

# **DRAFT COMPETITION APPEAL TRIBUNAL RULES 2015**

**2015 No. [ ]**

## **The Competition Appeal Tribunal Rules 2015**

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**2015 No. [ ]**

## **The Competition Appeal Tribunal Rules 2015**

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## **PART I**

### **INTRODUCTION**

#### **Citation and commencement**

1. These rules may be cited as the Competition Appeal Tribunal Rules 2015 and shall come into force on [ ] 2015.

#### **Interpretation**

2.

- (1) In these rules –

“a chairman” means any member of the panel of chairmen;

“the chairman” means the chairman of the Tribunal as constituted for particular proceedings;

“CMA” means the Competition and Markets Authority;

“class representative” means the person referred to as the representative in section 59 of the 1998 Act, being a person who is authorised to bring the collective proceedings and includes, for the purposes of these rules, a sub-class representative;

“collective proceedings” means proceedings which by virtue of section 47B(1) of the 1998 Act may be brought before the Tribunal combining two or more claims to which section 47A of the 1998 Act applies;

“collective settlement” means the settlement of claims by virtue of section 49A or 49B of the 1998 Act;

“collective settlement order” means an order authorising the settlement representative to act in relation to the collective settlement;

“the Competition Service” means the body corporate established by section 13 of the 2002 Act or any successor entity;

“damages” means any sum of money (other than costs or expenses) which may be awarded in respect of a claim under section 47A or 47B of the 1998 Act;

“document” means anything in which information of any description is recorded, in whatever form; and “copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“infringement decision” means an infringement decision as defined by section 47A(6) of the 1998 Act;

“foreign defendant” means a defendant domiciled outside the jurisdiction;

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“settlement representative” means a person who is authorised by a collective settlement order to act in relation to a collective settlement;

“specified price control matter” means a price control matter specified in rule 117(1);

“the President” means the person appointed to be President of the Tribunal;

“the Registrar” means the person appointed to be Registrar of the Tribunal;

“the 1998 Act” means the Competition Act 1998;

“the 2002 Act” means the Enterprise Act 2002;

“the 2003 Act” means the Communications Act 2003;

“the Tribunal” means (i) the Competition Appeal Tribunal or (ii) in relation to any proceedings, the tribunal as constituted for the purposes of those proceedings, as the context requires;

“undertaking as to damages” means an undertaking to pay damages which a person sustains as a result of an interim injunction or other interim order and which the Tribunal considers the person in whose favour the injunction or other order is granted should pay.

- (2) These rules will be interpreted in accordance with the governing principles set out in rule 3.

### **Governing principles**

3.

- (1) The Tribunal will seek to ensure that each case is dealt with justly and at proportionate cost.
- (2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate –
    - (i) to the amount of money involved;
    - (ii) to the importance of the case;
    - (iii) to the complexity of the issues; and



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- (iv) to the financial position of each party;
  - (d) ensuring that it is dealt with expeditiously and fairly;
  - (e) allotting to it an appropriate share of the Tribunal's resources, while taking into account the need to allot resources to other cases; and
  - (f) enforcing compliance with these rules, any practice direction issued pursuant to rule 114 below, and any order of the Tribunal.
- (3) Each party's case must be fully set out in writing as early as possible.
- (4) The Tribunal will actively case manage the proceedings.
- (5) Active case management includes:
- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
  - (b) identification and concentration on the main issues as early as possible;
  - (c) fixing a target date for the main hearing as early as possible with a structured timetable for the proceedings up to the main hearing;
  - (d) adopting fact-finding procedures that are most effective and appropriate for the case;
  - (e) planning the structure of the main hearing in advance with a view to avoiding unnecessary oral evidence and argument; and
  - (f) ensuring that the main hearing is conducted within defined time-limits.
- (6) The Tribunal may in particular –
- (a) encourage and facilitate the use of an alternative dispute resolution procedure if the Tribunal considers that appropriate;
  - (b) dispense with the need for the parties to attend any hearing; and
  - (c) use technology actively to manage cases.
- (7) The parties (together with their representatives and any experts) are required to co-operate with the Tribunal to give effect to the principles in this rule.

### **Application of rules**

#### **4. Unless the context otherwise requires -**

- (1) Parts I and VI of these rules apply to all proceedings before the Tribunal;

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- (2) Part II of these rules applies to all proceedings before the Tribunal save as otherwise provided in Parts III, IV, V and VII;
- (3) Part III of these rules applies to proceedings for a review or an appeal against penalties under the 2002 Act;
- (4) Part IV of these rules applies to claims under section 47A of the 1998 Act and, in certain respects, to collective proceedings;
- (5) Part V of these rules applies to collective proceedings and collective settlements;
- (6) Part VII of these rules applies to appeals under section 192(2) of the 2003 Act relating to price control.

### **The Registrar**

5.

- (1) Any person appointed to be the Registrar under section 12(3) of the 2002 Act must –
  - (a) have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>1</sup>, or
  - (b) be an advocate or solicitor in Scotland of at least seven years' standing, or
  - (c) be –
    - (i) a member of the Bar of Northern Ireland of at least seven years' standing, or
    - (ii) a solicitor of the Court of Judicature of Northern Ireland of at least seven years' standing.
- (2) The Registrar shall act in accordance with the instructions of the President and shall, in particular, be responsible for –
  - (a) the establishment and maintenance of a register in which all pleadings and supporting documents and all orders and decisions of the Tribunal shall be registered;
  - (b) the acceptance, transmission, service and custody of documents in accordance with these rules;
  - (c) the enforcement of decisions of the Tribunal pursuant to paragraphs 4 and 5 of Schedule 4 to the 2002 Act and certification for the purposes of paragraph 1A of that Schedule;
  - (d) certifying that any order, direction or decision is an order, direction or decision of the Tribunal, the President or a chairman, as the case may be.

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<sup>1</sup> 1990 c.41

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- (3) Any function of the Registrar may be performed on his behalf by any member of staff of the Competition Service whom the President or Registrar may authorise for the purpose.

### **Tribunal address for service**

6. The address for service of documents on the Tribunal (referred to in these rules as “the Tribunal address for service”) is: The Registrar of the Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB or such other address as may be notified on the Tribunal website from time to time.

### **Tribunal website**

7. The location of the Tribunal website is: [www.catribunal.org.uk](http://www.catribunal.org.uk) or such other location as may be notified from time to time in such manner as the President may direct.

### **Representation**

- 8.
- (1) In proceedings before the Tribunal, a party may be represented by -
- (a) a qualified lawyer having a right of audience before a court in the United Kingdom; or
  - (b) by any other person allowed by the Tribunal to appear on his behalf.
- (2) A party shall notify the Tribunal of a change of legal representative where:
- (a) the party changes its legal representative;
  - (b) the party, having conducted the proceedings in person, appoints a legal representative to act on its behalf; or
  - (c) the party, having conducted the proceedings by a legal representative, intends to act in person.
- (3) The notice referred to in paragraph (2) shall state the party’s new address for service and be served on:
- (a) every other party to proceedings; and
  - (b) where paragraphs (2)(a) or (2)(c) apply, the former legal representative.
- (4) Until service of the notice referred to in paragraph (2), service of any document at the existing address for service shall be valid.

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## **PART II**

### **APPEALS**

#### **COMMENCING APPEAL PROCEEDINGS**

##### **Time and manner of commencing appeals**

9.

(1) Unless otherwise provided for in any enactment, an appeal to the Tribunal must be made by sending a notice of appeal to the Registrar so that it is received within two months of the date upon which the appellant was notified of the disputed decision or the date of publication of the decision, whichever is the earlier.

(2) The Tribunal may not extend the time limit provided under paragraph (1) unless it is satisfied that the circumstances are exceptional.

(3) The notice of appeal shall state –

(a) the name and address of the appellant;

(b) the name and address of the appellant's legal representative, if appropriate;

(c) an address for service in the United Kingdom;

(d) the name and address of the respondent to the proceedings,

and shall be signed and dated by the appellant, or on his behalf by his duly authorised officer or his legal representative.

(4) The notice of appeal shall contain –

(a) a concise statement of the facts;

(b) details of the decision to which the proceedings relate;

(c) observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place pursuant to rule 18;

(d) a summary of the grounds for contesting the decision, identifying in particular:

(i) under which statutory provision the appeal is brought;

(ii) to what extent (if any) the appellant contends that the disputed decision was based on an error of fact or was wrong in law;

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- (iii) to what extent (if any) the appellant is appealing against the respondent's exercise of his discretion in making the disputed decision;
  - (e) a succinct presentation of the arguments supporting each of the grounds of appeal;
  - (f) the relief sought by the appellant, and any directions sought pursuant to rule 19;
  - (g) a schedule listing all the documents annexed to the notice of appeal; and
  - (h) a statement identifying the evidence (whether witness statements or documents annexed to the notice of appeal) the substance of which, so far as the appellant is aware, was not before the maker of the disputed decision.
- (5) In proceedings under the 2003 Act, the notice of appeal shall include a statement indicating the extent to which –
- (a) the appeal relates to price control, or
  - (b) a specified price control matter arises in the appeal.
- (6) There shall be annexed to the notice of appeal –
- (a) a copy of the disputed decision; and
  - (b) as far as practicable a copy of every document (or parts of a document) on which the appellant relies including the written statements of all witnesses of fact, or expert witnesses, if any.
- (7) Unless the Tribunal otherwise directs, the signed original of the notice of appeal (and its annexes) must be accompanied by ten copies certified by the appellant or his legal representative as conforming to the original.

### **Defective notices of appeal**

10.

- (1) If the Tribunal considers that a notice of appeal does not comply with rule 9, or is materially incomplete, or is unduly prolix or lacking in clarity, the Tribunal may give such directions as may be necessary to ensure that those defects are remedied.
- (2) The Tribunal may, if satisfied that the efficient conduct of the proceedings so requires, instruct the Registrar to defer service of the notice of appeal on the respondent until after the directions referred to in paragraph (1) have been complied with.

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### **Power to strike out**

11.

- (1) The Tribunal may, after giving the parties an opportunity to be heard, strike out an appeal in whole or in part at any stage in the proceedings if –
  - (a) it considers that the Tribunal has no jurisdiction to hear or determine the appeal;
  - (b) it considers that the notice of appeal, or part of it, discloses no valid ground of appeal;
  - (c) it considers that the appellant does not have (or represent those who have) a sufficient interest in the decision in respect of which the appeal is made;
  - (d) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly;
  - (e) it is satisfied that the appellant has habitually and persistently and without any reasonable ground –
    - (i) instituted vexatious proceedings, whether against the same person or different persons; or
    - (ii) made vexatious applications in any proceedings; or
  - (f) the appellant fails to comply with any rule, direction, practice direction or order of the Tribunal.
- (2) When the Tribunal strikes out an appeal it may make any consequential order it considers appropriate.

### **Amendment**

12.

- (1) The appellant may amend the notice of appeal only with the permission of the Tribunal.
- (2) Where the Tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.
- (3) In deciding whether to grant permission under paragraph (1), the Tribunal shall take into account all the circumstances including whether the proposed amendment –
  - (a) involves a substantial change or addition to the appellant's case;
  - (b) is based on matters of law or fact which have come to light since the appeal was made; or

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(c) could not otherwise practicably have been included in the notice of appeal.

### **Withdrawal of the appeal**

13.

- (1) The appellant may withdraw his appeal only with the permission of the Tribunal, or if no Tribunal has been constituted, the President.
- (2) Where the Tribunal gives permission under paragraph (1) it may –
  - (a) do so on such terms as it thinks fit;
  - (b) instruct the Registrar to publish notice of the withdrawal on the Tribunal website or in such other manner as the Tribunal may direct; and
  - (c) publish any decision which it would have made had the appeal not been withdrawn.
- (3) Where an appeal is withdrawn –
  - (a) any interim order of the Tribunal, other than an order made in respect of costs, shall immediately cease to have effect; and
  - (b) no fresh appeal may be brought by the appellant in relation to the decision which was the subject of the appeal without the permission of the Tribunal.

## **RESPONSE TO APPEAL PROCEEDINGS**

### **Acknowledgement and notification**

14.

- (1) On receiving a notice of appeal the Registrar shall –
  - (a) send an acknowledgement of its receipt to the appellant; and
  - (b) subject to rules 10(2) and 11 send a copy of the notice of appeal to the respondent who made the disputed decision.
- (2) Subject to rules 10 and 11 of these rules, the Registrar shall as soon as practicable upon receipt of a notice of appeal publish a summary on the Tribunal website and in any other manner the President may direct.
- (3) The summary referred to in paragraph (2) above shall state –
  - (a) that a notice of appeal has been received;
  - (b) the name and address of the appellant and his legal representative (if any);

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- (c) the disputed decision to which the appeal relates and the person by whom it was made;
- (d) the particulars of the relief sought by the appellant;
- (e) a summary of the principal grounds relied on; and
- (f) a statement indicating that any person who considers that he has sufficient interest may apply to intervene in the proceedings, in accordance with rule 16, within three weeks of publication of the summary or such other period as the President may direct.

### **Defence**

15.

- (1) Unless otherwise provided for in any enactment, the respondent shall send to the Registrar a defence in the form required by this rule so that the defence is received within six weeks (or such further time as the Tribunal may allow) of the date on which the respondent received a copy of the notice of appeal in accordance with rule 14(1)(b).

- (2) The defence shall state –

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's legal representative, if appropriate;
- (c) an address for service in the United Kingdom,

and shall be signed and dated by the respondent, or on his behalf by his duly authorised officer or his legal representative.

- (3) The defence shall contain –

- (a) observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place pursuant to rule 18;
- (b) a succinct presentation of the arguments of fact and law upon which the respondent will rely;
- (c) details of any objection to the admission of evidence put forward by the appellant;
- (d) the relief sought by the respondent and any directions sought pursuant to rule 19; and
- (e) a schedule listing all the documents annexed to the defence.



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- (4) In proceedings under the 2003 Act, the defence shall include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal, including a statement in rebuttal of a statement under rule 9(5).
- (5) As far as practicable, there shall be annexed to the defence a copy of every document (or parts of a document) upon which the respondent relies (save where such document (or parts of a document) have been annexed to the notice of appeal) including the written statements of all witnesses of fact, and where practicable expert witnesses, if any.
- (6) The signed original of the defence (and its annexes) must be accompanied by ten copies certified by the respondent or his duly authorised officer or legal representative as conforming to the original.
- (7) Rules 10(1), 11 (except rules 11(1)(c) and 11(1)(e)) and 12 shall apply to a defence as if references to “notice of appeal” were references to “defence”, references to “an appeal” or “the appeal” were references to “a defence” or “the defence”, references to “ground of appeal” were references to “ground of defence”, and references to “the appellant” were references to “the respondent”.
- (8) The respondent shall provide a copy of the defence and any accompanying documents to each other party at the same time as it provides the defence to the Tribunal.

### **INTERVENTION, CONSOLIDATION AND FORUM**

#### **Intervention**

16.

