the secretary must refer the application to the Tribunal for determination.

(11) Where the secretary refers the application to the Tribunal under paragraph (10) he must take no further action in relation to the appeal notice until such an application has been determined.

(12) Subject to paragraph (10) and to any directions given by the Tribunal, upon receiving a appeal notice the secretary must—

- (a) enter particulars of the appeal in the register; and
- (b) inform the parties in writing of—
  - (i) the date when the Tribunal received the appeal notice; and
  - (ii) the Tribunal’s decision on any application made for directions (including the particulars of any direction),

and the secretary when sending the parties this information must specify the date on which he is sending it.

### **Regulator’s statement of case**

5.—(1) The Regulator must file a written statement (“a statement of case”) in support of the Regulator’s decision.

(2) A statement of case under paragraph (1) must be received by the Tribunal no later than 28 days beginning on the day after the Regulator received the information sent by the secretary in accordance with rule 4(12)(b).

(3) The statement of case must—

- (a) specify the regulations upon which the Regulator’s decision is based;
- (b) specify the reasons for the Regulator’s decision;
- (c) set out all the matters and facts relied upon to support the Regulator’s decision;
- (d) specify the name of a contact person;
- (e) contain the signature, which may be by email, of any person authorised by the Regulator; and
- (f) specify the date on which the statement of case is filed.

(4) The statement of case must be accompanied by—

- (a) a list of—
  - (i) the documents relied on in support of the Regulator’s decision; and
  - (ii) any additional material which in the opinion of the Regulator might undermine his decision or adversely affect his case or support the appellant’s case; and
- (b) a copy of the Regulator’s decision if not filed by the appellant under rule 4(5).

(5) At the same time as he files the statement of case, the Regulator must send to the appellant a copy of the statement of case and a copy of the list referred to in paragraph (4)(a).

(6) If at any time the Regulator is permitted to amend the statement of case in accordance with rule 12(f), he must—

- (a) file the amended statement of case; and
- (b) at the same time, send a copy of the amended statement of case to the appellant.

(7) The Regulator may include an application for directions with the statement of case (including with a statement of case that has been amended in accordance with rule 12(f)).

### **Appellant’s reply**

6.—(1) The appellant must file a written reply so that it is received by the Tribunal no later than 28 days beginning on the day after—

- (a) the date on which the appellant received a copy of the statement of case; or

- (b) if the Regulator amends its statement of case, the date on which the appellant received a copy of the amended statement of case.
- (2) The reply must—
  - (a) state the grounds on which the appellant relies in the appeal;
  - (b) identify all matters contained in the statement of case which are disputed by the appellant;
  - (c) state the appellant’s reasons for disputing them; and
  - (d) specify the date on which it is filed.
- (3) The reply must be accompanied by a list of all the documents on which the appellant relies in support of his case.
- (4) At the same time as he files the reply, the appellant must send to the Regulator a copy of the reply and of the list referred to in paragraph (3).
- (5) If at any time the appellant is permitted to amend the reply in accordance with rule 12(f), he must—
  - (a) file the amendments with the Tribunal; and
  - (b) at the same time, send a copy of the amended reply to the Regulator.

#### **Secondary disclosure by the Regulator**

- 7.—(1) Following the filing of the appellant’s reply if there is any further material—
  - (a) which might be reasonably expected to assist the appellant’s case as disclosed by the appellant’s reply; and
  - (b) which is not mentioned in the list provided in accordance with rule 5(4)(a),the Regulator must file a list of such further material.
- (2) Any list required to be filed by paragraph (1) must be filed so that it is received by the Tribunal no later than 14 days after the day on which the Regulator received the appellant’s reply.
- (3) At the same time as he files any list required by paragraph (1) the Regulator must send a copy of that list to the appellant.

