

2007 No. 90

TRIBUNALS AND INQUIRIES

The Claims Management Services Tribunal Rules 2007

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The Lord Chancellor makes the following Rules in exercise of the powers conferred on him by section 12(4) of the Compensation Act 2006^(a) and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992^(b).

PART 1
Introduction

Citation and commencement

1. These Rules may be cited as the Claims Management Services Tribunal Rules 2007 and shall come into force on 14th February 2007.

Interpretation

2.—(1) A reference in these Rules—

- (a) to a regulation by number alone means the regulation so numbered in the Compensation (Claims Management Services) Regulations^(c);

(a) 2006 c.29.
(b) 1992 c.53.
(c) S.I. 2006/3322.

- (b) to a rule by number alone means the rule so numbered in these Rules; and
- (c) to a section or Schedule by number alone means the section or Schedule so numbered in the Compensation Act 2006.

(2) In these Rules, unless the context requires otherwise—

“the 2000 Act” means the Financial Services and Markets Act 2000(a);

“the 2006 Act” means the Compensation Act 2006;

“appeal” means an appeal to the Tribunal under section 13(1);

“appeal notice” means an appeal filed under rule 4(1);

“appellant” means a person who makes an appeal to the Tribunal;

“applicant” means an appellant who seeks permission to bring an appeal, or who appeals against, the decision of the Tribunal to the Court of Appeal;

“chairman” means the person who from time to time acts as chairman of the Tribunal in respect of an appeal;

“direction” includes any direction, summons or order given or made by the Tribunal;

“document” means information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information—

(i) in legible form; or

(ii) in a form from which it can readily be produced in a legible form;

“file” means send to the Tribunal;

“member of the Tribunal staff” means a person appointed by the Lord Chancellor in accordance with paragraph 6 of Schedule 13 to the 2000 Act as applied by section 12(5) of the 2006 Act;

“party” means the appellant or the Regulator;

“President” means the President of the Tribunal when acting under section 12(2)(b);

“Regulations” means the Compensation (Claims Management Services) Regulations 2006;

“Regulator” means the person exercising the functions of the Regulator under section 5(9);

“Regulator’s decision” means the decision of the Regulator which is the subject matter of the appeal;

“register” means the register maintained in accordance with rule 32;

“reply” means a reply filed by the appellant under rule 6(1);

“representations” means written representations or (with the consent of the Tribunal, or at its request) oral representations;

“response document” means—

(i) in relation to the Regulator, his statement of case; and

(ii) in relation to the appellant, his reply;

“secretary” means the person from time to time appointed as secretary to the Tribunal, being a member of the Tribunal’s staff;

“statement of case” means a statement filed by the Regulator under rule 5(1);

“supplementary statement” means a statement that is supplementary to a response document and filed in accordance with a direction given under rule 12(f);

“Tribunal” means the Claims Management Services Tribunal established under section 12; and

(a) 2000 c.8.

“working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

(3) Unless the context requires otherwise, anything permitted or required by these Rules to be done by a party may be done by any representative of that party.

Scope of these Rules

3. These Rules apply to all appeals to the Tribunal.

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.

PART 3

Hearings

Determination without oral hearing

23.—(1) The Tribunal may determine an appeal, or any particular issue, without an oral hearing if—

- (a) the parties agree in writing;
- (b) the issue concerns an application for directions; or
- (c) rule 22(3) applies.

(2) Where an appeal or an issue is determined in accordance with this rule, the Tribunal must consider whether there are circumstances that make it undesirable to publish the whole or part of its decision.

(3) If the Tribunal decides that a restriction on publication is desirable the Tribunal may take any steps, including any one or more of the steps specified in paragraph (5).

(4) Any step taken under paragraph (3) must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction.

(5) The specified steps referred to in paragraph (3) are—

- (a) anonymising the decision;
- (b) editing the text of the decision;
- (c) declining to publish the whole or part of the decision.

(6) Before reaching a decision under paragraph (2), the Tribunal must invite the parties to make representations.

Public hearings and directions for private hearings

24.—(1) In this rule, “hearing” means any hearing under these Rules except for the hearing of any application made to the Tribunal without notice to the other party.

