Article

Settlement of disputes under the Financial Services and Markets Act 2000 II

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The dispute procedure under the Financial Services and Markets Act 2000 (the "Act") may be found under Part IX (Hearing and Appeals) and Part XVI (The Ombudsman Scheme). The Act has devised a novel system whereby disputes pertaining to matters under the purview of the Act will be settled either through the Ombudsman Scheme or through Part IX procedure under which Part the Financial Services and Markets Tribunal (the "Tribunal") has been set up. The second part of this two-part article considers the Tribunal mechanism.

THE FSA TRIBUNAL IN ACTION

The Financial Services and Markets Tribunal Rules 2001

These rules, which were laid before Parliament on 10 July 2001(see SI 2001 No 2476) and came into force on 3 September 2001 (see SI 2001 No 2632), have been developed in five Parts:

Part I Introduction

Part II Preliminary Matters

Part III Hearings

Part IV Appeals from the Tribunal; and

Part V General

Part I is predominantly concerned with the definitions of certain chosen terms. These rules apply to all references to the Tribunal. Under "Preliminary Matters" (Part I) come the following: Reference notice (like a claim); Authority's statement of case; Applicant's reply; Secondary disclosure of the authority; Exceptions to disclosure; Directions, particular types of discretions; Filing of subsequent notices in relation to the referred action; Summoning of witnesses; Preliminary hearing; Withdrawal of reference and unopposed references; and References by third parties.

A reference is to be made by way of a written notice signed by or on behalf of the applicant. A reference notice shall state the name and address of the applicant, and of the representative; if any; and the issues that the applicant would like the Tribunal to consider.

Secondary disclosure by the Financial Services Authority may be necessary because of the information revealed in the applicant's reply. Disclosure of documents may be dispensed with when a document relates to a case involving a person other than the applicant which has already been taken into account by the Authority for the purposes of comparison with other cases; or when disclosure is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000. A party may seek dispensation for disclosure from the Tribunal on the grounds that disclosure of the document would not be in the public interest or that it would not be fair to disclose a document having regard to:

> *"(i) the likely significance of the document to the applicant in relation to the matter referred to the Tribunal; and*
>
> *(ii) the potential prejudice to the commercial interests of a person other than the applicant which would be caused by disclosure of the document."*

The Tribunal has the power to require a party seeking exceptions to disclosure to submit reasoned arguments in support of its applicant, and to invite the other party to make representations and decide on this matter. The Tribunal may at any time give directions in order to enable the parties to prepare for the hearing of the reference, and to assist it to determine the issues and "to ensure the just, expeditious and economical determination of the reference" (r 9(1)). The Tribunal may give directions on the application of any party or of all the parties or of its own initiative; but where it gives a direction of its own initiative, it may, but need not give, prior notice to the parties of its intention to do so (r 9(2)).

The chairman of the Tribunal has total discretion to decide whether a pre-hearing review would be appropriate in regard to a reference. Such reviews take place before the chairman.

The rules make a difference between a "pre-hearing review" and a "preliminary hearing". Whereas at a "preliminary hearing review" the chairman gives directions which would appear to be necessary or desirable for securing the just, expeditious and economical conduct of the reference, and endeavours to secure that "the parties make all admissions and agreements as they ought reasonably to have made in relation to the proceedings" (r 9(11) (a) & (b)), the purpose of holding a preliminary hearing is to determine the question of fact or law, if necessary. A preliminary hearing procedure serves another purpose, which is clearly stated in paragraph 2 of rule 13:

> *"If, in the opinion of the Tribunal, the determination of that question substantially disposes of the reference, the Tribunal may treat the preliminary hearing as the hearing of the reference and may make such order by way of disposing of the reference as it thinks fit."*

An applicant may withdraw the reference at any time before the hearing of it, without permission, by filing a notice to that effect or at the hearing of the reference, with the permission of the Tribunal. In certain circumstances a reference may be determined without an oral hearing (see r 16(1)); but except for the following circumstances, in which hearing shall take place in private, all hearings shall be in public:

- upon the application of all the parties; or
- if the Tribunal, upon the application of a party, is satisfied that a hearing ought to be held in private, having regard to:

  "(i) the interests of morals, public order, national security or the protection of the private lives of the parties; or

  (ii) any unfairness to the applicant or prejudice to the interests of consumers that might result from a hearing in public,

  if, in either case, the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice" (see r 17(2) & (3))."