#### **Exceptions to disclosure**

- 8.—(1) A list provided in accordance with rule 5(4)(a), 6(3) or 7(1) need not include any document in respect of which an application has been or is being made under paragraph (2).
- (2) A party who can establish a ground in paragraph (3) may apply to the Tribunal (without giving notice to the other party) for a direction authorising that party not to include a document in the list required by rule 5(4)(a), 6(3) or 7(1).
- (3) A party making an application under paragraph (2) must state in that application that a document should not be disclosed on the ground that—
  - (a) disclosure would not be in the public interest;
  - (b) the document contains commercially sensitive information;
  - (c) disclosure could not be compelled in a civil trial in England or Wales; or
  - (d) disclosure would not be fair, having regard to—
    - (i) the likely significance of the document to the appellant in relation to the matter referred to the Tribunal; and
    - (ii) the potential prejudice to the legitimate interests of a person other than the appellant, which would be caused by disclosure of the document.

- (4) For the purpose of deciding an application by a party under paragraph (2), the Tribunal may—
- (a) require that the document be produced to the Tribunal together with a statement of the reasons why it should not be included in the list; and
  - (b) invite the other party to make representations.

(5) The Tribunal shall not grant an application under paragraph (2) unless it is satisfied that in all the circumstances it would be in the interests of justice to do so.

(6) If the Tribunal refuses an application under paragraph (2) for a direction authorising a party not to include a document in a list, it must direct that party—

- (a) to revise the list so as to include the document; and
- (b) to file a copy of that list as revised and send a copy to the other party.

### **Provision of copy documents**

**9.** A party who has filed a list under rule 5(4)(a), 6(3), 7(1) or 8(6)(b) must, upon the request of the other party—

- (a) provide that other party with a copy of any document specified in the list; or
- (b) make any such document available to that party for inspection or copying.

### **Directions**

**10.**—(1) The Tribunal may at any time give directions to—

- (a) enable the parties to prepare for the hearing of the appeal;
- (b) assist the Tribunal to determine the issues; and
- (c) ensure the just, expeditious and economical determination of the appeal.

(2) The Tribunal may give directions—

- (a) on the application of any party or of all the parties; or
- (b) of its own initiative,

and, where it gives a direction of its own initiative, it may (but need not) give prior notice to the parties of its intention to do so.

(3) Any application for directions must include the reasons for making that application.

(4) An application for directions must be filed except where it is made during the course of a hearing.

(5) The party making the application must at the same time send a copy of the application to the other party except where—

- (a) an application under paragraph (4) is accompanied by the written consent of all the parties; or
- (b) an application is made during a hearing.

(6) Where the application for directions has been filed and a copy sent to the other party in accordance with paragraphs (4) and (5) any objection by the other party to the directions applied for, together with the reasons for the objection must be sent—

- (a) to the Tribunal within 14 days beginning on the date on which the copy of the application was sent; and
- (b) to the party who applied for the directions within 14 days beginning on the date on which the copy of the application was sent.

(7) Where the Tribunal directs that an oral hearing is to be held to consider an application under this rule, the Tribunal will give the parties not less than 14 days notice of the hearing unless both parties consent to shorter notice.

(8) Directions may be given orally at a hearing or in writing and, unless the Tribunal decides otherwise in any particular case, notice of any direction (or refusal to give a direction) must be given to the parties.

(9) Where a direction is given under these Rules containing a requirement—

- (a) it must include a statement of the possible consequences, as set out in rule 34, of a party's failure to comply with the requirement; and
- (b) it may specify a time limit for complying with the requirement.

(10) When a direction is given under these Rules, which affects a party or a witness, that party or witness may apply to the Tribunal showing good cause why it should be varied or set aside.

(11) The Tribunal must not give a direction to vary or set aside the direction under paragraph (10) without first—

- (a) notifying the party who applied for the direction, and
- (b) giving that party an opportunity to make representations.

### **Pre-hearing review**

**11.**—(1) The following paragraphs of this rule will apply if the chairman directs that it is appropriate to hold a pre-hearing review of the appeal.

(2) Unless both parties consent to shorter notice, the secretary must give the parties not less than 14 days' notice of the time and place of the pre-hearing review.

