
STATUTORY INSTRUMENTS

2008 No. 0000

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal (Health, Education and Social Care
Chamber) Rules 2008**

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The Tribunal Procedure Committee has made and the Lord Chancellor has allowed the following Rules in exercise of the power conferred by sections 9, 10, 22 and 29 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007^(a), and in accordance with paragraph 28(1) of that Schedule.

PART 1

Introduction

Citation, commencement, application and interpretation

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

^(a) 2007 c.15.

(2) These Rules apply to proceedings before the Tribunal which have been allocated to the Health, Education and Social Care Chamber by an order made under section 7(9) of the 2007 Act.

(3) In these Rules, any reference to a rule or Schedule alone is a reference to a rule or Schedule in these Rules.

(4) In these Rules—

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

“applicant” means a person who—

- (a) commences Tribunal proceedings, whether by making an application, an appeal, a claim or a reference;
- (b) makes an application to the Tribunal for leave to commence such proceedings; or
- (c) is substituted as an appellant under rule [9] (substitution and addition of parties);

“application notice” means a document which starts proceedings under rule [18] (the application notice);

“document” means anything in which information is recorded in any form, and an obligation under these Rules 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;

“final determination” means a decision of the Tribunal which disposes of proceedings, but—

- (a) a refusal of an application for permission or leave under rule [34] (combined application for appeal or review) is not a final determination; and
- (b) in mental health cases, a provisional decision (including a deferred direction for conditional discharge in accordance with section 73(7) of the Mental Health Act 1983 and a notification to the Secretary of State in accordance with section 74(1) of that Act), or a decision with recommendations, is a final determination, and any decision following further consideration of such provisional decision or decision with recommendations must be treated as a revision of the final determination;

“Health, Education and Social Care Chamber” means the Health, Education and Social Care Chamber of the First-tier Tribunal established by the [] Order 2008;

“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;

“interested party” means a person added as an interested party under rule [9] (substitution and addition of parties);

“legal representative” means an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990(a);

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

“party” means—

- (a) in mental health cases, the patient, the responsible authority, the Secretary of State (if the patient is a restricted patient), and any other person who starts a mental health case by making an application;
- (b) in other cases, a person who is (or was at the time of a final determination) an applicant, respondent or interested party;

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

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

(a) 1990 c.41.
(b) 1983 c.20.
(c) 1984 c.47.

“respondent” means (in proceedings challenging a decision) the maker of the decision challenged, a person against whom an applicant brings proceedings, or a person added or substituted 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); and
- (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; and
- (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;

“the Suspension Regulations” means—

- (a) the Child Minding and Day Care (Suspension of Registration) (England) Regulations 2003(a);
- (b) the Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004(b); and
- (c) the Childcare (Voluntary Registration) Regulations 2007(c);

“Tribunal” means the First-tier Tribunal;

“Upper Tribunal” means the Upper 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(d).

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

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

(a) S.I. 2003/332.
(b) S.I. 2004/3282.
(c) S.I. 2007/730.
(d) 1971 c.80.

Arbitration and alternative dispute resolution

3.—(1) The Tribunal must bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute and explain the procedure to them and, if the parties wish, must facilitate the use of the procedure if it would not cause undue delay.

(2) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal.

PART 2

General powers and provisions

Power to delegate

4.—(1) The Tribunal may delegate to staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) a function permitted or required by these Rules to be done by the Tribunal if—

- (a) the function is of a purely administrative nature; or
- (b) the Senior President of Tribunals has approved the delegation.

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

(3) Within 14 days of receiving notice of a decision made by a member of staff under paragraph (1)(b), a party may apply in writing to the Tribunal for that decision to be reconsidered by a judge.

Case management powers

5.—(1) The Tribunal may give directions at any time in relation to the conduct or disposal of proceedings.

(2) In particular, and without restriction on the general power to give directions under paragraph (1), the Tribunal may by directions—

- (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 an Act) if—
 - (i) the party requiring the extension or shortening has shown a good reason why it is necessary; and
 - (ii) the Tribunal considers the extension or shortening to be in the interests of justice;
- (b) consolidate or hear together two or more sets of proceedings or an issue raised in two or more sets of proceedings, or treat a case as a lead case;
- (c) permit or require a party to amend an application notice or response;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) permit a party to withhold disclosure of a document that the party would otherwise be required to disclose;
- (f) deal with an issue in the proceedings as a preliminary issue;
- (g) hold a hearing to consider any matter;
- (h) decide the form of any hearing;
- (i) adjourn or postpone a hearing;
- (j) suspend the decision of a justice of the peace under section 79K of the Children Act 1989 or section 20 of the Care Standards Act 2000;
- (k) stay proceedings;
- (l) stay execution of its own decision pending an appeal or review of such decision;

- (m) dismiss a party's case or part of it if there is no reasonable prospect of it succeeding, except in mental health cases.

