Employment Appeal Tribunal

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Practice Direction (Employment Appeal Tribunal - Procedure) 2018

Contents

1 Introduction and Objective

1.1 This Practice Direction ("PD") supersedes all previous Practice Directions. It comes into force on Wednesday 19 December 2018.

1.2 The following statutory provisions apply to the way appeals are handled at the Employment Appeal Tribunal ("the EAT"), whenever those appeals were begun:

a) Employment Tribunals Act 1996 (as amended) ("ETA 1996");

b) Employment Appeal Tribunal Rules 1993 (SI 1993/2854) (as amended) ("the Rules").

1.3 Where the Rules do not otherwise provide, the following procedure will apply to all appeals to the EAT.

1.4 By s30(3) of the ETA 1996 the Employment Appeal Tribunal ("the EAT") has power, subject to the Rules, to regulate its own procedure. In so doing, the EAT regards itself as subject in all its actions to the duties imposed by Rule 2A. It will seek to apply the overriding objective when it exercises any power given to it by the Rules or interprets any Rule.

1.5 The overriding objective of this PD is to enable the EAT to deal with cases justly. Dealing with a case justly includes, so far as is practicable:

1.5.1 ensuring that the parties are on an equal footing;

1.5.2 dealing with the case in ways which are proportionate to the importance and complexity of the issues;

1.5.3 ensuring that it is dealt with expeditiously and fairly;

1.5.4 saving expense.

1.6 Dealing with a case justly also includes safeguarding the resources of the EAT so that each case gets its fair share of available time, but no more.

1.7 The parties are required to help the EAT to further the overriding objective.

1.8 Where it is appropriate to the EAT's jurisdiction, procedure, unrestricted rights of representation and restricted costs regime, the EAT is guided by the Civil Procedure Rules. So, for example:

1.8.1 for the purpose of serving a valid Notice of Appeal under Rule 3 and paragraph 3 below, when an Employment Tribunal decision is sent to parties on, for example, a Wednesday, that day does not count when calculating time limits, and the Notice of Appeal must arrive at the EAT before, or by 4pm on, the Wednesday 6 weeks (i.e. 42 days) later.

1.8.2 When a date is given for serving of a document or for doing some other act, the complete document must be received by the EAT or the relevant party by 4pm on that date. Any document received after 4pm will be deemed to be lodged on the next working day.

1.8.3 Except as provided in 1.8.4 below, all days count, but if a time limit expires on a day when the central office of the EAT, or the EAT office in Edinburgh (as appropriate), is closed, it is extended to the next working day.

1.8.4 Where the time limit is 5 days (e.g. an appeal against a Registrar's order or direction), Saturdays, Sundays, Christmas Day, Good Friday and Bank Holidays do not count. For example an appeal against an order made on a Wednesday must arrive at the EAT on or before the following Wednesday.

1.9 The provisions of this PD are subject to any specific directions which the EAT makes in any particular case. Otherwise, the directions set out below must be complied with in all appeals from Employment Tribunals. In national security appeals, and appeals from the Certification Officer and the Central Arbitration Committee, the Rules set out the separate procedures to be followed and the EAT will normally give specific directions.

1.10 In this PD any reference to the date of an order shall mean the date stamped upon the relevant order by the EAT ("the seal date").

1.11 The parties can expect the EAT normally to have read the documents (or the documents indicated in any essential reading list if permission is granted under paragraph 7.4 below for an enlarged appeal bundle) in advance of any hearing.

2 Basis of Appeal

2.1 Since the ETA 1996 provides that appeal lies only on a "question of law", the parties must expect any decision of fact made by an Employment Tribunal, Certification Officer or Central Arbitration Committee to be decisive.

2.2 It is not an error of law for a Tribunal, judge, CO or CAC to reach a decision which one party to the case thinks should have been differently made. The appeal is not a rehearing of the case. The Employment Tribunal must be shown to have made an error of law.

2.3 If a party is in any doubt about whether a point is one of law or not, legal advice should be sought where it is at all possible to do so. The EAT cannot and does not give legal advice to any party.

3 Institution of Appeal: What should be in a Notice of Appeal

3.1 A Notice of Appeal and accompanying documents may be delivered to the EAT by any method, such as email, fax, post, courier, or hand-delivery. The Notice of Appeal must be, or be substantially, in accordance with Form 1 (in the amended form annexed to this Practice Direction) or Forms 1A or 2 of the Schedule to the Rules. It must identify the date of the judgment, decision or order being appealed. Copies of the judgment, decision or order appealed against must be attached by the Appellant. In addition the Appellant must provide copies of the Employment Tribunal's written reasons, together with a copy of the claim (the form ET1 and any attached grounds) and the response (the form ET3 and any attached grounds), or if not, a written explanation for the omission of the reasons, ET1 and ET3 must be given. It must include a postal address at or through which the Appellant can be contacted, and may also include an email address if the Appellant wishes the EAT to communicate by email. A Notice of Appeal without such documentation will not be validly presented.

