SCHEDULE 1 Regulation 13(1)

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

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Interpretation

1.—(1) In these Rules—

"ACAS" means the Advisory, Conciliation and Arbitration Service referred to in section 247 of the Trade Union and Labour Relations (Consolidation) Act 1992(**1**);

"claim" means any proceedings before an Employment Tribunal making a complaint;

"claimant" means the person bringing the claim;

"Commission for Equality and Human Rights" means the body established under section 1 of the Equality Act 2006(**2**);

"complaint" means anything that is referred to as a claim, complaint, reference, application or appeal in any enactment which confers jurisdiction on the Tribunal;

"Employment Appeal Tribunal" means the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(**3**) and continued in existence under section 135 of the Employment Protection (Consolidation) Act 1978(**4**) and section 20(1) of the Employment Tribunals Act;

"electronic communication" has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(**5**);

"employee's contract claim" means a claim brought by an employee in accordance with articles 3 and 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994(**6**) or articles 3 and 7 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994(**7**);

"employer's contract claim" means a claim brought by an employer in accordance with articles 4 and 8 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994(**8**) or articles 4 and 8 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994(**9**);

"Employment Tribunal" or "Tribunal" means an employment tribunal established in accordance with regulation 4, and in relation to any proceedings means the Tribunal responsible for the proceedings in question, whether performing administrative or judicial functions;

"Employment Tribunals Act" means the Employment Tribunals Act 1996(**10**);

"Equality Act" means the Equality Act 2010(**11**);

(**1**) 1992 c. 52.
(**2**) 2006 c. 3.
(**3**) 1975 c. 71; section 87 was repealed by the Employment Protection (Consolidation) Act 1978 (c. 44), Schedule 17.
(**4**) 1978 c. 44; section 135 was repealed by the Employment Tribunals Act 1996 (c. 17), Schedule 3, Part I.
(**5**) 2000 c. 7; section 15(1) was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.
(**6**) S.I. 1994/1623; by virtue of section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to "industrial tribunal" and "industrial tribunals" in any enactment were substituted with "employment tribunal" and "employment tribunals". By virtue of the destination table to the Employment Tribunals Act 1996, the reference in article 3(a) to "section 131(2) of the 1978 Act" should be read as section 3(2) of the Employment Tribunals Act 1996. Article 7 was amended by S.I. 2011/1133.
(**7**) S.I. 1994/1624; by virtue of the destination table to the Employment Tribunals Act 1996 the reference in article 3(a) to "section 131(2) of the 1978 Act" should be read as section 3(2) of the Employment Tribunals Act 1996. Article 7 was amended by S.I. 2011/1133.
(**8**) Article 8 was amended by S.I. 2011/1133.
(**9**) Article 8 was amended by S.I. 2011/1133.
(**10**) 1996 c. 17.
(**11**) 2010 c. 15.

"full tribunal" means a Tribunal constituted in accordance with section 4(1) of the Employment Tribunals Act(**12**);

"Health and Safety Act" means the Health and Safety at Work etc. Act 1974(**13**);

"improvement notice" means a notice under section 21 of the Health and Safety Act;

"levy appeal" means an appeal against an assessment to a levy imposed under section 11 of the Industrial Training Act 1982(**14**);

"Minister" means Minister of the Crown;

"prescribed form" means any appropriate form prescribed by the Secretary of State in accordance with regulation 12;

"present" means deliver (by any means permitted under rule 85) to a tribunal office;

"President" means either of the two presidents appointed from time to time in accordance with regulation 5(1);

"prohibition notice" means a notice under section 22 of the Health and Safety Act(**15**);

"Regional Employment Judge" means a person appointed or nominated in accordance with regulation 6(1) or (2);

"Register" means the register of judgments and written reasons kept in accordance with regulation 14;

"remission application" means any application which may be made under any enactment for remission or part remission of a Tribunal fee;

"respondent" means the person or persons against whom the claim is made;

"Tribunal fee" means any fee which is payable by a party under any enactment in respect of a claim, employer's contract claim, application or judicial mediation in an Employment Tribunal;

"tribunal office" means any office which has been established for any area in either England and Wales or Scotland and which carries out administrative functions in support of the Tribunal, and in relation to particular proceedings it is the office notified to the parties as dealing with the proceedings;

"unlawful act notice" means a notice under section 21 of the Equality Act 2006(**16**);

"Vice President" means a person appointed or nominated in accordance with regulation 6(3) or (4);

"writing" includes writing delivered by means of electronic communication.

(2) Any reference in the Rules to a Tribunal applies to both a full tribunal and to an Employment Judge acting alone (in accordance with section 4(2) or (6) of the Employment Tribunals Act(**17**)).

(3) An order or other decision of the Tribunal is either—

(a) a "case management order", being an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment; or

(**12**) Section 4(1)(b) was substituted by the Employment Rights (Dispute Resolution) Act 1998, section 4, from a date to be appointed.
(**13**) 1974 c. 37.
(**14**) 1982 c. 10. Section 11 was amended by the Employment Act 1989 (c. 38), Schedule 4, paragraph 10; there are other amending instruments but none is relevant.
(**15**) Section 22 was amended by the Consumer Protection Act 1987 (c. 43), Schedule 3, paragraph 2.
(**16**) 2006 c. 3; section 21 was amended by the Equality Act 2010 (c. 15), Schedule 26, paragraph 67.
(**17**) Section 4(2) and (6) was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 8, paragraphs 35 and 37.