(3) Rule [6] (directions) sets out the procedures for applying for and giving directions.

Directions

6.—(1) The Tribunal may give a direction at any time, including a direction amending, suspending or setting aside an earlier direction.

(2) The Tribunal may give a direction—

- (a) on the application of one or more of the parties; or
- (b) on its own initiative.

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

(4) An application for directions may be made either—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(5) The Tribunal may give a direction which states that failure by a party to comply with the direction could lead to the striking out of that party's case, or part of it.

(6) Unless the Tribunal considers that there is a good reason not to do so, the Tribunal must send written notice of any direction to every party to the proceedings and any other person required to take any action pursuant to the 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 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](strike out of a party's case); or
- (d) except in mental health cases, restricting a party's participation in the proceedings.

Strike out of a party's case

8.—(1) The Tribunal must strike out the whole or a part of a party's case if the Tribunal does not have jurisdiction in relation to the case or that part of the case.

(2) Except in mental health cases, the Tribunal may strike out the whole or a part of a party's case if—

- (a) that party has failed to comply with a direction which stated that failure to comply with the direction could lead to the striking out of the party's case or part of it; or
- (b) that party has failed to co-operate with the Tribunal to such an extent that it is impossible for the Tribunal to conduct the proceedings fairly and justly.

(3) If the Tribunal strikes out the whole or a part of a party's case without first giving that party an opportunity to make representations, that party may apply for the case, or part of it, that has been struck out to be reinstated.

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 an interested party or a respondent.

Orders for costs

10.—(1) The Tribunal may only make an order awarding costs following a final determination—

- (a) under section 29(4) of the 2007 Act (wasted costs), if the Tribunal considers that the circumstances justify it; or
- (b) except in mental health cases, if the Tribunal considers that a party has acted unreasonably in bringing or conducting the proceedings.

(2) The Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first—

- (a) considering that person’s financial means; and
- (b) giving that person an opportunity to make representations.

(3) An order under paragraph (1) must not relate to any costs other than those incurred in connection with the proceedings by the person in whose favour the order is made (the “receiving person”).

(4) An order under paragraph (1) must require the paying person to pay to the receiving person—

- (a) a specified sum, summarily assessed by the Tribunal, provided that the amount does not exceed £10,000;
- (b) a specified sum, agreed by the paying party and the receiving party; or
- (c) the whole or a specified part of the costs incurred by the receiving person, to be assessed if not agreed.

(5) Following an order under paragraph (4)(c) a party may apply to the 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.

(6) A person who makes an application for a costs order to be made in their favour must provide a schedule of the costs claimed to the Tribunal and to the proposed paying person.

Power to award expenses

11. The Tribunal may pay reasonably incurred expenses or allowances to a person who in Tribunal proceedings—

- (a) gives evidence;
- (b) produces documents; or
- (c) attends a hearing.

Representatives

12.—(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative’s name and address.

(3) Anything permitted or required to be done by or provided to a party under these Rules, a practice direction or a direction, other than signing a witness statement or a notice under paragraph (2), may be done by or provided to the representative of that party.

(4) If the Tribunal or a party receives notice of the appointment of a representative from the represented party, the Tribunal or party—

- (a) may assume that the representative is and remains authorised until receiving written notification to the contrary from the representative or the represented party; and
- (b) must provide to the representative any document which is required to be sent to the represented party, and need not provide that document to the represented party.

(5) In a mental health case the Tribunal may appoint a legal representative for the patient if—

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

(6) At a hearing a party may be accompanied by another person, who may assist in presenting the party's case.

(7) Paragraphs (2) to (4) do not apply to a person other than an appointed representative who accompanies a party in accordance with paragraph (6).

Calculating time

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

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

Sending and delivery of documents

14.—(1) Any document to be sent or delivered to the Tribunal under these Rules must be—

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

(2) Subject to paragraph (3), a party may inform 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 send documents to that party.

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

Prohibitions on disclosure or publication

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

(2) 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 who the Tribunal considers should not be identified.