3.2 If the Appellant has made an application to the Employment Tribunal for a reconsideration of its judgment or decision, a copy of that application should accompany the Notice of Appeal together with the judgment and written reasons of the Employment Tribunal in respect of that reconsideration application, or a statement, if such be the case, that a judgment is awaited.

3.3 If any of these documents cannot be included, a written explanation must be given. The Appellant should also attach (where they are relevant to the appeal) copies of any orders (including case management orders) made by the Employment Tribunal, CO or CAC.

3.4 Where written reasons of the Employment Tribunal are not attached to the Notice of Appeal, either (as set out in the written explanation) because a request for written reasons has been refused by the Employment Tribunal or for some other reason, an Appellant must, when presenting the Notice of Appeal, apply in writing to the EAT to exercise its discretion to hear the appeal without written reasons or to exercise its power to request written reasons from the Employment Tribunal, setting out the full grounds of that application.

3.5 The Notice of Appeal must clearly identify the point(s) of law which form(s) the ground(s) of appeal from the judgment, decision or order of the Employment Tribunal to the EAT. It should also state the order which the Appellant will ask the EAT to make at the hearing.

3.6 Notices of appeal should set out the grounds relied on in numbered paragraphs, in line with the forms set out in the Rules 1993, Rule 3 and Schedule.

3.7 A point of law should be easy to identify in a few words. Whatever the paragraph numbering of the surrounding text is, the grounds of appeal themselves:

3.7.1 should begin with the heading “Numbered Grounds” and be numbered consecutively, starting at (1);

3.7.2 each be headed by a brief description – underlined or in bold or both – of the points of law relied on (e.g. “Misinterpreted Section XX of the Equality Act 2010”; “Reached a decision on a point which had not been argued”; etc) followed only by what is needed to enable a Judge of the EAT to understand the point and identify what the error of law(s) is/are said to be;

3.7.3 should (except in the case of appeals alleging either perversity or bias) usually occupy in total no more than 2 sides of A4 paper – a well-directed notice of appeal is usually more persuasive than a long one, and in general, the more points raised the more it suggests that none is a good one;

3.7.4 in the case of appeals alleging either perversity or bias, or both, should comply with paragraph 3.10 (perversity) or paragraph 12 (bias) of this Practice Direction;

3.7.5 should not include any quotation from either the Tribunal judgment under appeal (which can and will be read by the EAT) or any authority (though if it is important and relevant to refer to an authority, the reference should allow it to be identified, and the relevant page and paragraph number should be stated);

3.7.6 should not contain any footnote, nor incorporate any other document.

3.8 If introductory or further explanatory text is necessary in addition to the grounds themselves, it should in most appeals be short, and should avoid making a complaint about the judgment of the Tribunal which is not made as one of the numbered grounds. Notices of Appeal are not meant to be skeleton arguments and should not set out detailed argument unless this is essential for understanding.

3.9 If it appears to the Judge or Registrar that a Notice of Appeal gives insufficient grounds of, or lacks clarity in identifying, a point of law, or fails to comply with these Directions, the Judge or Registrar may send it back to be resubmitted, or a preliminary hearing may be directed for the Appellant alone to attend, to persuade the EAT there is reasonable ground for the appeal. Any expense, inconvenience and delay caused by this is the Appellant’s sole responsibility. In some cases, the failure may be regarded as unreasonable conduct of litigation and expose the Appellant to a risk of costs.

3.10 Perversity Appeals: an Appellant may not state as a ground of appeal simply words to the effect that “the judgment or order was contrary to the evidence”, or that “there was no evidence to support the judgment or order”, or that “the judgment or order was one which no reasonable Tribunal could have reached and was perverse” unless the Notice of Appeal also sets out full particulars of the matters relied on in support of those general grounds.

3.11 Where it appears that the Notice of Appeal or any part of it (a) discloses no reasonable grounds for bringing the appeal, or (b) is an abuse of the Employment Appeal Tribunal's process or is otherwise likely to obstruct the just disposal of proceedings, Rules 3(7)-(10) give a judge or the Registrar power to decide that no further action shall be taken on the appeal. The Rules specify the rights of the Appellant and the procedure to be followed. The Appellant can request an oral hearing before a judge to reconsider the decision, unless the judge or Registrar has made an order under Rule3(7ZA), in which case the decision may be appealed to the Court of Appeal (Court of Session in Scotland).

3.12 A party cannot "reserve a right" to amend, alter or add, to a Notice of Appeal or a Respondent's Answer. No party has the right to amend any Notice of Appeal or Answer without the prior permission of the EAT. Any application for permission to amend must be made as soon as practicable and must be accompanied by a draft of the amended Notice of Appeal or amended Answer which makes clear the precise amendments for which permission is sought.

3.13 Where an application is made for permission to institute or continue relevant proceedings by a person who has been made the subject of a Restriction of Proceedings Order pursuant to s33 of ETA 1996, that application will be considered on paper by a judge, who may make an order granting, refusing or otherwise dealing with such application on paper.

4 Time for Instituting Appeals

4.1 The time within which an appeal must be instituted depends on whether the appeal is against a judgment or against an order, direction or decision of the Employment Tribunal. In either case, time limits are strictly applied.

