

First-tier Tribunal (Health, Education and Social Care Chamber) Rules  
Consolidated version – as in effect from 21 July 2020

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## PART 1

### Introduction

#### **Citation, commencement, application and interpretation**

**1.**—(1) These Rules may be cited as the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 and come into force on 3rd November 2008.

(2) These Rules apply to proceedings before the Health, Education and Social Care Chamber of the First-tier Tribunal.

(3) In these Rules—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“applicant” means a person who—

(a) starts Tribunal proceedings, whether by making an application, an appeal, a claim or a reference;

(b) makes an application to the Tribunal for leave to start such proceedings; or

(c) is substituted as an applicant under rule 9(1) (substitution and addition of parties);

“childcare provider” means a person who is a childminder or provides day care as defined in section 19 of the Children and Families (Wales) Measure 2010, or a person who provides childcare as defined in section 18 of the Childcare Act 2006;

“disability discrimination in schools case” means proceedings concerning disability discrimination in the education of a child or young person or related matters;

“dispose of proceedings” includes, unless indicated otherwise, disposing of a part of the proceedings;

“document” means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“health service case” means a case under the National Health Service Act 2006, the National Health Service (Wales) Act 2006, regulations made under either of those Acts, or regulations having effect as if made under either of those Acts by reason of section 4 of and Schedule 2 to the National Health Service (Consequential Provisions) Act 2006;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act;

“mental health case” means proceedings brought under the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984;

“nearest relative” has the meaning set out in section 26 of the Mental Health Act 1983;

“party” means—

(a) in a mental health case, the patient, the responsible authority, the Secretary of State (if the patient is a restricted patient or in a reference under rule 32(8) (seeking approval under section 86 of the Mental Health Act 1983)), and any other person who starts a mental health case by making an application;

(b) in any other case, a person who is an applicant or respondent in proceedings before the Tribunal or, if the proceedings have been concluded, a person who was an applicant or respondent when the Tribunal finally disposed of all issues in the proceedings;

“patient” means the person who is the subject of a mental health case;

“practice direction” means a direction given under section 23 of the 2007 Act;

“respondent” means—

(a) in an appeal against an order made by a justice of the peace, the person who applied to the justice of the peace for the order;

(b) in an appeal against any other decision, the person who made the decision;

(c) in proceedings on a claim brought under paragraph 3 of Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement)—

(i) the local authority or the governing body, where the school concerned is a maintained school;

(ii) the proprietor, where the school concerned is an independent school;

(da) in an application for, or for a review of, a stop order under the National Health Service (Optical Charges and Payments) Regulations 1997—

(i) the supplier, where the Secretary of State is the applicant;

(ii) the Secretary of State, where the supplier is the applicant;

(db) in any other health service case—

- (i) the practitioner, performer or person against whom the application is made, where the National Health Service Commissioning Board or Local Health Board is, or is deemed to be, the applicant;
  - (ii) the National Health Service Commissioning Board or Local Health Board that served the notice, obtained the order or confirmation of the order, where any other person is the applicant;
- (dc) in an application under section 127(5) of the Education and Skills Act 2008, the Secretary of State; or
- (e) a person substituted or added as a respondent under rule 9 (substitution and addition of parties);
- “responsible authority” means—
- (a) in relation to a patient detained under the Mental Health Act 1983 in a hospital within the meaning of Part 2 of that Act, the managers (as defined in section 145 of that Act);
  - (b) in relation to a patient subject to guardianship, the responsible local social services authority (as defined in section 34(3) of the Mental Health Act 1983);
  - (c) in relation to a community patient, the managers of the responsible hospital (as defined in section 145 of the Mental Health Act 1983);
- “restricted patient” has the meaning set out in section 79(1) of the Mental Health Act 1983;
- “special educational needs case” means proceedings concerning—
- (a) an EHC needs assessment within the meaning of section 36(2) of the Children and Families Act 2014,
  - (aa) a detained person's EHC needs assessment within the meaning of section 70(5) of the Children and Families Act 2014, or
  - (b) an EHC plan within the meaning of section 37(2) of that Act,
- of a child or young person who has or may have special educational needs;
- “Suspension Regulations” means regulations which provide for a right of appeal against a decision to suspend, or not to lift the suspension of, a person's registration as a childcare provider;
- “Tribunal” means the First-tier Tribunal;
- “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;
- “young person” means, in relation to a special educational needs case or a disability discrimination in schools case, a person over compulsory school age but under 25.

**Overriding objective and parties' obligation to co-operate with the tribunal**

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

- (4) Parties must—
- (a) help the Tribunal to further the overriding objective; and
  - (b) co-operate with the Tribunal generally.