(b) a "judgment", being a decision, made at any stage of the proceedings (but not including a decision under rule 13 or 19), which finally determines—

(i) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); or

(ii) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue).

Overriding objective

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

Alternative dispute resolution

3. A Tribunal shall wherever practicable and appropriate encourage the use by the parties of the services of ACAS, judicial or other mediation, or other means of resolving their disputes by agreement.

Time

4.—(1) Unless otherwise specified by the Tribunal, an act required by these Rules, a practice direction or an order of a Tribunal to be done on or by a particular day may be done at any time before midnight on that day. If there is an issue as to whether the act has been done by that time, the party claiming to have done it shall prove compliance.

(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day. "Working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(**18**).

(3) Where any act is required to be, or may be, done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. (For example, a response shall be presented within 28 days of the date on which the respondent was sent a copy of the claim: if the claim was sent on 1st October the last day for presentation of the response is 29th October.)

(4) Where any act is required to be, or may be, done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. (For example, if a party wishes to present representations in writing for consideration by a Tribunal at a hearing, they shall be presented not less than 7 days before the hearing: if the hearing is fixed for 8th October, the representations shall be presented no later than 1st October.)

(**18**) 1971 c. 80.

(5) Where the Tribunal imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(6) Where time is specified by reference to the date when a document is sent to a person by the Tribunal, the date when the document was sent shall, unless the contrary is proved, be regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document.

Extending or shortening time

5. The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.

Irregularities and non-compliance

6. A failure to comply with any provision of these Rules (except rule 8(1), 16(1), 23 or 25) or any order of the Tribunal (except for an order under rules 38 or 39) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following—

(a) waiving or varying the requirement;

(b) striking out the claim or the response, in whole or in part, in accordance with rule 37;

(c) barring or restricting a party's participation in the proceedings;

(d) awarding costs in accordance with rules 74 to 84.

Presidential Guidance

7. The Presidents may publish guidance for England and Wales and for Scotland, respectively, as to matters of practice and as to how the powers conferred by these Rules may be exercised. Any such guidance shall be published by the Presidents in an appropriate manner to bring it to the attention of claimants, respondents and their advisers. Tribunals must have regard to any such guidance, but they shall not be bound by it.

STARTING A CLAIM

Presenting the claim

8.—(1) A claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any practice direction made under regulation 11 which supplements this rule.

(2) A claim may be presented in England and Wales if—

(a) the respondent, or one of the respondents, resides or carries on business in England and Wales;

(b) one or more of the acts or omissions complained of took place in England and Wales;

(c) the claim relates to a contract under which the work is or has been performed partly in England and Wales; or

(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.

(3) A claim may be presented in Scotland if—

(a) the respondent, or one of the respondents, resides or carries on business in Scotland;

(b) one or more of the acts or omissions complained of took place in Scotland;

(c) the claim relates to a contract under which the work is or has been performed partly in Scotland; or

(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with Scotland.

Multiple claimants

9. Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 6.

Rejection: form not used or failure to supply minimum information

10.—(1) The Tribunal shall reject a claim if—

(a) it is not made on a prescribed form; or

(b) it does not contain all of the following information—

(i) each claimant's name;

(ii) each claimant's address;

(iii) each respondent's name;

(iv) each respondent's address.

(2) The form shall be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection.

Rejection: absence of Tribunal fee or remission application

11.—(1) The Tribunal shall reject a claim if it is not accompanied by a Tribunal fee or a remission application.

(2) Where a claim is accompanied by a Tribunal fee but the amount paid is lower than the amount payable for the presentation of that claim, the Tribunal shall send the claimant a notice specifying a date for payment of the additional amount due and the claim, or part of it in respect of which the relevant Tribunal fee has not been paid, shall be rejected by the Tribunal if the amount due is not paid by the date specified.

(3) If a remission application is refused in part or in full, the Tribunal shall send the claimant a notice specifying a date for payment of the Tribunal fee and the claim shall be rejected by the Tribunal if the Tribunal fee is not paid by the date specified.

(4) If a claim, or part of it, is rejected, the form shall be returned to the claimant with a notice of rejection explaining why it has been rejected.

Rejection: substantive defects

12.—(1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

(a) one which the Tribunal has no jurisdiction to consider; or

(b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process.

(2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a) or (b) of paragraph (1).

(3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

Reconsideration of rejection

13.—(1) A claimant whose claim has been rejected (in whole or in part) under rule 10 or 12 may apply for a reconsideration on the basis that either—

(a) the decision to reject was wrong; or

(b) the notified defect can be rectified.

(2) The application shall be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and if the claimant wishes to request a hearing this shall be requested in the application.

(3) If the claimant does not request a hearing, or an Employment Judge decides, on considering the application, that the claim shall be accepted in full, the Judge shall determine the application without a hearing. Otherwise the application shall be considered at a hearing attended only by the claimant.

(4) If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.

Protected disclosure claims: notification to a regulator

14. If a claim alleges that the claimant has made a protected disclosure, the Tribunal may, with the consent of the claimant, send a copy of any accepted claim to a regulator listed in Schedule 1 to the Public Interest Disclosure (Prescribed Persons) Order 1999(**19**). "Protected disclosure" has the meaning given to it by section 43A of the Employment Rights Act 1996(**20**).