(2) Subject to the following paragraphs of this rule, all hearings must be in public.

(3) The Tribunal may direct that all or part of a hearing is to be in private—

- (a) upon the application of all the parties; or
- (b) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to—
 - (i) the interests of public order, national security or the protection of the private lives of the parties; or
 - (ii) any unfairness to the appellant that might result from a hearing in public,

if the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice.

(4) Before determining an application under paragraph (3)(b), the Tribunal must give the other party an opportunity to make representations.

(5) Before giving a direction under paragraph (3) that all of a hearing should be in private, the Tribunal must consider whether it is only necessary that part of the hearing should be in private.

(6) The Tribunal may hold proceedings in private and has the power to direct that any particular individual be excluded.

(7) The Tribunal may permit any individual to attend a hearing, which is to be held in private.

(8) The Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of the Tribunal, has disrupted or is likely to disrupt, the hearing.

(9) Subject to any direction under paragraph (10), the secretary must provide for the public inspection at the Tribunal’s offices of—

- (a) a daily list of all hearings, which are to be held; and
- (b) information about the time and place fixed for the hearings.

(10) Where all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or part of the proceedings before the Tribunal (including information that might help to identify any person) must not be made public.

(11) Where a direction is given under paragraph (10), it must state what information (if any), is to be entered in the register or removed from it.

Representation at hearings

25.—(1) Subject to paragraph (2), the parties may appear at the hearing (with assistance from any person if desired), and may be represented by any person, whether or not that person is legally qualified.

(2) If in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.

(3) In this rule, “hearing” means any hearing under these Rules.

Procedure at hearings

26.—(1) Subject to the 2006 Act and these Rules, the Tribunal must conduct all hearings under these Rules in such manner as it considers most suitable to the clarification of the issues before it, and generally to the just, expeditious and economical determination of the proceedings.

(2) Subject to any directions by the Tribunal, the parties may—

- (a) give evidence (and, with the consent of the Tribunal, bring expert evidence);
- (b) call witnesses;
- (c) question any witnesses; and
- (d) address the Tribunal on the evidence, and generally on the subject matter of the appeal.

(3) Evidence may be admitted by the Tribunal—

- (a) whether or not it would be admissible in a civil trial in England and Wales; and
- (b) whether or not it was available to the Regulator when the Regulator’s decision was made.

(4) If a party fails to attend or be represented at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no sufficient reason for the absence—

- (a) hear and determine the application or appeal in the party’s absence; or
- (b) adjourn the hearing,

and may give any directions it thinks fit.

Decision of the Tribunal

27.—(1) Subject to paragraph (2) and to rule 23(3), the Tribunal must make arrangements for public access to its decision.

(2) Where the whole or any part of any hearing under these Rules was held in private, the Tribunal must consider whether, having regard to—

- (a) the reason for the hearing or any part of it being in private; and
- (b) the outcome of the hearing,

it would be undesirable to publish the whole or part of its decision.

(3) If the Tribunal decides that a restriction on publication is desirable the Tribunal may take any steps, including any one or more of the steps specified in paragraph (5).

(4) Any step taken under paragraph (3) must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction.

- (5) The specified steps that can be taken by the Tribunal under paragraph (3) are—
 - (a) anonymising the decision;
 - (b) editing the text of the decision; and
 - (c) declining to publish the whole or part of the decision.
- (6) Before reaching a decision under paragraph (2), the Tribunal must invite the parties to make representations.
- (7) The secretary must as soon as may be practicable—
 - (a) whether there has been an oral hearing or not, send a notification of the decision and the reasons for reaching it to each of the parties to the appeal; and
 - (b) subject to any steps taken under paragraph (3), under rule 23(3) or any direction given under rule 24(10), enter the decision and the reasons for reaching it in the register.
- (8) Every notification under paragraph (7)(a) must be accompanied by a notification of—
 - (a) any relevant provision of the 2006 Act relating to appeals from the Tribunal; and
 - (b) the time within which, and the place at which, an application for permission to appeal is to be made.

