

7. Procedures at a hearing

7.1 Rule 29 – Determination with or without a hearing

- 29(1) Subject to rule 26(6) (determination of a Default Paper case without a hearing) and the following paragraphs in this rule, the Tribunal must hold a hearing before making a decision which disposes of proceedings, or a part of proceedings, unless–
- (a) each party has consented to the matter being decided without a hearing; and
 - (b) the Tribunal considers that it is able to decide the matter without a hearing.
- 29(2) This rule does not apply to decisions under Part 4 (correcting, setting aside, reviewing and appealing Tribunal decisions).
- 29(3) The Tribunal may dispose of proceedings, or a part of proceedings, without a hearing under rule 8 (striking out a party's case).

7.1.1 Overview

The general position is that a case cannot be considered by the Tribunal without an actual hearing. However, as has been seen in rule 26 (see **5.8** above), the opposite is generally the position in cases allocated to the Default Paper case category.

Rule 29 provides for the other exceptions to the general position.

7.1.2 Scope of the rule

The general requirement for there to be a hearing applies in respect of any decision by the Tribunal that disposes of the whole or part of the case.

Therefore, supposing a taxpayer has appealed against an HMRC decision on three separate grounds, a hearing is generally necessary to deal with each of those three grounds.

Case management decisions, however, do not need to be made after a hearing.

7.1.3 Parties consent to waive hearing (rule 29(1))

The first exception to the general requirement is in cases where each party has consented to the matter being decided without a hearing. However, even the parties' consent is not sufficient. The Tribunal has also to consider that it can decide the matter without a hearing.

The wording of rule 29(1)(b) indicates that not only should the Tribunal feel that it is able to reach a decision without the benefit of hearing oral argument, but the Tribunal should also consider that it is appropriate for the matter to be so decided.

7.1.4 Correction, setting aside, reviewing and appealing against decisions (rule 29(2))

The second exception relates to the procedures that might take place after a decision is made. These are considered in fuller detail in **Chapter 9** at **9.3ff.** below.

7.1.5 Strike outs (rule 29(3))

The final exception arises in the context of strike outs (see rule 8). This is perhaps surprising given the consequences of a strike out. However, because of the protection given to parties under rule 8 itself, there should be no infringement of a party's right to a fair trial.

The benefits of being able to dispose of certain cases without a hearing are aptly illustrated by the *Gardner* case. In that case, the taxpayer was applying for permission to appeal late (28 years late, in fact). On most of his proposed grounds of appeal, the Tribunal had no jurisdiction and therefore these could not be used to justify the late appeal. On the other grounds, the Tribunal considered that the taxpayer had no reasonable prospects of success and, therefore, the application for the appeal to be admitted late was doomed to fail (see **2.4.4** above). The Tribunal decided to reach its decision without holding a hearing under rule 29(3) on the basis that "the position on the facts of this particular application are so clearly against the Appellant based on his own representations that there is

no need to hear HMRC’s objections to the application nor to hold a hearing”.

The decision notice confirms that Mr Gardner had earlier been given the opportunity to make representations in relation to the then proposed striking out in accordance with rule 8(4) (see 4.5.6 above).

Case: *Gardner t/a Gardner’s Transport Co v HMRC* [2010] UKFTT 133 (TC)

7.2 Rule 30 – Entitlement to attend a hearing

30 Subject to rules 19 (proceedings without notice to a respondent) and 32(4) (exclusion from a hearing), each party to proceedings is entitled to attend a hearing.

7.2.1 Overview

Rule 30 provides the rule that any party to the hearing is generally entitled to attend a hearing. When read with rule 2(2)(c), this also entitles any party to participate in the proceedings and therefore make representations. There are just two exceptions.

7.2.2 Without notice applications

The first exception is where an application is proceeding “without notice” under rule 19. For example, where HMRC seek the Tribunal’s prior approval of an information notice.

The wording of the rule would appear to mean that respondents in such cases are not entitled to attend any hearing and may therefore not make representations directly to the Tribunal.