THE RESPONSE TO THE CLAIM

Sending claim form to respondents

15. Unless the claim is rejected, the Tribunal shall send a copy of the claim form, together with a prescribed response form, to each respondent with a notice which includes information on—

(a) whether any part of the claim has been rejected; and

(b) how to submit a response to the claim, the time limit for doing so and what will happen if a response is not received by the Tribunal within that time limit.

Response

16.—(1) The response shall be on a prescribed form and presented to the tribunal office within 28 days of the date that the copy of the claim form was sent by the Tribunal.

(2) A response form may include the response of more than one respondent if they are responding to a single claim and either they all resist the claim on the same grounds or they do not resist the claim.

(3) A response form may include the response to more than one claim if the claims are based on the same set of facts and either the respondent resists all of the claims on the same grounds or the respondent does not resist the claims.

(**19**) S.I. 1999/1549, amended by the Energy Act 2004 (c. 20), and S.I. 2003/1993, 2004/3265, 2005/2035, 2005/2464, 2005/3172, 2008/531, 2008/2831, 2009/462, 2009/2457, 2009/2748, 2010/7, 2010/671, 2011/2581, 2012/462, 2012/725, 2012/1641, 2012/1479, 2012/2400.

(**20**) 1996 c. 18; section 43A was inserted by the Public Interest Disclosure Act 1996 (c. 23), section 1.

Rejection: form not used or failure to supply minimum information

17.—(1) The Tribunal shall reject a response if—

(a) it is not made on a prescribed form; or

(b) it does not contain all of the following information—

(i) the respondent's full name;

(ii) the respondent's address;

(iii) whether the respondent wishes to resist any part of the claim.

(2) The form shall be returned to the respondent with a notice of rejection explaining why it has been rejected. The notice shall explain what steps may be taken by the respondent, including the need (if appropriate) to apply for an extension of time, and how to apply for a reconsideration of the rejection.

Rejection: form presented late

18.—(1) A response shall be rejected by the Tribunal if it is received outside the time limit in rule 16 (or any extension of that limit granted within the original limit) unless an application for extension has already been made under rule 20 or the response includes or is accompanied by such an application (in which case the response shall not be rejected pending the outcome of the application).

(2) The response shall be returned to the respondent together with a notice of rejection explaining that the response has been presented late. The notice shall explain how the respondent can apply for an extension of time and how to apply for a reconsideration.

Reconsideration of rejection

19.—(1) A respondent whose response has been rejected under rule 17 or 18 may apply for a reconsideration on the basis that the decision to reject was wrong or, in the case of a rejection under rule 17, on the basis that the notified defect can be rectified.

(2) The application shall be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and it shall state whether the respondent requests a hearing.

(3) If the respondent does not request a hearing, or the Employment Judge decides, on considering the application, that the response shall be accepted in full, the Judge shall determine the application without a hearing. Otherwise the application shall be considered at a hearing attended only by the respondent.

(4) If the Judge decides that the original rejection was correct but that the defect has been rectified, the response shall be treated as presented on the date that the defect was rectified (but the Judge may extend time under rule 5).

Applications for extension of time for presenting response

20.—(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An Employment Judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside.

Effect of non-presentation or rejection of response, or case not contested

21.—(1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

Notification of acceptance

22. Where the Tribunal accepts the response it shall send a copy of it to all other parties.

EMPLOYER'S CONTRACT CLAIM

Making an employer's contract claim

23. Any employer's contract claim shall be made as part of the response, presented in accordance with rule 16, to a claim which includes an employee's contract claim. An employer's contract claim may be rejected on the same basis as a claimant's claim may be rejected under rule 12, in which case rule 13 shall apply.

Notification of employer's contract claim

24. When the Tribunal sends the response to the other parties in accordance with rule 22 it shall notify the claimant that the response includes an employer's contract claim and include information on how to submit a response to the claim, the time limit for doing so, and what will happen if a response is not received by the Tribunal within that time limit.

Responding to an employer's contract claim

25. A claimant's response to an employer's contract claim shall be presented to the tribunal office within 28 days of the date that the response was sent to the claimant. If no response is presented within that time limit, rules 20 and 21 shall apply.

INITIAL CONSIDERATION OF CLAIM FORM AND RESPONSE

Initial consideration

26.—(1) As soon as possible after the acceptance of the response, the Employment Judge shall consider all of the documents held by the Tribunal in relation to the claim, to confirm whether there are arguable complaints and defences within the jurisdiction of the Tribunal (and for that purpose the Judge may order a party to provide further information).

(2) Except in a case where notice is given under rule 27 or 28, the Judge conducting the initial consideration shall make a case management order (unless made already), which may deal with

the listing of a preliminary or final hearing, and may propose judicial mediation or other forms of dispute resolution.

Dismissal of claim (or part)

27.—(1) If the Employment Judge considers either that the Tribunal has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, the Tribunal shall send a notice to the parties—

(a) setting out the Judge's view and the reasons for it; and

(b) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed.

(2) If no such representations are received, the claim shall be dismissed from the date specified without further order (although the Tribunal shall write to the parties to confirm what has occurred).