- (1) Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings.
- (2) The request must be sent to the Registrar within the period referred to in rule 14(3)(f).
- (3) The Registrar shall give notice of the request for permission to intervene to all the other parties to the proceedings and invite their observations on that request within a specified period.
- (4) A request for permission to intervene must state—
  - (a) the title of the proceedings to which that request relates;
  - (b) the name and address of the person wishing to intervene;
  - (c) the name and address of his legal representative, if appropriate;

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- (d) an address for service in the United Kingdom.
- (5) The request must contain –
  - (a) a concise statement of the matters in issue in the proceedings which affect the person making the request;
  - (b) the name of any party whose position the person making the request intends to support; and
  - (c) a succinct presentation of the reasons for making the request.
- (6) If the Tribunal is satisfied, having taken into account the observations of the parties, that the intervening party has a sufficient interest, it may permit the intervention on such terms and conditions as it thinks fit.
- (7) On granting permission in accordance with paragraph (6), the Tribunal shall give all such consequential directions as it considers necessary with regard, in particular, to the service on the intervener of the documents lodged with the Registrar, the submission by the intervener of a statement of intervention and, if appropriate, the submission by the principal parties of a response to the statement of intervention.
- (8) The statement of intervention shall contain:
  - (a) a succinct presentation of the facts and arguments supporting the intervention;
  - (b) the relief sought by the intervener;
  - (c) a schedule listing all the documents annexed to the intervention and, as far as practicable, a copy of every document (or parts of a document) on which the intervener relies (save where such document (or parts of a document) have been annexed to the notice of appeal or defence) including the written statements of witnesses of fact or expert witnesses, if any.
- (9) Rules 10(1), 11 (except rules 11(1)(c) and 11(1)(e)) and 12 shall apply to a statement of intervention as if references to “notice of appeal” were references to “statement of intervention”, references to “an appeal” or “the appeal” were references to “a statement of intervention” or “the statement of intervention”, references to “ground of appeal” were references to “ground of intervention”, and references to “the appellant” were references to “the intervener”.
- (10) The intervener shall provide a copy of the statement of intervention and any accompanying documents to each other party at the same time as it provides the statement of intervention to the Tribunal.

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### **Consolidation**

17.

- (1) Where two or more proceedings are pending in respect of the same decision, or which involve the same or similar issues, the Tribunal may, on the request of a party or of its own initiative, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated.
- (2) Before making an order under this rule, the Tribunal shall invite the parties to the relevant proceedings to submit their observations.

### **Forum**

18.

- (1) The Tribunal, after taking into account the observations of the parties, may at any time determine whether its proceedings are to be treated, for purposes connected with –
  - (a) any appeal from a decision of the Tribunal made in those proceedings; or
  - (b) any other matter connected with those proceedings,as proceedings in England and Wales, in Scotland or in Northern Ireland and shall instruct the Registrar to notify the parties of its determination.
- (2) Notwithstanding any determination under paragraph (1), the Tribunal may hold any meeting, case management conference, pre-hearing review or hearing, or give any directions, in such place and in such manner as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.
- (3) In making a determination under paragraph (1), the Tribunal may have regard to all matters which appear to it to be relevant and in particular the part of the United Kingdom where –
  - (a) any individual party to the proceedings is habitually resident or has his head office or principal place of business;
  - (b) the majority of the parties are habitually resident or have their head offices or principal places of business;
  - (c) any agreement, decision or concerted practice to which the proceedings relate was made or implemented or intended to be implemented;
  - (d) any conduct to which the proceedings relate took place; and/or
  - (e) in collective proceedings or proceedings concerning a collective settlement, the place where the class representative or settlement representative is habitually resident or has its head office or principal place of business.

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- (4) Without prejudice to paragraph (3), in making a determination under paragraph (1) for the purposes of a claim under section 47A or section 47B of the 1998 Act, the Tribunal may have regard to the law which is applicable to the claim.

### **CASE MANAGEMENT**

#### **Directions**

19.

- (1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) below or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.
- (2) The Tribunal may give directions –
- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
  - (b) that the parties file a reply, rejoinder or other additional pleadings or particulars;
  - (c) for the preparation and exchange of skeleton arguments;
  - (d) requiring persons to attend and give evidence or to produce documents;
  - (e) requiring clarification of any matter in dispute or additional information in relation to any such matter;
  - (f) as to the evidence which may be required or admitted in proceedings before the Tribunal and the extent to which it shall be oral or written;
  - (g) as to the submission in advance of a hearing of any witness statements or expert reports;
  - (h) as to the examination or cross-examination of witnesses;
  - (i) for the filing of a list of issues;
  - (j) for the production of bundles for any hearing;
  - (k) for the creation of a confidentiality ring;
  - (l) as to the fixing of time limits with respect to any aspect of the proceedings;
  - (m) as to the abridgement or extension of any time limits, whether or not expired;

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- (n) to enable a disputed decision to be referred back in whole or in part to the person by whom it was taken;
  - (o) for the disclosure and the production by a party or third party of documents or classes of documents;
  - (p) for the appointment and instruction of experts, whether by the Tribunal or by the parties and the manner in which expert evidence is to be given;
  - (q) for the costs management of proceedings, including for the provision of such schedules of incurred and estimated costs as the Tribunal thinks fit;
  - (r) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal;
  - (s) for the hearing of any issues as preliminary issues prior to the main substantive hearing; and
  - (t) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.
- (3) The Tribunal may, in particular, of its own initiative –
- (a) put questions to the parties;
  - (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
  - (c) ask the parties or third parties for information or particulars;
  - (d) ask for documents or any papers relating to the case to be produced;
  - (e) summon the parties' representatives or the parties in person to meetings.
- (4) A request by a party for directions shall:
- (a) be made in writing as soon as practicable;
  - (b) be supported by reasons and indicate whether it is agreed or contested by the other parties;
  - (c) be served on any other party who might be affected by such directions; and
  - (d) be determined by the Tribunal taking into account the observations of the parties.

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### **Case management conference etc.**

20.

- (1) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.
- (2) Unless the Tribunal otherwise directs, a case management conference shall be held as soon as practicable after the filing of an appeal, whether or not the time for service of the defence has expired.
- (3) The purpose of a case management conference or pre-hearing review shall be
  - (a) to ensure the efficient conduct of the proceedings;
  - (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
  - (c) to set a timetable to an oral hearing in the proceedings, and fix a date for that hearing;
  - (d) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;
  - (e) to hear and determine any submissions in relation to the admission of evidence;
  - (f) to determine any issues relating to confidentiality;
  - (g) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
  - (h) to facilitate the settlement of the proceedings.
- (4) The Tribunal may authorise a person qualified for appointment to the panel of chairmen to carry out on its behalf a case management conference, pre-hearing review or any other preparatory measure relating to the organisation or disposal of the proceedings.

### **Evidence**

21.

- (1) The Tribunal may give directions as to –
  - (a) the provision by parties of statements of agreed matters;
  - (b) the issues on which it requires evidence, and the admission or exclusion from the proceedings of evidence;

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- (c) the nature of the evidence which it requires to decide those issues;
  - (d) whether the parties are permitted to provide expert evidence;
  - (e) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally; and
  - (f) the way in which evidence is to be placed before the Tribunal.
- (2) In deciding whether to admit or exclude evidence, the Tribunal will have regard to whether it would be just and proportionate to admit or exclude the evidence, including by reference to the following criteria:
- (a) the statutory provision pursuant to which the appeal is brought and the applicable standard of review being applied by the Tribunal;
  - (b) whether or not the evidence was available to the respondent before the disputed decision was taken;
  - (c) whether or not the evidence was capable of being made available to the respondent before the disputed decision was taken;
  - (d) the prejudice that may be suffered by one or more parties if the evidence is admitted or excluded; and
  - (e) whether the evidence is necessary for the Tribunal to determine the case.
- (3) Unless the Tribunal otherwise directs, no witness of fact or expert shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal.
- (4) The Tribunal may require any witness to give evidence on oath or affirmation or if in writing by way of affidavit.
- (5) The Tribunal may allow a witness to give evidence through a video link or by other means.
- (6) The Tribunal may dispense with the need to call a witness to give oral evidence if a witness statement has been submitted in respect of that witness.
- (7) The Tribunal may limit cross-examination of witnesses to any extent or in any manner it deems appropriate.

### **Summoning or citing of witnesses**

22.

- (1) Subject to paragraphs (2) and (3) below, the Tribunal may, at any time, either of its own initiative or at the request of any party, issue a summons (or in

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relation to proceedings taking place in Scotland, a citation) in any form authorised by the Tribunal, requiring any person wherever he may be in the United Kingdom to do one or both of the following –

- (a) to attend as a witness before the Tribunal, at the time and place set out in the summons or citation; and
  - (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.
- (2) A request by a party for the issue of a summons or citation under this rule shall state with reasons –
  - (a) upon which facts the witness is to be questioned and the reasons for the examination;
  - (b) the documents required to be produced.
- (3) No person may be required to attend in compliance with a summons or citation under this rule unless –
  - (a) he has been given at least seven days' notice of the hearing; and
  - (b) he is paid such sum as would be recoverable by that witness in respect of his attendance in proceedings before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland.
- (4) The Tribunal may make the summoning or citation of a witness in accordance with paragraph (1) conditional upon the deposit with the Registrar of a sum determined by the Tribunal as sufficient to cover –
  - (a) the costs of the summons or citation;
  - (b) the sum referred to in paragraph (3)(b).
- (5) The Registrar shall advance the funds necessary in connection with the examination of any witness summoned by the Tribunal of its own initiative.
- (6) The Tribunal may direct a party to serve a summons issued under this rule on its behalf.

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

23.

- (1) If any party fails to comply with any direction given in accordance with these rules, the Tribunal may if it considers that the justice of the case so requires, order that:
  - (a) the requirements of the direction be waived;



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- (b) the failure be remedied;
  - (c) a direction be made under rule 11, rule 15(7) or rule 16(9), as appropriate;
  - (d) such party be debarred from taking any further part in the proceedings without the permission of the Tribunal; and/or
  - (e) such party (or his representative) be subject to an order for costs as the Tribunal sees fit.
- (2) Before making an order under paragraphs (1)(c)-(e), the Tribunal will give the party (or his representative) the opportunity to make submissions as to why such an order should not be made.

### **INTERIM ORDERS AND MEASURES**

#### **Power to make interim orders and to take interim measures**

24.

- (1) The Tribunal may make an order on an interim basis –
- (a) suspending in whole or part the effect of any decision which is the subject matter of proceedings before it;
  - (b) in the case of an appeal under section 46 or 47 of the 1998 Act, varying the conditions or obligations attached to an exemption;
  - (c) granting any remedy which the Tribunal would have the power to grant in its final decision.
- (2) Without prejudice to the generality of the foregoing, if the Tribunal considers that it is necessary as a matter of urgency for the purpose of –
- (a) preventing significant damage to a particular person or category of person,  
or
  - (b) protecting the public interest,
- the Tribunal may give such directions as it considers appropriate for that purpose.
- (3) The Tribunal shall exercise its power under this rule taking into account all the relevant circumstances, including –
- (a) the urgency of the matter;
  - (b) the effect on the party making the request if the relief sought is not granted;

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- (c) the effect on competition if the relief is granted; and
  - (d) the existence and adequacy of any offer of an undertaking as to damages.
- (4) Any order or direction under this rule is subject to the Tribunal's further order, direction or final decision.
- (5) A party shall apply for an order or a direction under paragraphs (1) and (2) by sending a request for interim relief in the form required by paragraph (6) to the Registrar.
- (6) The request for interim relief shall state –
  - (a) the subject matter of the proceedings;
  - (b) in the case of a request for a direction pursuant to paragraph (2), the circumstances giving rise to the urgency;
  - (c) the factual and legal grounds establishing a prima facie case for the granting of interim relief by the Tribunal;
  - (d) the relief sought;
  - (e) if no appeal or application has been made in accordance with rule 9, in respect of a decision which is the subject of the request for interim relief, an outline of the information required by rule 9(4).
- (7) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings (and where no appeal or application has been made in accordance with rule 9, to the person who made the decision to which the request for interim relief relates) and shall inform them of the date by which they may submit written or oral observations to the Tribunal.
- (8) Subject to paragraph (9), an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.
- (9) If the urgency of the case so requires, the Tribunal may grant the request for interim relief before the observations of the other parties have been submitted.

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## **PART III**

### **PROCEEDINGS UNDER THE 2002 ACT**

#### **Time for commencing proceedings for a review under the 2002 Act**

25.

- (1) An application under section 120(1) of the 2002 Act for the review of a decision in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation, must be made within four weeks of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.
- (2) An application under section 179(1) of the 2002 Act for review of a decision in connection with a reference or possible reference under Part 4 of that Act (market investigations) must be made within two months of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.
- (3) The Tribunal may not extend the time limit provided under paragraphs (1) and (2) unless it is satisfied that the circumstances are exceptional.

#### **Supplementary provisions concerning reviews**

26.

- (1) In proceedings for a review under sections 120 or 179 of the 2002 Act:
  - (a) rules 9 to 16 shall be construed and applied as if references to “appeal” were references to “application”, references to “the notice of appeal” were references to “the notice of application”, references to the “appellant” were references to the “applicant”, and references to the “grounds of appeal” were references to the “grounds of review”;
  - (b) the words “or expert witnesses” in rule 9(6)(b) shall be deleted.
- (2) In proceedings for a review under section 120 of the 2002 Act, rule 15(1) shall apply with the substitution of “four weeks” (or such further time as the Tribunal may allow) for “six weeks”.
- (3) The Tribunal’s power to strike out an appeal under rule 11 includes a power to strike out an application for review if it considers that the applicant is not a person aggrieved by the decision in respect of which the review is sought.

#### **Expert evidence**

27. If the applicant in proceedings for a review under section 120 or section 179 of the 2002 Act wishes to rely upon expert evidence that was not before the decision maker whose decision is the subject of the application, he shall serve with his application for review an application to adduce that evidence, attaching either the

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statement of expert evidence on which he wishes to rely or a detailed explanation of the nature of the expert evidence that he wishes to adduce.

### **Appeals in relation to penalties under sections 114 or 176(1)(f) of the 2002 Act**

28.

- (1) An appeal against a penalty brought under section 114 or 176(1)(f) of the 2002 Act must be made by sending a notice of appeal to the Registrar so that it is received within the period of 28 days starting with –
  - (a) in the case of an appeal against a penalty imposed by a notice under section 112(1) of that Act, the day on which a copy of the notice was served on the person concerned;
  - (b) in the case of an appeal against a decision on an application under section 112(3), the day on which the person concerned was notified of the decision.
- (2) In an appeal against a penalty brought under section 114 or 176(1)(f) of the 2002 Act, rule 15(1) shall apply with the substitution of “three weeks” (or such further period of time as the Tribunal may allow) for “six weeks”.
- (3) Rules 14(2) and 16 shall not apply to appeals against penalties under sections 114 or 176(1)(f) of the 2002 Act.

## **PART IV**

### **CLAIMS PURSUANT TO SECTION 47A OF THE 1998 ACT**

#### **Application of rules to claims**

29. In respect of proceedings in Scotland, references in this Part to “claimant” and “defendant” shall be read respectively as “pursuer” and “defender”.

## **COMMENCEMENT OF PROCEEDINGS**

### **Manner of commencing proceedings under section 47A of the 1998 Act**

30.

