
STATUTORY INSTRUMENTS

2010 No. 791

The Copyright Tribunal Rules 2010

PART VI

CASE MANAGEMENT AND PREPARATION FOR HEARING

Case management – general

19.—(1) In determining applications the Tribunal shall actively exercise its powers set out in rules 16 (consolidation), 17 (allocation), 18 (change of track), 20 (directions), 21 (procedure for small applications) 22 (case management of standard applications) 23 (oral hearing of a standard application) 24 (evidence), 25 (expert evidence) 26 (summoning of witnesses and order to answer questions or produce documents) and 27 (failure to comply with directions) with a view to ensuring that the application is dealt with justly.

(2) The Tribunal may in particular—

- (a) encourage and facilitate the use of an alternative dispute resolution procedure if it considers it appropriate; and
- (b) dispense with the need for the parties to attend any hearing.

Directions

20.—(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review, on an application for appeal or otherwise, give such directions as are provided for in paragraph (2) below or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.

(2) Where a party requests directions in accordance with paragraph (1) the request must be accompanied by the relevant fee.

(3) The Tribunal may give directions—

- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of an oral hearing;
- (b) that the parties file a reply, rejoinder or other additional statements or particulars;
- (c) that part of any of the proceedings be dealt with as a preliminary issue;
- (d) that any part of the application, response or intervention be struck out;
- (e) for the dismissal of the proceedings;
- (f) to stay or, where the proceedings are in Scotland, to sist the whole or part of any proceedings or order or decision of the Tribunal either generally or until after a specified date;
- (g) for the preparation and exchange of skeleton arguments;

- (h) in relation to proceedings in England and Wales or Northern Ireland, requiring persons to attend and give evidence or to produce documents⁽¹⁾;
 - (i) as to the evidence which may be required or admitted in proceedings before the Tribunal and the extent to which it shall be oral or written;
 - (j) as to the submission in advance of a hearing of any witness statements or expert reports;
 - (k) as to the cross-examination of witnesses;
 - (l) as to the fixing of time limits with respect to any aspect of the proceedings;
 - (m) as to the abridgement or extension of any time limits, whether or not expired;
 - (n) for the disclosure between, or the production by, the parties of documents or classes of documents;
 - (o) for the appointment and instruction of experts, whether by the Tribunal or by the parties and the manner in which expert evidence is to be given;
 - (p) as to the use or further disclosure of a document which has been disclosed in the proceedings, whether or not it has been read to or by the Chairman or Tribunal or referred to at a hearing which has been held in public;
 - (q) for the award of costs; and
 - (r) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.
- (4) The Tribunal may, in particular, of its own initiative—
- (a) put questions to the parties;
 - (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
 - (c) ask the parties or other persons for information or particulars;
 - (d) ask for documents or any papers relating to the case to be produced;
 - (e) summon the parties' representatives or the parties in person to meetings.
- (5) A request by a party for directions shall be made in writing as soon as practicable and shall be served by the Secretary on any other party who might be affected by such directions and determined by the Tribunal taking into account the observations of the parties.

Procedure for small applications

21.—(1) This rule contains the procedure for small applications.

(2) As soon as possible after an allocation is made in accordance with rule 17 or 18 the Tribunal shall give directions and notify the parties of the date on which the decision shall be delivered in accordance with rule 30.

(3) If any party requests a hearing or the Tribunal considers that a hearing is required, either before or after the Tribunal has given directions in accordance with paragraph (2) the Tribunal must give directions (which may include directions for a case management conference or a pre-hearing review), fix a date for the hearing and notify the parties in writing of the date, time and place of that oral hearing.

Case management of standard applications

22.—(1) This rule applies to the case management of standard applications. Paragraphs (4) and (5) of this rule apply to small applications if the Tribunal gives directions in accordance with rule 21(3).

(1) Section 151(3) of the Act applies to proceedings in Scotland.

(2) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.

(3) Unless the Tribunal otherwise directs, a case management conference must be held as soon as practicable after allocation in accordance with rule 17 or rule 18(a).

(4) A case management conference or pre-hearing review shall be held in private unless the Tribunal otherwise directs.

(5) The purpose of a case management conference or pre-hearing review is—

- (a) to ensure the efficient conduct of the proceedings;
- (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
- (c) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;
- (d) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
- (e) to facilitate the settlement of the proceedings;
- (f) to set a timetable outlining the steps to be taken by the parties pursuant to directions in preparation for the oral hearing of the proceedings;
- (g) to set the dates within which the hearing shall take place.

Oral hearing of a standard application

23. As soon as practicable after the case management conference or pre-hearing review, the Secretary shall, after discussions with the parties, notify the parties in writing of the date, time and place for the oral hearing and of any timetable for that hearing.

Evidence

24.—(1) The Tribunal may control the evidence by giving directions as to —

- (a) the issues on which evidence is required;
- (b) the nature of the evidence required to decide those issues; and
- (c) the way in which the evidence is to be placed before the Tribunal.

(2) The Tribunal may use its power to exclude evidence that would otherwise be admissible where—

- (a) the evidence was not provided within the time allowed by a direction;
- (b) the evidence was provided in a manner that did not comply with a direction;
- (c) it would be unfair to admit the evidence;
- (d) the evidence is not proportionate to the issues of the case; or
- (e) the evidence is not necessary for the fair disposal of the case.

(3) The Tribunal may require any witness to give evidence on oath or affirmation or, if in writing, by way of a witness statement verified by a statement of truth.

(4) The Tribunal may allow a witness to give evidence through a video link or by other means.

Expert evidence

25.—(1) Expert evidence shall be restricted to that which is proportionate to the issues of the case and necessary for the fair disposal of the case.

(2) No party may call an expert or put in expert evidence without the permission of the Tribunal.

(3) When a party applies for permission to call an expert or put in expert evidence it must identify—

- (a) the field in which expert evidence shall be relied upon;
- (b) the expert in that field whose evidence shall be relied upon and, if applicable, the organisation by whom the expert is employed and
- (c) the principal issues which the expert will be expected to address.

(4) If the Tribunal grants permission under this rule it must be only in relation to the expert named and the field and on the issues identified in the application.

(5) The Tribunal may limit the fees and expenses of an expert that can be recovered from the parties to the litigation that did not instruct that expert.

Summoning of witnesses and orders to answer questions or produce documents

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

- (a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons; 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 under paragraph (1)(a) must—

- (a) give the person required to attend not less than 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) This rule shall only apply to proceedings in England and Wales and Northern Ireland⁽²⁾

Failure to comply with directions

27. If any party fails to comply with any direction given in accordance with these Rules, the Tribunal may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the Tribunal.

(2) Section 151(3) of the Act applies to proceedings in Scotland.