

FINANCIAL SERVICES TRIBUNAL

PRACTICE DIRECTION ON COST AWARDS

This Practice Direction is meant to supplement and clarify the principles the Tribunal will use when making cost awards which are expressed in some detail in the *Rules of Practice and Procedure for Proceedings Before the Financial Services Tribunal*, Rules 44 through 47.

1. The Tribunal's general principle is that its Rules should be liberally construed to secure the just, most expeditious and least expensive determination of every matter. The Tribunal will not normally consider an award of costs unless one of the parties requests it, and will consider such requests on a case-by-case basis. .
2. The Tribunal need not follow the civil court practice where the usual rule is that the unsuccessful party pays the successful party's costs. A party will not be subject to costs only because it has lost a hearing. The Tribunal is more likely to make a cost award against a party if it has engaged in conduct which is clearly unreasonable, frivolous, or vexatious. The Tribunal is less likely to make a cost award against a party that has been reasonable, cooperative, and helpful to the Tribunal.
 - a. Some examples of conduct or a course of conduct which the Tribunal is likely to find clearly unreasonable, frivolous or vexatious are:
 - i. when a party has advanced a position which was frivolous, vexatious, or manifestly unfounded; or
 - ii. acting or failing to act in a way which results in prejudice to any of the other parties or an unnecessary or unreasonable delay in the proceeding;
 - iii. failing either to attend a hearing or to send a representative to a hearing after having been properly served with a notice of the hearing;
 - iv. changing a position taken in a preliminary proceeding, introducing new issues which have not previously been identified, giving evidence on issues which are not in dispute or not giving evidence on an issue which had specifically been raised by that party previously;
 - v. failure to cooperate with other parties during preliminary proceedings or at the hearing; and
 - vi. failure to comply with an undertaking, or a procedural order or direction of the Tribunal which has resulted in prejudice to another party;