4.2 If the appeal is against an order, direction or decision, the appeal must be instituted within 42 days of the date of the order, direction or decision. The EAT will treat a Tribunal's refusal to make an order or decision as itself constituting an order, direction or decision. The date of an order, direction or decision is the date when the order, direction or decision was sent to the parties, which is normally recorded on or in the order, direction or decision.

4.3 If the appeal is against a Judgment, the appeal must be instituted within 42 days from the date on which the written record of the Judgment was sent to the parties. However in four situations the time for appealing against a Judgment will be 42 days from the date when written reasons for the Judgment were sent to the parties. This will be the case if (and only if) (i) written reasons were requested orally at the hearing before the Tribunal or (ii) written reasons were requested in writing within 14 days of the date on which the written record of the judgment was sent to the parties or (iii) the Tribunal itself reserved its reasons and gave them subsequently in writing or (iv) where a request to the Tribunal for written reasons is made out of time (and granted). The date of the written record of the Judgment and of the

written reasons for the Judgment is the date when they are sent to the parties, which is normally recorded on or in the written record and the written reasons.

4.4 The time limit referred to in paragraphs 4.1 to 4.3 above applies even though the question of remedy and assessment of compensation by the Employment Tribunal has been adjourned or has not been dealt with and even though an application has been made to the Employment Tribunal for a reconsideration.

4.5 An application for an extension of time for appealing cannot be considered until a Notice of Appeal in accordance with paragraph 3 above has been presented to the EAT.

4.6 Any application for an extension of time for appealing must be made as an interim application to the Registrar, who will normally determine the application after inviting and considering written representations from each side. An interim appeal lies from the Registrar's decision to a judge. Such an appeal must be notified to the EAT within 5 working days of the date when the Registrar's decision was sent to the parties: this means that where, for example, the Registrar's decision is sent to the parties on a Wednesday, any appeal against it must be received no later than 4pm on the following Wednesday [See paragraph 1.8.2 above].

4.7 In determining whether to extend the time for appealing, particular attention will be paid to whether any good excuse for the delay has been shown and to the guidance contained in the decisions of the EAT and the Court of Appeal, as summarised in cases such as ***United Arab Emirates v Abdelghafar*** [1995] ICR 65, ***Aziz v Bethnal Green City Challenge Co Ltd*** [2000] IRLR 111, ***Jurkowska v HLMAD Ltd*** [2008] ICR 841 and ***Muschett v London Borough of Hounslow*** [2009] ICR 424. These, and other, case reports may be accessed without charge at www.bailii.org.

4.8 It is not usually a good reason for late presentation of a Notice of Appeal that (a) an application for litigation support from public funds has been made, but not yet determined; or that support is being sought from, but has not yet been provided by, some other body, such as a trade union, employers' association or the Equality and Human Rights Commission; (b) the Appellant was waiting for the result of an application for reconsideration; (c) negotiations between the parties were occurring.

4.9 In any case of doubt or difficulty, a Notice of Appeal should be presented in time and an application made to the Registrar for directions.

5 Interim Applications

5.1 Interim applications should be made in writing (no particular form is required) and will initially be referred to the Registrar who (after considering the parties' submissions) may deal with the case or refer it to a judge. The judge may deal with it without a hearing (known as "on the papers") if he or she considers an oral hearing is not necessary, or refer it to a full EAT hearing. Parties are

encouraged to make any such applications at a Preliminary Hearing ("PH") if one is ordered.

5.2 Unless otherwise ordered, any application for an extension of time will be considered and determined as though it were an interim application to the Registrar, who will normally determine the application after inviting and considering written representations from each side.

5.3 An interim appeal lies from the Registrar's decision to a judge. Such an appeal must be notified to the EAT within five days of the date when the Registrar's decision was sent to the parties.

6 The Right to Inspect Certain Documents and to Take Copies

6.1 Any document presented to the Central Office of the EAT in London or in the EAT office in Edinburgh in any proceedings before the EAT shall be stamped with the seal of the EAT showing the date (and time, if received after 4pm) on which the document was presented.

6.2 Particulars of the date of delivery at the London or Edinburgh EAT office of any document for filing or presentation together with the time, if received after 4pm, the date of the document and the title of the appeal of which the document forms part of the record shall be entered in the list of registered cases kept in London and in Edinburgh or in the file which forms part of the list of registered cases.

6.3 Any person shall be entitled to inspect by requesting a copy of any of the following documents filed or presented to the London or Edinburgh EAT office, namely:

6.3.1 any Notice of Appeal or Respondent's Answer or any copy thereof;

6.3.2 any judgment or order given or made in court or any copy of such judgment or order.

6.4 Any other document may be inspected only with the permission of the EAT, which may be granted for proper reason on an application, following consultation with any other affected party, and subject to conditions as appropriate.

6.5 A copying charge per page will be payable for those documents mentioned in paragraphs 6.3 and 6.4 above.

6.6 Nothing in this Direction shall be taken as preventing any party to an appeal from inspecting and requesting a copy of any document filed or presented to the EAT office in London or Edinburgh before the commencement of the appeal, but made with a view to its commencement.