Review of the Tribunal’s decision

- 28.**—(1) If, on the application of a party or of its own initiative, the Tribunal is satisfied that—
- (a) its decision was wrongly made as a result of an error;
 - (b) new evidence has become available since the conclusion of the hearing to which that decision relates, the existence of which could not have been reasonably known or foreseen; or
 - (c) there is good reason,

the Tribunal may review and set aside its decision.

- (2) An application under paragraph (1) must be made—
 - (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
 - (b) by way of written application filed not later than 14 days after the date on which the notification of the decision was sent to the party making the application,

stating the grounds on which the application is made.

(3) Where the Tribunal proposes to review its decision on its own initiative, the secretary must notify the parties of that proposal not later than 14 days after the date on which the decision was sent to the parties.

(4) The parties must have an opportunity to make representations on any application or proposal for review under this rule.

(5) A review under this rule is to be determined either by the same members of the Tribunal who made the decision or by a differently constituted Tribunal appointed by the President.

(6) The parties must be notified of the decision that the Tribunal is minded to make following a review under this rule and have an opportunity to make representations.

(7) The decision of the Tribunal whether or not to set aside the decision must be recorded in a certificate signed by the chairman.

- (8) If the Tribunal sets the decision aside—
 - (a) the Tribunal must—
 - (i) substitute such decision as it thinks fit; or
 - (ii) order a re-hearing before either the same or a differently constituted Tribunal; and
 - (b) the certificate of the chairman recording the decision in accordance with paragraph (7) must be sent to the secretary who must immediately—

- (i) make such correction as may be necessary in the register; and
- (ii) must send a copy of the entry so corrected to each party.

(9) If the Tribunal does not set the decision aside the secretary must notify each of the parties in writing to this effect.

PART 4

Appeals from the Tribunal

Permission to appeal to the Court of Appeal

29.—(1) An application to the Tribunal for permission to appeal to the Court of Appeal may be made by the applicant—

- (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or
- (b) by way of written application filed not later than 14 days beginning on the day after the notification of the decision is sent to the party making the application; or
- (c) by way of written application filed not later than 14 days beginning on the day after the notification under rule 28(9) that a decision is not to be set aside is sent.

(2) When an application is made under paragraph (1)(b) or (c), it must be signed by the applicant and must—

- (a) state the name and address of the applicant and any representative of the applicant;
- (b) identify the decision of the Tribunal to which the application relates; and
- (c) state the grounds on which the applicant intends to rely.

Decision as to permission to appeal to the Court of Appeal

30.—(1) The application for permission to appeal to the Court of Appeal must be decided without an oral hearing unless—

- (a) the decision is made immediately following an oral application; or
- (b) the chairman considers that special circumstances render a hearing desirable.

(2) The decision of the Tribunal on an application for permission to appeal to the Court of Appeal, together with the reasons for its decision, must be recorded in writing.

(3) Unless the decision is given immediately following an oral application, the secretary must notify the applicant and each of the other parties of the decision and the reasons for the decision in writing.

(4) When the Tribunal refuses the application, the notification to the applicant under paragraph (3) must include notification of the time within which an application may be made to the Court of Appeal for permission to appeal to that court.

Appeal remitted by the Court of Appeal for rehearing

31. Where the Court of Appeal remits an appeal to the Tribunal for rehearing and determination (“the rehearing”)—

- (a) these Rules, so far as relevant, must apply to the rehearing as they did to the original hearing of the appeal; and
- (b) the Tribunal must, within 28 days of the remittal, give directions in relation to the rehearing.

PART 5

General

The register

- 32.—(1) The secretary must maintain a register of appeals to, and decisions of the Tribunal.
- (2) The register must be reasonably accessible to any person without charge.

Miscellaneous powers of Tribunal

- 33.—(1) Any functions of the secretary may be performed by—
- (a) an assistant secretary to the Tribunal; or
 - (b) by any other member of the Tribunal staff authorised for the purpose by the secretary.
- (2) Subject to the provisions of the 2006 Act and these Rules, the Tribunal may regulate its own procedure.
- (3) Without limiting any other powers conferred on it by the 2006 Act or these Rules, the Tribunal may, if it thinks fit—
- (a) order any response document, supplementary statement or written representation to be struck out at any stage of the proceedings on the ground that it—
 - (i) discloses no reasonable grounds for bringing or defending an appeal;
 - (ii) is an abuse of the Tribunal's process; or
 - (iii) is likely to obstruct the just disposal of proceedings; or
 - (b) order any appeal to be struck out for inordinate delay.
- (4) Before making any order under paragraph (3), the Tribunal must provide an opportunity for the party against whom it is proposed that the order should be made, to make representations against the making of the order.