(3) If representations are received within the specified time they shall be considered by an Employment Judge, who shall either permit the claim (or part) to proceed or fix a hearing for the purpose of deciding whether it should be permitted to do so. The respondent may, but need not, attend and participate in the hearing.

(4) If any part of the claim is permitted to proceed the Judge shall make a case management order.

Dismissal of response (or part)

28.—(1) If the Employment Judge considers that the response to the claim, or part of it, has no reasonable prospect of success the Tribunal shall send a notice to the parties—

(a) setting out the Judge's view and the reasons for it;

(b) ordering that the response, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the respondent has presented written representations to the Tribunal explaining why the response (or part) should not be dismissed; and

(c) specifying the consequences of the dismissal of the response, in accordance with paragraph (5) below.

(2) If no such representations are received, the response shall be dismissed from the date specified without further order (although the Tribunal shall write to the parties to confirm what has occurred).

(3) If representations are received within the specified time they shall be considered by an Employment Judge, who shall either permit the response (or part) to stand or fix a hearing for the purpose of deciding whether it should be permitted to do so. The claimant may, but need not, attend and participate in the hearing.

(4) If any part of the response is permitted to stand the Judge shall make a case management order.

(5) Where a response is dismissed, the effect shall be as if no response had been presented, as set out in rule 21 above.

CASE MANAGEMENT ORDERS AND OTHER POWERS

Case management orders

29. The Tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order. The particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend or set aside an earlier case management

order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

Applications for case management orders

30.—(1) An application by a party for a particular case management order may be made either at a hearing or presented in writing to the Tribunal.

(2) Where a party applies in writing, they shall notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible.

(3) The Tribunal may deal with such an application in writing or order that it be dealt with at a preliminary or final hearing.

Disclosure of documents and information

31. The Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by a county court or, in Scotland, by a sheriff.

Requirement to attend to give evidence

32. The Tribunal may order any person in Great Britain to attend a hearing to give evidence, produce documents, or produce information.

Evidence from other EU Member States

33. The Tribunal may use the procedures for obtaining evidence prescribed in Council Regulation (EC) No. 1026/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters(**21**).

Addition, substitution and removal of parties

34. The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.

Other persons

35. The Tribunal may permit any person to participate in proceedings, on such terms as may be specified, in respect of any matter in which that person has a legitimate interest.

Lead cases

36.—(1) Where a Tribunal considers that two or more claims give rise to common or related issues of fact or law, the Tribunal or the President may make an order specifying one or more of those claims as a lead case and staying, or in Scotland sisting, the other claims ("the related cases").

(2) When the Tribunal makes a decision in respect of the common or related issues it shall send a copy of that decision to each party in each of the related cases and, subject to paragraph (3), that decision shall be binding on each of those parties.

(**21**) OJ L 174, 27.6.01, p1.

(3) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under paragraph (2), that party may apply in writing for an order that the decision does not apply to, and is not binding on the parties to, a particular related case.

(4) If a lead case is withdrawn before the Tribunal makes a decision in respect of the common or related issues, it shall make an order as to—

(a) whether another claim is to be specified as a lead case; and

(b) whether any order affecting the related cases should be set aside or varied.

Striking out

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

Unless orders

38.—(1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred.

(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.

(3) Where a response is dismissed under this rule, the effect shall be as if no response had been presented, as set out in rule 21.

Deposit orders

39.—(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

Non-payment of fees

40.—(1) Subject to rule 11, where a party has not paid a relevant Tribunal fee or presented a remission application in respect of that fee the Tribunal will send the party a notice specifying a date for payment of the Tribunal fee or presentation of a remission application.

(2) If at the date specified in a notice sent under paragraph (1) the party has not paid the Tribunal fee and no remission application in respect of that fee has been presented—

(a) where the Tribunal fee is payable in relation to a claim, the claim shall be dismissed without further order;

(b) where the Tribunal fee is payable in relation to an employer's contract claim, the employer's contract claim shall be dismissed without further order;

(c) where the Tribunal fee is payable in relation to an application, the application shall be dismissed without further order;

(d) where the Tribunal fee is payable in relation to judicial mediation, the judicial mediation shall not take place.

(3) Where a remission application is refused in part or in full, the Tribunal shall send the claimant a notice specifying a date for payment of the Tribunal fee.

(4) If at the date specified in a notice sent under paragraph (3) the party has not paid the Tribunal fee, the consequences shall be those referred to in sub-paragraphs (a) to (d) of paragraph (2).

(5) In the event of a dismissal under paragraph (2) or (4) a party may apply for the claim or response, or part of it, which was dismissed to be reinstated and the Tribunal may order a reinstatement. A reinstatement shall be effective only if the Tribunal fee is paid, or a remission application is presented and accepted, by the date specified in the order.

RULES COMMON TO ALL KINDS OF HEARING

General

41. The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit

the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

Written representations

42. The Tribunal shall consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all other parties not less than 7 days before the hearing.

Witnesses

43. Where a witness is called to give oral evidence, any witness statement of that person ordered by the Tribunal shall stand as that witness's evidence in chief unless the Tribunal orders otherwise. Witnesses shall be required to give their oral evidence on oath or affirmation. The Tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence if it considers it in the interests of justice to do so.

