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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

(A)

ACKNOWLEDGEMENT AND REGISTRATION ETC.

**Acknowledgement and registration of appeal or application and service of documents by FHSAA**

**29.**—(1) Upon receiving a notice of appeal or notice of application, as the case may be, the FHSAA shall provided that the notice of appeal was given or the notice of application was made within the time described in rule 5 or 15 or in the 1977 Act as appropriate—

- (a) send to the appellant or the applicant an acknowledgement of its receipt which shall include a notice that advice in relation to the proceedings may be obtained from the FHSAA,
- (b) enter particulars of it in the register, and
- (c) inform the appellant or the applicant in writing of the case number of the appeal or application entered in the register (which shall thereafter constitute the title of the proceedings).

(2) Upon receiving a reply from a respondent the FHSAA shall—

- (a) send the respondent an acknowledgement of its receipt;
- (b) enter particulars of the reply in the register; and
- (c) inform the respondent of the case number of the appeal or application, as the case may be.

(3) Subject to paragraph (4) the FHSAA shall serve forthwith a copy of any document submitted by a party in connection with an appeal or an application on the other party in the case, provided that if any document is sent or delivered to the FHSAA after a time prescribed in these Rules other than in rule 5 or 15, the FHSAA may defer service pending a decision by a panel for the extension of the time limit in question.

(4) If any document supplied to the FHSAA by a party in an appeal or an application contains any matter that relates to—

- (a) a person's intimate personal or financial circumstances,
- (b) is commercially sensitive,
- (c) consists of information communicated or obtained in confidence, or
- (d) considerations of national security are involved,

and for that reason the party seeks to restrict its disclosure, that party shall inform the FHSAA of that fact and of the reasons for seeking such a restriction.

(5) In any case falling within paragraph (4) the FHSAA shall serve the copies as provided in this rule only in accordance with directions given by the panel to which the case is allocated.

(6) In this rule, “respondent” includes a respondent Health Authority.

(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.

(C)

## **DETERMINATION OF APPEALS OR APPLICATIONS BY PANELS**

### **Powers to determine an appeal or application without a hearing**

**38.**—(1) The panel may, if the parties so agree in writing, determine an appeal or application, or any particular issue, without an oral hearing.

(2) The panel may determine an appeal or application on the basis of the documents provided by the appellant under rules 6 and 7 or by the applicant under rules 16 to 18, as the case may be, without an oral hearing where—

- (a) no reply is received by the FHSAA within the time appointed under rule 12 or rule 23, or
- (b) the respondent Health Authority or the respondent states in writing that he does not resist, or withdraws his reply, to the appeal or application.

(3) The provisions of paragraph (2) of rule 40 and of paragraph (6) of rule 41 shall apply in respect of the determination of an appeal or application, or any particular issue, under this rule.

### **Hearings to be in public and exceptions**

**39.**—(1) All hearings by a panel shall be in public except where a practitioner (as defined in paragraph 21 of Schedule 9A to the 1977 Act) has asked for the hearing be in private and the panel considers that it is reasonable in all the circumstances for that hearing to be held in private.

(2) The following persons shall be entitled to attend the hearing of an appeal or an application, whether or not it is in private—

- (a) the President or any member of the FHSAA, notwithstanding that he is not a member of the panel for the purpose of the hearing,
- (b) a member of the Council on Tribunals,

but such persons may not take part in the proceedings or in the making of any decision by a panel.

(3) A panel, with the consent of the parties, may permit any other person to attend the hearing of an appeal or application which is held in private.

### **Failure of parties to attend hearing**

**40.**—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the panel may—

- (a) unless it is satisfied that there is reasonable excuse for such absence, hear and determine the appeal or application, as the case may be in the party's absence; or
- (b) adjourn the hearing.

(2) Before determining any appeal or application in the absence of a party, the panel shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal or application and any reply shall be treated as representations in writing.

### **Procedure at hearing**

**41.**—(1) At the beginning of the hearing the Chairman shall explain to the parties the order of proceedings which the panel proposes to adopt.

(2) Subject to this rule, the panel shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.

(3) The parties shall be heard in such order as the panel shall determine and they shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the panel both on the evidence and generally on the subject matter of the appeal or the application, as the case may be.