(3) The Tribunal may use the power in paragraph (2) in order to take action under rule [24] (withholding documents or information likely to cause harm) and in such other circumstances as it considers just.

PART 3

Proceedings before the Tribunal

CHAPTER 1

Before the final determination

Procedure in mental health cases

16.—(1) In mental health cases this rule applies and rules [17] to [19] do not apply.

(2) An application or reference must be made in writing, be signed and be provided 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.

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

- (a) the name and address of the patient;
- (b) if the application is made by the patient's nearest relative, or in proceedings under section 66(1)(a) of the Mental Health Act 1983, 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; and
- (e) the name and address of the responsible authority in relation to the patient.

(4) Subject to rule [24] (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 to the proceedings.

(5) If the patient is a conditionally discharged patient (as defined in the Mental Health Act 1983) the Secretary of State must send a statement containing the information and documents required by the relevant practice direction to the Tribunal so that it is received by the Tribunal as soon as practicable and in any event within 6 weeks after the Secretary of State received a copy of the application or reference.

(6) In proceedings under section 66(1)(a) of the Mental Health Act 1983, on the earlier of receipt of the copy of the application or receipt of a request from the Tribunal, the responsible authority must send to the Tribunal—

- (a) the application for admission;
- (b) the written recommendations of the two registered medical practitioners on which the application is founded;
- (c) such of the information specified in the relevant practice direction as is within the knowledge of the responsible authority and can reasonably be provided in the time available; and
- (d) such of the documents specified in the relevant practice direction as can reasonably be provided in the time available.

(7) If paragraphs (5) and (6) do not apply, the responsible authority must send a statement containing the information and documents required by the relevant practice direction to the Tribunal so that it is received by the Tribunal as soon as practicable and in any event within 3 weeks after the responsible authority received a copy of the application or reference.

(8) If the patient is a restricted patient the responsible authority must also send the statement under paragraph (7) to the Secretary of State, and the Secretary of State must send a statement of any further relevant information to the Tribunal as soon as practicable and in any event—

- (a) in proceedings under section 75(1) of the Mental Health Act 1983, within 2 weeks after the Secretary of State received the relevant authority's statement; or

- (b) otherwise, within 3 weeks after the Secretary of State received the relevant authority's statement.

Application for leave

17.—(1) If another enactment requires the applicant to obtain the Tribunal's leave to start proceedings, the applicant must make a written application to the Tribunal for leave which must—

- (a) give full reasons why the applicant considers that the Tribunal should give leave; and
- (b) comply with paragraphs (1) to (4) of rule [18] (the application notice) as if the application for leave were an application notice.

(2) The Tribunal may make any directions it considers appropriate prior to determining the application for leave.

(3) 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

18.—(1) If rule [17] (application for leave) does not apply, an applicant must start proceedings before the Tribunal by sending or delivering to the Tribunal an application notice so that it is received—

- (a) when specified in another enactment, if applicable;
- (b) when specified in the Schedule, if applicable; or
- (c) otherwise, within 28 days after notice of the act or decision to which the proceedings relate was sent to the applicant.

(2) The application notice 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, that the proceedings relates to;
- (f) what result the applicant seeks;
- (g) the grounds on which the applicant intends to rely;
- (h) any further information or documents required by an applicable practice direction; and
- (i) whether the applicant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The applicant must send with the application notice a copy of any written record of any decision under challenge, and any statement of reasons for that decision that the applicant has or can reasonably obtain.

(4) If the applicant provides the application notice to the Tribunal later than required by paragraph (1) or any extension of time under rule [5(2)(a)], and a further extension under rule [5(2)(a)] is possible, the application notice must include a request for an extension of time and reasons why the application notice was not provided in time.

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

(6) In all other proceedings, 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

19.—(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) when specified in another enactment, if applicable;
- (b) when specified in the Schedule, if applicable;
- (c) otherwise, within 21 days after the date on which 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) any further information or documents required by an applicable practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response may include 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.

(4) If the respondent provides the response to the Tribunal later than required by paragraph (1) or any extension of time under rule [5(2)(a)], and a further extension under rule [5(2)(a)] is possible, the response must include a request for an extension of time and reasons 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.