Inspection of witness statements

44. Subject to rules 50 and 94, any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

Timetabling

45. A Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted.

Hearings by electronic communication

46. A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal.

Non-attendance

47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

Conversion from preliminary hearing to final hearing and vice versa

48. A Tribunal conducting a preliminary hearing may order that it be treated as a final hearing, or vice versa, if the Tribunal is properly constituted for the purpose and if it is satisfied that neither party shall be materially prejudiced by the change.

Majority decisions

49. Where a Tribunal is composed of three persons any decision may be made by a majority and if it is composed of two persons the Employment Judge has a second or casting vote.

Privacy and restrictions on disclosure

50.—(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

(d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.

(4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

(5) Where an order is made under paragraph (3)(d) above—

(a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;

(b) it shall specify the duration of the order;

(c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and

(d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.

(6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998(**22**).

WITHDRAWAL

End of claim

51. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.

(**22**) 1998 c. 42.

Dismissal following withdrawal

52. Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—

(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or

(b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

PRELIMINARY HEARINGS

Scope of preliminary hearings

53.—(1) A preliminary hearing is a hearing at which the Tribunal may do one or more of the following—

(a) conduct a preliminary consideration of the claim with the parties and make a case management order (including an order relating to the conduct of the final hearing);

(b) determine any preliminary issue;

(c) consider whether a claim or response, or any part, should be struck out under rule 37;

(d) make a deposit order under rule 39;

(e) explore the possibility of settlement or alternative dispute resolution (including judicial mediation).

(2) There may be more than one preliminary hearing in any case.

(3) "Preliminary issue" means, as regards any complaint, any substantive issue which may determine liability (for example, an issue as to jurisdiction or as to whether an employee was dismissed).

Fixing of preliminary hearings

54. A preliminary hearing may be directed by the Tribunal on its own initiative following its initial consideration (under rule 26) or at any time thereafter or as the result of an application by a party. The Tribunal shall give the parties reasonable notice of the date of the hearing and in the case of a hearing involving any preliminary issues at least 14 days notice shall be given and the notice shall specify the preliminary issues that are to be, or may be, decided at the hearing.

Constitution of tribunal for preliminary hearings

55. Preliminary hearings shall be conducted by an Employment Judge alone, except that where notice has been given that any preliminary issues are to be, or may be, decided at the hearing a party may request in writing that the hearing be conducted by a full tribunal in which case an Employment Judge shall decide whether that would be desirable.

When preliminary hearings shall be in public

56. Preliminary hearings shall be conducted in private, except that where the hearing involves a determination under rule 53(1)(b) or (c), any part of the hearing relating to such a determination shall be in public (subject to rules 50 and 94) and the Tribunal may direct that the entirety of the hearing be in public.

FINAL HEARING

Scope of final hearing

57. A final hearing is a hearing at which the Tribunal determines the claim or such parts as remain outstanding following the initial consideration (under rule 26) or any preliminary hearing. There may be different final hearings for different issues (for example, liability, remedy or costs).

Notice of final hearing

58. The Tribunal shall give the parties not less than 14 days' notice of the date of a final hearing.

When final hearing shall be in public

59. Any final hearing shall be in public, subject to rules 50 and 94.

DECISIONS AND REASONS

Decisions made without a hearing

60. Decisions made without a hearing shall be communicated in writing to the parties, identifying the Employment Judge who has made the decision.

Decisions made at or following a hearing

61.—(1) Where there is a hearing the Tribunal may either announce its decision in relation to any issue at the hearing or reserve it to be sent to the parties as soon as practicable in writing.

(2) If the decision is announced at the hearing, a written record (in the form of a judgment if appropriate) shall be provided to the parties (and, where the proceedings were referred to the Tribunal by a court, to that court) as soon as practicable. (Decisions concerned only with the conduct of a hearing need not be identified in the record of that hearing unless a party requests that a specific decision is so recorded.)

(3) The written record shall be signed by the Employment Judge.

Reasons

62.—(1) The Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural (including any decision on an application for reconsideration or for orders for costs, preparation time or wasted costs).

(2) In the case of a decision given in writing the reasons shall also be given in writing. In the case of a decision announced at a hearing the reasons may be given orally at the hearing or reserved to be given in writing later (which may, but need not, be as part of the written record of the decision). Written reasons shall be signed by the Employment Judge.

(3) Where reasons have been given orally, the Employment Judge shall announce that written reasons will not be provided unless they are asked for by any party at the hearing itself or by a written request presented by any party within 14 days of the sending of the written record of the decision. The written record of the decision shall repeat that information. If no such request is received, the Tribunal shall provide written reasons only if requested to do so by the Employment Appeal Tribunal or a court.

(4) The reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short.

(5) In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues. Where the judgment includes a financial award the reasons shall identify, by means of a table or otherwise, how the amount to be paid has been calculated.

Absence of Employment Judge

63. If it is impossible or not practicable for the written record or reasons to be signed by the Employment Judge as a result of death, incapacity or absence, it shall be signed by the other member or members (in the case of a full tribunal) or by the President, Vice President or a Regional Employment Judge (in the case of a Judge sitting alone).

Consent orders and judgments

64. If the parties agree in writing or orally at a hearing upon the terms of any order or judgment a Tribunal may, if it thinks fit, make such order or judgment, in which case it shall be identified as having been made by consent.

When a judgment or order takes effect

65. A judgment or order takes effect from the day when it is given or made, or on such later date as specified by the Tribunal.

