

## SCHEDULE

### THE LABOUR RELATIONS AGENCY (FLEXIBLE WORKING) ARBITRATION SCHEME

#### XIV OUTLINE OF PROCEDURE BEFORE THE HEARING

67. Once a hearing has been fixed, the following procedure shall apply, subject to any direction by the arbitrator.

##### **Written materials**

68. At least 14 days before the date of the hearing, each party shall send to the LRA (for forwarding to the arbitrator and the other party, and for retention by the LRA Arbitration Section) three copies of a written statement of case, together with three copies of:

- (i) any supporting documentation or other material to be relied upon at the hearing; and, where appropriate,
- (ii) a list of the names and title/role of all those persons who will accompany each party to the hearing or be called as a witness.

69. Written statements of case should briefly set out the main particulars of each party's case, which can then be expanded upon if necessary at the hearing itself. The statement should include an explanation of the events which led to the Flexible Working Claim being brought including an account of the outcome of any relevant meetings.

70. Supporting documentation or other material may include (without limitation) copies of:

- (i) the employee's application under Article 112F of the 1996 Order;
- (ii) contracts of employment;
- (iii) notes of meetings held between employee and employer to consider the employee's application under Article 112F of the 1996 Order;
- (iv) letters of appointment;
- (v) written statement of particulars of employment;
- (vi) time sheets;
- (vii) written reasons for refusing the employee's application under Article 112F of the 1996 Order, where these have been given;
- (viii) company handbooks, rules and procedures;
- (ix) any other written information which may assist the arbitrator in deciding the Flexible Working Claim;
- (x) any information which will help the arbitrator to assess compensation, including (without limitation) pay slips, P60s or wage records;
- (xi) signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.

71. The parties must also supply details of any relevant awards of compensation that may have been made by any other tribunal or court in connection with the subject matter of the claim.

72. Legible copies of documents must be supplied to the LRA even if they have already been supplied to an LRA conciliator before the Arbitration Agreement was concluded.

73. No information on the conciliation process, if any, in respect of the case to be heard by the arbitrator shall be disclosed by the LRA to the arbitrator.

*Status: This is the original version (as it was originally made).*

### **Submissions, evidence and witnesses not previously notified**

74. Written statements of case and documentary or other material that have not been provided to the LRA prior to the hearing (in accordance with paragraph 68 above) may only be relied upon at the hearing with the arbitrator's permission.

75. All representatives and witnesses who have been listed as accompanying a party at the hearing should be present at the start of the hearing. Witnesses who have not been included in a list submitted to the LRA prior to the hearing may only be called with the arbitrator's permission.

### **Requests for documents**

76. Any party may request the other party to include in their submission, or submit through the LRA or the arbitrator (as appropriate), copies of relevant documents that are not in the requesting party's possession, custody or control. Although the LRA and the arbitrator have no power to compel a party to comply, the arbitrator may draw an inference from a party's failure to comply with a reasonable request.

### **Requests for attendance of witnesses**

77. Although the arbitrator has no power to compel the attendance of any person at the hearing, the arbitrator may draw an inference if an employer who is a party to the arbitration fails or refuses to allow current employees or other workers (who have relevant evidence to give) time off from work to attend the hearing, should such an employer be so requested.

### **Preliminary hearings and directions**

78. Where the arbitrator believes that there may be considerable differences between the parties over any issue, including the availability or exchange of documents, or the availability of witnesses, the arbitrator may call, through the LRA, the parties to a preliminary hearing to address such issues, or he/she may determine procedural directions.

79. In the course of a preliminary hearing and/or through the LRA, the arbitrator may express views on the desirability of information and/or evidence being available at the hearing.