### **Alternative dispute resolution and arbitration**

- 3.—(1) The Tribunal should seek, where appropriate—
- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
  - (b) if the parties wish, and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.
- (2) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal.

## **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) or section 2(1) of the Courts Act 2003(2) (court officers, staff and services) may, if authorised by the Senior President of Tribunals under paragraph 3(3) of Schedule 5 to the 2007 Act, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(3) Within 14 days after the date on which the Tribunal sends notice of a decision made by a member of staff 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;
- (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 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.

#### **Coronavirus temporary rule (decisions without a hearing)**

**5A.**—(1) Notwithstanding anything in rule 22 (order that a school be regarded as not registered pending determination of an appeal), rule 23 (decision with or without a hearing), rule 35 (restrictions on disposal of proceedings without a hearing) or rule 37 (time and place of hearings), the Tribunal may make a decision which disposes of proceedings without a hearing if the Tribunal considers that the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) the matter is urgent;
- (b) it is not reasonably practicable for there to be a hearing (including a hearing where the proceedings would be conducted wholly or partly as video proceedings or audio proceedings); and
- (c) it is in the interests of justice to do so.

(3) This rule does not prejudice any power of the Tribunal to make a decision which disposes of proceedings without a hearing otherwise than under this rule.

#### **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) except in mental health cases, 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) With the exception of paragraph (3), this rule does not apply to mental health cases.

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

(3) 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.

(4) The Tribunal may strike out the whole or a part of the proceedings if—

- (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the applicant 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 applicant's case, or part of it, succeeding.

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

(6) If the proceedings, or part of them, have been struck out under paragraph (2) or (4)(a), the applicant may apply for the proceedings, or part of them, to be reinstated.

(7) An application under paragraph (6) 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.

(8) This rule applies to a respondent as it applies to an applicant 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.

(9) 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.

### **Substitution and addition of parties**

**9.**—(1) The Tribunal may give a direction substituting a party if—

- (a) the wrong person has been named as a party; or
  - (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.
- (2) The Tribunal may give a direction adding a person to the proceedings as a respondent.
- (3) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

### **Orders for costs**

- 10.**—(1) Subject to paragraph (2), the Tribunal may make an order in respect of costs only—
- (a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs; or
  - (b) if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.
- (2) The Tribunal may not make an order under paragraph (1)(b) in mental health cases.
- (3) The Tribunal may make an order in respect of costs on an application or on its own initiative.
- (4) 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 claimed with the application.
- (5) 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—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice under rule 17(6) that a withdrawal which ends the proceedings has taken effect.
- (6) 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.
- (7) The amount of costs 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 (“the receiving person”); or
  - (c) assessment of the whole or a specified part of the costs, including the costs of the assessment, incurred by the receiving person, if not agreed.
- (8) Following an order for assessment under paragraph (7)(c), the paying person or the receiving person may apply to a county court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 on the standard basis or, if specified in the order, on the indemnity basis.
- (9) Upon making an order for the assessment of costs, the Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

### **Representatives**

- 11.**—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.
- (1A) Where a child or young person is a party to proceedings, that child or young person may appoint a representative under paragraph (1).



(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) 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 a party under these Rules, a practice direction or a direction may be done by the representative of that party, except—

- (a) signing a witness statement; or
- (b) signing an application notice under rule 20 (the application notice) if the representative is not a legal representative.

(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 provided 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 as such until they receive written notification that this is not so 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, subject to paragraph (8) and 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).

(7) In a mental health case, if the patient has not appointed a representative, the Tribunal may appoint a legal representative for the patient where—

- (a) the patient has stated that they do not wish to conduct their own case or that they wish to be represented; or
- (b) the patient lacks the capacity to appoint a representative but the Tribunal believes that it is in the patient's best interests for the patient to be represented.

(8) In a mental health case a party may not appoint as a representative, or be represented or assisted at a hearing by—

- (a) a person liable to be detained or subject to guardianship, or who is a community patient, under the Mental Health Act 1983; or
- (b) a person receiving treatment for mental disorder at the same hospital as the patient.

### **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 by 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 a special educational needs case—

- (a) if the time for starting proceedings by providing the application notice to the Tribunal under rule 20 (the application notice) ends on a day from 25th December to 1st January inclusive, or on any day in August, the application notice is provided in time if it is provided to the Tribunal on the first working day after 1st January or 31st August, as appropriate; and
- (b) the days from 25th December to 1st January inclusive and any day in August must not be counted when calculating the time by which any other act must be done.

(3A) In a disability discrimination in schools case, the days from 25th December to 1st January inclusive and any day in August must not be counted when calculating the time by which any act must be done, other than the time for starting proceedings by providing the application notice to the Tribunal under rule 20 (the application notice).