Time for compliance

66. A party shall comply with a judgment or order for the payment of an amount of money within 14 days of the date of the judgment or order, unless—

(a) the judgment, order, or any of these Rules, specifies a different date for compliance; or

(b) the Tribunal has stayed (or in Scotland sisted) the proceedings or judgment.

The Register

67. Subject to rules 50 and 94, a copy shall be entered in the Register of any judgment and of any written reasons for a judgment.

Copies of judgment for referring court

68. Where the proceedings were referred to the Tribunal by a court a copy of any judgment and of any written reasons shall be provided to that court.

Correction of clerical mistakes and accidental slips

69. An Employment Judge may at any time correct any clerical mistake or other accidental slip or omission in any order, judgment or other document produced by a Tribunal. If such a correction is made, any published version of the document shall also be corrected. If any document is corrected under this rule, a copy of the corrected version, signed by the Judge, shall be sent to all the parties.

RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

COSTS ORDERS, PREPARATION TIME ORDERS AND WASTED COSTS ORDERS

Definitions

74.—(1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing). In Scotland all references to costs (except when used in the expression "wasted costs") shall be read as references to expenses.

(2) "Legally represented" means having the assistance of a person (including where that person is the receiving party's employee) who—

(a) has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates' courts;

(b) is an advocate or solicitor in Scotland; or

(c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

(3) "Represented by a lay representative" means having the assistance of a person who does not satisfy any of the criteria in paragraph (2) and who charges for representation in the proceedings.

Costs orders and preparation time orders

75.—(1) A costs order is an order that a party ("the paying party") make a payment to—

(a) another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;

(b) the receiving party in respect of a Tribunal fee paid by the receiving party; or

(c) another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal.

(2) A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing.

(3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings. A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

When a costs order or a preparation time order may or shall be made

76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing; and

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

(4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer's contract claim or application and that claim, counterclaim or application is decided in whole, or in part, in favour of that party.

(5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.

Procedure

77. A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.

The amount of a costs order

78.—(1) A costs order may—

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles; or, in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Fees of Solicitors in the Sheriff Court)(Amendment and Further Provisions) 1993(**23**), or by an Employment Judge applying the same principles;

(c) order the paying party to pay the receiving party a specified amount as reimbursement of all or part of a Tribunal fee paid by the receiving party;

(d) order the paying party to pay another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses (of the kind described in rule 75(1)(c)); or

(e) if the paying party and the receiving party agree as to the amount payable, be made in that amount.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative shall be no higher than the rate under rule 79(2).

(3) For the avoidance of doubt, the amount of a costs order under sub-paragraphs (b) to (e) of paragraph (1) may exceed £20,000.

(**23**) S.I. 1993/3080

The amount of a preparation time order

79.—(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of—

(a) information provided by the receiving party on time spent falling within rule 75(2) above; and

(b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

(2) The hourly rate is £33 and increases on 6 April each year by £1.

(3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2).

When a wasted costs order may be made

80.—(1) A Tribunal may make a wasted costs order against a representative in favour of any party ("the receiving party") where that party has incurred costs—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.

Costs so incurred are described as "wasted costs".

(2) "Representative" means a party's legal or other representative or any employee of such representative, but it does not include a representative who is not acting in pursuit of profit with regard to the proceedings. A person acting on a contingency or conditional fee arrangement is considered to be acting in pursuit of profit.

(3) A wasted costs order may be made in favour of a party whether or not that party is legally represented and may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is representing a party in his or her capacity as an employee of that party.

Effect of a wasted costs order

81. A wasted costs order may order the representative to pay the whole or part of any wasted costs of the receiving party, or disallow any wasted costs otherwise payable to the representative, including an order that the representative repay to its client any costs which have already been paid. The amount to be paid, disallowed or repaid must in each case be specified in the order.

Procedure

82. A wasted costs order may be made by the Tribunal on its own initiative or on the application of any party. A party may apply for a wasted costs order at any stage up to 28 days after the date on which the judgment finally determining the proceedings as against that party was sent to the parties. No such order shall be made unless the representative has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application or proposal. The Tribunal shall inform the representative's client in writing of any proceedings under this rule and of any order made against the representative.

Allowances

83. Where the Tribunal makes a costs, preparation time, or wasted costs order, it may also make an order that the paying party (or, where a wasted costs order is made, the representative) pay to the Secretary of State, in whole or in part, any allowances (other than allowances paid to members of the Tribunal) paid by the Secretary of State under section 5(2) or (3) of the Employment Tribunals Act(**24**) to any person for the purposes of, or in connection with, that person's attendance at the Tribunal.

Ability to pay

84. In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

DELIVERY OF DOCUMENTS

Delivery to the Tribunal

85.—(1) Subject to paragraph (2), documents may be delivered to the Tribunal—

(a) by post;

(b) by direct delivery to the appropriate tribunal office (including delivery by a courier or messenger service); or

(c) by electronic communication.

(2) A claim form may only be delivered in accordance with the practice direction made under regulation 11 which supplements rule 8.

(3) The Tribunal shall notify the parties following the presentation of the claim of the address of the tribunal office dealing with the case (including any fax or email or other electronic address) and all documents shall be delivered to either the postal or the electronic address so notified. The Tribunal may from time to time notify the parties of any change of address, or that a particular form of communication should or should not be used, and any documents shall be delivered in accordance with that notification.