7 Papers for use at the Hearing

7.1 The Appellant is responsible for preparing and lodging bundles of papers for use at any hearing, however a represented Respondent may be willing to take this responsibility from an unrepresented Appellant. Paragraphs 7.3 below lists the documents required for the core bundle, but all parties should agree what additional documents are to be included. Failure by the Appellant to comply with orders or directions to lodge bundles in time may result in an appeal being adjourned with costs sanctions, or struck out for non-compliance.

7.2 The bundle must include only those exhibits (productions in Scotland) and documents used before the Employment Tribunal which are considered to be necessary for the appeal. It is the duty of the parties or their advisers to ensure that only those documents are included which are (a) relevant to the point(s) of law raised in the appeal and (b) likely to be referred to at the hearing. It is also the responsibility of parties to retain copies of all documents and correspondence, including hearing bundles, sent to EAT. Bundles (see paragraph 7.4 below) used at one EAT hearing will not be retained by the EAT for a subsequent hearing.

7.3 The documents that are required to be included in the core bundle should be numbered by item, then paginated continuously and indexed, in the following order:

7.3.1 Judgment, decision or order appealed from and written reasons

7.3.2 Sealed Notice of Appeal

7.3.3 Respondent's Answer if a Full Hearing ("FH"), Respondent's Submissions if any for a PH

7.3.4 ET1 claim (and any Additional Information or Written Answers)

7.3.5 ET3 response (and any Additional Information or Written Answers)

7.3.6 Questionnaire and Replies, if any (discrimination and equal pay cases)

7.3.7 Relevant orders, judgments and written reasons of the Employment Tribunal

7.3.8 Relevant orders and judgments of the EAT

7.3.9 Affidavits and Employment Tribunal comments (where ordered)

7.3.10 Any documents agreed or ordered (subject to paragraph 7.4 below).

7.4 Other documents necessary for and relevant to the appeal, which were referred to at the Employment Tribunal may follow in the core or a supplementary bundle, if the total pages additional to the documents set out in paragraphs 7.3 - 7.3.9 do not exceed 50. No bundle containing more than 50 such additional pages should be agreed or lodged without the permission of

the Registrar or order of a judge which will not be granted without the provision of an essential reading list as soon as practicable thereafter. If permitted or ordered, further pages should follow, with consecutive pagination, in an additional bundle or bundles if appropriate.

7.5 All documents must be legible and unmarked.

7.6 **For PH cases (see paragraph 10.9 below), Appeals from Registrar's Order, Rule 3(10) hearings, Rule 6(16) hearings, or Appointments for Directions:** the Appellant (or party whose cross-appeal or application it is) must prepare and present two copies (four copies if the judge has directed a sitting with lay members) of the bundle as soon as possible after service of the Notice of Appeal and no later than 28 days prior to the date fixed for the hearing, unless otherwise directed.

7.7 **For FH cases (see paragraph 10.21 below):** the parties must co-operate in agreeing a bundle of papers for the hearing. By no later than 28 days prior to the date fixed for the hearing, unless otherwise directed, the Appellant is responsible for ensuring that two copies (four copies if the judge has directed a sitting with lay members) of a bundle agreed by the parties is presented to the EAT.

7.8 **For Fast Track FH cases:** the bundles should be presented as soon as possible and (unless the hearing date is within seven days) in any event within seven days after the parties have been notified that the case is expedited.

7.9 In the event of disagreement between the parties or difficulty in preparing the bundles, the Registrar may give appropriate directions, whether on application in writing (on notice) by one or more of the parties or his/her own initiative.

7.10 In general the EAT will not accept documents or communications on the basis that they are to be confidential to the EAT and are not to be disclosed to another party. All documents presented by one party are presumed to be disclosable to the other(s), and the parties must expect that to be the case in the absence of a direction or order made by a judge on application by a party to the contrary effect.

8 Evidence before the Employment Tribunal

8.1 An Appellant who considers that a point of law raised in the Notice of Appeal cannot be argued without reference to evidence given (or not given) at the Employment Tribunal, the nature or substance of which does not, or does not sufficiently, appear from the written reasons, must ordinarily submit an application with the Notice of Appeal. The application is for the nature of such evidence (or lack of it) to be admitted, or if necessary for the relevant parts of the employment judge's notes of evidence to be produced. If such application is not so made, then it should be made:

8.1.1 if a PH is ordered, in the skeleton argument or written submissions presented prior to such PH; or

8.1.2 if the case is listed for FH without a PH, then within 14 days of the seal date of the order so providing.

Any such application by a Respondent to an appeal, must, if not made earlier, accompany the Respondent's Answer.

8.2 The application must explain why such a matter is considered necessary in order to argue the point of law raised in the Notice of Appeal or Respondent's Answer. The application must identify:

8.2.1 the issue(s) in the Notice of Appeal or Respondent's Answer to which the material is relevant;

8.2.2 the names of the witnesses whose evidence is considered relevant, alternatively the nature of the evidence the absence of which is considered relevant;

8.2.3 (if applicable) the part of the hearing when the evidence was given;

8.2.4 the gist of the evidence (or absence of evidence) alleged to be relevant; and

8.2.5 (if the party has a record of the evidence), saying so and by whom and when it was made, or producing an extract from a witness statement given in writing at the hearing.