(4) Where the hearing is in public the panel may direct—

- (a) that the identity of a witness (other than a party) may, if the interests of justice require it, not be disclosed to the public; or

- (b) where in the panel's opinion it is strictly necessary, that some part of the hearing be held in private.
- (5) Evidence before the panel may be given orally or, if the panel so directs, by written statement, but the panel may at any stage of the proceedings require the personal attendance of any maker of a written statement.
- (6) The panel may receive evidence of any fact which appears to it to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.
- (7) At any hearing the panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, notice of application, or his reply in either case and, in respect of an appellant, to adduce any evidence not presented to the respondent Health Authority before or at the time it took the disputed decision.
- (8) The panel may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

### **Decision of panel**

- 42.—(1) The decision of the panel may be given orally at the end of the hearing or reserved.
- (2) All decisions of a panel shall be recorded forthwith in a document which records the relevant party's professional registration number, where applicable, and save in the case of a decision by consent, shall also contain a statement of the reasons (in summary form) for its decision, and that document shall be signed and dated by the Chairman.
- (3) Subject to paragraph (4), every document referred to in this rule shall be entered in the register and the FHSAA shall send a copy of the entry to each party.
- (4) Where any such document refers to any evidence that has been heard in private or when a witness has given evidence in circumstances of anonymity as provided for under rule 41(4), it shall be entered in the register as the panel may direct, but copies of the complete document shall be sent to the parties together with a copy of the entry.
- (5) Every copy of an entry sent to the parties under this rule shall be accompanied by a notification of their rights under section 11 of the Tribunals and Inquiries Act 1992 relating to appeals from decisions of the FHSAA and of the time within which and place at which such appeal shall be made.
- (6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the appellant, or the applicant Health Authority, as the case may be.

### **Review of a panel's decision**

- 43.—(1) Subject to the following paragraphs, if, on the application of a party or of its own motion, a panel is satisfied that—
  - (a) its decision was wrongly made as a result of an error made by the panel;
  - (b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear;
  - (c) new evidence has become available since the conclusion of the hearing to which the decision relates the existence of which could not have been reasonably known of or foreseen; or
  - (d) the interests of justice require,the panel may review and, by certificate under the Chairman's hand, set aside or vary the decision of the panel in question.

(2) An application by a party for the purposes of paragraph (1) shall be made to the FHSAA not later than fourteen days after the date on which the decision was sent to the parties in accordance with rule 42 and shall be in writing, stating the grounds in full.

(3) The parties shall have an opportunity to be heard on any application for review under this rule and the review shall, subject to rule 45, be determined by the panel which decided the case.

(4) Where for any reason it is not practicable for the review to be carried out by the same panel, the President shall allocate the matter to another panel.

(5) If, having reviewed the decision, the decision is set aside, the panel shall substitute such decision as it thinks fit or order a rehearing before it.

(6) The certificate of the Chairman as to the setting aside or variation of a panel's decision under this rule shall be sent to the President who shall ensure that such correction as may be necessary is made in the register and that a copy of the entry so corrected is sent to each of the parties.

(7) Where a decision is reviewed the FHSAA shall serve a copy of that revised decision on the parties as soon as practicable thereafter.

(8) Where a copy of the original decision has already been sent to any person or body referred to in rule 47, the President shall ensure that the person or body in question is notified immediately of the revised decision.

#### **Miscellaneous powers of panel**

**44.**—(1) A panel may, if it thinks fit—

- (a) dismiss the proceedings if the appellant or the applicant, as the case may be, shall at any time give notice of the withdrawal of the appeal or the application;
- (b) if both the parties agree in writing upon the terms of a decision to be made by the panel, decide accordingly (and in making any such decision, it shall not be necessary for the panel to give reasons).

(2) Subject to paragraph (3), at any stage of the proceedings a panel may direct that—

- (a) there be struck out or amended any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious; or
- (b) there be struck out any appeal or any application for want of prosecution.

(3) Before making any direction under paragraph (2) the panel shall give notice to the party against whom it is proposed that any such direction should be made giving him an opportunity to show cause why it should not be made.

#### **Irregularities**

**45.**—(1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any directions before the panel has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the panel, the panel may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks fit to cure or waive the irregularity before reaching its decision.