- (1) A claim under section 47A of the 1998 Act must be made by sending a claim form to the Registrar.
- (2) The claim form referred to in paragraph (1) shall state –
  - (a) the full name and address of the claimant;
  - (b) the full name and address of the claimant’s legal representative, if appropriate;

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- (c) an address for service in the United Kingdom; and
- (d) the name and address of the defendant to the proceedings.

(3) The claim form shall contain –

- (a) a statement as to whether the claim is in respect of an infringement decision, and if so, whether that decision has become final within the meaning of section 58A of the 1998 Act;
- (b) observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place pursuant to rule 18;
- (c) a concise statement of the relevant facts, identifying, where applicable, any relevant findings in an infringement decision;
- (d) a concise statement of any contentions of law which are relied on;
- (e) the relief sought in the proceedings, including (where applicable), —
  - (i) an estimate of the amount claimed in damages;
  - (ii) details of any other claim for a sum of money;
  - (iii) in proceedings in England and Wales or Northern Ireland, a statement that the claimant is making a claim for an injunction;
- (f) where the claim form is to be served on one or more foreign defendants then in respect of each foreign defendant—
  - (i) a statement that the permission of the Tribunal is not required for service out of the jurisdiction; or
  - (ii) a request that the Tribunal make an order permitting service of the claim form out of the jurisdiction;
  - (iii) a statement of the legal basis or bases upon which the Tribunal is said to have jurisdiction over each foreign defendant; and
  - (iv) a concise statement of the relevant facts said to engage the Tribunal's jurisdiction over each foreign defendant;
- (g) such other matters as may be specified by practice direction,

and its contents shall be verified by a statement of truth signed and dated by the claimant or on his behalf by his duly authorised officer or his legal representative.

(4) There shall be annexed to the claim form –

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- (a) a copy of any infringement decision referred to in paragraph (3)(a);
  - (b) copies of any documents referred to in the claim form;
  - (c) any application for the claim to be subject to the fast track procedure pursuant to rule 57 supported by reasons for the application and cross-referenced to the claim form; and
  - (d) such other documents or annexes as may be specified by practice direction.
- (5) Unless the Tribunal otherwise directs, the signed original of the claim form (and its annexes) must be accompanied by ten copies certified by the claimant or his legal representative as conforming to the original.
- (6) When sending the claim form to the Registrar the claimant shall also indicate—
- (a) whether the claimant wishes the Registrar to serve the claim form on a defendant domiciled in the United Kingdom; and
  - (b) the method by which the claimant (or the claimant's representative) would propose to effect service should he be directed to do so by the Registrar in accordance with rule 32.

### **Amendment**

31.

- (1) A claim form may only be amended—
- (a) with the written consent of all the parties; or
  - (b) with the permission of the Tribunal.
- (2) The Tribunal may permit an amendment after the period of limitation has expired in the following circumstances:
- (a) to add or substitute a new claim, only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings;
  - (b) to correct a mistake as to the name of a party, only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question; and
  - (c) to alter the capacity in which a party claims, only if the new capacity is one which that party had when the proceedings started or has since acquired.

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## **RESPONSE TO A CLAIM**

### **Acknowledgment and notification**

32.

- (1) On receiving a claim the Registrar shall send an acknowledgment of receipt to the claimant and shall either—
  - (a) send a copy of the claim form to the defendant; or
  - (b) direct that the claimant or his representative do so.
- (2) Where the Registrar directs the claimant to send the claim form to a defendant, the direction may specify any matter the Registrar may consider appropriate with regard to the service of the claim form, including but not limited to—
  - (a) the time within and the method by which service of the claim form is to be effected;
  - (b) the documents that are to accompany the claim form, including but not limited to the acknowledgement of service form referred to in paragraph (4) below;
  - (c) the information to be provided to the Registrar by the claimant concerning the date of service and the calculation of the time limits for acknowledging service and filing a defence; and
  - (d) the provision of any other information that may be required by the Registrar (whether by way of witness statement or otherwise) regarding the service of the claim form.
- (3) Where the claim form is served on a defendant domiciled in the United Kingdom, the defendant shall within 7 days of receipt of the copy of the claim form send to the Registrar an acknowledgment of service of the claim in the form provided by the Registrar.
- (4) Where the claim form is served on a foreign defendant, the defendant shall send an acknowledgement of service to the Registrar within the period specified or referred to in the Registrar's direction to the claimant pursuant to paragraph (1).
- (5) The Registrar shall, as soon as practicable, notify the claimant of the receipt of an acknowledgement of service from a defendant.
- (6) Subject to rule 41 of these rules, the Registrar shall as soon as practicable upon receipt of an acknowledgement of service publish a summary on the Tribunal website and in any other manner the President may direct.

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### **Service out of the jurisdiction**

33.

- (1) The Tribunal may serve (or may authorise a claimant to serve on its behalf) a claim form out of the jurisdiction on one or more foreign defendants.
- (2) When serving (or directing a claimant to serve) a claim form out of the jurisdiction, the Tribunal will apply the provisions of Civil Procedure Rules 6.30 to 6.47 and the accompanying Practice Direction 6B, Chapters 13 and 16 of the Rules of the Court of Session or the provisions of Order 11 of the Rules of the Supreme Court of Judicature (NI) 1980, as appropriate.

### **Disputing the Tribunal's jurisdiction**

34.

- (1) A defendant who wishes to—
  - (a) dispute the Tribunal's jurisdiction to hear the claim; or
  - (b) argue that the Tribunal should not exercise its jurisdiction,may apply to the Tribunal for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it might have.
- (2) A defendant who wishes to make such an application must first send an acknowledgement of service to the Registrar in accordance with Rule 32.
- (3) A defendant who files an acknowledgement of service does not by doing so lose any right he may have to dispute the Tribunal's jurisdiction and need not file a defence before the hearing of his application.
- (4) An application under this rule must—
  - (a) be made within 14 days after sending an acknowledgement of service to the Registrar; and
  - (b) be supported by evidence.
- (5) If the defendant—
  - (a) files an acknowledgement of service; and
  - (b) does not make an application within the period specified in paragraph (4),he is to be treated as having accepted that the Tribunal has jurisdiction to hear the claim.
- (6) An order containing a declaration that the Tribunal has no jurisdiction or will not exercise its jurisdiction may also make further provision as to the disposal or stay of the proceedings.



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- (7) If on an application under this rule the Tribunal does not make a declaration pursuant to paragraph (6), the Tribunal shall give directions regarding the future conduct of the proceedings.

### **Defence to a claim**

35.

- (1) Within 28 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar a defence:
  - (a) setting out in sufficient detail which of the facts and contentions of law in the claim form it admits or denies, on what grounds and on what other facts or contentions of law it relies; and
  - (b) containing observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place pursuant to rule 18.
- (2) The contents of the defence shall be verified by a statement of truth signed and dated by the defendant or on his behalf by his duly authorised officer or his legal representative.
- (3) Unless the Tribunal otherwise directs, the signed original of the defence (and its annexes) must be accompanied by ten copies certified by the defendant or his legal representative as conforming to the original.
- (4) The defendant shall provide a copy of the defence and any accompanying documents to each other party at the same time as it provides the defence to the Tribunal.

### **Reply to defence**

36.

- (1) Within 21 days of receipt of the copy of the defence, the claimant may file a reply to the defence.
- (2) The contents of the reply shall be verified by a statement of truth signed and dated by the claimant or on his behalf by his duly authorised officer or his legal representative.
- (3) If the claimant files a reply to the defence, it shall provide a copy of the reply and any accompanying documents to each other party at the same time as it provides the reply to the Tribunal.

### **Further pleadings**

37. No further pleadings may be filed without the permission of the Tribunal.

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### **ADDITIONAL PARTIES AND ADDITIONAL CLAIMS**

#### **Additional parties**

38.

- (1) The Tribunal may grant permission to remove, add or substitute a party in the proceedings.
- (2) An application for permission under this rule must be served on the parties to the proceedings and may be made by:
  - (a) an existing party; or
  - (b) a person who wishes to become a party.
- (3) The Tribunal may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.
- (4) Before the expiry of a relevant period of limitation, the Tribunal may order a person to be added as a new party or to be substituted for an existing one if:
  - (a) it is desirable to add or substitute the new party so that the Tribunal can resolve the matters in dispute in the proceedings; and
  - (b) in the case of a new party, there is an issue involving the new party and an existing party that is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so as to resolve that issue; or
  - (c) in the case of a substituted party, the existing party's interest or liability has passed to the new party.
- (5) After the expiry of a relevant period of limitation, the Tribunal may add or substitute a party only if:
  - (a) that limitation period was current when the proceedings were started; and
  - (b) the addition or substitution is necessary.
- (6) The addition or substitution of a new party is necessary for the purpose of paragraph (5)(b) only if the Tribunal is satisfied that:
  - (a) the new party is to be substituted for a party who was named in the claim form by mistake;
  - (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
  - (c) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.

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### **Additional claims**

39.

- (1) For the purpose of rules 39 - 40, an additional claim is:
  - (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; or
  - (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).
- (2) An additional claim shall be treated as if it were a claim for the purpose of these rules.
- (3) A defendant may make an additional claim pursuant to section 47A of the 1998 Act, other than a claim for contribution or indemnity falling within paragraph (4):
  - (a) without the Tribunal's permission, if he files it with his defence; or
  - (b) at any other time, with the permission of the Tribunal.
- (4) A defendant who has filed an acknowledgment of service or a defence, may make an additional claim for a contribution or indemnity against an existing party to the proceedings:
  - (a) without the Tribunal's permission, if he files it with his defence, or if it is a claim against a party added to the claim later, within 28 days after that party files his defence; or
  - (b) at any other time, with the permission of the Tribunal.

### **Powers on receipt of an additional claim**

40.

- (1) This rule applies where the Tribunal is considering whether to—
  - (a) permit an additional claim to be made;
  - (b) dismiss an additional claim;
  - (c) require an additional claim to be dealt with separately from the claim by the claimant against the defendant.
- (2) The matters to which the Tribunal may have regard include—

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- (a) the connection between the additional claim and the claim made by the claimant against the defendant;
- (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him;
- (c) whether the additional claimant wants the Tribunal to decide any question connected with the subject matter of the proceedings—
  - (i) not only between existing parties but also between existing parties and a person not already a party; or
  - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.
- (3) The Tribunal may direct that the additional claim is transferred pursuant to rule 70.
- (4) Where the Tribunal gives permission for an additional claim, it may make further orders or give further directions as it thinks appropriate in respect of the conduct of the additional claim and the management of the case generally.

### **SUMMARY DISPOSAL**

#### **Power to strike out**

41.

- (1) The Tribunal may, of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, strike out in whole or in part a claim at any stage of the proceedings if—
  - (a) it considers that the Tribunal has no jurisdiction to hear or determine the claim;
  - (b) it considers that there are no reasonable grounds for making the claim;
  - (c) it is satisfied that the claimant has habitually and persistently and without any reasonable ground –
    - (i) instituted vexatious proceedings, whether against the same person or different persons; or
    - (ii) made vexatious applications in any proceedings; or
  - (d) the claimant fails to comply with any rule, direction, practice direction or order of the Tribunal.
- (2) When the Tribunal strikes out a claim it may make any other consequential order it considers appropriate.

**Default judgment**

42.

- (1) The Tribunal may of its own initiative or on the application of a party give default judgment without a final hearing of the claim where—
  - (a) the defendant has not filed an acknowledgement of service or a defence to the claim (or any part of the claim); or
  - (b) a counterclaim has been made under rules 39 - 40 and a defence to the counterclaim has not been filed; and
  - (c) the relevant time for doing so has expired.
- (2) A default judgment may not be given if the defendant has made an application—
  - (a) disputing the Tribunal's jurisdiction under rule 34;
  - (b) to have the claim struck out under rule 41; or
  - (c) for summary judgment under rule 43,and that application has not been disposed of.
- (3) Where the claim form has been served on the defendant pursuant to the directions of the Registrar, the claimant may not obtain default judgment unless the claimant has complied with any directions concerning proof of service.
- (4) A default judgment given under this rule will be—
  - (a) such judgment as it appears to the Tribunal that the claimant is entitled to on the claim form;
  - (b) for an amount to be decided by the Tribunal as to damages, costs and interest or for such other relief to be decided by the Tribunal in accordance with any directions it may give for the determination of those matters.
- (5) A default judgment may be given against one of two or more defendants and the claimant may proceed against the other defendants.
- (6) The Tribunal may only give a default judgment against one of two or more defendants in accordance with paragraph (5) if it is satisfied that the claim against that defendant can be dealt with separately from the claim against the other defendants.
- (7) The Tribunal must set aside a default judgment if the judgment was wrongly entered because any of the conditions set out in paragraph (1) above were not satisfied.

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- (8) In any other case, the Tribunal may set aside or vary a default judgment (and attach any conditions it may think fit) if—
- (a) the defendant has a real prospect of defending the claim; or
  - (b) it appears to the Tribunal that there is some other good reason why—
    - (i) the judgment should be set aside or varied; or
    - (ii) the defendant should be allowed to defend the claim;
  - (c) in considering whether to set aside or vary a default judgment under paragraph (8)(b), the matters to which the Tribunal must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.
- (9) Where—
- (a) the claimant claimed a remedy in addition to damages;
  - (b) the claimant has abandoned his claim for that remedy in order to obtain default judgment on request; and
  - (c) the default judgment is set aside,
- the abandoned claim is restored when the default judgment is set aside.

### **Summary judgment**

43.

- (1) The Tribunal may of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—
- (a) it considers that—
    - (i) the claimant has no real prospect of succeeding on the claim or issue;  
or
    - (ii) the defendant has no real prospect of successfully defending the claim or issue; and
  - (b) there is no other compelling reason why the case or issue should be disposed of at a substantive hearing.
- (2) The Tribunal shall give such directions as it considers appropriate for dealing with a request under this rule.
- (3) Upon giving summary judgment, the Tribunal may make any consequential order it considers appropriate.

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### **Withdrawal of the claim**

44.

- (1) The claimant may withdraw his claim only –
  - (a) with the consent of the defendant; or
  - (b) with the permission of the Tribunal or, if no Tribunal has been constituted, the President.
- (2) Where a claim is withdrawn, the Tribunal may make any consequential order it thinks fit.

## **OFFERS TO SETTLE**

### **Settlement Offers**

45.