Of course, rule 32(1) provides that hearings are to be held in public and so a person excluded from attending the hearing (in the sense of not being able to participate at the hearing) will generally still have the right to be present at the hearing to observe the proceedings, subject to a direction by the Tribunal:

- for a hearing in private under rule 32(2); or
- excluding that person from attendance under rule 32(4).

Such a direction might be justified if an application is going to reveal sensitive third-party information (perhaps the identity of the source of information tipping off HMRC to possible tax irregularities).

However, it is suggested that a direction should not be automatic in any such “without notice” applications.

See also 7.4.5 below.

7.2.3 Disruptive individuals etc

A party may also be excluded from attending a hearing if a direction has been given (under rule 32(4)) excluding that person’s attendance because of likely disruption or the risk of intimidation of a witness or in the case of individuals aged under 18 years.

Rule 32(4) also allows the Tribunal to exclude any person whose attendance would defeat the purpose of the hearing.

7.3 Rule 31 – Notice of hearings

31(1) The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.

31(2) In relation to a hearing to consider the disposal of proceedings, the period of notice under paragraph (1) must be at least 14 days except that the Tribunal may give less than 14 days’ notice–

- (a) with the parties’ consent; or
- (b) in urgent or exceptional circumstances.

7.3.1 Overview

Rule 31 ensures that parties are generally given reasonable notice of the time and place of any hearing (or changes thereto). The rule extends only to persons entitled to attend a hearing. Therefore, in a case where a party is not entitled to attend (see rule 30), the rule does not apply.

7.3.2 Minimum notice

In respect of hearings that consider the disposal of proceedings (i.e. final decisions on particular substantive issues rather than directions hearings), rule 31(2) provides that the minimum notice should be at least two weeks.

However, lesser notice may be given if the parties consent to it or in urgent or other exceptional cases.

7.3.3 If dates provided are inconvenient

In many cases, the Tribunal will allocate a date and place for a hearing. This is particularly so in Basic cases and for directions hearings in other cases. If the date and/or place are inconvenient to a party, it is incumbent on the party to give prompt notice to the Tribunal to see if it can be rearranged.

Generally, the Tribunal will try to co-operate. However, the Tribunal is less likely to be amenable in cases where a party has been slow to announce their non-availability, the party has regularly sought to rearrange a hearing without good reason or the party has been given the opportunity to provide a list of dates to avoid and the Tribunal took any response into account when fixing the time and place for the hearing.

7.4 Rule 32 – Public and private hearings

- 32(1) Subject to the following paragraphs, all hearings must be held in public.
- 32(2) The Tribunal may give a direction that a hearing, or part of it, is to be held in private if the Tribunal considers that restricting access to the hearing is justified–
- (a) in the interests of public order or national security;
 - (b) in order to protect a person’s right to respect for their private and family life;
 - (c) in order to maintain the confidentiality of sensitive information;
 - (d) in order to avoid serious harm to the public interest;
or
 - (e) because not to do so would prejudice the interests of justice.
- 32(3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

- 32(4) The Tribunal may give a direction excluding from any hearing, or part of it–
- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
 - (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
 - (c) any person where the purpose of the hearing would be defeated by the attendance of that person; or
 - (d) a person under the age of eighteen years.
- 32(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.
- 32(6) If the Tribunal publishes a report of a decision resulting from a hearing which was held wholly or partly in private, the Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

7.4.1 Overview

It is a general rule of law that justice must not only be done but must be seen to be done. As Voltaire wrote, “publicity is the very soul of justice”. Rule 32(1) recognises this by stating as a general proposition that all hearings must be held in public.

The rest of the rule contains exceptions to this proposition and, in rule 32(6), one consequence of a hearing being held (at least in part) in private.

7.4.2 Public access in practice

Public access to hearings is relatively easy to achieve in cases heard in the main Tribunal centres where there are regularly hearings taking place and, usually, a list of such hearings on display.