8.3 The application will be considered on the papers, or if appropriate at a PH, by the Registrar or a judge. The Registrar or a judge may give directions for written representations (if they have not already been lodged), or may determine the application, but will ordinarily make an order requiring the party who seeks to raise such a matter to give notice to the other party (or parties) to the appeal/cross-appeal. The notice will require the other party (or parties) to co-operate in agreeing, within 21 days (unless a shorter period is ordered), a statement or note of the relevant evidence, alternatively a statement that there was no such evidence. All parties are required to use their best endeavours to agree such a statement or note.

8.4 In the absence of such agreement within 21 days (or such shorter period as may be ordered) of the requirement, any party may make an application within seven days thereafter to the EAT, for directions. The party must enclose all relevant correspondence and give notice to the other parties. The directions may include: the resolution of the disagreement on the papers or at a hearing; the administration by one party to the others of, or a request to the employment judge to provide, information; or, if the EAT is satisfied that such notes are necessary, a request that the employment judge produce his/her notes of evidence either in whole or in part.

8.5 If the EAT requests any documents from the employment judge, it will supply copies to the parties upon receipt.

8.6 A note of evidence is not to be produced or supplied to the parties to enable the parties to embark on a "fishing expedition" to establish grounds or additional grounds of appeal or because they have not kept their own notes of the evidence. If an application for such a note is found by the EAT to have been unreasonably made or if there is unreasonable lack of co-operation in agreeing a relevant note or statement, the party behaving unreasonably is at risk of being ordered to pay costs.

9 Fresh Evidence and New Points of Law

9.1 Usually the EAT will not consider evidence which was not placed before the Employment Tribunal unless and until an application has first been made to the Employment Tribunal against whose judgment the appeal is brought for that Tribunal to reconsider its judgment. Where such an application has been made, it is likely that unless a judge of the EAT dismisses the appeal as having no reasonable prospect of success the judge will stay (or sist) any further action on that appeal until the result of the reconsideration is known. The Employment Tribunal as the fact-finding body, which has heard relevant witnesses, is the appropriate forum to consider "fresh evidence" and in particular the extent to which (if at all) it would or might have made a difference to its conclusions. When deciding if an Employment Tribunal erred in law when deciding on an application to reconsider an earlier decision, the EAT will have regard to any evidence placed before the Employment Tribunal in relation to the application to reconsider.

9.2 Subject to paragraph 9.1, where an application is made by a party to an appeal to put in, at the hearing of the appeal, any document which was not before the Employment Tribunal, and which has not been agreed in writing by the other parties, the application and a copy of the document(s) sought to be admitted should be presented to the EAT with the Notice of Appeal or the Respondent's Answer, as appropriate. The application and copy should be served on the other parties. The same principle applies to any oral evidence not given at the Employment Tribunal which is sought to be adduced on the appeal. The application to consider Fresh Evidence must explain what that evidence is, and how it came to light. Generally, a witness statement detailing this should be filed with the EAT and served on the other parties when the application is made.

9.3 In exercising its discretion to admit any fresh evidence, the EAT will only admit the evidence (in accordance with the principles set out in ***Ladd v Marshall*** [1954] 1WLR 1489 and having regard to the overriding objective), if all of the following apply:

9.3.1 the evidence could not have been obtained with reasonable diligence for use at the Employment Tribunal hearing; and

9.3.2 it is relevant and would probably have had an important influence on the hearing; and

9.3.3 it is apparently credible.

Accordingly the evidence and representations in support of the application must address these principles.

9.4 A party wishing to resist the application must, within 14 days of its being sent, submit any representations in response to the EAT and other parties.

9.5 The application will be considered by the Registrar or a judge on the papers (or, if appropriate, at a PH) who may stay (or sist) the appeal in accordance with paragraph 9.1, determine the issue or give directions for a hearing or may seek comments from the employment judge. A copy of any comments received from the employment judge will be sent to all parties.

9.6 If a Respondent intends to contend at the FH that the Appellant has raised a point which was not argued below, the Respondent shall say so:

9.6.1 if a PH has been ordered, in writing to the EAT and all parties, within 14 days of receiving the Notice of Appeal;

9.6.2 if the case is listed for a FH without a PH, in a Respondent's Answer.

In the event of dispute the employment judge should be asked for his/her comments as to whether a particular legal argument was deployed.

10 The Sift of Appeals: Case Tracks and Directions

10.1 Once a Notice of Appeal has been received, properly instituted within time (and compliant with these Directions), it will be sifted by a judge or the Registrar who will consider the Notice of Appeal to determine:

(a) whether it discloses any reasonable ground for bringing an appeal; (see further paragraph 10.5 below);

(b) if so, whether the whole or only part of the grounds of appeal should be argued before a Full Hearing;

(c) if not, whether the appeal is wholly without merit (in which case there is no right for the Appellant to an oral hearing before a judge at the EAT, though this does not remove any right to appeal to the Court of Appeal);

10.1.1 The EAT will deal with applications in order, and parties must not expect their appeal to take precedence over any other unless there are truly exceptional circumstances.