Failure to comply

- 34.—(1) The Tribunal may take any one or more of the steps in paragraph (2) in respect of a party, where that party has, without reasonable excuse, failed to comply—
- (a) with a direction given under these Rules; or
 - (b) with a provision of these Rules.
- (2) The steps referred to in paragraph (1) are—
- (a) where that party is the appellant, dismiss the whole or part of the appeal (or, if there is more than one appellant, that appellant's appeal);
 - (b) where that party is the Regulator, strike out the whole or part of the statement of case and, where appropriate, direct that the Regulator be disqualified from contesting the appeal altogether.
- (3) The Tribunal must not take any of the steps under this rule in respect of a party unless it has given that party an opportunity to make representations against the taking of any such steps.

Irregularities

- 35.—(1) Any irregularity that arises before the Tribunal has reached its decision, resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal, will not of itself render the proceedings void.
- (2) When any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision, or errors arising in such a document from an accidental slip or omission, may be corrected by a certificate signed by the chairman.

Power of chairman to exercise powers of Tribunal

36. Any matter (other than the determination of an appeal or the setting aside of a decision) required or authorised by these Rules to be done by the Tribunal may be done by the chairman.

Proof of documents

37.—(1) Any document purporting to be a document duly executed or issued by the chairman or the secretary on behalf of the Tribunal must, unless proved to the contrary, be deemed to be a document so executed or issued.

(2) A document purporting to be certified by the secretary to be a true copy of any entry of a decision in the register will, unless proved to the contrary, be sufficient evidence of the entry and of the matters referred to in it.

Sending notices

38.—(1) This rule applies to any notice sent under these Rules, and in this rule—

“send” to a person includes deliver or give to, or serve on, that person;

“notice” includes any notice or other information required or authorised by these Rules to be sent or delivered to, or served on, any person; and

“recipient” means a person to, or on whom, any notice is required or authorised to be sent for the purposes of these Rules.

(2) A notice may be sent—

- (a) by a postal service which seeks to deliver documents or other things by post no later than the next working day in all or in the majority of cases;
- (b) by fax;
- (c) by email to an appropriate email address; or
- (d) by personal delivery.

(3) A notice must be sent—

- (a) in the case of a notice directed to the Tribunal, to the Tribunal’s office;
- (b) in the case of a notice directed to the appellant or where relevant the applicant—
 - (i) to his representative; or
 - (ii) where there is no representative, to the appellant or where relevant the applicant, at the appropriate address notified to the Tribunal in accordance with rule 4(3);
- (c) in the case of a notice directed to the Regulator, to the Regulator’s head office; or
- (d) otherwise, to the recipient’s registered office or last known address.

(4) Subject to paragraphs (5) and (6), a notice that is sent will be deemed, unless the contrary is proved, to have been received—

- (a) where it was sent by post, on the second day after it was sent; and
- (b) in any other case, on the day it was sent.

(5) Where a notice is sent by post to the Tribunal, it will be deemed to have been received on the day it was actually received by the Tribunal.

(6) No notice will be deemed to have been received if it is not received—

- (a) in legible form; or
- (b) in a form from which it can readily be produced in a legible form.

(7) Where the time prescribed by these Rules for doing any act expires on a Saturday, Sunday, Christmas Day, Good Friday or bank holiday, the act will be in time if done on the next following working day.

(8) Paragraph (9) applies where—

- (a) a recipient cannot be found;
- (b) a recipient has died and has no known personal representative;
- (c) a recipient has no address for service in the United Kingdom; or
- (d) for any other reason service on a recipient cannot be readily effected.

(9) Where this paragraph applies the chairman may dispense with service on the recipient or may make an order for alternative service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the chairman may think fit.