Generally, parties themselves may appear at a hearing, with assistance from any person, if desired, or may be represented by any person, whether qualified in law or not. The parties are usually entitled to give evidence, including expert evidence (the latter, with the consent of the Tribunal), to call witnesses, to question any witness, and to address the Tribunal on the evidence, and subject matter of the reference. It is interesting to point out that evidence may be admitted by the Tribunal irrespective of whether it would be deemed admissible by a court of law, and whether not it was available to the Financial Services Authority when taking the referred action (r 19(3)).

A discussion of the Tribunal may be reviewed if, either on the application of a party or of its own initiative, the Tribunal is satisfied that:

- its decision on a reference was incorrectly made as a result of an error made by its staff; or
- since the conclusion of the hearing new evidence has become available, the existence of which could not have been reasonably known or foreseen (r 22(1)).

Where a review is allowed, the original decision of the Tribunal is set aside. An application for a review must be made within 14 days after the date on which the notification of the decision was sent to the parties. Where the Tribunal proposes to review its decision on its own initiative, the parties concerned are notified of it no later than 14 days after the date on which the decision was sent to the parties.

"Reviews" are different from "appeals". An "appeal" may be made under section 137(1) to the Court of Appeal or to the Court of Session in the case of Scotland on a decision of the Tribunal disposing of a reference. Permission to appeal may be sought by making an application, oral or written. Whereas an oral application may be made at the hearing after the decision is announced by the Tribunal, a written application must be filed stating the grounds therein no later than 14 days after the decision is sent to the party making the application (r 23(2)(b)). The chairman of the Tribunal takes the decision as to permission to appeal. In the event of the Tribunal refusing an application for appeal, it shall issue a direction whereby an appellant, if he so wishes, may seek permission from the Court of Appeal or the Court of Session, within 14 days of the refusal of application by the Tribunal.

The Court of Appeal or the Court of Session, as the case may be, has the power to remit a reference to the Tribunal under section 137(3)(a) of the Financial Services and Markets Act, 2000 for a re-hearing and determination. The Financial Services and Markets Tribunals Rules 2001, so far as relevant, apply to re-hearings too. When a party may fail to comply, without reasonable excuse, with a direction given by the Tribunal under these rules or with any of its provisions, the Tribunal may take any one or more of the following steps:

- make an order for costs;
- where that party is the applicant, dismiss the whole or part of the reference; and
- where the party is the Financial Services Authority, strike out the whole or part of the statement of case, and "… where appropriate, direct the Authority be debarred from contesting the reference altogether (r 27(1)). "

EUROLIFE ASSURANCE COMPANY AND FSA: THE TRIBUNAL'S REASONING

Since its inception, the Financial Services and Markets Tribunal has decided a few cases; it is opportune to discuss one case to examine how the provisions of the 2000 Act and the Rules of Procedure were applied, in addition to applying other provisions of the relevant statutes. The parties to this case were *Eurolife Assurance Company Ltd (Applicant) and Financial Services Authority (Respondent).* (The report of this case is available from http://www.courtservice.gov.uk/tribunals/comtax/decision/eurolife2.htm)).

The applicant (EAC) is a member of the Eurolife Group and has Eurolife Assurance Group plc (EAG) as its holding company. EAC is a UK life assurance company which specialises in single premium bond products; these products are distributed through independent financial advisors ("IFAS"). The material report at the relevant time from EAC was that related to March 2002. This report showed that EAC at that time held sufficient capital to cover its required solvency margin but that the assets which EAC had in its long-term business fund were less than its liabilities.

On 20 August 2001, the FSA notified EAC of its intention to make requirements under sections 39 and 40 of the Insurance Companies Act 1982 whereby EAC should have maintained assets to the value of its liabilities within the European Community, and the entire assets should be held by a trustee approved by FSA, in order to protect the interests of EAC's policyholders by putting assets in a trust which would not be controlled by EAC.

On 24 August 2001 the Financial Services Authority served on EAC a notice under section 12A of the Insurance Companies Act 1982 directing it ceased to be authorised to effect contracts of insurance as it failed to fulfil the criteria of sound and prudent management required by the 1982 Act. This notice was based on an investigation carried out by FSA into the company.

EAC objected to the procedure under the 1982 Act; furthermore, there was no provision for a review of the merits of the FSA's decision before an independent and impartial tribunal. It was agreed that the FSA's notice under the 1982 Act would remain in place until the new regulatory regime for insurance companies under the Financial Services and Markets Act 2000 came into force on 1 December 2001.