- (1) An offer to settle which is made in accordance with this rule is called a “Settlement Offer”.
- (2) A Settlement Offer may be made at any time, including before the commencement of proceedings.
- (3) A Settlement Offer must:
  - (a) be in writing;
  - (b) state on its face that it is intended to be a Settlement Offer pursuant to these rules;
  - (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant’s costs in accordance with rule 47 if the offer is accepted (save where the Settlement Offer is made less than 21 days before the start of the substantive hearing of the claim);
  - (d) state whether it relates to the whole of the claim, to part of it or to an issue that arises in it and, if so, to which part or issue; and
  - (e) where it is made by some, but not all, of a number of defendants, state whether or not it is made in satisfaction of the claim against all defendants.
- (4) For the purposes of these rules, the Relevant Period means:
  - (a) in the case of an offer made not less than 21 days before the substantive hearing of the claim, the period specified pursuant to paragraph (3)(c) or such longer period as the parties agree; or

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- (b) otherwise, the period up to the end of the substantive hearing of the claim or such other period as has been determined by a chairman.
- (5) A Settlement Offer which offers to pay or offers to accept a sum of money will be treated as inclusive of all interest until:
  - (a) the date on which the period specified under paragraph (3)(c) expires; or
  - (b) where paragraph (3)(c) does not apply, a date 21 days after the date the Settlement Offer was made.
- (6) An offer by a defendant to pay all or part of the sum, if accepted, at a date later than 14 days following the date of acceptance will not be treated as a Settlement Offer unless the claimant accepts the offer.
- (7) A Settlement Offer may be withdrawn or its terms changed to be less advantageous to the offeree, before the expiry of the Relevant Period, only with the permission of a chairman. Such permission is not required after the expiry of the Relevant Period, provided that the offeree has not previously served notice of acceptance.
- (8) A Settlement Offer may be accepted any time before the substantive hearing of the claim, unless the offeror has served a notice of withdrawal on the offeree. The permission of a chairman is required to accept a Settlement Offer where the substantive hearing of the claim has started.
- (9) The fact that a Settlement Offer has been made shall not be communicated to the members of the Tribunal deciding the case until all questions of liability and the amount of money to be awarded have been agreed between the parties or determined by the Tribunal. This paragraph shall not apply where:
  - (a) the parties reach an agreement to that effect;
  - (b) a preliminary issue has been determined and the existence of a Settlement Offer may be relevant to the question of the costs of the preliminary issue; or
  - (c) the issue of liability has been determined before any assessment of relief and the existence of a Settlement Offer may be relevant to the question of the costs of the issue of liability.
- (10) Where the claimant wishes to accept a Settlement Offer made by one or more, but not all, of a number of defendants:
  - (a) if the claimant alleges that the defendants have a joint and several liability to him and the Settlement Offer states that it is in satisfaction of the claim against all defendants, the claimant may serve notice accepting the Settlement Offer and the Tribunal will then direct that the claim against the defendants who did not make the Settlement Offer be discontinued;



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- (b) if the claimant alleges that the defendants have a joint and several liability to him and the Settlement Offer states that it is in satisfaction of the claim against those defendants making it, the claimant may:
  - (i) serve notice on the defendants making the Settlement Offer agreeing not to continue his claims against them in return for payment of the sum offered; and
  - (ii) continue with his claims against the other defendants;
- (c) if the claimant alleges that the defendants have a several but not a joint liability to him, the claimant may:
  - (i) accept the Settlement Offer; and
  - (ii) continue with his claims against the other defendants;
- (d) if the defendants are sued only jointly or in the alternative, the claimant may accept the Settlement Offer if:
  - (i) he discontinues his claim against those defendants who have not made the Settlement Offer; and
  - (ii) those defendants give written consent to the acceptance of the Settlement Offer.
- (11) A Settlement Offer under these rules will be treated as “without prejudice except as to costs”.
- (12) This rule does not preclude a party from making an offer to settle at any time or by any other means.

### **Clarification of a Settlement Offer**

46.

- (1) The offeree may, within 7 days of a Settlement Offer being made, request the offeror to clarify the offer.
- (2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the substantive hearing of the claim has started, apply for an order that he does so.
- (3) If the Tribunal makes an order under paragraph (2), it must specify the date when the Settlement Offer is to be treated as having been made.

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### **Costs consequences of acceptance of a Settlement Offer**

47.

- (1) Where a Settlement Offer made at least 21 days before the start of the substantive hearing of the claim is accepted or the claimant has sent a notice pursuant to rule 45(10)(b)(i):
  - (a) within the Relevant Period, the claimant is entitled to the relevant costs of the proceedings up to the date on which notice of acceptance or a notice pursuant to rule 45(10)(b)(i) was served on the offeror; or
  - (b) after the expiry of the Relevant Period, unless the Tribunal otherwise directs and the parties do not agree the liability for costs:
    - (i) the claimant is entitled to the relevant costs of the proceedings up to the date on which the Relevant Period expired; and
    - (ii) the offeree is liable for the offeror's relevant costs for the period from the date of expiry of the Relevant Period to the date on which notice of acceptance or a notice pursuant to rule 45(10)(b)(i) was served on the offeror.
  - (c) the relevant costs for the purpose of paragraph (a) or (b) are the costs related to the proceedings against the defendants making the Settlement Offer, except where rule 45(10)(a) applies when they are the costs of the proceedings against all defendants.
- (2) Where a Settlement Offer made less than 21 days before the start of the substantive hearing of the claim is accepted, or the claimant has sent a notice pursuant to rule 45(10)(b)(i), and the parties do not agree the liability for costs, the Tribunal will make an order as to costs.

(3) Where:

- (a) a defendant's Settlement Offer relates to part only of the claim; and
- (b) at the time of serving notice of acceptance within the Relevant Period, the claimant abandons the balance of the claim,

the claimant will be entitled to the costs of the proceedings up to the date of serving notice of acceptance unless the Tribunal otherwise directs.

### **Costs consequences following judgment**

48.

- (1) Where a Settlement Offer is not accepted and upon judgment being handed down:
  - (a) a claimant fails to obtain a judgment more advantageous than a defendant's Settlement Offer, the Tribunal will, unless it considers it

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unjust to do so, order that any defendant who made, either alone or jointly with any other defendant, the Settlement Offer is entitled to costs from the date on which the Relevant Period expired and interest on those costs; or

- (b) where a judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Settlement Offer, the Tribunal will, unless it considers it unjust to do so, order that the claimant is entitled to:
  - (i) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the Relevant Period expired;
  - (ii) costs on the indemnity basis from the date on which the Relevant Period expired;
  - (iii) interest on those costs at a rate not exceeding 10% above base rate; and
  - (iv) an additional amount to be determined by the Tribunal in accordance with Civil Procedure Rule 36.14(3)(d), as amended from time to time.
- (2) In considering whether it would be unjust to make the orders referred to in paragraph (1) above, the Tribunal will take into account all the circumstances of the case including:
  - (a) the terms of any Settlement Offer;
  - (b) the stage in the proceedings when any Settlement Offer was made, including in particular how long before the substantive hearing of the claim started the offer was made;
  - (c) the information available to the parties at the time when the Settlement Offer was made; and
  - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the Settlement Offer to be made or evaluated.
- (3) Paragraph (1) does not apply to a Settlement Offer:
  - (a) that has been withdrawn;
  - (b) that has been changed so that its terms are less advantageous to the offeree, and the offeree has beaten the less advantageous offer; or
  - (c) made less than 21 days before the substantive hearing of the claim, unless the Tribunal has abridged the Relevant Period.

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### **INTERVENTION, CONSOLIDATION AND FORUM**

#### **Intervention**

49. Rule 16 (except rules 16(2), 16(8), 16(9) and 16(10)) shall apply to claims falling within this Part.

#### **Consolidation**

50. Rule 17 shall apply to claims falling within this Part.

#### **Forum**

51. Rule 18 shall apply to claims falling within this Part.

### **CASE MANAGEMENT**

#### **Directions**

52.

(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) below or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.

(2) The Tribunal may give directions –

- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
- (b) that the parties file a rejoinder or other additional pleadings or particulars;
- (c) for the preparation and exchange of skeleton arguments;
- (d) requiring clarification of any matter in dispute or additional information in relation to any such matter;
- (e) as to the submission in advance of a hearing of any witness statements or expert reports;
- (f) as to the examination or cross-examination of witnesses;
- (g) for the filing of a list of issues;
- (h) for the production of bundles for any hearing;
- (i) for the creation of a confidentiality ring;

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- (j) as to the fixing of time limits with respect to any aspect of the proceedings;
  - (k) as to the abridgement or extension of any time limits, whether or not expired;
  - (l) for the disclosure and the production by a party or third party of documents or classes of documents;
  - (m) for the appointment and instruction of experts, whether by the Tribunal or by the parties and the manner in which expert evidence is to be given;
  - (n) for the costs management of proceedings, including for the provision of such schedules of incurred and estimated costs as the Tribunal thinks fit;
  - (o) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal;
  - (p) for the hearing of any issues as preliminary issues prior to the main substantive hearing; and
  - (q) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.
- (3) The Tribunal may, in particular, of its own initiative –
- (a) put questions to the parties;
  - (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
  - (c) ask the parties or third parties for information or particulars;
  - (d) ask for documents or any papers relating to the case to be produced;
  - (e) summon the parties’ representatives or the parties in person to meetings.
- (4) A request by a party for directions shall:
- (a) be made in writing as soon as practicable;
  - (b) be supported by reasons and indicate whether it is agreed or contested by the other parties;
  - (c) be served on any other party who might be affected by such directions;
  - (d) be determined by the Tribunal taking into account the observations of the parties.

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### **Case management conference etc.**

53.

- (1) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.
- (2) Unless the Tribunal otherwise directs, a case management conference shall be held as soon as practicable after the service of the reply, or the expiry of the time for the filing of the reply if none is served.
- (3) The purpose of a first case management conference or pre-hearing review shall be to give directions for the efficient conduct of the proceedings including—
  - (a) to set a timetable to an oral hearing in the proceedings, and if appropriate fix a date for that hearing;
  - (b) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;
  - (c) to determine any issues relating to confidentiality;
  - (d) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
  - (e) to consider any issues relating to disclosure and the provision of a disclosure report and Electronic Documents Questionnaire pursuant to rule 59;
  - (f) to facilitate the settlement of the proceedings; and
  - (g) to determine whether the parties should be given permission to adduce expert evidence and, if so, to what extent.
- (4) Where it appears to the Tribunal that any proceedings would be facilitated by holding a subsequent case management conference to determine issues relating to disclosure, or any other issue, the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference to be held.
- (5) The Tribunal may authorise a person qualified for appointment to the panel of chairmen to carry out on its behalf a case management conference, pre-hearing review or any other preparatory measure relating to the organisation or disposal of the proceedings.

### **Evidence**

54.

- (1) The Tribunal may give directions as to –

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- (a) the provision by parties of statements of agreed matters;
  - (b) the issues on which it requires evidence, and the admission or exclusion from the proceedings of evidence;
  - (c) the nature of the evidence which it requires to decide those issues;
  - (d) whether the parties are permitted to provide expert evidence;
  - (e) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally; and
  - (f) the way in which evidence is to be placed before the Tribunal.
- (2) Unless the Tribunal otherwise directs, no witness of fact or expert shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal.
- (3) The Tribunal may require any witness to give evidence on oath or affirmation or, if in writing, by way of affidavit.
- (4) The Tribunal may allow a witness to give evidence through a video link or by other means.
- (5) The Tribunal may dispense with the need to call a witness to give oral evidence if a witness statement has been submitted in respect of that witness.
- (6) The Tribunal may limit cross-examination of witnesses to any extent or in any manner it deems appropriate.

### **Summoning or citing of witnesses**

55.

- (1) Subject to paragraphs (2) and (3) below, the Tribunal may, at any time, at the request of any party, issue a summons (or in relation to proceedings taking place in Scotland, a citation) in any form, requiring any person wherever he may be in the United Kingdom to do one or both of the following –
- (a) to attend as a witness before the Tribunal, at the time and place set out in the summons or citation; and
  - (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.
- (2) A request by a party for the issue of a summons or citation under this rule shall state with reasons –

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- (a) upon which facts the witness is to be questioned and the reasons for the examination; and
  - (b) the documents required to be produced.
- (3) No person may be required to attend in compliance with a summons or citation under this rule unless –
- (a) he has been given at least seven days’ notice of the hearing; and
  - (b) he is paid such sum as would be recoverable by that witness in respect of his attendance in proceedings before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland.
- (4) The Tribunal may make the summoning or citation of a witness in accordance with paragraph (1) conditional upon the deposit with the Registrar of a sum determined by the Tribunal as sufficient to cover –
- (a) the costs of the summons or citation; and/or
  - (b) the sum referred to in paragraph (3)(b).
- (5) The Tribunal may direct a party to serve a summons issued under this rule on its behalf and to pay the sum referred to in paragraph (3)(b).

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

56.

- (1) If any party fails to comply with any direction given in accordance with these rules, the Tribunal may, if it considers that the justice of the case so requires, order that:
- (a) the requirements of the direction be waived;
  - (b) the failure be remedied;
  - (c) such party be debarred from taking any further part in the proceedings without the permission of the Tribunal; and/or
  - (d) such party (or his representative) be subject to an order for costs as the Tribunal sees fit.
- (2) Before making an order under paragraphs (1)(c) - (d), the Tribunal will give the party (or his representative) the opportunity to make submissions as to why such an order should not be made.



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## **FAST TRACK PROCEDURE**

### **Fast Track Procedure**

57.

- (1) In this rule “Fast Track Procedure” means proceedings in which—
  - (a) the final hearing will be fixed to commence as soon as practicable and in any event within 6 months of an order of the Tribunal stating that the particular proceedings are to be subject to the Fast Track Procedure; and
  - (b) the amount of recoverable costs will be capped at a level to be determined by the Tribunal.
- (2) The Tribunal may, at any time, either of its own initiative or on the application of a party, make an order that the proceedings be, or cease to be, subject to the Fast Track Procedure.
- (3) In deciding whether to make particular proceedings subject to the Fast Track Procedure the Tribunal will take into account all matters it thinks fit, including, but not limited to—
  - (a) whether one or more of the parties is an individual or a micro, small or medium-sized enterprise within the meaning of Commission Recommendation No. 361 (EC) of 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L124/36);
  - (b) whether the time estimate for the final hearing is three days or less;
  - (c) the complexity and novelty of the issues involved;
  - (d) whether any additional claims pursuant to rules 39 - 40 have been or will be made;
  - (e) the number of witnesses involved (including expert witnesses, if any);
  - (f) the scale and nature of the documentary evidence involved;
  - (g) whether any disclosure is required and, if so, the likely extent of such disclosure; and
  - (h) the nature of the remedy being sought and, in respect of any claim for damages, the amount of any damages claimed.

**SECURITY FOR COSTS**

**Security for costs**

58.

- (1) A defendant to a claim may seek security for his costs of the proceedings.
- (2) A request for security for costs must be supported by written evidence.
- (3) Where the Tribunal makes an order for security for costs, it shall –
  - (a) determine the amount of security; and
  - (b) direct –
    - (i) the manner in which, and
    - (ii) the time within whichthe security must be given.
- (4) The Tribunal may make an order for security for costs under this rule if –
  - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
  - (b)
    - (i) one or more of the conditions in either paragraph (5) or (6) applies; or
    - (ii) an enactment permits the Tribunal to require security for costs.
- (5) Where a defendant seeks security for costs against the claimant, the conditions are –
  - (a) the claimant is–
    - (i) resident out of the jurisdiction; but
    - (ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982;
  - (b) the claimant is a company or other body (whether incorporated inside or outside the United Kingdom) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
  - (c) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;

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- (d) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
  - (e) the claimant is acting as a nominal claimant, other than under section 47B of the 1998 Act, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
  - (f) the claimant has been authorised to act as the class representative in collective proceedings under rule 77 and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so; or
  - (g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.
- (6) Where a defendant seeks security for costs against someone other than the claimant, the conditions are that the person –
- (a) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or
  - (b) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and
- is a person against whom a costs order may be made.