(10) In this rule, “bank holiday” means a day that is specified in, or appointed under, the Banking and Financial Dealings Act 1971^(a).

Signed on behalf of the Lord Chancellor

18th January 2007

Cathy Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

^(a) 1971 c.80.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the procedure for appeals to the Claims Management Services Tribunal (“the Tribunal”), established under section 12(4) of the Compensation Act 2006.

Part 1 (rules 1 to 3) introduces the Rules and includes interpretation of terms used in the Rules.

Part 2 (rules 4 to 22) contains preliminary matters, which take place prior to the appeal hearing.

Part 3 (rules 23 to 28) applies when the appeal hearing has commenced.

Part 4 (rules 29 to 31) makes provision for appeals from the Tribunal to the Court of Appeal in England and Wales.

Part 5 (rules 32 to 38) makes provision for general matters such as the register kept by the Tribunal and the rules that apply to the sending of notices.

In particular, the Rules make the following provision.

Rule 4 provides for the bringing of an appeal by the appellant filing an appeal notice with the Tribunal.

Rule 5 provides that a statement of case must be filed by the Regulator in support of its decision and rule 6 provides that the appellant must reply to that statement of case. Both rules set out what information those documents should contain and also that they should be accompanied by a list of certain information. Those documents and lists should be filed with the Tribunal.

Rule 8(3) allows a party to request that a document that they are otherwise obliged to disclose is exempted from such disclosure on the grounds that it would not be in the public interest, that the document contains commercially sensitive information, that the document is privileged or that it is disproportionate to the case to order such disclosure.

The direction making powers of the Tribunal are contained in rules 10 to 18 and rule 21. Rule 10 provides that the Tribunal may make directions to ensure the just, expeditious and economical determination of the appeal. Rule 12 lists examples of particular directions that the Tribunal may make; rules 13, 14, 15 and 16 provide further information about the making of a particular direction listed in rule 12.

Rules 17 and 18 make provision in respect of the suspension of a decision of the Regulator. Rule 17 allows an appellant to apply to the Tribunal to have that part of the Regulator’s decision that has not been suspended, either during the period when an appeal could be brought or during the appeal, suspended. This rule also allows an appellant who has had his decision suspended during the period when an appeal could be brought to be further suspended, that is, until the Tribunal makes its decision. Rule 18 allows the Regulator to apply to the Tribunal to have the suspension of a decision terminated. This will allow the Regulator to take immediate action to prevent companies from providing claims management services when new evidence comes to light about that company.

Rule 11 applies where the Tribunal directs that a pre-hearing review of the case is to be held. The purpose of a pre-hearing review is to assist the Tribunal in ensuring the fair and prompt hearing of the appeal by making any directions necessary to achieve that objective.

Rule 21 applies where the Tribunal directs that a hearing to determine a preliminary question of law or fact should be held before the substantive hearing of the appeal begins.

Rule 23 applies when the Tribunal determines an appeal without an oral hearing. When an appeal is determined in accordance with this rule the Tribunal must consider whether it is undesirable to publish the whole or part of its decision. The Tribunal will take into account the circumstances of the case, such as whether there are matters of commercial sensitivity or personal

details relating to key personnel in an organisation before deciding to publish the whole or part of its decision.

Rule 24 provides an exemption to the general rule that all hearings must be held in public. The Tribunal will look at the particular circumstances of the case and will allow the hearing to take place without the attendance of the press and public when it considers that it is in the interests of justice to exclude them. Under this rule, the Tribunal can permit any other person to attend a private hearing when it thinks that it is necessary for the fair hearing of the appeal, for example, the attendance of an interpreter.

Rule 27 allows the Tribunal to consider whether it would be undesirable to publish the whole or part of its' decision when the whole or part of the hearing was held in private.

Rules 29 and 30 apply when a person seeks permission to bring an appeal to the Court of Appeal against the decision of the Tribunal. The application for permission to bring an appeal in these circumstances must be decided without an oral hearing unless the Tribunal considers that there are exceptional circumstances that make a hearing desirable.

STATUTORY INSTRUMENTS

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TRIBUNALS AND INQUIRIES

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