Delivery to parties

86.—(1) Documents may be delivered to a party (whether by the Tribunal or by another party)—

(a) by post;

(b) by direct delivery to that party's address (including delivery by a courier or messenger service);

(c) by electronic communication; or

(d) by being handed personally to that party, if an individual and if no representative has been named in the claim form or response; or to any individual representative named in the claim form or response; or, on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.

(2) For the purposes of sub-paragraphs (a) to (c) of paragraph (1), the document shall be delivered to the address given in the claim form or response (which shall be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question.

(**24**) Section 5(2) was amended by the Equality Act 2010 (c. 15), Schedule 26, Part I, paragraphs 27 and 28.

(3) If a party has given both a postal address and one or more electronic addresses, any of them may be used unless the party has indicated in writing that a particular address should or should not be used.

Delivery to non-parties

87. Subject to the special cases which are the subject of rule 88, documents shall be sent to non-parties at any address for service which they may have notified and otherwise at any known address or place of business in the United Kingdom or, if the party is a corporate body, at its registered or principal office in the United Kingdom or, if permitted by the President, at an address outside the United Kingdom.

Special cases

88. Addresses for serving the Secretary of State, the Law Officers, and the Counsel General to the Welsh Assembly Government, in cases where they are not parties, shall be issued by practice direction.

Substituted service

89. Where no address for service in accordance with the above rules is known or it appears that service at any such address is unlikely to come to the attention of the addressee, the President, Vice President or a Regional Employment Judge may order that there shall be substituted service in such manner as appears appropriate.

Date of delivery

90. Where a document has been delivered in accordance with rule 85 or 86, it shall, unless the contrary is proved, be taken to have been received by the addressee—

(a) if sent by post, on the day on which it would be delivered in the ordinary course of post;

(b) if sent by means of electronic communication, on the day of transmission;

(c) if delivered directly or personally, on the day of delivery.

Irregular service

91. A Tribunal may treat any document as delivered to a person, notwithstanding any non-compliance with rules 86 to 88, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.

Correspondence with the Tribunal: copying to other parties

92. Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.

MISCELLANEOUS

ACAS

93.—(1) Where proceedings concern an enactment which provides for conciliation, the Tribunal shall—

(a) send a copy of the claim form and the response to an ACAS conciliation officer; and

(b) inform the parties that the services of an ACAS conciliation officer are available to them.

(2) Subject to rules 50 and 94, a representative of ACAS may attend any preliminary hearing.

National security proceedings

94.—(1) Where in relation to particular Crown employment proceedings a Minister considers that it would be expedient in the interests of national security, the Minister may direct a Tribunal to—

(a) conduct all or part of the proceedings in private;

(b) exclude a person from all or part of the proceedings;

(c) take steps to conceal the identity of a witness in the proceedings.

(2) Where the Tribunal considers it expedient in the interests of national security, it may order—

(a) in relation to particular proceedings (including Crown employment proceedings), anything which can be required to be done under paragraph (1);

(b) a person not to disclose any document (or the contents of any document), where provided for the purposes of the proceedings, to any other person (save for any specified person).

Any order made must be kept under review by the Tribunal.

(3) Where the Tribunal considers that it may be necessary to make an order under paragraph (2) in relation to particular proceedings (including Crown employment proceedings), the Tribunal may consider any material provided by a party (or where a Minister is not a party, by a Minister) without providing that material to any other person. Such material shall be used by the Tribunal solely for the purposes of deciding whether to make that order (unless that material is subsequently used as evidence in the proceedings by a party).

(4) Where a Minister considers that it would be appropriate for the Tribunal to make an order under paragraph (2), the Minister may make an application for such an order.

(5) Where a Minister has made an application under paragraph (4), the Tribunal may order—

(a) in relation to the part of the proceedings preceding the outcome of the application, anything which can be required to be done under paragraph (1);

(b) a person not to disclose any document (or the contents of any document) to any other person (save for any specified person), where provided for the purposes of the proceedings preceding the outcome of the application.

(6) Where a Minister has made an application under paragraph (4) for an order to exclude any person from all or part of the proceedings, the Tribunal shall not send a copy of the response to that person, pending the decision on the application.

(7) If before the expiry of the time limit in rule 16 a Minister makes a direction under paragraph (1) or makes an application under paragraph (4), the Minister may apply for an extension of the time limit in rule 16.

(8) A direction under paragraph (1) or an application under paragraph (4) may be made irrespective of whether or not the Minister is a party.

(9) Where the Tribunal decides not to make an order under paragraph (2), rule 6 of Schedule 2 shall apply to the reasons given by the Tribunal under rule 62 for that decision, save that the reasons will not be entered on the Register.

(10) The Tribunal must ensure that in exercising its functions, information is not disclosed contrary to the interests of national security.

Interim relief proceedings

95. When a Tribunal hears an application for interim relief (or for its variation or revocation) under section 161 or section 165 of the Trade Union and Labour Relations (Consolidation) Act 1992(**25**) or under section 128 or section 131 of the Employment Rights Act 1996(**26**), rules 53 to 56 apply to the hearing and the Tribunal shall not hear oral evidence unless it directs otherwise.

Proceedings involving the National Insurance Fund

96. The Secretary of State shall be entitled to appear and be heard at any hearing in relation to proceedings which may involve a payment out of the National Insurance Fund and shall be treated as a party for the purposes of these Rules.