On 29 November 2001, FSA issued a supervisory notice pursuant to section 53(4) of the Financial Services and Markets Act 2000, the effect of which was withdrawal of EAC's authorisation to conduct new insurance business as of 1 December 2001. It was also required to have sufficient assets to meet EAC's liabilities within the European Community, which assets were to be held by an approved trustee.

In accordance with section 55 of the Financial Services and Markets Act, on 21 December 2000 EAC referred this matter to this Tribunal, and requested the Tribunal, *inter alia*, to hold the hearing in private in accordance with rule 17(3) of the rules of the Tribunal. (It is not considered to be necessary to refer to the activities of other companies in that Eurofile Group, namely EAG (Eurofile Assurance Group plc) and EFM (Eurofile Fund Management Ltd) in the context of this discussion).

The principal legal issues to be decided by the Tribunal were whether EAC's request for holding the entire hearing in private in order not to cause any possible prejudice to its customers and to give direction accordingly was justifiable under rule 17(3) of the Financial Services and Markets Tribunal Rules 2001. Rule 17 provides, inter alia, that:

> *"(2) Subject to the following paragraphs of this rule, all hearings shall be in public.*
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> *(3) The Tribunal may direct that all or part of a hearing shall be in private . . .*
>
> *(b) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to –*
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> *(i) the interests of morals, public order, national security or the protection of the private lives of the parties; or*
>
> *(ii) any unfairness to the applicant or prejudice to the interests of consumers that might result from a hearing in public,*
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> *if, in either case, the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice . . ."*
>
> *"(5) Before giving a direction under paragraph (3) that the entire hearing should be in private, the Tribunal shall consider whether only part of the hearing should be heard in private . . ."*
>
> *"(11) Where all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or part of the proceedings before the Tribunal (including information that might help to identify any person) shall not be made public, and such a direction may provide for the information (if any) that is to be entered in the register or removed from it."*

The Tribunal's determination was against EAC's application for the hearing to be in private and declined to make a direction accordingly. The reasoning of the Tribunal was developed under three headings: (a) observations on the relevant law; (b) the unfairness or prejudice condition; and (c) the interests of justice condition. Although the Tribunal considered this last heading, it did not find it necessary to address it in its determination. The Tribunal's reasoning is discussed below.

Observations on the relevant law

The Tribunal traced the history of rule 17. The debate of the House of Lords on whether hearings before the FSA Tribunal should entirely or in part be held in public or in private may be found in the Lords Official Report (Report dated 23 October 2001, vol 627, No. 31, Columns 922-942). The general view of the House of Lords was that hearings before the FSA Tribunal should be held in public. Baroness Scotland of Asthal described the terms of rule 17(3) as a very flexible tool. She stated, *inter alia*, that rule 17:

> *"... enables the* [Tribunal] *to exercise its judicial judgment, first, as to whether the ... matter should be heard in private, and secondly, which part of the hearing should be heard in private and how disclosure should be managed."*

An application under rule 17(3) is likely to be accompanied or followed up by further application under rule 17(11). Both rule 17(3) and rule 17(11) allow the Tribunal a considerable margin of power in considering whether a hearing should in its entirety or in part be held in public or in private. There does not exist a difference between "keeping proceedings secret", and "holding a hearing in private", and this issue was clarified by the Court of Appeal in *Hodgson v Imperial Tobacco Ltd* [1998] 1 WLR 1056. Proceedings in chambers are not confidential, and "information about what had occurred should be made available to the public", except in certain exceptional circumstances, which, unless governed by any statute such as the Administration of Justice Act 1960 (s 12(1)) may be identified by the court in the light of the special nature of a proceedings. Lord Woolf MR stated, *inter alia*, at 1070 that:

> *"A distinction has to be clearly drawn between the normal situation where a court sits in chambers and when a court sits in camera in the exceptional situation recognised in Scott v Scott [1913] AC 417 or the court sits in chambers and the case falls in the categories specified in section 12(1) of the Act of 1960 (which include issues involving children, national security, secret processes and the like)."...*
>
> *..."Proceedings in chambers however are always correctly described as being conducted in private. The word "chambers" is used because of its association with the judge's room so as to distinguish a hearing in chambers from a hearing in open court. While the public in general are normally free to come into and go from a court (as long as there is capacity for them to do so) during most hearings the same is not true of chambers hearings. Other than the parties and their representatives the public need the permission of the judge to attend."*