(4) Paragraphs (3)(b) and (3A) do not apply where the Tribunal directs that an act must be done by or on a specified date.

### **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 pre-paid 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.

(1A) If the Tribunal permits or directs documents to be provided to it by email, the requirement for a signature on applications or references under rules 20(2), 22(4)(a) or 32(1)(b) may be satisfied by a typed instead of a handwritten signature.

(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.

(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.

### **Use 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) The Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) 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 (6).

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

(7) Unless the Tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public.

### **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) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) 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;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) 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
- (f) 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.

(4) In a special educational needs case the Tribunal may require—

- (a) the parents of the child, or any other person with care of the child or parental responsibility for the child (as defined in section 3 of the Children Act 1989), to make the child available for examination or assessment by a suitably qualified professional person; or
- (b) the person responsible for a school or educational setting to allow a suitably qualified professional person to have access to the school or educational setting for the purpose of assessing the child or the provision made, or to be made, for the child.

(5) The Tribunal may consider a failure by a party to comply with a requirement made under paragraph (4), in the absence of any good reason for such failure, as a failure to co-operate with the Tribunal, which could lead to a result which is adverse to that party's case.

## **Summoning 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 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 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.

(4) A summons 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 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 or order.

## **Withdrawal**

**17.**—(1) Subject to paragraphs (2) and (3), a party may give notice of the withdrawal of its case, or any part of it—

- (a) 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 except—

- (a) in proceedings concerning the suitability of a person to work with children or vulnerable adults; or
- (b) in proceedings started by a reference under section 67 or 71(1) of the Mental Health Act 1983; or
- (c) where a local authority notifies the Tribunal before the expiry of the time limit for submitting a response that it will not oppose the appeal in a special educational needs case.

(3) A party which started a mental health case by making a reference to the Tribunal under section 68, 71(2) or 75(1) of the Mental Health Act 1983 may not withdraw its case.

(4) A party which has withdrawn its case may apply to the Tribunal for the case to be reinstated.

(5) An application under paragraph (4) 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);
- (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b);
- (c) where a local authority notifies the Tribunal before the expiry of the time limit for submitting a response that it will not oppose the appeal in a special educational needs case.

(6) The Tribunal must notify each party in writing that a withdrawal has taken effect under this rule.

(7) Where a local authority has notified the Tribunal before the expiry of the time limit for submitting a response that it will not oppose the appeal in a special educational needs case, the notice under paragraph (6) must state the date on which the Tribunal was so notified.

## PART 3

### Proceedings before the Tribunal other than in mental health cases

#### CHAPTER 1

##### Before the hearing

#### **Application of Part 3**

**18.** This Part does not apply to mental health cases.

#### **Application for leave**

**19.—**(1) This rule applies to applications for leave to bring proceedings under—

- (a) section 32 of the Criminal Justice and Court Services Act 2000(e) (application to have the issue of the continuation of a disqualification order determined by the Tribunal);
- (b) section 51 of the Children and Families Act 2014 where leave to appeal is required by virtue of regulation 34(3)—
  - (i) of the Special Educational Needs and Disability Regulations 2014, or
  - (ii) regulation 20(3) of the Special Educational Needs and Disability (Detained Persons) Regulations 2015,

(appeals in a special educational needs case in the absence of a mediation certificate).

(2) An application to the Tribunal for leave must be made by sending or delivering an application to the Tribunal which—

- (a) gives full reasons why the applicant considers that the Tribunal should give leave; and
- (b) complies with paragraphs (2) to (4) of rule 20 (the application notice) as if the application for leave were an application notice.

(3) The Tribunal may make any directions it considers appropriate before determining the application for leave.

(4) The Tribunal must—

- (a) notify the applicant of its decision in relation to the application for leave; and
- (b) if it gives leave, give directions as to the future conduct of the proceedings.

#### **The application notice**

**20.—**(1) If rule 19 (application for leave) does not apply, an applicant must start proceedings before the Tribunal by sending or delivering an application notice to the Tribunal so that, unless paragraph (1A) or (1B) applies, it is received—

- (a) if the time for providing the application notice is specified in another enactment, in accordance with that enactment;
- (b) in a case under the Suspension Regulations, within 10 working days after written notice of the decision being challenged was sent to the applicant;
- (c) in a special educational needs case—
  - (i) within 2 months after written notice of the decision being challenged was sent to the applicant; or
  - (ii) within 1 month from the date of issue of the mediation certificate if that date would be a later date than the date calculated by reference to paragraph (i);
- (d) in a case listed in the Schedule, within 3 months after written notice of the decision being challenged was sent to the applicant;
- (e) in any other case, within 28 days after written notice of the decision being challenged was sent to the applicant.