10.1.2 The EAT may, where necessary, seek additional information from either party.

10.2 If the Notice of Appeal does or might disclose a reasonable ground or grounds, the judge considering it on the sift will determine the most effective case management of the appeal. This will be to allocate the relevant ground(s) of appeal for further consideration on paper having directed the Respondent to lodge a written response to the proposed appeal; or at a Preliminary Hearing (PH): or for determination at a Full Hearing (FH), and in any case to give appropriate directions.

10.3 The judge or Registrar may also stay (or sist in Scotland) the appeal for a period, normally 21 days, pending the making or the conclusion of an application by the Appellant to the Employment Tribunal for a reconsideration (if necessary out of time) or pending the response by the Employment Tribunal to an invitation from the judge or Registrar to clarify, supplement or give its written reasons.

10.4 Paragraphs 10.1 to 10.3 apply equally to a Respondent's cross-appeal which will be sifted and case managed in the same way as a Notice of Appeal.

10.5 An appeal or cross-appeal will not be treated as showing any reasonable ground for bringing the appeal if it is an abuse of the process or otherwise likely to obstruct the just disposal of the matters in issue between the parties.

10.6 Reasons will be sent and within 28 days the Appellant (or Respondent in the case of a cross-appeal) may request an oral hearing (known as a "Rule 3(10) hearing" or "Rule 6(16) hearing") before a judge unless the judge determining the sift has ruled that the appeal is wholly without merit.

10.7 At a Rule 3(10) or 6(16) hearing the judge may confirm the earlier decision or order that the appeal proceeds in whole or in part to a PH or FH, giving appropriate directions. These directions may permit an amendment to be made to the grounds of appeal. Such a proposed amendment should be made available in writing at the hearing wherever practicable, and will not take effect unless the judge has approved it. The Amended Grounds of Appeal are to be drafted as explained in paragraph 13.6 below.

10.8 A hearing under Rule 3(10) or 6(16), including judgment and any directions, will normally last not more than one hour including time for oral judgment to be given.

Preliminary Hearings (PHs)

10.9 The purpose of a PH is to determine whether any of the grounds in the Notice of Appeal or cross-appeal raise a point of law which gives:

10.9.1 reasonable grounds to appeal i.e. a reasonable prospect of success at a FH; or

10.9.2 that for some other compelling reason the appeal should be heard e.g. that the Appellant seeks a declaration of incompatibility under the

Human Rights Act 1998; or to argue that a decision binding on the EAT should be considered by a higher court.

10.10 Prior to the PH there will be automatic directions. These include sending the Notice of Appeal to the Respondent(s) to the appeal and/or cross-appeal to the Appellant. The direction may order but in any event will enable the opposing party to present and serve, within 14 days of the seal date of the order (unless otherwise directed), concise written submissions in response to the appeal, dedicated to showing that there is no reasonable prospect of success for all or any grounds of any appeal. Those submissions will be considered at the PH.

10.11 If the Respondent to the appeal intends to serve a cross-appeal this must be accompanied by written Notice to that effect which must be presented and served within 28 days of service of the Notice of Appeal. The Respondent to the appeal must make clear whether it is intended to advance the cross-appeal:

10.11.1 in any event (an unconditional cross-appeal); or

10.11.2 only if the Appellant succeeds (a conditional cross-appeal).

Any cross-appeal will be sifted and case managed in accordance with paragraphs 10.1 to 10.3 above.

10.12 All parties will be notified of the date fixed for the PH. In the normal case, unless ordered otherwise, only the Appellant and/or a representative should attend to make submissions to the EAT on the issue whether the Notice of Appeal raises any reasonable ground for bringing an appeal. A Respondent pursuing a cross-appeal to be considered at a PH should attend to make similar submissions. The opposing party will not normally be permitted to take part save where the judge considers it desirable that either should do so. Any written submissions as referred to in paragraph 10.10 above will be considered at the PH.

10.13 If the relevant party does not attend, the appeal or cross-appeal may nevertheless be dealt with as above on written submissions, and be dismissed wholly or in part or allowed to proceed.

10.14 The PH, including judgment and directions, will normally last no more than one hour. Arguments should be carefully planned so that this time is not exceeded; if it is, the Appeal Tribunal may impose a guillotine on further argument, in order to ensure that the case does not take a share of the Appeal Tribunal's resources which is disproportionate to that taken by other appeals yet to be heard.

10.15 The same procedure will be applied to cross-appeals as to appeals. If satisfied that the appeal (and/or the cross-appeal) should be heard at a FH on all or some of the grounds of appeal, the EAT will give directions relating to, for example, a time estimate, any application for fresh evidence, a procedure in

respect of matters of evidence before the Employment Tribunal not sufficiently appearing from the written reasons, the exchange and lodging of skeleton arguments and an Appellant's Chronology, and bundles of documents and authorities.