Withdrawal and dismissal by consent

20.—(1) Subject to paragraphs (2) to (4), a party to the proceedings may withdraw its case, or any part of it—

- (a) at any time before the hearing to consider the final determination (or, if the Tribunal is to determine the appeal without a hearing, before such determination) by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) A party must obtain the consent of the Tribunal before making a withdrawal under paragraph (1) except a withdrawal—

- (a) under paragraph (1)(a) in proceedings concerning the education of a child with special educational needs or a disabled child; or
- (b) in proceedings concerning the suitability of a person to work with children or vulnerable adults.

(3) After a party has withdrawn its case, that party may only bring new proceedings, or present the same case—

- (a) in a mental health case; or
- (b) with the consent of the Tribunal.

(4) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order dismissing the proceedings and making such other appropriate provisions as the parties have agreed.

Further evidence and submissions

21.—(1) 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 requested 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 the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker;
 - (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 require any witness to give evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.
- (4) In a case concerning the education of a child with special educational needs the Tribunal may request that the parents of the child make the child available for examination or assessment.
- (5) The Tribunal may consider a failure to comply with a request 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 result in an adverse decision.

Summoning of witnesses and production of documents

- 22.**—(1) On the application of a party or on its own initiative, the Tribunal may by summons require any person—
- (a) to attend as a witness at a hearing at the time and place specified in the summons, provided that—
 - (i) the person has been given reasonable notice of the hearing; and
 - (ii) unless the person is a party to the proceedings, the summons makes provision for the person's necessary expenses of attendance to be paid, and by whom; and
 - (b) to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.
- (2) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.
- (3) A summons under this rule must—
- (a) if the person to whom it is addressed has not had an opportunity to object to it, state that the person may apply to the Tribunal to vary or set aside the summons; and
 - (b) state the consequences of failure to comply with the summons.

(4) When a summons is issued, the Tribunal must send a copy of the summons to each party to the proceedings.

(5) If a person fails to comply with a requirement imposed by the Tribunal under this rule, the Tribunal may refer the matter to the Upper Tribunal with a request that the Upper Tribunal take appropriate action as if the requirement had been imposed by the Upper Tribunal.

Medical examination and interview of the patient in mental health cases

23.—(1) Before the hearing to consider the final determination in a mental health case, an appropriate member of the Tribunal must, so far as practicable—

- (a) examine the patient; and
- (b) take such other steps as that member considers necessary to form an opinion of the patient's mental condition.

(2) For the purposes of paragraph (1) that member may—

- (a) examine the patient in private;
- (b) examine records relating to the detention or treatment of the patient and any after-care services;
- (c) take notes and copies of records for use in connection with the proceedings.

(3) At any time before the Tribunal makes the final determination in a mental health case, the Tribunal or any one or more of its members—

- (a) may interview the patient; and
- (b) must interview the patient if the patient so requests.

(4) An interview under paragraph (3)—

- (a) may take place in the absence of any other person; and
- (b) must take place in the absence of any other person if the patient so requests.

Withholding documents or information likely to cause harm

24.—(1) The Tribunal must give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that such disclosure would be likely to cause that person or some other person serious harm.

(2) If a party considers that the Tribunal should give a direction under paragraph (1) prohibiting the disclosure of a document or information to another 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 reasons for its exclusion, so that the Tribunal may decide whether the information should be disclosed to the second party or should be the subject of a direction under paragraph (1).

(3) The Tribunal may exclude a person from part of a hearing if it is necessary in order to avoid undermining a direction given under paragraph (1).

(4) If the Tribunal gives a direction under paragraph (1) which prevents disclosure to a party who has a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if it is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative would not be likely to act contrary to paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not—

- (a) be disclosed either directly or indirectly to any other person without the Tribunal's consent; or
- (b) be used otherwise than in connection with the proceedings.

CHAPTER 2

Hearings

Determination with or without a hearing

25.—(1) Subject to the following paragraphs, the Tribunal must hold a hearing to consider a final determination unless—

- (a) all parties have consented to the matter being determined without a hearing; and
- (b) the Tribunal decides to determine the matter without the hearing.

(2) In mental health cases the Tribunal must not reach a final determination without a hearing.

(3) Except in mental health cases, the Tribunal may in any event dispose of proceedings without a hearing under rules—

- (a) [5(2)(m)] (dismissal of a case with no reasonable prospect of success); or
- (b) [8(1) or (2)] (strike out).

Time and place of hearings

26.—(1) In proceedings under section 66(1)(a) of the Mental Health Act 1983 the hearing of the case must be listed to start within 7 days after the date on which the Tribunal received the application notice.