In *Scott v Scott*, Viscount Haldane LC provided (at 439) a powerful argument against court hearings in private:

> *"A mere desire to consider feelings of delicacy or to exclude from publicity details while it would be desirable not to publish is not ... enough as the law now stands. I think that to justify an order for hearing in camera it must be shown that the paramount object of securing justice is done would really be rendered doubtful of attainment if the order was not made."*

In this case, the application was made under rule 17(3)(b)(ii), according to which to justify an order for a hearing in private, the Tribunal must be satisfied that: (a) such a hearing is necessary having regard to any unfairness to the applicant or that a hearing in public might be prejudicial to the interests of consumers; and (b) that a hearing in private is in the interests of justice. The Tribunal dealt with this issue under two sub-headings: "unfairness or prejudicial conditions" and the "interests of justice conditions".

The Tribunal pointed out that the phraseology of rule 17(3)(a) is taken from Article 6 of the European Convention on Human Rights. In *Hakansson v Sweden* (1991) 13 EHRR 1, at para 66, the European Court of Human Rights established that a waiver from a public hearing might only be made where it would not run counter to the public interest. According to the Tribunal, English law was in line with the Strasbourg jurisprudence in terms of the "interests of justice condition", but not so in relation to the unfairness or prejudicial condition.

Publicity is the very soul of justice. In *Scott v Scott*, Lord Shaw of Dunfermline relied on Bentham:

> *"In the darkness of secrecy, similar interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice."*

His Lordship went on to state (at 484) that:

> *"To extend the powers of a judge so as to restrain or forbid a narrative of the proceedings either by speech or by writing seems to me to be an unwarrantable stretch of judicial authority."*

A similar view of jurisprudence was also advocated by the European Court of Human Rights in *Biennet v Frazee* [1979] AC 440. But, support for the contrary principle was expressed in both *Scott v Scott* and *A-G and Leveller Magazine Ltd* [1979] AC 440. In the former case, Earl Loreburn stated, inter alia, (at 446) that:

> *"... in all cases where the public has been excluded with admitted propriety the underlying principle, as it seems to me, is that the administration of justice would be rendered impracticable by their presence, whether because the case could not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court."*

The courts have inherent jurisdiction on this matter. Such a view was reinforced by Viscount Dilhorne in *A-G v Leveller Magazine* when he stated that:

> *"Proceedings in the courts of his country are normally conducted in public. The courts have, however, inherent*

jurisdiction to sit in camera if that is necessary for the due administration of justice."

The Tribunal maintained that if the unfairness or prejudice condition is satisfied, then the interests of justice condition will also be satisfied. But the Tribunal also pointed out (at para 43 of the case report) that:

"If the unfairness or prejudice condition is fulfilled, the interests of justice in the particular case are likely to be better served by the holding of the hearing in private. Nevertheless, the Tribunal must keep in mind the important public interest in open justice, which goes beyond the considerations arising from the circumstances of the particular case under review, and before making a rule 17 direction the Tribunal must in every case be satisfied also that the interest of justice in this more general sense will not be prejudiced."

The unfairness or prejudice condition

Rule 17 of the Financial Services and Markets Tribunal Rules allows the Tribunal to exercise its discretion (by using the word "may") as to whether a hearing should be held in private in the interests of morals, public order, national security or to avoid unfairness to the applicant or prejudice to the interests of consumers, which might result from a hearing in public. One of the legal issues that the Tribunal was required to consider was whether "unfairness" is difference from "prejudices", and whether "reputational risk" may give rise to unfairness. The FSA's representatives argued that reputational risk was to be regarded as constituting unfairness, and that most cases would be held in private, which would be contrary to the plain intention of the rule (para 32 of the report). According to the FSA representatives: "The existence of unfairness is not sufficient on its own to predetermine the Tribunal's exercise of its discretion."