(3) At the pre-hearing review, which must be held before the chairman—

- (a) the chairman must give all directions appearing necessary or desirable for securing the just, expeditious and economical conduct of the appeal; and
- (b) the chairman must endeavour to secure that the parties make all such admissions and agreements as they ought reasonably to have made in relation to the proceedings.

### **Particular types of direction**

**12.** Directions given by the Tribunal may in particular—

- (a) permit the appellant to make an appeal after the expiry of the time limit under rule 4(2);
- (b) fix the time and place of any hearing and alter any time and place so fixed;
- (c) provide for an oral hearing, upon such notice as the Tribunal may determine, in connection with any matter arising under the appeal;
- (d) adjourn any oral hearing;
- (e) vary any time limit for anything to be done under these Rules;
- (f) permit or require any party to provide further information or supplementary statements or to amend a response document or a supplementary statement;
- (g) require any party to file any document—
  - (i) that is in the custody or under the control of that party;
  - (ii) that the Tribunal considers is or may be relevant to the determination of the appeal and which is to be used only for the purposes of determining the appeal; and
  - (iii) that has neither been exempted from disclosure on the basis of a ground in rule 8(3) nor been made available under rule 9;

- and may also direct that a copy of any such document be sent to the other party or require that it is made available to the other party for inspection and copying;
- (h) require any party to provide a statement of relevant issues and facts, and to identify those which are, and are not, agreed by the other party;
  - (i) require any party to file documents for any hearing under these Rules unless the parties reach an agreement as to the documents to be filed;
  - (j) require any party to file—
    - (i) a list of the witnesses whom the party wishes to call to give evidence at the hearing of the appeal; and
    - (ii) statements of the evidence which those witnesses intend to give, if called;
  - (k) make provision as to any expert witness to be called including provision—
    - (i) for the number of such witnesses; and
    - (ii) the evidence to be given by such witnesses or any documents to be provided by them;
  - (l) provide for the manner in which any evidence may be given;
  - (m) provide for the use of languages in addition to English, including provision—
    - (i) as to the place of any hearing under these Rules so as to ensure the availability of simultaneous interpretation facilities; and
    - (ii) for the translation of any document.
  - (n) require that the register must include no, or limited particulars, about the appeal; and
  - (o) where two or more appeal notices have been filed—
    - (i) in respect of the same matter;
    - (ii) in respect of separate interests in the same matter; or
    - (iii) which involve the same issues,
 provide that the appeals or any particular issue or matter raised in the appeals be consolidated or heard together.

### **Application for permission to make a late appeal**

**13.—**(1) Where the appellant has made an application under rule 4(7) to the Tribunal for a direction under rule 12(e) to allow an appeal to be made after the time limit for doing so has expired, the Tribunal, subject to paragraph (2), must consider whether—

- (a) the decision notice notified the appellant properly and effectively of the Regulator’s decision; and
- (b) the appellant had been notified, whether in the decision notice or otherwise, of the existence of the right to make the appeal and of the time limit for making the appeal.

(2) The Tribunal must not allow the appeal to proceed under this rule unless it considers that it is in the interests of justice to do so.

### **Directions fixing the time and place of the hearing of the appeal**

**14.—**(1) Unless the parties otherwise agree or the Tribunal otherwise directs, the secretary will give the parties not less than 28 days notice of the time and place of the hearing of the appeal fixed in accordance with a direction under rule 12(b).

(2) Before making a direction under rule 12(b) to fix the time and place of a hearing, the Tribunal must consider—

- (a) whether the appeal should be dealt with as a matter of urgency; and
- (b) the convenience and the ability of the appellant attending a hearing which is to be heard as a matter of urgency at shorter notice.

### **Directions varying time limits**

**15.**—(1) The Tribunal must not make a direction under rule 12(e) to vary any time limit provided by these Rules or by a previous direction of the Tribunal, unless it is satisfied that it is in the interests of justice to do so.