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

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

(4) The notice given under paragraph (3) must be no less than 14 days' notice, except that—

- (a) in proceedings under the Suspension Regulations or section 66(1)(a) of the Mental Health Act 1983 the Tribunal must give at least 3 working days' notice; and

(b) the Tribunal may give less than 14 days' notice—

- (i) with the parties' consent; or
- (ii) in urgent or exceptional circumstances.

Public and private hearings

27.—(1) Except as otherwise provided in this rule all hearings must be held in public.

(2) All hearings in mental health cases, or cases concerning the education of children with special educational needs or disabled children, 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.

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

(4) Where a hearing, or part of it, is to be held in private, the Tribunal may with good reason—

- (a) exclude particular individuals from the hearing or part of it; or
- (b) permit particular individuals to attend the hearing or part of it.

(5) The Tribunal may give a direction excluding from any hearing, or part of it, any person whose conduct is, in the opinion of the Tribunal, likely to disrupt the hearing.

Request to appear at and take part in a hearing

28.—(1) The Tribunal may give a direction permitting or requesting any person to—

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

(b) make written submissions in relation to a particular issue.

(2) If a person makes an application to the Tribunal for a direction under paragraph (1) the Tribunal must deal with the application under these Rules as if it were an application for directions by a party.

(3) The Tribunal must give a direction under paragraph (1) if a person has a right under another enactment or a practice direction to make representations at a hearing.

Hearings in a party's absence

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

- (a) (i) is satisfied that the party was duly notified of the hearing; and
- (ii) is not aware of any good reason for the failure to attend; or
- (b) otherwise considers that it is in the interests of justice to proceed with the hearing.

(2) In a mental health case the Tribunal may not proceed with a hearing unless the patient is present.

CHAPTER 3

Decisions

Decisions

30.—(1) The Tribunal may give a decision orally at a hearing or may reserve its decision.

(2) Subject to rule [24] (withholding documents or information likely to cause harm), the Tribunal must send to each party as soon as reasonably practicable following a final determination—

- (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 method by which, such rights of review or appeal may be exercised.

(3) The documents and information referred to in paragraph (2) must in any event be sent—

- (a) in proceedings under the Suspension Regulations or section 66(1)(a) of the Mental Health Act 1983, within 3 working days of the hearing; and
- (b) in other mental health cases, within 7 days of the hearing.

Publication and notification of decisions

31. Subject to rule [15] (prohibitions on disclosure or publication), the Tribunal may, where appropriate—

- (a) publish a decision or the reasons for a decision; or
- (b) send notice of a decision or the reasons for it to any person.

PART 4

Correcting, setting aside, reviewing and appealing Tribunal decisions

Clerical mistakes and accidental slips or omissions

32. 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 final determination

33.—(1) Except in mental health cases, the Tribunal may set aside a final determination, and require the matter to be decided afresh, if—

- (a) (i) 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;
- (ii) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (iii) a party, or a party’s representative, was not present at a hearing related to the proceedings; or
- (iv) there has been any other procedural irregularity in the proceedings; and
- (b) the Tribunal considers that it is in the interests of justice to do so.

(2) A party applying for a decision to be set aside under paragraph (1) must send 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.

Combined application for appeal or review

34.—(1) In this rule—

“appeal” means the exercise of a right of appeal under section 11 of the 2007 Act (right to appeal to the Upper Tribunal); and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act (review of decision of First-tier Tribunal).

(2) A party may seek a review of, or permission to appeal against, a decision if—

- (a) the Tribunal has made an error of law in the decision; and
- (b) the decision is not an excluded decision as defined in section 11(5) of the 2007 Act.

(3) A party seeking a review or permission to appeal must send or deliver to the Tribunal a written application for appeal or review so that it is received no later than 28 days after the latest of the date that the Tribunal sent—

- (a) written reasons for the decision of the Tribunal;
- (b) notification of a new or amended decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful, provided that that application was made within the time stipulated in rule [33] (setting aside a final determination).

(4) An application under paragraph (3) 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 seeks.

(5) On receiving the application for appeal or review the Tribunal must first consider whether to review the decision under rule [35] (power to review a decision).

(6) If the Tribunal decides not to review the decision, or reviews the decision and decides not to set aside or amend the decision, the Tribunal must consider whether to grant permission to appeal, and must send to the parties as soon as practicable—

- (a) a record of its decision; and

- (b) if the Tribunal has refused to grant permission—
 - (i) reasons for such refusal; and
 - (ii) 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.