The Tribunal pointed out that the applicant in this case relied on unfairness to associated companies as well as to the applicant itself. The question remains, prejudice to whom, presumably to consumers. But the Act of 2000 widely defined the term "consumer" in section 5(3) and 138 and rule 17, in particular, any consumer may be relevant for the purposes of rule 17(3). Secondly, it is necessary to provide concrete and cogent evidence to establish "prejudice". No ritualistic assertion is enough (see *In re An Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660 at 709, per Lord Oliver of Aylelmerton). However, in *Regina v Legal Aid Board ex parte Kaim Todner* [1999] QB 966, two solicitors against whom allegations of dishonesty were brought in connection with a legal aid franchise sought anonymity in proceedings. The Court of Appeal dismissed the appeal, and held that:

"... any interference with the public nature of court proceedings was to be avoided unless justice required it, and where no specific statutory exception applied protection against identification of a party should therefore be granted only where it was necessary for the proper administration of justice; that there was no justification for singling out the legal profession for special treatment when considering whether to grant anonymity to a party to legal proceedings; that in determining an application for anonymity it was appropriate to take into account the extent of the restriction on disclosure sought, the nature of the proceedings, the identity of the party seeking the order and the reasonableness of the claim; that a person who initiated proceedings could reasonably be considered to have accepted the normal incidence of the public nature of court proceedings and, in general, parties had to accept the embarrassment, damage to reputation and possible consequential loss which could be inherent in being involved in litigation, the protection to which they were entitled normally being provided by a judgment delivered in public refuting unfounded allegations; that a party could not be allowed to achieve anonymity by insisting upon it as a condition for being involved in proceedings irrespective of an order for anonymity depended on the individual circumstances and, provided a judge adopted the correct approach, the Court of Appeal would not interfere with his decision; and that in all the circumstances the judge had been right to refuse the application for anonymity."

The criteria for anonymity in proceedings were settled in this case. The idea of holding proceedings in private is also to maintain anonymity from the general public. Thus, the criteria for anonymity in proceedings may also be applied to private proceedings.

EAC maintained that unfairness to itself from the hearing being held in public might arise in at least two ways: (a) that a public hearing would cause irreparable damage to EAC's reputation; and (b) that the consequential damage to EAC's business would be so disproportionate as to be unfair.

The Tribunal pointed out that the risk of damage to reputation would not of itself normally be unfair. Without going into the minute details of the arguments put forward by EAC, it may be stated that the Tribunal observed that the evidence of unfairness to EAC did not satisfy it that a private hearing would be necessary or would be appropriate. Despite the relevant arguments put forward by the applicant in relation to prejudice against consumers (see paras 51–4 of the case report), the Tribunal held that the prejudice against the consumer was not such as to make it necessary for the hearing to be in private.

This Tribunal was also seized to consider another issue – when EAC purported to "withdraw its reference" to the Tribunal without the latter's permission. The facts of the reference have already been detailed. On 24 December 2001 EAC referred the action to the FSA Tribunal in accordance with section 55 of the Financial Services and Markets Act, 2000. The reference was "listed" for a full oral hearing in public on 2 September 2002. Before the hearing took place, the parties asked for time in an attempt to reach an agreement on certain matters, to which the

Tribunal agreed. The parties failed to reach any agreement on that issue, but asked for further time to which the Tribunal further agreed. On 4 September 2002 – before the FSA had started to open their case – the representatives for EAC submitted a letter of withdrawal in open court the contents of which were:

> *"Following an agreement reached today between the parties to the proceedings described above, we are writing … on behalf of [EAC] to withdraw the Notice dated 24 December 2001 by which EAC referred the FSA's First Supervisory Notice to the Tribunal pursuant to section 133 of the FS&MA (See the report on this case on the Court Service website http://www.courtservice.gov.uk/tribunals/comtax/decision/eurofile2.htm)".*

Rule 14 of the Financial Services and Markets Tribunals Rules 2001 deals with the issue of withdrawal and unopposed references. Paragraph (1) of this rule provides that:

> *"(1) The applicant may withdraw the reference –*
>
> *(a) at any time before the hearing of the reference, without permission, by filing a notice to that effect; or*
>
> *(b) at the hearing of the reference, with the Tribunal's permission,*
>
> *and the Tribunal may determine any reference that is so withdrawn."*

The provision does signify that withdrawal of references rather than litigated decisions on references is preferred by the Tribunal. However, under section 133(4) of the Financial Services & Markets Act 2000, the Tribunal has a statutory obligation to determine the nature of action it is supposed to take on a reference. But, in the event of the reference being withdrawn before the hearing took place, which happened in this case, by reason of rule 14(1), the Tribunal's permission was not necessary. Thus, the Tribunal found that the application for withdrawal was valid.

