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STATUTORY INSTRUMENTS

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**2001 No. 3750**

The Family Health Services Appeal  
Authority (Procedure) Rules 2001

PART IV

GENERAL MATTERS RELATING TO CASES

(B)

PREPARATION FOR HEARING BY A PANEL

**Composition of panels in certain cases**

**30.** The President shall ensure that in the case of—

- (a) an FHS regulations appeal, or
- (b) an application for an order under section 49I(6)(b) of the 1977 Act,

the composition of any panel to which the case or any proceedings in such a case is allocated under rule 31 is in accordance with paragraph 10(a) and (b) of Schedule 9A to that Act as if the panel were one constituted for the purposes of section 49M or 49N of the 1977 Act.

**Allocation to a panel and directions**

**31.—**(1) Subject to the following paragraphs, the President shall allocate a case to a panel after the FHSAA has received a reply to an appeal under Part II or to an application under Part III, as the case may be.

(2) Where a party to an appeal or an application makes an application for directions before the case has been allocated to a panel, the President may allocate such an application to any panel.

(3) Where a case has been allocated to a panel in accordance with paragraph (1), any proceedings in that case, including any application for directions by a party shall be dealt with by that panel, except where in the President's opinion, including for reasons of urgency, the matter should be dealt with by another panel and the President shall allocate that matter to another panel accordingly.

**Directions in respect of hearings**

**32.—**(1) Subject to rule 31(3) and paragraph (2) below the panel to which a case has been allocated may at any time, on the application for directions of a party or of its own motion, give such directions as are necessary to enable the parties to prepare for the hearing or to assist the panel to which the case is allocated to determine the issues.

(2) In exercising the powers conferred by this rule the panel shall take into account the need to protect any matter referred to in rule 29(4).

(3) An application by a party for directions shall be made in writing to the FHSAA and, unless it is accompanied by the written consent of the other party, shall be served by the FHSAA on the other party.

(4) If the other party objects to the directions sought, the panel shall, if it considers it necessary for the determination of the application, give the parties an opportunity of appearing before it.

(5) Directions shall, where appropriate, include a statement of the possible consequences for the appeal or application, as provided by rule 36, of a party's failure to comply with any requirement within the time allowed by the panel.

### **Further directions**

**33.** The panel may give directions requiring any party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal or application.

### **Disclosure of documents and other material**

**34.**—(1) Subject to paragraph 18 of Schedule 9A to the 1977 Act the panel may require a person to deliver to the FHSAA any document or class of documents which it is in the power of that person to deliver.

(2) The FHSAA shall, subject to rule 29(4), make such provision as it thinks necessary to supply copies of any document obtained under this rule to the other party to the proceedings, and it shall be a condition of such supply that a party shall use such a document only for the purposes of the appeal or application.

### **Summoning of witnesses**

**35.**—(1) The panel may by summons require any person in England to attend as a witness at a hearing of an appeal or application at such time and place as may be specified in the summons and, at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal or application, subject to paragraph 18 of Schedule 9A to the 1977 Act.

(2) No person shall be required to attend in obedience to such a summons unless—

- (a) he has been given at least seven days' notice of the hearing or, if less than seven days, he has informed the FHSAA that he accepts such notice as he has been given; and
- (b) his reasonable expenses have been tendered by the FHSAA.

### **Failure to comply with certain directions**

**36.**—(1) Subject to paragraph (2), if any directions given to a party under this Part are not complied with by such a party without reasonable excuse, the panel may, before or at the hearing—

- (a) dismiss the whole or any part of the appeal or application,
- (b) strike out the whole or part of a respondent Health Authority's, or respondent's reply and
- (c) where appropriate, direct that a respondent Health Authority shall be debarred from contesting an appeal altogether or, as the case may be, that a respondent shall be debarred from contesting an application altogether.

(2) A panel shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with that direction giving an opportunity to show cause why it should not do so.

### **Varying or setting aside directions**

**37.**—(1) Where a person to whom a direction is given under this Part had no opportunity to object to the making of such direction, he may apply to have it varied or set aside.

(2) Where such an application is made it shall be considered by the panel which gave the direction and it shall not be varied or set aside without notifying the party which applied for the direction and considering any representations made by that party.