## **DISCLOSURE**

### **Disclosure by parties to the proceedings**

59.

(1) In these rules:

- (a) a party discloses a document by stating that the document exists or has existed;
- (b) a "disclosure report" means a report verified by a statement of truth, which:
  - (i) describes briefly what documents exist or may exist that are or may be relevant to the matters in issue in the case;
  - (ii) describes where and with whom those documents are or may be located;
  - (iii) in the case of electronic documents, describes how those documents are stored;

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- (iv) estimates the broad range of costs that could be involved in giving disclosure in the case, including the costs of searching for and disclosing any electronically stored documents; and
  - (v) states which directions are to be sought regarding disclosure;
- (c) an “Electronic Documents Questionnaire” means the questionnaire in the Schedule to Practice Direction 31B of the Civil Procedure Rules.
- (2) Subject to paragraph (3) and unless the Tribunal otherwise thinks fit:
  - (a) at the first case management conference, the Tribunal will decide whether and when the disclosure report and Electronic Documents Questionnaire should be filed; and
  - (b) at a subsequent case management conference, the Tribunal will decide, having regard to the governing principles and the need to limit disclosure to that which is necessary to deal with the case justly, what orders to make in relation to disclosure.
- (3) The Tribunal may at any point give directions as to how disclosure is to be given, and in particular:
  - (a) what searches are to be undertaken, of where, for what, in respect of which time periods and by whom and the extent of any search for electronically stored documents;
  - (b) whether lists of documents are required;
  - (c) in what format documents are to be disclosed (and whether any identification is required);
  - (d) what is required in relation to documents that once existed but no longer exist; and
  - (e) whether disclosure shall take place in stages.
- (4) A party’s duty to disclose documents is limited to documents which are or have been in his control. For this purpose, a party has or has had a document in his control if:
  - (a) it is or was in his physical possession;
  - (b) he has or has had a right to possession of it; or
  - (c) he has or has had a right to inspect or take copies of it.
- (5) A party need not disclose more than one copy of a document. A copy of a document that contains a modification, obliteration or other marking or feature shall be treated as a separate document.

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- (6) Any duty of disclosure continues until the proceedings are concluded. If documents to which that duty extends come to a party's notice at any time during the proceedings, he must immediately notify every other party.

### **Documents referred to in statements of case etc.**

60. A party may request disclosure of any document mentioned in:

- (1) a claim form, defence, or reply to a defence;
- (2) a witness statement or affidavit;
- (3) an expert report, save that any instructions referred to in an expert's report shall not (unless the party serving the report consents) be disclosed without an order of the Tribunal.

### **Disclosure before proceedings start**

61.

- (1) This rule applies where an application is made to the Tribunal for disclosure before proceedings have started.
- (2) The application must be supported by evidence.
- (3) The Tribunal may make an order under this rule only where:
  - (a) the respondent is likely to be a party to subsequent proceedings;
  - (b) the applicant is also likely to be a party to those proceedings;
  - (c) disclosure before proceedings have started is desirable in order to:
    - (i) dispose fairly of the anticipated proceedings;
    - (ii) assist the dispute to be resolved without proceedings; or
    - (iii) save costs; and
  - (d) the Tribunal would, if proceedings had started, have ordered disclosure pursuant to rules 59.
- (4) An order under this rule must:
  - (a) specify the documents or the classes of documents which the respondent must disclose; and
  - (b) require him, when making disclosure, to specify any of those documents:
    - (i) which are no longer in his control; or

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(ii) in respect of which he claims a right or duty to withhold disclosure.

(5) Such an order may:

- (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
- (b) specify the time and place for disclosure.

### **Orders for disclosure against a person not a party**

62.

(1) This rule applies where an application is made to the Tribunal by a party for disclosure by a person who is not a party to the proceedings.

(2) The application must be supported by evidence.

(3) The Tribunal may make an order under this rule only where:

- (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
- (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.

(4) An order under this rule must:

- (a) specify the documents or the classes of documents which the respondent must disclose; and
- (b) require the respondent, when making disclosure, to specify any of those documents:
  - (i) which are no longer in his control; or
  - (ii) in respect of which he claims a right or duty to withhold inspection.

(5) Such an order may:

- (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
- (b) specify the time and place for disclosure.

**Claim to withhold inspection or disclosure of a document**

63.

- (1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.
- (2) Unless the Tribunal orders otherwise, an order of the Tribunal under paragraph (1) –
  - (a) must not be served on any other person; and
  - (b) must not be open to inspection by any person.
- (3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing –
  - (a) that he has such a right or duty; and
  - (b) the grounds on which he claims that right or duty.
- (4) The statement referred to in paragraph (3) must be made –
  - (a) in the list in which the document is disclosed; or
  - (b) if there is no list, to the person wishing to inspect the document.
- (5) A party may apply to the Tribunal to decide whether a claim made under paragraph (3) should be upheld.
- (6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (3) (claim to withhold inspection) the Tribunal may –
  - (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the Tribunal; and
  - (b) invite any person, whether or not a party, to make representations.
- (7) An application under paragraph (1) or paragraph (5) must be supported by evidence.
- (8) This rule does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

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### **Restriction on use of a privileged document inspection of which has been inadvertently allowed**

64. Where a party inadvertently discloses a privileged document, the party who has seen the document may use it or its contents only with the permission of the Tribunal.

## **INTERIM PAYMENTS**

### **Interim payments on claims**

- 65.
- (1) An interim payment is an order for payment by the defendant (in one sum or in instalments) on account of any damages or other sum of money (except costs) which the Tribunal may hold the defendant liable to pay.
  - (2) The claimant may not request an order for an interim payment before the end of the period for filing a defence by the defendant against whom the claim is made.
  - (3) The claimant may make more than one request for an order for an interim payment.
  - (4) The Tribunal may make an interim payment order if –
    - (a) the defendant against whom the order is sought has admitted liability to pay damages to the claimant;
    - (b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
    - (c) it is satisfied that, if the claim were to be heard, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for interim payment.
  - (5) The Tribunal must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
  - (6) A request for an interim payment shall be supported by evidence and include –
    - (a) the grounds on which an interim payment is sought; and
    - (b) any directions necessary in the opinion of the claimant for the determination of the request.
  - (7) On receiving a request for an interim payment the Registrar shall send a copy to all the other parties to the proceedings and shall inform them of the date by which they may submit written or oral observations to the Tribunal.



**INJUNCTIONS**

**Injunctions generally**

66.

- (1) Rules 66 to 69 shall not apply to proceedings in Scotland.
- (2) The Tribunal may by order (whether interim or final) grant an injunction in all cases in which it appears to the Tribunal to be just and convenient to do so.
- (3) Any such order may be made either unconditionally or on such terms and conditions as the Tribunal thinks just.

**Interim or interlocutory injunctions**

67.

- (1) An order for an interim injunction may be made at any time, including:
  - (a) before proceedings are started; and
  - (b) after judgment has been given.
- (2) The Tribunal may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.
- (3) The Tribunal may grant an interim injunction before proceedings are started only if:
  - (a) the matter is urgent; or
  - (b) it is otherwise necessary to do so in the interests of justice.
- (4) Where it grants an interim remedy before proceedings are started, the Tribunal should give directions requiring a claim to be commenced.
- (5) In proceedings subject to the Fast Track Procedure in rule 57, the Tribunal may grant an interim injunction:
  - (a) without requiring the applicant to provide an undertaking as to damages;
  - (b) subject to a cap on the amount of the undertaking as to damages.

**How to apply for an interim remedy**

68.

- (1) The Tribunal may grant an interim remedy on an application made without notice if it appears to the Tribunal that there are good reasons for not giving notice.

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- (2) An application for an interim remedy must be supported by evidence, unless the Tribunal orders otherwise. The evidence in support of the application must:
- (a) include all material information regarding the applicant's ability to pay under any undertaking as to damages that the Tribunal may require to be given;
  - (b) if the application is made without notice, state the reasons why notice has not been given.

### **Enforcement**

69.

- (1) After the granting of an injunction by the Tribunal, if a party contends that the party subject to the injunction has failed to comply, he may apply to the Tribunal for certification of the matter to the High Court pursuant to paragraph 1A of Schedule 4 to the 2002 Act.
- (2) Any evidence relied on in an application made pursuant to paragraph (1) shall be served on all other parties to the proceedings.
- (3) The Tribunal may, after giving the parties an opportunity to be heard, make any directions as it thinks fit for determining whether to certify the matter to the High Court.

## **TRANSFERS**

### **Transfer of claims from the Tribunal**

70. The Tribunal may, at any stage of the proceedings, on the request of a party or of its own initiative, and after considering any observations of the parties, direct that all or part of a claim made in proceedings brought under section 47A of the 1998 Act be transferred to -

- (1) the High Court or a county court in England and Wales or Northern Ireland; or
- (2) the Court of Session or a sheriff court in Scotland.

### **Transfer of claims to the Tribunal**

71.

- (1) This rule shall apply where any court has ordered the transfer to the Tribunal of all or part of any proceedings.
- (2) The person bringing the claim shall within 7 days of the order of the court transferring the claim or such other period directed by that court, send to the Registrar –

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- (a) a certified copy of the order of the court transferring the claim to the Tribunal;
  - (b) any pleadings and documents in support of the claim filed with the court in which the claim was begun;
  - (c) any directions sought for the further progress of the claim.
- (3) As soon as practicable after receipt of the documents referred to in paragraph (2) a case management conference shall be held in accordance with rule 53.

### **PART V**

#### **COLLECTIVE PROCEEDINGS AND COLLECTIVE SETTLEMENTS**

##### **Scope and interpretation**

72.

- (1) The rules in this Part concern collective proceedings pursuant to section 47B of the 1998 Act and collective settlements pursuant to sections 49A and 49B of the 1998 Act.
- (2) In this Part—
  - (a) “aggregate award of damages” means an award of damages made by the Tribunal in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of each represented person;
  - (b) “application for a collective proceedings order” means the application referred to in rule 74(2)(e);
  - (c) “class member” means a person falling within the class described in the collective proceedings order for those proceedings, or a collective settlement order, as applicable;
  - (d) “collective proceedings order” means an order made by the Tribunal authorising the continuance of collective proceedings;
  - (e) “collective settlement approval order” means an order of the Tribunal approving a proposed collective settlement;
  - (f) “common issues” means the same, similar or related issues of fact or law;
  - (g) “domicile date” means the date specified in the collective proceedings order or collective settlement order, as applicable, for the purposes of determining whether a person is domiciled in the United Kingdom;
  - (h) “opt-in collective proceedings” means collective proceedings which are brought on behalf of each class member who opts in by notifying the class

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representative, in a manner and by a time specified by the Tribunal, that the claim should be included in the collective proceedings;

- (i) “opt-out collective proceedings” means collective proceedings which are brought on behalf of each class member except—
  - (i) any class member who opts out by notifying the class representative, in a manner and by a time specified by the Tribunal, that the claim should not be included in the collective proceedings; and
  - (ii) any class member who is not domiciled in the United Kingdom at a time specified and does not, in a manner and by a time specified by the Tribunal, opt in by notifying the class representative that the claim should be included in the collective proceedings;
- (j) “represented person” means a class member who, in accordance with rule 81—
  - (i) has opted in to opt-in collective proceedings;
  - (ii) was domiciled in the United Kingdom on the domicile date and has not opted out of opt-out collective proceedings; or
- (k) has opted in to opt-out collective proceedings.

### **General**

73.

- (1) These rules are without prejudice to the Tribunal’s general powers of case management under rule 52, including, where there are multiple claims, its power to consolidate proceedings or hear two or more claims together or transfer all or any part of any proceedings.
- (2) A collective proceedings order and a collective settlement order may be limited to only some parts or issues in the claims to which it relates.

## **COLLECTIVE PROCEEDINGS**

### **Manner of commencing proceedings under section 47B of the 1998 Act**

74.

- (1) Proceedings under section 47B of the 1998 Act must be made by sending a collective proceedings claim form to the Registrar.
- (2) The collective proceedings claim form shall state—
  - (a) the full name and address of the proposed class representative;

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- (b) the full name and address of the proposed class representative's legal representative;
  - (c) an address for service in the United Kingdom;
  - (d) the name and address of each defendant to the proceedings;
  - (e) that the proposed class representative is making an application for a collective proceedings order;
  - (f) whether the order sought is for opt-in collective proceedings or opt-out collective proceedings;
  - (g) whether the parties have used an alternative dispute resolution procedure; and
  - (h) that the proposed class representative believes that the claims which it is sought to combine in the collective proceedings have a real prospect of success.
- (3) The collective proceedings claim form shall contain—
- (a) a description of the proposed class;
  - (b) a description of any possible sub-classes and, if so, how it is proposed that their interests may be represented;
  - (c) an estimate of the number of class (or sub-class) members and the basis for that estimate;
  - (d) a summary of the basis on which the proposed class representative seeks to be authorised to act in that capacity pursuant to rule 77;
  - (e) a summary of the basis on which it is contended that the criteria for certification and approval in rule 78 are satisfied;
  - (f) whether the claims are in respect of an infringement decision, and if so whether that decision has become final within the meaning of section 58A of the 1998 Act;
  - (g) a concise statement of the relevant facts, identifying - where applicable - any relevant findings in an infringement decision;
  - (h) a concise statement of any contentions of law which are relied on;
  - (i) the relief sought in the proceedings, including an estimate of the amount claimed in damages (where applicable), including whether an aggregate award of damages is sought, supported with any calculations which have been undertaken to arrive at the claimed amount;

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(j) observations on the question in which part of the United Kingdom the proceedings are to be treated as taking place for all or for any purpose;

(k) such other matters as may be specified by practice direction,

and its contents shall be verified by a statement of truth signed and dated by the proposed class representative or on his behalf by his duly authorised officer or his legal representative.

(4) There shall be annexed to the collective proceedings claim form—

(a) a copy of any infringement decision referred to in paragraph (3)(f) and any other document referred to in the collective proceedings claim form;

(b) a draft collective proceedings order; and

(c) a draft of the notice referred to in rule 80.

(5) Unless the Tribunal otherwise directs, the signed original of the collective proceedings claim form (and its annexes) must be accompanied by ten copies certified by the proposed class representative or his legal representative as conforming to the original.

### **Response to a collective proceedings claim form**

75.

(1) On receiving a collective proceedings claim form, the Registrar shall send an acknowledgment of receipt to the proposed class representative and send a copy of the claim form to each defendant or direct that the proposed class representative do so.

(2) The Registrar shall, as soon as practicable, publish a summary of the collective proceedings claim form on the Tribunal website.

(3) As soon as practicable, the Tribunal shall hold a case management conference to give directions in relation to the application for a collective proceedings order.