(1A) Where, in a health service case, the Tribunal has contingently removed a practitioner or performer from a list, an application may be made at any time if it is made under—

- (a) section 158(5)(a) of the National Health Service Act 2006;
- (b) section 114(5)(a) of the National Health Service (Wales) Act 2006;
- (c) regulation 15(6)(a) of the National Health Service (Performers Lists) Regulations 2004;  
or
- (d) regulation 15(6)(a) of the National Health Service (Performers Lists) (Wales) Regulations 2004.

(1B) An application under section 127(5) of the Education and Skills Act 2008 may be made at any time when the relevant restriction has effect.

(2) The application notice must be signed by the applicant and must include—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant's representative (if any);
- (c) an address where documents for the applicant may be sent or delivered;
- (d) the name and address of any respondent;
- (e) details of the decision or act, or failure to decide or act, to which the proceedings relate;
- (f) the result the applicant is seeking;
- (g) the grounds on which the applicant relies; and
- (h) any further information or documents required by an applicable practice direction.

(3) The applicant must send with the application notice—

- (a) a copy of any written record of any decision under challenge,
- (b) any statement of reasons for that decision that the applicant has or can reasonably obtain, and
- (c) in a special educational needs case to which section 55(3) of the Children and Families Act 2014 (cases in which an appeal may be made only if a mediation certificate has been issued) applies, a copy of any certificate issued under subsection (4) or (5) of that section, as the case may be.

(4) If the applicant provides the application notice to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application notice must include a request for an extension of time and the reason why the application notice was not provided in time; and
- (b) unless the Tribunal extends time for the application notice under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application notice.

(5) In proceedings under Suspension Regulations, the applicant must send or deliver a copy of the application notice and any accompanying documents to the respondent at the same time as it provides the application notice to the Tribunal.

(6) In proceedings other than proceedings under paragraph (5), when the Tribunal receives the application notice it must send a copy of the application notice and any accompanying documents to each other party.

### **The response**

**21.**—(1) When a respondent receives a copy of the application notice, the respondent must send or deliver to the Tribunal a response so that it is received—

- (a) in a case under the Suspension Regulations, within 3 working days after the respondent received the application notice;
- (b) in a health service case, within 21 days after the respondent received the application notice;

(c) in a special educational needs case or a disability discrimination in schools case to which sub-paragraph (cc) does not apply, within 30 working days after the respondent received the application notice;

(cc) in a disability discrimination in schools case that includes a claim for the reinstatement of a child or young person who has been permanently excluded, within 15 working days after the respondent received the application notice;

(d) in any other case, within 20 working days after the respondent received the application notice.

(2) The response must include—

(a) the name and address of the respondent;

(b) the name and address of the respondent's representative (if any);

(c) an address where documents for the respondent may be sent or delivered;

(d) a statement as to whether the respondent opposes the applicant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response;

(e) in a special educational needs case brought by a parent of a child, the views of the child about the issues raised by the proceedings, or the reason why the respondent has not ascertained those views; and

(f) any further information or documents required by an applicable practice direction or direction.

(3) The response may include a statement as to whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(4) If the respondent provides the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(5) The respondent must send or deliver a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

### **Order that a school be regarded as not registered pending determination of an appeal**

**22.**—(1) This rule sets out the procedure for the making of an order under section 166(5) of the Education Act 2002 that a school is to be regarded as not registered for the purposes of section 159 of that Act until the Tribunal determines an appeal under section 165(2) of that Act (decision to remove an independent school from the register).

(2) In this rule—

(a) “the applicant” means the applicant bringing the appeal under section 165(2) of the Education Act 2002; and

(b) “the respondent” means the respondent to that appeal.

(3) The respondent must make any application for an order under this rule in writing and must send or deliver it to the Tribunal and the applicant so that it is received within 28 days after the date on which the respondent received a copy of the application notice starting the appeal.

(4) An application under paragraph (3) must—

(a) be signed by the respondent and dated;

(b) state the grounds for the application;

(c) state the nature of the evidence that will be provided in support of the application and the names of the witnesses who will give that evidence;

(d) specify any working days in the following 30 days when the respondent or a witness named under sub-paragraph (c) would not be available to attend a hearing, and provide reasons why they would not be available; and

- (e) include, so far as practicable, any documentary evidence (including witness statements) that the respondent intends to rely on.

(5) The applicant must send or deliver a written response to the application under paragraph (3) to the Tribunal and the respondent so that it is received within 16 days after the date on which the respondent sent that application to the applicant under paragraph (3).