10.16 Permission to amend a Notice of Appeal (or cross-appeal) may be granted at a PH:

10.16.1 If the proposed amendment is produced at the hearing, then, if such amendment has not previously been notified to the other parties, and the appeal (or cross-appeal) might not have been permitted to proceed but for the amendment, the opposing party (or parties) will have the opportunity to apply on notice to vary or discharge the permission to proceed, and for consequential directions as to the hearing or disposal of the appeal or cross-appeal.

10.16.2 A draft amendment should wherever practicable be made available at the PH or on the same day unless otherwise directed.

10.17 If not satisfied that the appeal, or any particular ground of it, should go forward to a FH, the EAT at the PH will dismiss the appeal, wholly or in part, and give a judgment setting out the reasons for doing so.

10.18 If an appeal is permitted to go forward to an FH on all grounds, a reasoned judgment will not normally be given.

10.19 Parties who become aware that a similar point is raised in other proceedings at an Employment Tribunal or the EAT are encouraged to co-operate in bringing this to the attention of the Registrar so that consideration can be given to the most expedient way of dealing with the cases, in particular to the possibility of having two or more appeals heard together.

10.20 If an appeal is permitted to go forward to an FH, a listing category will be assigned i.e.:

P (recommended to be heard in the President's list);

A (complex, and raising point(s) of law of public importance);

B (any other cases).

The President reserves the discretion to alter any relevant category as circumstances require.

Full Hearings (FHs)

10.21 If a judge or the Registrar decides to list the case for an FH s/he will consider appropriate directions, relating for example to amendment, further information, a procedure in respect of matters of evidence at the Employment Tribunal not sufficiently appearing from the written reasons, allegations of bias, apparent bias or improper conduct, provisions for skeleton arguments, Appellant's

Chronology and bundles of documents and of authorities, time estimates and listing category (as set out in paragraph 10.20 above).

10.22 The EAT aims to hear FH cases in the order in which they are received. However, there are times when it is expedient to hear an appeal as soon as it can be fitted into the list. Appeals thus fast-tracked, at the discretion of a judge or the Registrar, will normally fall into the following cases:

10.22.1 appeals where the parties have made a reasoned case on the merits for an expedited hearing;

10.22.2 appeals against interim orders or decisions of an Employment Tribunal, particularly those which involve the taking of a step in the proceedings within a specified period, for example adjournments, further information, amendments, disclosure, witness orders;

10.22.3 appeals on the outcome of which other applications to the Employment Tribunal or the EAT or the civil courts depend;

10.22.4 appeals in which a reference to the European Court of Justice (ECJ), or a declaration of incompatibility under the Human Rights Act 1998, is sought;

10.22.5 appeals involving reinstatement, re-engagement, or interim relief.

10.23 Category B cases estimated to take two hours or less may also be fast-tracked.

11 Respondent's Answer and Directions

11.1 The EAT will send the Notice of Appeal, with any amendments which have been permitted, and any submissions or skeleton argument lodged by the Appellant, to all parties who are Respondents to the appeal. Within 28 days of the seal date of the order (unless otherwise directed), the Respondent must present to the EAT and serve on the other parties a Respondent's Answer, including any cross-appeal if one is to be pursued. If it contains a cross-appeal the Appellant must present and serve a Reply. In both cases, the opposing party must state how it would wish the EAT to deal with the appeal if the Appellant or cross-appellant succeeds: see paragraph 3.5 above.

11.2 A Respondent's Answer should address the contentions set out in the Grounds of Appeal. A Respondent to an appeal is not obliged to respond in their answer to any additional contentions made in any text which accompanies the Notice of Appeal.

11.3 A Respondent may rely solely, or partly, on the Employment Tribunal's reasons to answer the appeal. They need not repeat those reasons in their Answer, but should shortly state any additional legal reasoning on which they wish to rely.

11.4 A Respondent to the appeal who wishes to resist the appeal and/or to cross-appeal, but who has not delivered a Respondent's Answer as directed by the Registrar, or otherwise ordered, may be barred from taking part in the appeal unless permission is granted to serve an Answer out of time.

11.5 After presentation and service of the Respondent's Answer and of any Reply to a cross-appeal, the Registrar may, where necessary, invite applications from the parties in writing, on notice to all other parties, for directions, and may give any appropriate directions on the papers or may fix a day when the parties should attend on an Appointment for Directions.

11.6 A judge may at any time, upon consideration of the papers or at a hearing, make an order requiring or recommending consideration by the parties or any of them of compromise, conciliation, mediation or, in particular, reference to ACAS.

12 Complaints about the Conduct of the Employment Tribunal Hearing or Bias

12.1 An Appellant who intends to complain about the conduct of the Employment Tribunal (for example bias, apparent bias or improper conduct by the employment judge, any lay members or any material procedural irregularity at the hearing) must include in the Notice of Appeal full particulars of each complaint made.

12.2 An appeal which is wholly or in part based on such a complaint will be sifted by a judge or the Registrar as set out in paragraph 10.1 above. The judge or Registrar may postpone a decision on the sift, and direct that the Appellant or a representative provide an affidavit or statement setting out full particulars of all allegations of bias or misconduct relied upon, and/or may enquire of the party making the complaint whether it is intended to proceed with it and may draw attention to paragraph 12.6 below.