(4) The Tribunal may give directions —

(a) as regards any question concerning service out of the jurisdiction;

(b) as to the time by which the defendant must respond to the application for a collective proceedings order;

(c) as to the time by which any person with a legitimate interest (including any class member) may object to the application for a collective proceedings order or the authorisation of the proposed class representative;

(d) regarding the hearing of the application; or

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- (e) as to a stay of proceedings while the parties attempt to compromise the proceedings by alternative dispute resolution or other means.
- (5) Subject to any directions of the Tribunal, the defendant need not, before the hearing of the application for a collective proceedings order, file an acknowledgement of service or defence to the collective proceedings claim form.
- (6) A defendant who opposes an application for a collective proceedings order does not, by doing so, lose any right that the defendant may have to dispute the Tribunal's jurisdiction.

### **Determination of the application for a collective proceedings order**

76.

- (1) The Tribunal may make a collective proceedings order, after hearing the parties, only—
  - (a) if it considers that the person who brought the proceedings is a person who, if the order were made, the Tribunal could authorise to act as the class representative in those proceedings in accordance with rule 77; and
  - (b) in respect of claims or specified parts of claims which are eligible for inclusion in collective proceedings in accordance with rule 78.
- (2) If the Tribunal makes a collective proceedings order it may attach such conditions to the order or give such directions as it thinks fit, including—
  - (a) directions for the filing of an acknowledgement of service and defence, and other pleadings; and
  - (b) directions regarding any class member who is a child or person who lacks capacity within the meaning of the Mental Capacity Act 2005.

### **Authorisation of the class representative**

77.

- (1) The Tribunal may authorise a person to act as the class representative—
  - (a) whether or not that person is a class member, but
  - (b) only if the Tribunal considers that it is just and reasonable for that person to act as a class representative in the collective proceedings.
- (2) In determining whether it is just and reasonable for a person to act as the class representative, the Tribunal will consider whether that person—

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- (a) would fairly and adequately act in the interests of the class members;
  - (b) does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of class members;
  - (c) (if there is more than one person seeking approval to act as the class representative in respect of the same claims) would be the most suitable person to act as such;
  - (d) will be able to pay the defendant's recoverable costs if ordered to do so; and
  - (e) where an interim injunction is sought, will be able to satisfy any undertaking as to damages required by the Tribunal.
- (3) In determining whether the proposed class representative would act fairly and adequately in the interests of the class members for the purposes of paragraph (2)(a), the Tribunal will take into account all the circumstances, including—
- (a) whether the proposed class representative is a member of the class, and if so, his suitability to manage the proceedings;
  - (b) if the proposed class representative is not a member of the class, whether it is a pre-existing body and the nature and functions of that body;
  - (c) whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes—
    - (i) a method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings; and
    - (ii) a procedure for governance and consultation which takes into account the size and nature of the class; and
    - (iii) any estimate of and/or details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative must provide.
- (4) If the represented persons include a sub-class of persons whose claims raise common issues that are not shared by all the represented persons, the Tribunal may approve a person who satisfies the criteria for approval in paragraph (1) to act as the class representative for that sub-class.



**Certification of the claims as eligible for inclusion in collective proceedings**

78.

- (1) The Tribunal may certify claims as eligible for inclusion in collective proceedings where, having regard to all the circumstances, it is satisfied by the proposed class representative that the claims sought to be included in the collective proceedings—
  - (a) are brought on behalf of an identifiable class of persons;
  - (b) raise common issues; and
  - (c) are suitable to be brought in collective proceedings.
- (2) In determining whether the claims are suitable to be brought in collective proceedings for the purposes of paragraph (1)(c), the Tribunal will take into account all matters it thinks fit, including but not limited to —
  - (a) whether collective proceedings are an appropriate means for the fair and efficient resolution of the common issues;
  - (b) the costs and the benefits of continuing the collective proceedings;
  - (c) whether any separate proceedings making claims of the same or a similar nature have already been commenced by members of the class;
  - (d) the size and the nature of the class;
  - (e) whether it is possible to determine for any person whether he is or is not a member of the class;
  - (f) whether the claims are suitable for an aggregate award of damages; and
  - (g) the availability of alternative dispute resolution and any other means of resolving the dispute.
- (3) In determining whether collective proceedings should be opt-in or opt-out proceedings, the Tribunal will take into account all matters it thinks fit, including but not limited to the following additional matters to those set out in paragraph (2)—
  - (a) the strength of the claims; and
  - (b) whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover.
- (4) At the hearing of the application for a collective proceedings order, the Tribunal may hear any application by the defendant—

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- (a) under rule 41(1), to strike out in whole or part any or all of the claims sought to be included in the collective proceedings; or
  - (b) under rule 43(1), for summary judgment as if the defence had been filed.
- (5) Any member of the proposed class may apply to make submissions either in writing or orally at the hearing of the application for a collective proceedings order.

### **The collective proceedings order**

79.

- (1) A collective proceedings order must authorise the class representative to act as such in continuing the collective proceedings and must—
- (a) state the name and address for service of the class representative or, where there are sub-classes, representatives;
  - (b) state the name of each defendant;
  - (c) describe or otherwise identify the class and any sub-classes;
  - (d) describe or otherwise identify the claims certified for inclusion in the collective proceedings;
  - (e) state the remedy sought;
  - (f) state whether the collective proceedings are opt-in or opt-out collective proceedings;
  - (g) specify the domicile date;
  - (h) specify the time and the manner by which—
    - (i) in the case of opt-in collective proceedings, a class member may opt in; and
    - (ii) in the case of opt-out collective proceedings, a class member who is domiciled in the United Kingdom on the domicile date may opt out and a class member who is not domiciled in the United Kingdom on the domicile date may opt in;
  - (i) order the publication of a notice to class members in accordance with rule 80; and
  - (j) specify the part of the United Kingdom in which the collective proceedings are to be treated as taking place.

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- (2) In describing or otherwise identifying the class for the purposes of paragraph (1)(c), it is not necessary for the order to name or specify the number of the class members.

### **Notice of the collective proceedings order**

80.

- (1) The class representative must give notice of the collective proceedings order to class members in a form and manner approved by the Tribunal.
- (2) The notice referred to in paragraph (1) must—
- (a) incorporate or annex the collective proceedings order;
  - (b) identify each defendant;
  - (c) contain a summary in plain and easily understood language of the collective proceedings claim form and the common issues;
  - (d) include a statement explaining that any judgment on the common issues for the class members or any sub-class will bind represented persons in the class, or those within the sub-class, as the case may be;
  - (e) draw attention to the provisions of the order setting out what a class member is required to do and by what date so as to opt into or opt out of the collective proceedings, as the case may be; and
  - (f) give such other information as the Tribunal directs.

### **Opting in and opting out of collective proceedings**

81.

- (1) A class member may on or before the time and in the manner specified in the collective proceedings order—
- (a) in the case of opt-in collective proceedings, opt into the collective proceedings; or
  - (b) in the case of opt-out collective proceedings, either—
    - (i) opt out of the collective proceedings; or
    - (ii) if not domiciled in the United Kingdom at the domicile date, opt into the collective proceedings.
- (2) A class member who does not opt in or opt out in accordance with paragraph (1) may not do so without the permission of the Tribunal.

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- (3) In considering whether to grant permission under paragraph (2), the Tribunal will consider all circumstances, including in particular—
- (a) whether the delay was caused by the fault of that class member; and
  - (b) whether the defendant would suffer substantial prejudice if permission were granted.
- (4) A class member who has already brought a claim that raises one or more of the common issues set out in the collective proceedings order may not be a represented person unless, before the specified time, the class member discontinues or applies, as regards a claim brought in England, Wales or Northern Ireland, to stay that claim or, as regards a claim brought in Scotland, to sist that claim.

### **Class records**

82.

- (1) Once a collective proceedings order has been made, the class representative must establish a register on which it will record the names of those class members who, in accordance with rule 81, opt in or opt out, as the case may be, of the collective proceedings.
- (2) The class representative must, on request, make such register available for inspection by the Tribunal and any defendant and by such other person as the Tribunal may direct.

### **Scope of the collective proceedings**

83. A class representative may not in collective proceedings bring different claims or bring claims against different defendants to those specified in the collective proceedings order.

### **Stay, variation or revocation of the collective proceedings order**

84.

- (1) The Tribunal may at any time, either of its own initiative or on the application of the class representative, a represented person or a defendant, make an order for the variation or revocation of the collective proceedings order, or for the stay or sist of collective proceedings generally.
- (2) In deciding whether to vary or revoke a collective proceedings order, the Tribunal shall take account of all the relevant circumstances, including in particular –
  - (a) whether the criteria for certification of claims set out in rule 78 still apply or apply in the same way as when the order was made; and

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- (b) whether the class representative continues to satisfy the criteria for authorisation set out in rule 77 and if not, whether a suitable alternative class representative can be authorised;
  - (c) whether the Tribunal has granted the class representative permission to withdraw pursuant to rule 86 and he will not be replaced.
- (3) If the Tribunal makes an order under paragraph (1), the order may also make further provision including—
  - (a) that the proceedings should be discontinued in whole or in part or continue between different parties and, for that purpose, the Tribunal may—
    - (i) order the addition, removal or substitution of parties; or
    - (ii) order the amendment of the collective proceedings claim form;
  - (b) that there be substituted as the class representative another person who satisfies the criteria for approval in rule 77;
  - (c) as regards costs.
- (4) If the Tribunal varies the collective proceedings order so as to alter the description or identification of class members, it may also make any other orders that it considers appropriate, including an order relating to the specified time for the purposes of rules 79 and 81.

### **Individual settlement by the class representative**

85.

- (1) If the class representative is a member of the class and settles in whole or part his personal claim included within the collective proceedings, he must promptly give notice of that fact:
  - (a) to all represented persons; and
  - (b) to the Tribunal.

### **Applications for withdrawal by the class representative**

86.

- (1) A class representative may only withdraw from acting in that capacity in the collective proceedings if the Tribunal gives permission for the withdrawal.
- (2) The Tribunal will only give permission for the withdrawal under paragraph (1)—
  - (a) if it is satisfied that the class representative has given notice of the application to withdraw to represented persons in a form and manner approved by the Tribunal; and

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- (b) on conditions as to costs that the Tribunal considers just.
- (3) If the Tribunal gives permission for the class representative to withdraw from acting in that capacity and no substitute class representative is approved, the Tribunal will give directions for the future conduct of the proceedings which may include provision that the proceedings should continue as one or more proceedings between different parties or be discontinued.

### **Case management of the collective proceedings**

87.

- (1) The Tribunal may, at any time, give any directions it thinks appropriate for the case management of the collective proceedings.
- (2) Without limitation to the generality of paragraph (1), such directions may, in particular, order that—
  - (a) the common issues for the class be determined together;
  - (b) the common issues for a sub-class be determined together;
  - (c) issues that are relevant only to certain represented persons (“individual issues”) be determined in further hearings either separately or at the same time; or
  - (d) the class representative give notice in such manner as the Tribunal directs to represented persons of any step taken by the class representative.
- (3) If the Tribunal directs that the participation of any represented persons is necessary in order to determine individual issues, the class representative must give notice of the further hearings to those persons in a form and manner approved by the Tribunal.

### **Disclosure**

88.

- (1) Notwithstanding the Tribunal’s general powers under these rules to order disclosure, the Tribunal may order, on any terms it thinks fit, disclosure to be given—
  - (a) by any party to the collective proceedings to any other party;
  - (b) by the class representative to any or all represented persons; and
  - (c) by any represented person to any other represented person (including a person within a different sub-class), the class representative or the defendant.

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### **Notices**

89. If a class member or represented person does not receive, or fails to respond to, a notice, this does not affect a step taken, order made, or judgment given, in the collective proceedings, unless the Tribunal orders otherwise.

### **Judgments and orders**

90.

- (1) A judgment or order of the Tribunal made in collective proceedings may specify the sub-class of represented persons or individual represented persons to whom it shall not apply.
- (2) The class representative must give notice of any judgment or order to all represented persons in a form and manner approved by the Tribunal.
- (3) The notice referred to in paragraph (2) must (unless ordered otherwise by the Tribunal)—
  - (a) incorporate or annex the judgment or order;
  - (b) if it relates to a judgment on common issues in favour of represented persons, include a statement in plain and easily understood language—
    - (i) explaining that represented persons may be entitled to individual remedies;
    - (ii) stating the steps that must be taken to claim that remedy; and
    - (iii) stating the consequences of failing to take those steps;
  - (c) if it relates to a judgment on common issues against represented persons, include a statement—
    - (i) informing them that an appeal may be brought only by the class representative; and
    - (ii) stating the date by which the class representative would have to serve a notice of appeal or application for permission to appeal;
  - (d) if the Tribunal has specified under paragraph (1) that some represented persons are not bound by the judgment or order, a statement to that effect; and
  - (e) give such other information as the Tribunal directs.

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### **Assessment of damages**

91.

- (1) Where the Tribunal makes an aggregate award of damages, it shall give directions for assessment of the amount that may be claimed by individual represented persons out of that award.
- (2) Directions given pursuant to paragraph (1) may include –
  - (a) a method or formula whereby such amounts shall be quantified;
  - (b) provision for making an interim payment before the final amount which a represented person may receive is determined;
  - (c) appointment of an independent third party to determine a claim or dispute by any represented person regarding the quantification of the amount which he will receive, and provision for payment of the costs of that independent third party; and
  - (d) a requirement that the apportionment of the aggregate award as between represented persons is approved by the Tribunal.
- (3) The class representative shall give notice to represented persons, in such manner as the Tribunal shall direct, of any hearing to determine what directions should be given pursuant to paragraph (1), and any represented person may apply to make submissions either in writing or orally at that hearing.

### **Distribution of award**

92.

- (1) Where the Tribunal makes an award of damages in opt-out collective proceedings, it must make an order providing for the damages to be paid on behalf of the represented persons to—
  - (a) the class representative; or
  - (b) such person other than a represented person as the Tribunal thinks fit.
- (2) Where the Tribunal makes an award of damages in opt-in collective proceedings, it may make an order as described in paragraph (1).
- (3) An order made in collective proceedings pursuant to paragraph (1), shall specify—
  - (a) the date by which represented persons must claim their entitlement to a share of that aggregate award;
  - (b) the date by which the class representative or person specified pursuant to paragraph (1)(b) shall notify the Tribunal of any undistributed damages which have not been claimed; and



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- (c) any other matters as the Tribunal thinks fit.
- (4) Where the Tribunal is notified that there are undistributed damages pursuant to paragraph (3)(b), it may make an order directing that all or part of any undistributed damages is paid to the class representative in respect of all or part of any costs, fees or disbursements incurred by him in connection with the collective proceedings.
- (5) In exercising its discretion under paragraph (4), the Tribunal may itself determine the amounts to be paid in respect of costs, fees or disbursements or may direct that any such amounts be determined by a costs judge of the High Court or a taxing officer of the Supreme Court of Northern Ireland or the Auditor of the Court of Session.
- (6) Subject to any order made under paragraph (4), the Tribunal shall order that all or part of any undistributed damages is paid to the charity designated in accordance with section 47C(5) of the 1998 Act and a copy of that order shall be sent to that charity.

### **COLLECTIVE SETTLEMENTS**

#### **Collective settlement where a collective proceedings order has been made: opt-out collective proceedings**

93.