(6) The response must—

- (a) acknowledge receipt of the application and any documentary evidence included with it;
- (b) state whether the applicant requests that the application be decided at a hearing, and if so—
  - (i) state the nature of the evidence that will be provided in support of the applicant's case and the names of the witnesses who will give that evidence; and
  - (ii) specify any working days in the following 16 days when the applicant or a witness named under sub-paragraph (b)(i) would not be available to attend a hearing, and provide reasons why they would not be available; and
- (c) include, so far as practicable, any documentary evidence (including witness statements) that the applicant intends to rely on.

(7) If the applicant fails to comply with paragraph (5) the applicant will not be entitled to take any further part in the proceedings in relation to the application.

(8) If the applicant complies with paragraph (5) and requests that the application be decided at a hearing, the Tribunal must hold a hearing to consider the application.

(9) Any hearing to consider the making of an order must be held as soon as reasonably practicable, and if the respondent has applied for such an order any such hearing must be held no later than the earlier of—

- (a) 14 days after the date on which the Tribunal received the applicant's response to the application; or
- (b) 30 days after the date on which the respondent sent the application to the applicant.

(10) If the Tribunal is considering whether to make an order on its own initiative, the Tribunal—

- (a) may not do so without giving the applicant an opportunity to make representations at a hearing in relation to the making of the order;
- (b) must give directions as to the provision to the Tribunal by the parties of documents or evidence that the parties wish to be taken into account.

## CHAPTER 2

### Hearings

#### **Decisions with or without a hearing**

**23.**—(1) Subject to paragraphs (2) and (3), the Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being decided without a hearing; and
- (b) the Tribunal considers that it is able to decide the matter without the hearing.

(2) This rule does not apply to a decision under Part 5.

(3) The Tribunal may dispose of proceedings without a hearing under rule 8 (striking out a party's case).

#### **Entitlement to attend a hearing**

**24.** Subject to rules 22(7) (exclusion of applicant from proceedings to consider an order under section 166(5) of the Education Act 2002) and 26(5) (exclusion of a person from a hearing)—

- (a) each party is entitled to attend a hearing; and



- (b) in a special educational needs case or a disability discrimination in schools case brought by a parent of a child, the child is entitled to attend a hearing and the Tribunal may permit the child to give evidence and to address the Tribunal.

### **Notice of hearings**

**25.**—(1) The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

- (2) The period of notice under paragraph (1) must be at least 14 days, except that—
  - (a) in proceedings under Suspension Regulations the period of notice must be at least 3 working days;
  - (b) the period of notice in respect of a hearing to consider the making of an order under section 166(5) of the Education Act 2002 must be at least 7 days; and
  - (c) the Tribunal may give shorter notice—
    - (i) with the parties' consent; or
    - (ii) in urgent or exceptional circumstances.

### **Public and private hearings**

**26.**—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) Hearings in special educational needs cases and disability discrimination in schools cases must be held in private unless the Tribunal considers that it is in the interests of justice for a hearing to be held in public.

(3) Subject to paragraph (2), the Tribunal may give a direction that a hearing, or part of it, is to be held in private.

(3A) Without prejudice to paragraph (3), the Tribunal may direct that a hearing, or part of it, is to be held in private if—

- (a) the Tribunal directs that the proceedings are to be conducted wholly or partly as video proceedings or audio proceedings;
- (b) it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing;
- (c) a media representative is not able to access the proceedings remotely while they are taking place; and
- (d) such a direction is necessary to secure the proper administration of justice.

(4) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm);
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person; or
- (e) in a special educational needs case or a disability discrimination in schools case brought by a parent of a child or by a young person who lacks capacity to conduct their case, that child or young person, if the Tribunal considers that their presence at the hearing would be adverse to their interests.

(6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

### **Coronavirus temporary rule (recording of remote hearings)**

**26A.**—(1) In the circumstances set out in paragraph (3), the Tribunal must direct that the hearing be recorded, if practicable.

(2) Where the Tribunal has made a direction under paragraph (1), it may direct the manner in which the hearing must be recorded.

(3) The circumstances referred to in paragraph (1) are that the hearing, or part of it, is—

- (a) held in private under rule 26(3A); or
- (b) only treated as held in public by virtue of a media representative being able to access the proceedings remotely while they are taking place.

(4) On the application of any person, any recording made pursuant to a direction under paragraph (1) is to be accessed with the consent of the Tribunal in such manner as the Tribunal may direct.

