
STATUTORY INSTRUMENTS

2009 No. 1976

**The Tribunal Procedure (First-tier Tribunal)
(General Regulatory Chamber) Rules 2009**

PART 2

General powers and provisions

Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.

Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 18 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;

- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
 - (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or
 - (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

Procedure for applying for and giving directions

6.—(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

- (2) An application for a direction may be made—
 - (a) by sending or delivering a written application to the Tribunal; or
 - (b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

Failure to comply with rules, practice directions or tribunal directions

7.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case);
- (d) exercising its power under paragraph (3); or
- (e) barring or restricting a party's participation in the proceedings.

(3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or

- (f) to facilitate the inspection of a document or any other thing (including any premises).

Striking out a party's case

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction would lead to the striking out of the proceedings or that part of them.

- (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
 - (a) does not have jurisdiction in relation to the proceedings or that part of them; and
 - (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (3) The Tribunal may strike out the whole or a part of the proceedings if—
 - (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
 - (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
 - (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraph (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

- (7) This rule applies to a respondent as it applies to an appellant except that—
 - (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
 - (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Addition, substitution and removal of parties

9.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) Any person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

Orders for costs

- 10.**—(1) The Tribunal may make an order in respect of costs (or, in Scotland, expenses) only—
- (a) under section 29(4) of the 2007 Act (wasted costs);
 - (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings; or
 - (c) where the Charity Commission is the respondent and a decision, direction or order of the Charity Commission is the subject of the proceedings, if the Tribunal considers that the decision, direction or order was unreasonable.
- (2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.
- (3) A person making an application for an order under this rule must—
- (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
 - (b) send or deliver a schedule of the costs or expenses claimed with the application.
- (4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends to the person making the application the decision notice recording the decision which finally disposes of all issues in the proceedings.
- (5) The Tribunal may not make an order under paragraph (1) against a person (“the paying person”) without first—
- (a) giving that person an opportunity to make representations; and
 - (b) if the paying person is an individual, considering that person’s financial means.
- (6) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or
 - (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.
- (7) Following an order under paragraph (6)(c) a party may apply—
- (a) in England and Wales, to the county court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998(1) on the standard basis or, if specified in the order, on the indemnity basis;
 - (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in the Court of Session; or
 - (c) in Northern Ireland, to the county court for the costs to be taxed.

Representatives

- 11.**—(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.
- (2) If a party appoints a representative, that party must send or deliver to the Tribunal and to each other party written notice of the representative’s name and address.

(3) Anything permitted or required to be done by or provided to a party under these Rules, a practice direction or a direction may be done by or provided to the representative of that party except—

- (a) signing a witness statement; or
 - (b) sending or delivering a notice under paragraph (2), if the representative is not an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990(2), an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.
- (4) A person who receives due notice of the appointment of a representative—
- (a) must provide to the representative any document which is required to be sent to the represented party, and need not provide that document to the represented party; and
 - (b) may assume that the representative is and remains authorised until receiving written notification to the contrary from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

Calculating time

12.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(3).

Sending and delivery of documents

13.—(1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be—

- (a) sent by prepaid post or by document exchange, or delivered by hand to the address specified for the proceedings;
- (b) sent by fax to the number specified for the proceedings; or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(2) 1990 c.41.

(3) 1971 c.80.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Prevention of disclosure or publication of documents and information

14.—(1) The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Tribunal’s consent.

(6) The Tribunal may give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

(8) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send notice that a party has made an application for a direction under paragraph (6) to each other party.

(9) In a case involving matters relating to national security, the Tribunal must ensure that information is not disclosed contrary to the interests of national security.

(10) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1), a direction given under paragraph (2) or (6) or the duty imposed by paragraph (9).

Disclosure, evidence and submissions

15.—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—

- (a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;
- (e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
- (h) the time at which any evidence or submissions are to be provided.

(2) The Tribunal may—

- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in England and Wales; or
 - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair to admit the evidence.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Summoning or citation of witnesses and orders to answer questions or produce documents

16.—(1) On the application of a party or on its own initiative, the Tribunal may—

- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons or citation under paragraph (1)(a) must—

- (a) give the person required to attend 14 days' notice of the hearing or such shorter period as the Tribunal may direct; and
- (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.

(3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

(4) A summons, citation or order under this rule must—

- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it; and
- (b) state the consequences of failure to comply with the summons, citation or order.

Withdrawal

17.—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—

- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.

(3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days after—

- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

(5) The Tribunal must notify each party in writing of a withdrawal under this rule.

Lead cases

18.—(1) This rule applies if—

- (a) two or more cases have been started before the Tribunal;
- (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
- (c) the cases give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
- (b) staying (or, in Scotland, sisting) the other cases falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related case.

(5) The Tribunal must give directions in respect of cases which are stayed or sisted under paragraph (2)(b), providing for the disposal of or further directions in those cases.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another case or other cases are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related cases should be set aside or amended.

Transfer of charities cases to the Upper Tribunal

19.—(1) This rule applies to charities cases.

(2) The Tribunal may refer a case or a preliminary issue to the President of the General Regulatory Chamber with a request that the case or issue be considered for transfer to the Upper Tribunal.

(3) If a case or issue has been referred by the Tribunal under paragraph (2), the President of the General Regulatory Chamber may, with the concurrence of the President of the appropriate Chamber of the Upper Tribunal, direct that the case or issue be transferred to and determined by the Upper Tribunal.

Procedure for applying for a stay of a decision pending an appeal

20.—(1) This rule applies where another enactment provides in any terms for the Tribunal to stay or suspend, or to lift a stay or suspension of, a decision which is or may be the subject of an appeal to the Tribunal (“the substantive decision”) pending such appeal, including an enactment which provides for—

- (a) an appeal to the Tribunal against a decision not to stay the effect of the substantive decision pending an appeal; or
- (b) an application to the Tribunal for an order that the substantive decision shall take effect immediately.

(2) A person who wishes the Tribunal to decide whether the substantive decision should be stayed or suspended must make a written application to the Tribunal which must include—

- (a) the name and address of the person making the application;
- (b) the name and address of any representative of that person;
- (c) the address to which documents for that person should be sent or delivered;
- (d) the name and address of any person who will be a respondent to the appeal;
- (e) details of the substantive decision and any decision as to when that decision is to take effect, and copies of any written record of, or reasons for, those decisions; and
- (f) the grounds on which the person making the application relies.

(3) In the case of an appeal against a refusal by the registrar to stay a decision to refuse an application for registration as a driving instructor, an application under paragraph (2) must be sent or delivered to the Tribunal so that it is received within 10 days after the date on which the registrar sent notice of the refusal to the person making the application.

(4) If the Tribunal grants a stay or suspension following an application under this rule—

- (a) the Tribunal may give directions as to the conduct of the appeal of the substantive decision; and
- (b) the Tribunal may, where appropriate, grant the stay or suspension subject to conditions.

(5) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any decision made under this rule to each party.