- (1) Where a collective proceedings order has been made in respect of claims and the Tribunal has specified that the proceedings are opt-out collective proceedings, an application for a collective settlement approval order may be made to the Tribunal by—
  - (a) the class representative; and
  - (b) the defendant in the collective proceedings, or if there is more than one defendant, such of them as wish to be bound by the proposed collective settlement.
- (2) The application referred to in paragraph (1) must—
  - (a) provide details of the claims to be settled by the proposed collective settlement;
  - (b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements;
  - (c) contain a statement that the applicants believe that the terms of the proposed settlement are just and reasonable, supported by evidence which may include any report by an independent expert or any opinion of the

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- applicants' legal representative(s) as to the merits of the collective settlement;
- (d) specify how any sums received under the collective settlement are to be paid and distributed;
  - (e) annex a draft collective settlement approval order; and
  - (f) set out the form and manner by which the class representative proposes to give notice of the application to:
    - (i) represented persons, in a case where it is expected that paragraph (9) of this rule will apply; or
    - (ii) class members, in a case where it is expected that paragraph (10) of this rule will apply.
- (3) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement approval order (and its annexes) must be accompanied by ten copies certified by the class representative or his legal representative as conforming to the original.
- (4) On receiving an application for a collective settlement approval order, the Tribunal may give any directions it thinks fit, including—
- (a) for the confidential treatment of any part of an application for a collective settlement approval order;
  - (b) for the giving of or dispensing with the notice referred to in paragraph (2)(f);
  - (c) for further evidence to be filed on the merits of the proposed collective settlement; and
  - (d) for the hearing of the application.
- (5) Any represented person or, in a case where paragraph (10) of this rule applies, any class member may apply to make submissions either in writing or orally at the hearing of the application for a collective settlement approval order.
- (6) At the hearing of the application, the Tribunal may make a collective settlement approval order where it is satisfied that the terms of the collective settlement are just and reasonable.
- (7) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—
- (a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;

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- (b) the number or estimated number of persons likely to be entitled to a share of the settlement;
  - (c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;
  - (d) the likely duration and cost of the collective proceedings if they proceeded to trial;
  - (e) any opinion by an independent expert and any legal representative of the applicants;
  - (f) the views of any represented person in a case to which paragraph (9) of this rule applies, or of any class member in a case to which paragraph (10) of this rule applies; and
  - (g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount shall revert to the defendants shall not of itself be considered unreasonable.
- (8) A collective settlement approval order shall specify the time and manner by which—
- (a) a represented person or class member, as the case may be, who is domiciled in the United Kingdom on the domicile date may opt out of the collective settlement; and
  - (b) a represented person or class member, as the case may be, who is not domiciled in the United Kingdom on the domicile date may opt in to the collective settlement.
- (9) Where the Tribunal approves the collective settlement *after* the expiry of the period specified in the collective proceedings order pursuant to rule 79(1)(h)(ii) within which persons may opt out or (if not domiciled in the United Kingdom) opt in to the collective proceedings, the collective settlement approval order binds all represented persons except—
- (a) a person who opts out of the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order; and
  - (b) a person who is not domiciled in the United Kingdom on the domicile date and does not opt in to the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order.
- (10) Where the Tribunal approves the collective settlement *before* the expiry of the period referred to in paragraph (9), the collective settlement approval order binds all class members except—

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- (a) a person who opts out of the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order; and
  - (b) a person who is not domiciled in the United Kingdom on the domicile date and does not opt in to the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order.
- (11) If the Tribunal approves the proposed collective settlement, the class representative must give notice of the terms of the settlement and its approval, in a form and manner approved by the Tribunal, to the represented persons in a case to which paragraph (9) applies, or to the class members in a case to which paragraph (10) applies, and to any other persons as the Tribunal may direct.
- (12) If one or more of the represented persons or class members are to be omitted from the collective settlement, the Tribunal may permit the proceedings to continue as one or more claims between different parties and for that purpose—
- (a) order the addition, removal or substitution of parties;
  - (c) order the amendment of the collective proceedings claim form; or
  - (d) make any other order that it considers appropriate.

### **Collective settlements where a collective proceedings order has been made: opt-in proceedings**

94. Where a collective proceedings order has been made in respect of claims and the Tribunal has specified that the proceedings are opt-in collective proceedings, the class representative may not without the permission of the Tribunal settle those proceedings before the expiry of the time specified in the collective proceedings order as the time by which a class member may (without the permission of the Tribunal) opt in to those proceedings.

### **Collective settlements where a collective proceedings order has not been made**

#### **Collective settlement order**

95.

#### *Application for a collective settlement order*

- (1) An application for a collective settlement order may be made to the Tribunal by—
- (a) a person who proposes to be the settlement representative in relation to the collective settlement; and

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- (b) the person who, if collective proceedings were brought in respect of the claims would be a defendant in those proceedings (or where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).
- (2) The application for a collective settlement order referred to in paragraph (1) shall—
- (a) identify the proposed settlement representative;
  - (b) provide a summary of the basis on which the proposed settlement representative seeks to be authorised to act in that capacity pursuant to paragraphs (9) – (11);
  - (c) identify the person or persons who would be a defendant or defendants in collective proceedings and who it is proposed will be parties to the collective settlement;
  - (d) provide a description of the proposed settlement class;
  - (e) provide an estimate of the number of class members and the basis for that estimate;
  - (f) provide details of the claims to be settled by the proposed collective settlement;
  - (g) provide a summary of the basis on which the claims, if they had been made in collective proceedings, would satisfy the requirements of rule 78; and
  - (h) annex—
    - (i) a draft collective settlement order;
    - (ii) a draft of the summary referred to in paragraph (5); and
    - (iii) a draft of the notice referred to in paragraph (15).
- (3) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement order (and its annexes) must be accompanied by ten copies certified by the proposed settlement representative or his legal representative as conforming to the original.

### *Response to an application for a collective settlement order*

- (4) On receiving an application for a collective settlement order, the Tribunal may give any directions it thinks fit, including for the hearing of the application.
- (5) The Registrar shall, as soon as practicable, publish a summary of the application for a collective settlement order on the Tribunal website.

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### *Determination of the application for a collective settlement order*

- (6) The Tribunal may make a collective settlement order only—
  - (a) if it considers that the person who proposes to be the settlement representative is a person who, if the order were made, the Tribunal could authorise to act as the settlement representative in relation to the collective settlement in accordance with paragraphs (9) – (11); and
  - (b) in respect of claims which, if collective proceedings were brought, would be eligible for inclusion in such proceedings in accordance with rule 78.
- (7) At the hearing of the application for a collective settlement order, the Tribunal may make—
  - (a) a collective settlement order; and
  - (b) any other order or give any other directions as it considers appropriate.
- (8) Any member of the proposed settlement class may apply to make submissions either in writing or orally at the hearing of the application for a collective settlement order.
- (9) The Tribunal may authorise a person to act as the settlement representative only if it considers that it is just and reasonable.
- (10) In determining whether it is just and reasonable for a person to act as the settlement representative, the Tribunal will consider whether that person—
  - (a) would fairly and adequately act in the interests of the class members; and
  - (b) does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of the class members.
- (11) In determining whether the proposed settlement representative would act fairly and adequately in the interests of the class members for the purposes of paragraph (10)(a), the Tribunal will take into account all the circumstances, including—
  - (a) whether the proposed settlement representative is a member of the settlement class, and if so, his suitability to manage the settlement;
  - (b) if the proposed representative is not a member of the settlement class, whether it is a pre-existing body and the nature and functions of that body; and
  - (c) whether the proposed settlement representative has prepared a plan for the collective settlement that satisfactorily includes—

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- (i) a method for notifying the class members of the fact and progress of the collective settlement; and
- (ii) where the proposed collective settlement involves payment of an aggregate amount, a procedure for determination of claims by class members to be paid out of that amount that takes into account the size and nature of the settlement class.

### *The collective settlement order*

- (12) A collective settlement order must authorise the settlement representative to continue to act in relation to the collective settlement and must—
  - (a) state the name and address of the settlement representative;
  - (b) state the name of each party to the collective settlement who would be a defendant had collective proceedings been brought;
  - (c) describe or otherwise identify the settlement class;
  - (d) describe or otherwise identify the claims to be settled by the collective settlement;
  - (e) specify the domicile date; and
  - (f) order the publication of a notice to class members in accordance with paragraph (15).
- (13) A collective settlement order may include any other provision the Tribunal considers appropriate.
- (14) In describing or otherwise identifying the settlement class for the purposes of paragraph (12)(c), it is not necessary for the order to name or specify the number of the class members.

### *Notice of the collective settlement order*

- (15) The settlement representative must give notice of the collective settlement order to class members in a form and manner approved by the Tribunal.
- (16) The notice referred to in paragraph (15) must—
  - (a) incorporate or annex the collective settlement order;
  - (b) contain a summary in plain and easily understood language of the claims to be settled by the collective settlement;
  - (c) include a statement explaining that the subsequent making of a collective settlement approval order will bind:-

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- (i) a class member domiciled in the United Kingdom on the domicile date who does not opt out of the collective settlement; and
  - (ii) a class member who is not domiciled in the United Kingdom on the domicile date who opts in to the collective settlement; and
- (d) give such other information as the Tribunal directs.

### *Variation or revocation of the collective settlement order*

- (17) The Tribunal may, either of its own initiative or on the application of a class member or party, make an order for the variation or revocation of the collective settlement order.

### **Collective settlement approval order**

96.

- (1) Where the Tribunal has made a collective settlement order, an application for a collective settlement approval order may be made to the Tribunal by—
- (a) the settlement representative; and
  - (b) the person who, if collective proceedings were brought in respect of the claims, would be a defendant in those proceedings (or where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).
- (2) The application referred to in paragraph (1) must—
- (a) provide details of the claims to be settled by the proposed collective settlement;
  - (b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements;
  - (c) contain a statement that the applicants believe that the terms of the proposed settlement are just and reasonable, supported by evidence which may include any report by an independent expert or any opinion of the applicants' legal representative(s) as to the merits of the collective settlement;
  - (d) specify how any sums received under the collective settlement are to be paid and distributed;
  - (e) annex a draft collective settlement approval order; and
  - (f) set out the form and manner by which the settlement representative proposes to give notice of the application to members of the settlement class.



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- (3) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement approval order (and its annexes) must be accompanied by ten copies certified by the class representative or his legal representative as conforming to the original.
- (4) On receiving an application for a collective settlement approval order, the Tribunal may give any directions it thinks fit, including—
  - (a) for the confidential treatment of any part of an application for a collective settlement approval order;
  - (b) for the giving of or dispensing with the notice referred to in paragraph (2)(f);
  - (c) for further evidence to be filed on the merits of the proposed collective settlement; and
  - (d) for the hearing of the application.
- (5) Any member of the proposed settlement class may apply to make submissions in writing or orally at the hearing of the application for a collective settlement approval order.
- (6) At the hearing of the application, the Tribunal may make a collective settlement approval order where it is satisfied that terms of the collective settlement are just and reasonable.
- (7) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—
  - (a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;
  - (b) the number or estimated number of persons likely to be entitled to a share of the settlement;
  - (c) the likelihood of judgment being obtained if the claims were made in collective proceedings for an amount significantly in excess of the amount of the settlement;
  - (d) the likely duration and cost of proceedings if the claims were made in collective proceedings which proceeded to trial;
  - (e) any opinion by an independent expert and any legal representative of the applicants;
  - (f) the views of any member of the settlement class; and

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- (g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount shall revert to the parties paying or contributing to the settlement amount shall not of itself be considered unreasonable.
- (8) A collective settlement approval order shall specify the time and manner by which—
  - (a) a class member who is domiciled in the United Kingdom on the domicile date may opt out of the collective settlement; and
  - (b) a class member who is not domiciled in the United Kingdom on the domicile date may opt in to the collective settlement.
- (9) A collective settlement approval order binds all class members except—
  - (a) a person who opts out of the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order; and
  - (b) a person who is not domiciled in the United Kingdom on the domicile date and does not opt in to the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order.
- (10) If the Tribunal approves the proposed collective settlement, the settlement representative must give notice of the terms of the settlement and its approval, in a form and manner approved by the Tribunal, to the class members and to any other persons as the Tribunal may direct.
- (11) An application for a collective settlement approval order may be made at the same time as an application for a collective settlement order.

## **COSTS AND FEES**

### **Costs**

97.

- (1) Subject to paragraph (2), in opt-out collective proceedings costs may be awarded to or against the class representative, but may not be awarded to or against a represented person who is not the class representative, save that
  - (a) if the Tribunal has approved the appointment of a class representative for a sub-class, costs associated with the determination of the common issues for the sub-class may be awarded to or against that person, and not the class representative for the whole class; and

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- (b) costs associated with the determination of individual issues in accordance with rule 87(2)(c) may be awarded to or against the relevant individual represented persons.
- (2) Costs relating to an application made by a class member, whether or not he is a represented person pursuant to a collective proceedings order, may be awarded to or against that class member.

### **PART VI**

#### **GENERAL AND SUPPLEMENTARY**

##### **THE HEARING**

###### **Hearing to be in public**

98.

- (1) Every hearing shall be in public except as to any part where the Tribunal is satisfied that it will be considering information which is, in its opinion, information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.
- (2) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is entitled to attend the hearing or part of it.

###### **Quorum**

99.

- (1) If, after the commencement of any hearing, the chairman is unable to continue the President may appoint either of the remaining two members to chair the Tribunal; and in that case the Tribunal shall consist of the remaining two members for the rest of the proceedings.
- (2) If the person appointed under paragraph (1) is not a member of the panel of chairmen, the President may appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.
- (3) For the purposes of paragraph (2), a person is “suitably qualified” if he is, or is qualified for appointment as, a member of the panel of chairmen.
- (4) If, after the commencement of any hearing, a member of the Tribunal (other than its chairman) is unable to continue, the President may decide that the Tribunal shall consist of the remaining two members for the rest of the proceedings.
- (5) Where in pursuance of this rule the Tribunal consists of two members, a decision of the Tribunal must be unanimous.

**CONFIDENTIALITY**

**Requests for confidential treatment**

100.

- (1) A request for the confidential treatment of any document or part of a document filed in connection with proceedings before the Tribunal shall be made in writing indicating the relevant words, figures or passages for which confidentiality is claimed and supported in each case by specific reasons and, if so directed by the Registrar, the person making the request must supply a non-confidential version of the relevant document.
- (2) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties, taking into account the matters referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.
- (3) The Tribunal may direct that documents containing confidential information are disclosed within a confidentiality ring limited to named individuals on such terms as it thinks fit.

**Subsequent use of documents provided in proceedings**

101.

- (1) Subject to paragraphs (2) - (4), a party to whom any document has been provided by the Tribunal or by another party as part of the proceedings, including the pleadings, any document annexed to the pleadings and any document disclosed, or pursuant to an order under rule 62, may use that document only for the purpose of those proceedings.
- (2) Except where a document or a part of a document has been provided within a confidentiality ring, the restriction in paragraph (1) will not apply to that document if:
  - (a) the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public;
  - (b) the Tribunal gives permission; or
  - (c) the party who produced or disclosed the document and the person to whom the document belongs agree.
- (3) Where a document or part of a document has been provided within a confidentiality ring, the restriction in paragraph (1) will not apply if the Tribunal gives permission for further use of that document or the information contained in that part.
- (4) The restriction in paragraph (1) will not apply to the CMA or any statutory body which is the maker of a disputed decision that is remitted to it by order of the Tribunal in the proceedings.