### **Hearings in a party's absence**

**27.** If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

### **Power to pay allowances**

**28.** The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at hearings as the Secretary of State may determine.

## **CHAPTER 3**

### **Decisions**

#### **Consent orders**

**29.**—(1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

#### **Decisions**

**30.**—(1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 5) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)—

- (a) a decision notice stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any rights of review or appeal against the decision and the time within which, and the manner in which, such rights of review or appeal may be exercised.

(3) In proceedings under Suspension Regulations, the documents and information referred to in paragraph (2) must be provided at the hearing or sent within 3 working days after the hearing.

(4) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

## PART 4

### Proceedings before the Tribunal in mental health cases

#### CHAPTER 1

##### Before the hearing

#### **Application of Part 4**

**31.** This Part applies only to mental health cases.

#### **Procedure in mental health cases**

**32.**—(1) An application or reference must be—

- (a) made in writing;
- (b) signed (in the case of an application, by the applicant or any person authorised by the applicant to do so); and
- (c) sent or delivered to the Tribunal so that it is received within the time specified in the Mental Health Act 1983 or the Repatriation of Prisoners Act 1984.

(2) An application must, if possible, include—

- (a) the name, address and date of birth of the patient;
- (b) if the application is made by the patient's nearest relative, the name, address and relationship to the patient of the patient's nearest relative;
- (c) the provision under which the patient is detained, liable to be detained, subject to guardianship, or a community patient;
- (d) whether the person making the application has appointed a representative or intends to do so, and the name and address of any representative appointed;
- (e) the name and address of the responsible authority in relation to the patient.

(2A) A reference must, if possible, include—

- (a) the name and address of the person or body making the reference;
- (b) the name, address and date of birth of the patient;
- (c) the name and address of any representative of the patient;
- (d) the provision under which the patient is detained, liable to be detained, subject to guardianship or a community patient (as the case may be);
- (e) whether the person or body making the reference has appointed a representative or intends to do so, and the name and address of any representative appointed;
- (f) if the reference is made by the Secretary of State, the name and address of the responsible authority in relation to the patient, or, in the case of a conditionally discharged patient, the name and address of the responsible clinician and any social supervisor in relation to the patient.

(3) Subject to rule 14(2) (withholding evidence likely to cause harm), when the Tribunal receives a document from any party it must send a copy of that document to each other party.

(4) If the patient is a conditionally discharged patient—

- (a) upon being notified by the Tribunal of an application, the Secretary of State must immediately provide to the Tribunal the names and addresses of the responsible clinician and any social supervisor in relation to the patient; and
- (b) upon being notified by the Tribunal of an application or reference, the responsible clinician and any social supervisor named by the Secretary of State under this rule must send or deliver the documents specified in the relevant practice direction to the Tribunal so that they are received by the Tribunal as soon as practicable and in any event within 3 weeks after the notification.

(5) In proceedings under section 66(1)(a) of the Mental Health Act 1983(b) (application in respect of an admission for assessment), on the earlier of receipt of the copy of the application or a request from the Tribunal, the responsible authority must immediately send or deliver to the Tribunal a copy of—

- (a) the application for admission; and
- (b) the written medical recommendations on which that application was founded;

and must as soon as practicable send or deliver to the Tribunal the documents specified in the relevant practice direction.

(6) If neither paragraph (4) nor (5) applies, the responsible authority must send or deliver the documents specified in the relevant practice direction to the Tribunal so that they are received by the Tribunal as soon as practicable and in any event within 3 weeks after the responsible authority made the reference or received a copy of the application or reference.

(7) If the patient is a restricted patient, a person or body providing a document to the Tribunal in accordance with paragraph (4)(b) or (6) must also send or deliver a copy of the document to the Secretary of State.

(7A) The Secretary of State must send the information specified in paragraph (7B) and any observations the Secretary of State wishes to make to the Tribunal as soon as practicable and in any event—

- (a) in proceedings under section 75(1) of the Mental Health Act 1983 (reference concerning a conditionally discharged restricted patient who has been recalled to hospital), within 2 weeks after the Secretary of State received the documents sent or delivered in accordance with paragraph (7);
- (b) otherwise, within 3 weeks after the Secretary of State received the documents sent or delivered in accordance with paragraph (7).

(7B) The information specified in this paragraph is—

- (a) a summary of the offence or alleged offence that resulted in the patient being detained in hospital subject to a restriction order or, in the case of a patient subject to a restriction or limitation direction, that resulted in the patient being remanded in custody, kept in custody or sentenced to imprisonment;
- (b) a record of any other criminal convictions or findings recorded against the patient;
- (c) full details of the history of the patient's liability to detention under the Mental Health Act 1983 since the restrictions were imposed;
- (d) any further information in the Secretary of State's possession that the Secretary of State considers relevant to the proceedings.