(7) The Tribunal may grant permission to appeal on limited grounds, but must comply with paragraph (6)(b) in relation to any grounds on which it has refused permission.

Power to review a decision

35.—(1) In this rule “review” means the review of a decision by the Tribunal under section 9 of the 2007 Act (review of decision of First-tier Tribunal).

(2) The Tribunal may undertake a review of a decision—

- (a) pursuant to rule [34(5)] (review on a combined application for appeal or review); or
- (b) on its own initiative at any time.

(3) The Tribunal must notify the parties in writing of the outcome of any review, unless the Tribunal undertakes the review on its own initiative and decides to take no action following the review.

(4) If the Tribunal sets aside or amends a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (3) must state that any party that did not have an opportunity to make representations may apply for the setting aside or amendment to be reversed.

(5) If the Tribunal sets aside or amends a decision following a review, the Tribunal must also make any necessary amendment to any document published by it in relation to the decision.

Power to consider applications as different types of applications

36.—(1) If a party applies for the correction or setting aside of a decision, or makes an application for appeal or review, the Tribunal may treat the application as an application for any other one of those things.

(2) Paragraph (1) applies subject to the decision being excluded from review or appeal as an “excluded decision” under section 11 of the 2007 Act.

SCHEDULE

Rules 18(1)(b) and 19(1)(b)

Time limits for providing notices of appeal and responses

<i>Type of proceedings</i>	<i>Time for application notice</i>	<i>Time for reply</i>
<p>Under section 65A of the Children Act 1989 (refusal to give consent for a person who is disqualified from fostering a child privately to carry on, be otherwise concerned in the management of, have any financial interest in, or be employed in, a children's home)</p> <p>Under sections 79M & 79L(1)(a) of the Children Act 1989 (intention to refuse to grant an application for registration for childminding)</p> <p>Under section 4 of the Protection of Children Act 1999 (inclusion of a person on a list of individuals who are considered unsuitable to work with children, a refusal to remove a person from such list, or determination of inclusion on the list where a person has been provisionally included on the list for more than 9 months)</p> <p>Under section 86 of the Care Standards Act 2000 (inclusion of a person on a list of individuals who are considered unsuitable to work with vulnerable adults, a refusal to remove a person from such list, or determination of inclusion on the list where a person has been provisionally included on the list for more than 9 months)</p> <p>Under section 68 of the Care Standards Act 2000 where the appeal is against a refusal under section 58 of that Act (refusal of an application to be included on a register of social workers)</p> <p>Under the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (decision to give 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)</p>	<p>within 3 months after written notice of the decision was sent to the applicant</p>	<p>within 28 days after the respondent received the application notice</p>

Under section 74(1)(a) of the Childcare Act 2006 (refusal or cancellation of registration, or varying or refusing to vary conditions, or an order in relation to registration, as a person acting as a child minder or providing day care)		
Under the Suspension Regulations (suspension of registration of a person acting as a child minder or providing day care)	within 10 working days after written notice of the decision was sent to the applicant	within 3 working days after the respondent received the application notice
Under section 21 of the Care Standards Act 2000 (refusal or cancellation of registration by registration authority)	within 28 days after notice of the decision or order was sent to the applicant	within 20 working days after the respondent received the application notice
Under regulations made under section 28X NHS Act 1977 (decision contingently to remove a person from a list maintained by Primary Care Trust or Local Health Board of persons authorised to perform primary medical, dental or ophthalmic services, or local pharmaceutical services)	<ul style="list-style-type: none"> - for the first application in relation to a decision, within 3 months after the decision was made; - for any further application in respect of the same decision, within 6 months after the Tribunal made its last determination in relation to that decision; - for any further application in respect of the same decision where the parties apply jointly to the Tribunal with a view to seeking— <ul style="list-style-type: none"> (a) the same variation of conditions, (b) the same imposition of different conditions, or (c) for the contingent removal to be revoked, within 1 month after the Tribunal made its last determination in relation to that decision.	within 21 days after the respondent received the application notice
Under section 325 or 326 of the Education Act 1996 (provision of education to a child with special educational needs)	within 2 months after written notice of the decision was sent to the applicant	within 30 days after the respondent received the application notice
Under section 28I of the Disability Discrimination Act 1995 (provision of education to a disabled child)	within 6 months of the decision or act complained of	within 30 days after the respondent received the application notice