(2) Before making a direction to vary any time limit, the Tribunal must consider—

- (a) whether the appeal should be dealt with as a matter of urgency; and
- (b) any objections raised.

(3) The Tribunal may direct that a time limit be extended whether or not that time limit has already expired.

(4) A time limit which has previously been extended may from time to time be further extended by directions of the Tribunal, whether or not that, or any subsequent such time limit, has already expired.

(5) Before making a direction under paragraph (4) to further extend a time limit, the Tribunal must consider whether paragraph (2) applies in the circumstances.

(6) Where a party files a response document or list later than any time limit imposed by, or extended under, these Rules but without applying for a direction under rule 12(e) extending the time limit, that party must be treated as applying for such a direction.

(7) If a response document or list is not filed in accordance with the time limit imposed by, or extended under, these Rules, the Tribunal may of its own initiative, direct that the document or list be filed by a specified date.

### **Further matters regarding specific directions**

**16.**—(1) If the Tribunal gives a direction under rule 12(f) to permit or require a party to provide further information, supplementary statements or to amend a response document or supplementary statement, the direction must require that party to—

- (a) file any such information, statement or amendment, and
- (b) send a copy to the other party.

(2) A person must not be required to file any document under rule 12(g) or 12(i) where the Tribunal is satisfied that the document should not be disclosed on the basis that a ground in rule 8(3) is met.

(3) To assist the Tribunal's decision under paragraph (2) the Tribunal may—

- (a) require that the document be produced to the Tribunal;
- (b) conduct any hearing in the absence of any party; and
- (c) invite any party to make representations.

(4) In the case of an application for a direction under rule 12(n) that the register should not include particulars about the appeal, or only include limited particulars about the appeal, the Tribunal may give such a direction if it is satisfied that it is necessary, having regard to—

- (a) the interests of public order, national security or the protection of the private lives of the parties; or
- (b) any unfairness to the appellant or prejudice to the interests of justice that might result.

### **Applications for suspension of effect of decision**

17.—(1) In this rule—

“effective decision” means a Regulator’s decision, other than one to refuse to grant authorisation in accordance with regulation 13(5), which is not suspended or, in the case of a decision which is partly suspended, such a decision to the extent that it is not suspended; and

“suspension direction” means a direction under paragraph (2).

(2) If the appellant applies to the Tribunal under this rule, the Tribunal may direct that the effect of an effective decision is suspended or further suspended, wholly or partly.

(3) An application for a suspension direction may be made before, or at the same time as, an appeal is filed.

(4) An application for a suspension direction must be made by filing written notice of the application with the Tribunal.

(5) A written notice under paragraph (4) must state the grounds of the application.

(6) At the same time as filing the written notice under paragraph (4) with the Tribunal the appellant must send a copy of the written notice to the Regulator.

(7) Before deciding any application under this rule, the Tribunal may, if it sees fit—

(a) invite representations in writing from the Regulator; or

(b) hold a hearing at which the parties can be heard.

(8) Where a hearing is held under paragraph (7), unless both parties agree to shorter notice, the secretary must give both parties not less than 14 days notice of the time and place of the hearing.

(9) Where a direction is made other than at a hearing at which both parties are present or represented, the secretary must as soon as practicable notify both parties in writing of the terms of the direction.

### **Cancellation of direction for suspension**

18.—(1) The Tribunal may terminate the suspension of any decision.

(2) An application by the Regulator for the termination of suspension of a decision must be made by sending to the Tribunal written notice of the application, which must state the grounds for the application.

(3) At the same time as sending the written notice in paragraph (2) to the Tribunal, the Regulator must send a copy of the written notice to the appellant.

(4) Before deciding an application under this rule, the Tribunal must either—

(a) invite representations from the appellant; or

(b) hold a hearing at which the parties may be heard.

(5) Where a decision on an application under this rule is made other than at a hearing at which both parties are present or represented, the secretary must as soon as practicable notify both parties of the decision.