(8) If the Secretary of State wishes to seek the approval of the Tribunal under section 86(3) of the Mental Health Act 1983 (removal of alien patients), the Secretary of State must refer the patient's case to the Tribunal and the provisions of these Rules applicable to references under that Act apply to the proceedings.

(9) The responsible authority must make records relating to the detention or treatment of the patient and any after-care services available to the Tribunal on request and the Tribunal or an appropriate member of the Tribunal may, before or at the hearing, examine and take notes and copies of such records for use in connection with the proceedings.

### **Notice of proceedings to interested persons**

**33.**—(1) When the Tribunal receives the information required by rule 32(4), (5) or (6) (procedure in mental health cases) the Tribunal must give notice of the proceedings—

- (a) where the patient is subject to the guardianship of a private guardian, to the guardian;
- (b) where there is an extant order of the Court of Protection, to that court;
- (c) subject to a patient with capacity to do so requesting otherwise, where any person other than the applicant is named by the authority as exercising the functions of the nearest relative, to that person; and
- (e) to any other person who, in the opinion of the Tribunal, should have an opportunity of being heard.

### **Medical examination of the patient**

**34.**—(1) Where paragraph (2) applies, an appropriate member of the Tribunal must, so far as practicable, examine the patient in order to form an opinion of the patient's mental condition, and may do so in private.

(2) This paragraph applies—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983 (application in respect of an admission for assessment), unless the Tribunal is satisfied that the patient does not want such an examination;
- (b) in any other case, if the patient or the patient's representative has informed the Tribunal in writing, not less than 14 days before the hearing, that—
  - (i) the patient; or
  - (ii) if the patient lacks the capacity to make such a decision, the patient's representative, wishes there to be such an examination; or
- (c) if the Tribunal has directed that there be such an examination.

## **CHAPTER 4**

### **Hearings**

### **Restrictions on disposal of proceedings without a hearing**

**35.**—(1) Subject to the following paragraphs, the Tribunal must hold a hearing before making a decision which disposes of proceedings.

(2) This rule does not apply to a decision under Part 5.

(3) The Tribunal may make a decision on a reference under section 68 of the Mental Health Act 1983 (duty of managers of hospitals to refer cases to tribunal) without a hearing if the patient is a community patient aged 18 or over and either—

- (a) the patient has stated in writing that the patient does not wish to attend or be represented at a hearing of the reference and the Tribunal is satisfied that the patient has the capacity to decide whether or not to make that decision; or
- (b) the patient's representative has stated in writing that the patient does not wish to attend or be represented at a hearing of the reference.

(4) The Tribunal may dispose of proceedings without a hearing under rule 8(3) (striking out a party's case).

### **Entitlement to attend a hearing**

**36.**—(1) Subject to rule 38(4) (exclusion of a person from a hearing), each party to proceedings is entitled to attend a hearing.

(2) Any person notified of the proceedings under rule 33 (notice of proceedings to interested persons) may—

- (a) attend and take part in a hearing to such extent as the Tribunal considers proper; or
- (b) provide written submissions to the Tribunal.

### **Time and place of hearings**

**37.**—(1) Subject to paragraph (1A), in proceedings under section 66(1)(a) of the Mental Health Act 1983 the hearing of the case must start within 10 days after the date on which the Tribunal received the application notice.

(1A) If the Tribunal considers that it is not reasonably practicable for a hearing to start within the period specified in paragraph (1), the hearing must start within such time as the Tribunal may direct.

(2) In proceedings under section 75(1) of that Act, the hearing of the case must start at least 5 weeks but no more than 8 weeks after the date on which the Tribunal received the reference.

(3) The Tribunal must give reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing), and any changes to the time and place of the hearing, to—

- (a) each party entitled to attend a hearing; and
- (b) any person who has been notified of the proceedings under rule 33 (notice of proceedings to interested persons).

(4) The period of notice under paragraph (3) must be at least 21 days, except that—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983 the period must be at least 3 working days; and
- (b) the Tribunal may give shorter notice—
  - (i) with the parties' consent; or
  - (ii) in urgent or exceptional circumstances.

### **Public and private hearings**

**38.**—(1) All hearings must be held in private unless the Tribunal considers that it is in the interests of justice for the hearing to be held in public.

(2) If a hearing is held in public, the Tribunal may give a direction that part of the hearing is to be held in private.

(3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

### **Hearings in a party's absence**

**39.**—(1) Subject to paragraph (2), if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

(2) The Tribunal may not proceed with a hearing that the patient has failed to attend unless the Tribunal is satisfied that—

- (a) the patient—
  - (i) has decided not to attend the hearing; or
  - (ii) is unable to attend the hearing for reasons of ill health; and
- (b) an examination under rule 34 (medical examination of the patient)—
  - (i) has been carried out; or
  - (ii) is impractical or unnecessary.