Collective agreements

97. Where a claim includes a complaint under section 146(1) of the Equality Act relating to a term of a collective agreement, the following persons, whether or not identified in the claim, shall be regarded as the persons against whom a remedy is claimed and shall be treated as respondents for the purposes of these Rules—

(a) the claimant's employer (or prospective employer); and

(b) every organisation of employers and organisation of workers, and every association of or representative of such organisations, which, if the terms were to be varied voluntarily, would be likely, in the opinion of an Employment Judge, to negotiate the variation.

An organisation or association shall not be treated as a respondent if the Judge, having made such enquiries of the claimant and such other enquiries as the Judge thinks fit, is of the opinion that it is not reasonably practicable to identify the organisation or association.

Devolution issues

98.—(1) Where a devolution issue arises, the Tribunal shall as soon as practicable send notice of that fact and a copy of the claim form and response to the Advocate General for Scotland and the Lord Advocate, where it is a Scottish devolution issue, or to the Attorney General and the Counsel General to the Welsh Assembly Government, where it is a Welsh devolution issue, unless they are a party to the proceedings.

(2) A person to whom notice is sent may be treated as a party to the proceedings, so far as the proceedings relate to the devolution issue, if that person sends notice to the Tribunal within 14 days of receiving a notice under paragraph (1).

(3) Any notices sent under paragraph (1) or (2) must at the same time be sent to the parties.

(4) "Devolution issue" has the meaning given to it in paragraph 1 of Schedule 6 to the Scotland Act 1998(**27**) (for the purposes of a Scottish devolution issue), and in paragraph 1 of Schedule 9 to the Government of Wales Act 2006(**28**) (for the purposes of a Welsh devolution issue).

Transfer of proceedings between Scotland and England & Wales

99.—(1) The President (England and Wales) or a Regional Employment Judge may at any time, on their own initiative or on the application of a party, with the consent of the President (Scotland),

(**25**) 1992 c. 52. Section 161 was amended by the Employment Relations Act 2004 (c. 24), Schedule 1, paragraph 12. Section 165 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).
(**26**) 1996 c. 17. Section 128 was amended by S.I. 2010/493. Section 131 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).
(**27**) 1998 c. 46.
(**28**) 2006 c. 32.

transfer to a tribunal office in Scotland any proceedings started in England and Wales which could (in accordance with rule 8(3)) have been started in Scotland and which in that person's opinion would more conveniently be determined there.

(2) The President (Scotland) or the Vice President may at any time, on their own initiative or on the application of a party, with the consent of the President (England and Wales), transfer to a tribunal office in England and Wales any proceedings started in Scotland which could (in accordance with rule 8(2)) have been started in England and Wales and in that person's opinion would more conveniently be determined there.

References to the Court of Justice of the European Union

100. Where a Tribunal decides to refer a question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union(**29**), a copy of that decision shall be sent to the registrar of that court.

Transfer of proceedings from a court

101. Where proceedings are referred to a Tribunal by a court, these Rules apply as if the proceedings had been presented by the claimant.

Vexatious litigants

102. The Tribunal may provide any information or documents requested by the Attorney General, the Solicitor General or the Lord Advocate for the purpose of preparing an application or considering whether to make an application under section 42 of the Senior Courts Act 1981(**30**), section 1 of the Vexatious Actions (Scotland) Act 1898(**31**) or section 33 of the Employment Tribunals Act.

Information to the Commission for Equality and Human Rights

103. The Tribunal shall send to the Commission for Equality and Human Rights copies of all judgments and written reasons relating to complaints under section 120, 127 or 146 of the Equality Act. That obligation shall not apply in any proceedings where a Minister of the Crown has given a direction, or a Tribunal has made an order, under rule 94; and either the Security Service, the Secret Intelligence Service or the Government Communications Headquarters is a party to the proceedings.

Application of this Schedule to levy appeals

104. For the purposes of a levy appeal, references in this Schedule to a claim or claimant shall be read as references to a levy appeal or to an appellant in a levy appeal respectively.

Application of this Schedule to appeals against improvement and prohibition notices

105.—(1) A person ("the appellant") may appeal an improvement notice or a prohibition notice by presenting a claim to a tribunal office—

(a) before the end of the period of 21 days beginning with the date of the service on the appellant of the notice which is the subject of the appeal; or

(b) within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for an appeal to be presented within that time.

(**29**) OJC 83, 30.03.10 p.47.
(**30**) 1981 c. 54.
(**31**) 1898 c. 35.

(2) For the purposes of an appeal against an improvement notice or a prohibition notice, this Schedule shall be treated as modified in the following ways—

(a) references to a claim or claimant shall be read as references to an appeal or to an appellant in an appeal respectively;

(b) references to a respondent shall be read as references to the inspector appointed under section 19(1) of the Health and Safety Act who issued the notice which is the subject of the appeal.

Application of this Schedule to appeals against unlawful act notices

106. For the purposes of an appeal against an unlawful act notice, this Schedule shall be treated as modified in the following ways—

(a) references in this Schedule to a claim or claimant shall be read as references to a notice of appeal or to an appellant in an appeal against an unlawful act notice respectively;

(b) references to a respondent shall be read as references to the Commission for Equality and Human Rights.