### **Filing of subsequent notices in relation to the Regulator’s decision**

19. Where, after the filing of an appeal notice under rule 4(1), the Regulator gives the appellant any notice under the Regulations in relation to the Regulator’s decision, the Regulator must without delay file a copy of that notice.



### **Summoning of witnesses**

**20.**—(1) The Tribunal may by summons issued on its own initiative or on the application of a party, require any person to—

- (a) attend, at such time and place as is specified in the summons, to give evidence as a witness;
- (b) file, within the time specified in the summons, any document in his custody or under his control which the Tribunal considers it necessary to examine; or
- (c) both attend and file in accordance with sub-paragraphs (a) and (b).

(2) Any summons issued under paragraph (1) must—

- (a) state the name and address of the person to be served; and
- (b) be signed by the chairman.

(3) It will be the responsibility of the party who made the application under paragraph (1), or where no such application was made, the Tribunal, to serve the summons.

(4) A person may not be required under this rule to file a document where the Tribunal is satisfied that the document should not be disclosed on the basis that a ground in rule 8(3) is met.

(5) For the purpose of satisfying itself that a document under paragraph (4) should not be filed, the Tribunal may—

- (a) require that the document be produced to the Tribunal;
- (b) conduct any hearing in the absence of any party; and
- (c) invite any party to make representations.

(6) A summons issued under paragraph (1) above must be received by the person to whom it is addressed at least seven days before the date of attendance or of production of documents specified in the summons.

(7) Every summons under paragraph (1) must contain a statement warning of the effect of paragraph 11(3) to (5) of Schedule 13 (offences connected to summonses) to the 2000 Act, as applied by section 12(5)(f).

(8) If a summons issued under paragraph (1) requires a person to travel more than 16 kilometres from his place of residence, whoever is responsible for serving the summons under paragraph (3) must pay or tender to him in advance, the necessary expenses of his attendance.

(9) The Tribunal may, upon the application of the person to whom the summons issued under paragraph (1) is addressed, direct that the summons be set aside or varied.

### **Preliminary hearing**

**21.**—(1) The Tribunal may direct that any preliminary question of fact or law which appears to be in issue in relation to the appeal, be determined at a preliminary hearing.

(2) If, in the opinion of the Tribunal, the determination of that preliminary question substantially disposes of the appeal, the Tribunal may—

- (a) treat the preliminary hearing as the hearing of the appeal; and
- (b) make such order by way of disposing of the appeal, as it thinks fit.

(3) If the parties so agree in writing, the Tribunal may determine the preliminary question without an oral hearing.

(4) Where the Tribunal determines the preliminary question without an oral hearing under paragraph (3), the Tribunal must not at the same time dispose of the appeal, unless the parties have agreed in writing that it may do so.

### **Withdrawal of appeal and unopposed appeals**

**22.**—(1) The appellant may withdraw the appeal—

- (a) at any time before the hearing of the appeal, without permission, by filing a notice in writing to that effect; or
- (b) at the hearing of the appeal, with the Tribunal’s permission,

and the Tribunal must dismiss any appeal that is so withdrawn.

(2) The Regulator may state that he does not oppose the appeal or that he is withdrawing his opposition to it—

- (a) at any time before the hearing of the appeal, without permission, by filing a notice to that effect; or
- (b) at the hearing of the appeal, with the Tribunal’s permission,

and the Tribunal must allow the appeal.

(3) In any case where—

- (a) the Regulator files a notice in accordance with paragraph (2)(a); or
- (b) the Regulator does not file a statement of case within the time limit imposed by rule 5(1) (or any such time limit as varied under rule 12 (e)); or
- (c) the appellant does not file a reply within any time limit imposed by rule 6(1) (or any such time limit as varied under rule 12(e)),

the Tribunal may (subject to its power to give a direction under rule 15(7)) determine the appeal without an oral hearing in accordance with rule 23.

(4) Where the Tribunal determines the appeal without an oral hearing under paragraph (3), it must not dismiss the appeal without notifying the appellant that it is minded to do so and giving him an opportunity to make representations.