### **Power to pay allowances**

**40.** The Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to—

- (a) any person who attends a hearing as an applicant or a witness;
- (b) a patient who attends a hearing otherwise than as the applicant or a witness; and
- (c) any person (other than a legal representative) who attends as the representative of an applicant.

## **CHAPTER 3**

### **Decisions**

#### **Decisions**

**41.**—(1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision (except a decision under Part 5) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)—

- (a) a decision notice stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.

(3) The documents and information referred to in paragraph (2) must—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983, be provided at the hearing or sent within 3 working days after the hearing; and
- (b) in other cases, be provided at the hearing or sent within 7 days after the hearing.

(4) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

#### **Provisional decisions**

**42.** For the purposes of this Part and Parts 1, 2 and 5, a decision with recommendations under section 72(3)(a) or (3A)(a) of the Mental Health Act 1983 or a deferred direction for conditional discharge under section 73(7) of that Act is a decision which disposes of the proceedings.

## PART 5

### Correcting, setting aside, reviewing and appealing Tribunal decisions

#### Interpretation

**43.** In this Part—

“appeal” means the exercise of a right of appeal on a point of law under section 11 of the 2007 Act; and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

#### Clerical mistakes and accidental slips and omissions

**44.** The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

#### Setting aside a decision which disposes of proceedings

**45.—**(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) a party, or a party's representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.

#### Application for permission to appeal

**46.—**(1) A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.

(2) An application under paragraph (1) must be sent or delivered to the Tribunal so that it is received no later than 28 days after the latest of the dates that the Tribunal sends to the person making the application—

- (za) the relevant decision notice;
- (a) written reasons for the decision, if the decision disposes of—
  - (i) all issues in the proceedings; or
  - (ii) subject to paragraph (2A), a preliminary issue dealt with following a direction under rule 5(3)(e);
- (b) notification of amended reasons for, or correction of, the decision following a review; or



(c) notification that an application for the decision to be set aside has been unsuccessful.

(2A) The Tribunal may direct that the 28 days within which a party may send or deliver to the Tribunal an application for permission to appeal against a decision that disposes of a preliminary issue shall run from the date of the decision that disposes of all issues in the proceedings.

(3) The date in paragraph (2)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 45 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Tribunal.

(4) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
- (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

(5) An application under paragraph (1) must—

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the result the party making the application is seeking.

#### **Tribunal's consideration of application for permission to appeal**

**47.**—(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 49 (review of a decision).

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision—

- (a) a statement of its reasons for such refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

#### **Application for review in special educational needs cases**

**48.**—(1) This rule applies to decisions which dispose of proceedings in special educational needs cases, but not to decisions under this Part.

(2) A party may make a written application to the Tribunal for a review of a decision if circumstances relevant to the decision have changed since the decision was made.

(3) An application under paragraph (2) must be sent or delivered to the Tribunal so that it is received within 28 days after the date on which the Tribunal sent the decision notice recording the Tribunal's decision to the party making the application.

(4) If a party sends or delivers an application to the Tribunal later than the time required by paragraph (3) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
- (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

## **Review of a decision**

**49.**—(1) The Tribunal may only undertake a review of a decision—

- (a) pursuant to rule 47(1) (review on an application for permission to appeal) if it is satisfied that there was an error of law in the decision; or
- (b) pursuant to rule 48 (application for review in special educational needs cases).

(2) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

## **Power to treat an application as a different type of application**

**50.** The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

# SCHEDULE

Cases in which the time for providing the application notice is within 3 months after written notice of the decision being challenged was sent to the applicant

An appeal under section 65A of the Children Act 1989 (appeal against a refusal to give consent for a person who is disqualified from fostering a child privately to carry on, or be otherwise concerned in the management of, or have any financial interest in, or be employed in, a children's home)

An appeal under section 74(1)(a) of the Childcare Act 2006 (appeal against a refusal of registration as a childcare provider)

An appeal under section 37(1)(a) of the Children and Families (Wales) Measure 2010 (appeal against a refusal of an application for registration for child minding or providing day care for children)

An appeal under regulation 12 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (appeal against a direction, or a refusal to revoke a direction, prohibiting or restricting a person from working in education or in a job which brings them regularly into contact with children)

An appeal under section 129(1) of the Education and Skills Act 2008 (appeal against a decision to give, or not to vary or revoke, a direction prohibiting or restricting a person from taking part in the management of an independent educational institution).

