

## **Rules on Oral Hearings for Further Reviews of Welfare Fund Applications 2015**

### **1. Status of these Rules**

These Rules are made by the Scottish Public Services Ombudsman ("the Ombudsman") under section 10(5) of the Welfare Funds (Scotland) Act 2015 ("the Act") in relation to an application for review made under section 7(2) of that Act.

### **2. Citation and Commencement**

These Rules may be cited as the Rules on Oral Hearings for Further Reviews of Welfare Fund Applications 2015 and are to come into force on 1 April 2016.

### **3. Interpretation**

(1) In these Rules, unless the context requires otherwise:

"2002 Act" means the Scottish Public Services Ombudsman Act 2002 (2002 asp 11),

"2015 Act" means the Welfare Funds (Scotland) Act 2015 (2015 asp 5),

"applicant" means a person who has applied to the Ombudsman for a further review under section 7(2) of the Act in respect of an application for assistance they have made to a local authority under section 2 of the Act,

"application for further review" means an application for further review made under section 7(2) of the Act,

"appropriate representative" means a person who represents an Applicant at an oral hearing in respect of an application for further review, with the consent of the Ombudsman,

"clerk" means a person appointed by the Ombudsman to provide administrative support in connection with an oral hearing,

"hearing statement" means a written statement outlining the matters which a party intends to put forward at an oral hearing in relation to an application for further review,

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

"Ombudsman" means the Scottish Public Services Ombudsman appointed under the Scottish Public Services Ombudsman Act 2002 or any person exercising functions on behalf of the Ombudsman,

"parties" means the applicant and the local authority in respect of whose decision the applicant has made an application for further review,

"supporter" means a person who accompanies an applicant to an oral hearing relating to an application for further review, but does not represent them in a legal or lay capacity.

(2) In these Rules, except where the context otherwise requires, words in the singular include the plural and words in the plural include the singular.

(3) Where the provisions of these Rules expressly or impliedly confer any power or impose any duty then, unless the contrary intention appears, that power may be exercised and that duty shall be performed from time to time, as occasion requires.

(4) Subject to the provisions of these Rules, the Ombudsman may regulate his own procedure for dealing with an application for further review.

(5) The Ombudsman may relieve any Party from the consequence of a failure to comply with any provision in these Rules where, in the opinion of the Ombudsman, this is required in the interests of fairness, on such conditions, if any, as the Ombudsman thinks fit.

### **4 Factors to be taken into account in deciding whether or not to hold an oral hearing**

(1) The Ombudsman may decide to hold an oral hearing in relation to an application for further review in respect of which a decision by the Ombudsman has not yet been made, if the Ombudsman considers that it is in the interests of fairness to do so and either:

- (a) any of the parties to that application for further review request an oral hearing; or
- (b) on the Ombudsman's own motion.

(2) If a party to an application for further review requests an oral hearing under (1)(a), all parties must be given an opportunity to make representations to the Ombudsman in writing, as to whether an oral hearing should take place, giving reasons for their view, by no later than a date to be specified by the Ombudsman.

### **5 Notice of oral hearing and further procedure**

(1) Where the Ombudsman decides that there will be an oral hearing to deal with an application for further review, the Ombudsman must give written notice of that decision to the parties 7 days before the oral hearing, or within such other period as the Ombudsman considers to be fair in all the circumstances, setting out the reasons for that decision and the scope of the oral hearing.

(2) The clerk to an oral hearing, to be appointed by the Ombudsman, will communicate to parties in writing:

(a) the date, time and place at which an oral hearing is to be held, and any subsequent variation in those arrangements,

(b) the date by which parties must communicate to the Ombudsman whether they intend to give oral evidence,

(c) the date by which parties must submit any hearing statement to the Ombudsman and to other parties in advance of the oral hearing, and

(d) the date by which a party intending to refer to, or rely upon, any other documents at the oral hearing, must provide a copy of each document to the Ombudsman and to other parties.

(3) All hearings will be held in private.

### **6 Admissibility of evidence and questions to witnesses**

(1) Subject to the other provisions contained in these Rules, the Ombudsman may regulate the proceedings of an oral hearing in respect of an application for further review, as the Ombudsman sees fit, for the purposes of any particular application.

(2) The Ombudsman may, in proceedings under these Rules, admit such evidence, and in whatever form, as it would in the opinion of the Ombudsman be fair to admit, regardless of whether such evidence would be admissible in proceedings in a Scottish court.

### **7 Attendance at oral hearing**

(1) Any person who intends to give evidence at an oral hearing may be accompanied to the oral hearing by a supporter.

(2) If a party intends to be legally represented at an oral hearing, they must inform the Ombudsman of that intention, in writing, in advance of the oral hearing.

(3) Oral evidence may be given through a live television link or through any other electronic means:

(a) if all the parties agree, or

(b) if the Ombudsman is satisfied that evidence so given will not prejudice the fairness of those proceedings.

(4) If any of the parties declines, or fails, to attend an oral hearing fixed by the Ombudsman, the Ombudsman may, but need not, proceed to reach a decision in respect of the application for further review.

### **8 Minutes of proceedings and notice of decisions**

(1) The clerk will be responsible for producing a written minute of the oral hearing proceedings, to be provided to all parties within 7 days of the date of the oral hearing.

(2) Where the Ombudsman delivers a decision in respect of an application for further review at the oral hearing, the decision, including reasons, will be recorded in the minute of the oral hearing.

(3) Where the Ombudsman reaches a decision in respect of an application for further review after the oral hearing, a decision notice will be issued in writing to all parties by the Ombudsman as soon as reasonably practicable.