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- (5) The Tribunal may make an order restricting or prohibiting the use of any document produced or disclosed in the course of proceedings, even where the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public.
- (6) An application for such an order may be made:
  - (a) by a party;
  - (b) by any person to whom the document belongs; or
  - (c) by any person who claims that the document contains confidential information relating to him.

### **DECISION OF THE TRIBUNAL**

#### **Delivery of the decision**

102.

- (1) The decision of the Tribunal shall be delivered:
  - (a) by handing down the decision in public on a date fixed for that purpose;
  - (b) by publishing the decision on the Tribunal's website; or
  - (c) in such other manner as may be specified by practice direction.
- (2) The Registrar shall send a copy of the document recording the decision to each party and shall enter it on the register.
- (3) The decision of the Tribunal shall be treated as having been notified on the date on which a copy of the document recording it is sent to the parties under paragraph (2).
- (4) The President shall arrange for the decision of the Tribunal to be published in such manner as he considers appropriate.

#### **Costs**

103.

- (1) For the purposes of these rules "costs" means costs and expenses recoverable before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland.
- (2) The Tribunal may at its discretion, subject to paragraph (3) and rules 47 - 48, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.

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- (3) For the purposes of paragraph (2), applications made pursuant to rules 61 or 62 are considered to be proceedings of the Tribunal.
- (4) In making an order pursuant to paragraph (2) and determining the amount of costs, the Tribunal may take account of:
  - (a) the conduct of all parties in relation to the proceedings;
  - (b) any schedule of incurred or estimated costs filed by the parties;
  - (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
  - (d) any admissible offer to settle made by a party which is drawn to the Tribunal's attention, and which is not a Settlement Offer to which costs consequences under rules 47 - 48 apply;
  - (e) whether costs were proportionately and reasonably incurred; and
  - (f) whether costs are proportionate and reasonable in amount.
- (5) The Tribunal may assess the sum to be paid pursuant to any order under paragraph (2) or may direct that it be assessed by the President, a chairman or the Registrar, or dealt with by the detailed assessment of a costs officer of the Senior Courts of England and Wales or a taxing officer of the Court of Judicature of Northern Ireland or by the Auditor of the Court of Session.
- (6) Unless the Tribunal otherwise directs, an order made pursuant to paragraph (2) may be made in the decision, if the parties so consent, or immediately following delivery of the decision.
- (7) The power to award costs pursuant to paragraphs (1) - (5) includes the power to direct any party to pay to the Tribunal such sum as may be appropriate in reimbursement of any costs incurred by the Tribunal in connection with the summoning or citation of witnesses or the instruction of experts on the Tribunal's behalf. Any sum due as a result of such a direction may be recovered by the Tribunal as a civil debt due to the Tribunal.

### **Interest**

104.

- (1) If it imposes, confirms or varies any penalty under Part 1 of the 1998 Act, the Tribunal may, in addition, order that interest is to be payable on the amount of any such penalty from such date, not being a date earlier than the date upon which the application was made in accordance with rule 9, and at such rate, as the Tribunal considers appropriate. Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant

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to section 44 of the Administration of Justice Act 1970<sup>1</sup>. Such interest is to form part of the penalty and be recoverable as a civil debt in addition to the amount recoverable under section 36 of the 1998 Act.

- (2) If it makes an award of damages the Tribunal may include in any sum awarded interest on all or any part of the damages in respect of which the award is made, for all or any part of the period between the date when the cause of action arose and –
  - (a) in the case of any sum paid before the decision making the award, the date of the payment; and
  - (b) in the case of the sum awarded, the date of that decision.
- (3) Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to section 44 of the Administration of Justice Act 1970.

### **Consent orders**

105.

- (1) If all the parties agree the terms of an order, the Tribunal may, if it thinks fit, make such order, in which case it shall be identified as having been made by consent.
- (2) If the Tribunal considers that a draft consent order may have a significant effect on competition, it may:
  - (a) require the parties to file a consent order impact statement; and
  - (b) direct the Registrar to publish a notice on the Tribunal website or in such other manner as the Tribunal may direct.
- (3) A consent order impact statement shall provide an explanation of the draft consent order, including an explanation of the circumstances giving rise to the draft order, the relief to be obtained if the order is made and the anticipated effects on competition of that relief.

## **APPEALS FROM THE TRIBUNAL**

### **Permission to appeal**

106.

- (1) A request to the Tribunal for permission to appeal from a decision of the Tribunal shall be made in writing and sent to the Registrar within three weeks of the notification of that decision.

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<sup>1</sup> 1970 c.31.

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- (2) A request for permission to appeal shall be signed and dated by the party or his representative and shall –
- (a) state the name and address of the party and of any representative of the party;
  - (b) identify the Tribunal decision to which the request relates;
  - (c) state the grounds on which the party intends to rely in his appeal; and
  - (d) state whether the party requests a hearing of his request and any special circumstances relied on.

### **Decision of the Tribunal on request for permission to appeal**

107.

- (1) On receipt of a request for permission to appeal, the Tribunal shall decide without a hearing whether or not to grant such permission, unless it considers that special circumstances render a hearing desirable
- (2) The decision of the Tribunal on a request for permission to appeal shall be recorded in writing and the Registrar shall notify the parties of such decision.

## **REFERENCES TO THE EUROPEAN COURT**

### **References to the European Court**

108.

- (1) An order may be made by the Tribunal of its own initiative at any stage in the proceedings or on application by a party before or at the oral hearing.
- (2) An order shall set out in a schedule the request for the preliminary ruling of the European Court and the Tribunal may give directions as to the manner and form in which the schedule is to be prepared.
- (3) The proceedings in which an order is made shall, unless the Tribunal otherwise directs, be stayed (or in Scotland, sisted) until the European Court has given a preliminary ruling on the question referred to it.
- (4) When an order has been made, the Registrar shall send a copy of it to the Registrar of the European Court.
- (5) In this rule –

“European Court” means the Court of Justice of the European Union;

“order” means an order referring a question to the European Court for a preliminary ruling under Article 267 of the Treaty on the Functioning of the



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European Union or as provided for under any agreement to which the European Union or the Member States of the European Union are parties.

### **SUPPLEMENTARY**

#### **Power of President, chairman and Registrar to exercise powers of Tribunal**

109.

(1) Any act required or authorised by these rules, not being one required or authorised by the following rules –

- (a) rules 11 (Power to strike out) and 26(3);
- (b) rule 13 (Withdrawal of the appeal), in the case of a withdrawal during or after the hearing;
- (c) rule 41 (Power to strike out);
- (d) rule 42 (Default judgment);
- (e) rule 43 (Summary judgment);
- (f) rule 44 (Withdrawal of the claim), in the case of a withdrawal during or after the hearing;
- (g) rule 76 (Determination of the application for a collective proceedings order);
- (h) rule 84 (Stay, variation or revocation of the collective proceedings order), in the case of revocation of the collective proceedings order;
- (i) rule 86 (Applications for withdrawal by the class representative);
- (j) rules 93(6) and 96(6) (Making of a collective settlement approval order);
- (k) rule 95(6) (Determination of the application for a collective settlement order);
- (l) rule 107 (Decision of the Tribunal on request for permission to appeal);
- (m) rule 108 (References to the European Court),

may be done by the President or a chairman acting alone.

(2) If so authorised by the President, the Registrar may, subject to paragraph (3) and without prejudice to rule 103(5) –

- (a) make any order by consent (except where rule 105(2) applies);

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- (b) make a direction under rule 9(7);
  - (c) deal with extensions or abridgments of time limits under rule 19(2)(m), except a request for an extension of time for filing an appeal or application under Part II or Part III of these rules;
  - (d) deal with requests for confidential treatment under rule 100;
  - (e) exercise the Tribunal's powers in respect of the service of documents under rule 110.
- (3) A party may within 5 days of any exercise by the Registrar of his functions pursuant to paragraph (2) of this rule request in writing that the exercise of such functions be reviewed by the President. The President may determine the matter acting alone or refer the matter to a chairman or to the Tribunal.

### **Documents etc.**

110.

- (1) Any document required to be sent to or served on any person for the purposes of proceedings under these rules may be –
- (a) delivered personally at his appropriate address;
  - (b) sent to him at his appropriate address by first class post;
  - (c) served through a document exchange;
  - (d) where authorised by the Tribunal, sent to him by fax or other means of electronic communication; or
  - (e) served in such other manner as may be specified by practice direction.
- (2) Where –
- (a) a document is to be served by the Tribunal; and
  - (b) the Tribunal is unable to serve it,
- the Tribunal must send a notice of non-service, stating the method attempted, to the other parties to the proceedings.
- (3) Where it appears to the Tribunal that there is a good reason to authorise service by a method not permitted by these rules, the Tribunal may of its own initiative or on the request of a party make an order permitting and specifying an alternative method of service, and specifying when the document will be deemed to be served.
- (4) The Tribunal may dispense with service of a document if the interests of justice so require.

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- (5) A document which is sent or served in accordance with these rules shall be treated as if it had been received by or served on that person –
- (a) in the case of personal delivery, on the day of delivery;
  - (b) when sent by first class post or through a document exchange, on the second day after it was posted or left at the document exchange; and
  - (c) in the case of a fax or other electronic communication sent on a business day before 5pm, on that day, or in any other case, on the next business day.
- (6) If a document (other than a fax or other electronic communication) is served or is treated by virtue of paragraph (5) as having been served after 5pm on a business day, or at any time on a Saturday, Sunday or a Bank Holiday, the document shall be treated as having been served on the next business day.
- (7) For the purposes of these rules “business day” means any day except Saturday, Sunday or a Bank Holiday and “Bank Holiday” includes Christmas Day and Good Friday.
- (8) A person’s appropriate address for the purposes of paragraph (1) is –
- (a) in the case of a document directed to the Tribunal or to the Registrar, the Tribunal address for service;
  - (b) in the case of a document directed to the appellant, applicant or claimant (or to his representative), the address stated in the notice of appeal, notice of application or claim form respectively, or such other address as may be subsequently notified to the Tribunal;
  - (c) in the case of a document addressed to the respondent or defendant, the address stated in the defence, or such other address as may be subsequently notified to the Tribunal;
  - (d) in the case of an intervener, the address stated in the request to intervene, or such other address as may be subsequently notified to the Tribunal.
- (9) Anything required to be sent to or served on a company is duly sent or served if it is sent to or served on a person holding a senior position within the company. Each of the following persons is a person holding a senior position –
- (a) in respect of a registered company or corporation, a director, the treasurer, the secretary of the company or corporation, the chief executive, a manager or other officer of the company or corporation; and
  - (b) in respect of a corporation which is not a registered company, in addition to any of the persons set out in paragraph (a), the mayor, the chairman, the president, a town clerk or similar officer of the corporation.
- (10) Anything required to be sent or delivered to or served on a partnership is duly sent or served if it is sent to or served on any one of the partners for the time

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being or a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

- (11) The Registrar shall, at the request of the Tribunal, or any party, certify the steps taken to serve a document pursuant to this rule, including the date and manner of service.

### **Time**

111.

- (1) Unless otherwise specified, an act required by the Tribunal, the President, a chairman or the Registrar, or by these rules, to be done on or by a particular day must be done before 5pm on that day.
- (2) Where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question.
- (3) A period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date in the month, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month.
- (4) “Month” shall mean calendar month.
- (5) Where the time prescribed for doing any act expires on a Saturday, Sunday or Bank Holiday, the act is in time if done on the next following day which is not a Saturday, Sunday or Bank Holiday.

### **Funding Arrangements**

112.

- (1) Subject to section 47C(8) of the 1998 Act and rule 92(4), the rules on funding arrangements made under Part II of the Courts and Legal Services Act 1990 (as amended by Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) apply to proceedings before the Tribunal.
- (2) Any party who has entered into a conditional fee agreement in relation to proceedings before the Tribunal shall notify the Tribunal of the existence of such an agreement.

### **Irregularities**

113.

- (1) Any irregularity resulting from failure to comply with any provision of these rules before the Tribunal has reached its decision shall not of itself render the proceedings void.

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- (2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it thinks just, to cure or waive the irregularity before reaching its decision.
- (3) Clerical mistakes in any document recording a direction, order or decision of the Tribunal, the President, a chairman or the Registrar, or errors arising in such a document from an accidental slip or omission, may be corrected by the President, that chairman or the Registrar, as the case may be, by:
  - (a) sending notification of the amended direction, order or decision, or a copy of the amended document, to each party; and
  - (b) making the necessary amendment to any information published on the Tribunal website in relation to the direction, order or decision.

### **General power of the Tribunal**

114.

- (1) Subject to the provisions of these rules, the Tribunal may regulate its own procedure.
- (2) The President may issue practice directions in relation to the procedures provided for by these rules.

## **TRANSITIONAL AND REVOCATION**

### **Transitional**

115. Proceedings commenced before the Tribunal prior to the coming into force of these rules shall continue to be governed by the Competition Appeal Tribunal Rules 2003<sup>1</sup> and Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 as if they had not been revoked.

### **Revocation**

116. Save as provided by rule 115, the Competition Appeal Tribunal Rules 2003 and Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 are revoked.

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<sup>1</sup> SI 2003/1892

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## **PART VII**

### **REFERENCE OF PRICE CONTROL MATTERS TO THE CMA UNDER THE 2003 ACT**

#### **Reference of price control matters to the CMA**

117.

- (1) For the purposes of subsection (1) of section 193 of the 2003 Act, there is specified every price control matter falling within subsection (10) of that section which is disputed between the parties and which relates to-
  - (a) the principles applied in setting the condition which imposes the price control in question,
  - (b) the methods applied or calculations used or data used in determining that price control, or
  - (c) what the provisions imposing the price control which are contained in that condition should be (including at what level the price control should be set).
- (2) The Tribunal shall refer to the CMA for determination in accordance with section 193 of the Act and rule 118 every matter which, either upon consideration of any statement provided for in rules 9(5) or 15(4) or in the subsequent course of the appeal, it decides is a specified price control matter.
- (3) The Tribunal may make a reference to the CMA under paragraph (2) at any time before it delivers its decision.

#### **Determination by the CMA of price control matters**

118.

- (1) Subject to any directions given by the Tribunal (which may be given at any time before the CMA has made its determination), the CMA shall determine every price control matter within four months of receipt by it of the reference.
- (2) The Tribunal may give directions as to the procedure in accordance with which the CMA is to make its determination.
- (3) The Tribunal may give directions under this rule of its own motion or upon the application of the CMA or of any party.

### **EXPLANATORY NOTE**

#### **(THIS NOTE IS NOT PART OF THE RULES)**

These rules prescribe the procedure to be followed before the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002 in relation to

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proceedings before the Tribunal including proceedings under the Competition Act 1998, the Enterprise Act 2002 and the Communications Act 2003 (each as amended).