Incidentally, in this case, the Tribunal rightly pointed out that neither the Financial Services and Markets Act nor the rules pertaining to it states when "the hearing of the reference" begins. Two possibilities seem to have developed: one that suggests that the hearing may be said to have started when the time on the listing notice arrives, or the other that it starts when the parties come into court to ask for further time, as happened in this case. According to the Tribunal, the hearing would effectively start with the FSA's opening. This phase of the case thus clarified at least one legal issue, namely, when a "hearing" under the Financial Services and Markets Rules, begins.

CONCLUSIONS

The dispute settlement procedures under the Financial Services and Markets Act 2000 entail two forms: the Ombudsman Scheme and the Tribunal Scheme. The Compulsory Ombudsman Scheme aims at a speedy and informal resolution of disputes between members of the public and an authorised person; the voluntary scheme provides for adjudication of certain other disputes on a voluntary basis. Neither form of the Ombudsman Scheme is concerned with complaints against or by the FSA. The Tribunal Scheme, on the other hand, establishes the procedures for referring cases to it where the FSA has decided to take regulatory action against an authorised person or any person who may be allegedly in breach of a provision of the Act.

The primary difference between the two schemes is that whereas the Ombudsman Scheme allows the members of the public to challenge the FSA in appropriate cases, the second scheme allows the FSA to challenge the activities of authorised persons. Thus, the conduct of both the FSA and the authorised persons will be regulated, and will always be under scrutiny, in consequence of which investors will be in a better position. While the Ombudsman Scheme is the body through which members of the public make complaints against the FSA, the Tribunal is the authority to which the FSA will lodge legal complaints about an authorised person's conduct, or a person who has authority otherwise, or a player on the financial services markets. The Ombudsman Scheme can deal with both legal and non-legal issues, but the Tribunal will be dealing almost exclusively with legal issues.

Voluntary jurisdiction under the Ombudsman Scheme seems to be a novel idea in that it allows players or authorised persons to ascertain their legal position in respect of any conduct or performance about which they may have doubts. The scheme must be appreciated in that it is to be treated as a direct attempt by players and markets to keep the markets in order. The voluntary jurisdiction also confirms the fact that it is not by legal rules alone that markets can be kept regulated. It should develop a degree of awareness on the part of the players that they cannot do anything which will disturb the market. In fact, a recipient's conduct on the part of each player will promote their business also, and eventually confidence in the capital market.

The inclusion of laymen in the panel of the Tribunal is a laudable idea in that a dilution of legal and non-legal ideas and experience would be extremely helpful in dealing with disputes. The panel membership seems to be comprehensive in that it will accept members from the Northern Ireland and Scottish jurisdictions in addition to the English jurisdiction.

Dispute settlement schemes under the Act of 2000 are extremely extensive. It would be premature to comment on their effectiveness as the rules have yet to be developed to operate them and no cases have yet been reported on the actual performance of any of the schemes. It should be pointed out however that both the schemes require resources, human and financial, in order to make them a

success. The Financial Services and Markets Tribunal hears references arising from decision notices issued by the FSA on a wide range of regulatory and disciplinary matters, namely: authorisations and permissions; disciplinary measures; market abuse and official listing. A reference may be made to this Tribunal on a matter which the Act so provides.

Although the Tribunal does not charge any fee for dealing with cases referred to it, parties are required to bear the expenses of their legal representatives if they decide to appoint them to conduct their cases. Although as a general rule, public funding is not available for references to the Financial Services and Markets Tribunal, this principle does not apply to matters relating to market abuse which are referred to under section 127(4) of the Financial Services and Markets Act; a special scheme of legal assistance has been established to provide financial assistance to such cases.

A reference notice must be sent by an applicant or his authorised representative for a case to be initiated. A reference must normally be made within 28 days of the decision notice. Upon receipt of a reference, the Tribunal notifies the FSA of it, and the latter is then required to lodge with the Tribunal a "statement of case" in support of its position. In certain cases the Tribunal may take the view that a pre-hearing revised should be arranged in order to identify the issues in dispute and to resolve the dispute; thus, a reference may be withdrawn at any time before the hearing.

It is possible for an applicant to represent himself/itself or by a person, whether legally qualified or not. If a dispute is not settled or withdrawn on a consensual basis, it proceeds to the hearing stage, but a withdrawal is possible even after a hearing has commenced. The Tribunal has discretion as to whether a hearing should take place in public or private, bearing in mind that a hearing shall take place in private if it is satisfied that it is necessary to do so in the interests of moral, public order, national security, the protection of private lives of the parties – in addition to having regard to any unfairness to the applicant or prejudice to the interests of consumers that might result by virtue of holding a public hearing.

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