12.3 If a decision is taken at the sift to proceed further with the appeal, the EAT may take the following steps prior to any hearing within a time-limit set out in the relevant order:

12.3.1 require the Appellant or a representative to provide, if not already provided, an affidavit or statement as set out in paragraph 12.2 above;

12.3.2 require any party to give an affidavit or to obtain a witness statement from any person who has represented any of the parties at the Tribunal hearing, and any other person present at the Tribunal hearing or a relevant part of it, giving their account of the events set out in the affidavit of the Appellant or the Appellant's representative. For this purpose, the EAT will provide copies of any affidavits received from or on behalf of the Appellant to any other person from whom an account is sought;

12.3.3 seek comments, upon all affidavits or witness statements received, from the employment judge of the Employment Tribunal from which the appeal is brought and may seek such comments from any lay members of the Tribunal. For this purpose, copies of all relevant documents will be provided by the EAT to the employment judge and, if appropriate, the lay members; such documents will include any affidavits and witness statements received, the Notice of Appeal and other relevant documents;

12.3.4 the EAT will on receipt supply to the parties copies of all affidavits, statements and comments received.

12.4 A Respondent who intends to make such a complaint must include such particulars as set out in paragraphs 12.1 and 12.2 above:

12.4.1 in the Respondent's Answer

12.4.2 or in the cross-appeal referred to in paragraph 10.6 above, or,

12.4.3 where a PH is ordered in the absence of a cross-appeal, in written submissions, as referred to in paragraph 10.10 above.

A similar procedure will then be followed as in paragraph 12.3 above.

12.5 In every case raising bias which is permitted to proceed to a FH the parties must agree (or the EAT may give appropriate directions, ordinarily on the papers after notice to the Appellant and Respondent) as to the procedure to be adopted at, and material to be provided to, the FH; including, the names of witnesses required to attend to give evidence and be cross-examined. If agreement cannot be reached, an application for directions can be made to the Registrar.

12.6 Parties should note the following:

12.6.1 The EAT will not permit complaints of the kind mentioned above to be raised or developed at the hearing of the appeal unless this procedure has been followed.

12.6.2 The EAT recognises that employment judges and Employment Tribunals are themselves obliged to observe the overriding objective and are given wide powers and duties of case management (see Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (SI 2013/1237)), so appeals in respect of conduct of Employment Tribunals which is in exercise of those powers and duties, are the less likely to succeed.

12.6.3 Unsuccessful pursuit of an allegation of bias or improper conduct, particularly in respect of case management decisions, may put the party raising it at risk of an order for costs against them.

13 Case Management

13.1 Consistent with the overriding objective, the EAT will seek to give directions for case management so that the appeal can be dealt with quickly, or better considered, and in the most effective and just way.

13.2 Applications and directions for case management will usually be dealt with on the papers at the sift stage by a judge, or by the Registrar with an appeal to a judge.

13.3 Any party seeking directions must serve a copy on all parties.

13.4 Directions may be given at any stage, before or after the registration of a Notice of Appeal. An order made will contain a time for compliance, which must be observed or be the subject of an application by any party to vary or discharge it, or to seek an extension of time. Otherwise, failure to comply with an order in time or at all may result in the EAT exercising its power under Rule 26 to strike out the appeal, cross-appeal or Respondent's Answer, to debar the party from taking any further part in the proceedings or to make any other order it thinks fit, including an award of costs. The power to strike out an appeal, cross-appeal or answer to an appeal will not be exercised without the party subject to it being sent notification that the power may be exercised: but a notice stating that "unless…(a particular step is taken by a certain time)... the appeal (or a specified part of it) will be struck out" is sufficient notification for this purpose, and if the step is not taken before the time specified has elapsed the consequential strike-out will occur automatically.

13.5 Any application to vary or discharge an order, or to seek an extension of time, must be presented to the EAT and served on the other parties within the time fixed for compliance. Such other parties must, if opposing the application and within 14 days (or such shorter period as may be ordered) of receiving it, submit their representations to the EAT and the other parties.

13.6 An application to amend a Notice of Appeal or Respondent's Answer must include the text of the original document with any changes clearly marked and identifiable, for example with deletions struck through in red and the text of the amendment either written or underlined in red. Any subsequent amendments will have to be in a different identifiable colour. Where provided from a computer print-out, the deleted wording should be struck through, and new wording put in italics. Where re-amendment is made, the new wording must be in bold italics or a distinctive and easily readable font.

14 Listing of Appeals

14.1 **Estimate of Length of Hearing:** All parties are required to ensure that the estimates of length of hearing (allowing for the fact that the parties can expect the EAT to have pre-read the papers and for deliberation and the giving of a judgment) are accurate when first given. This is of particular importance in any case in which it is directed that lay members should sit. Lay members of the

EAT are part-time members. They attend when available on pre-arranged dates. They do not sit for continuous periods. Consequently appeals which run beyond their estimated length have to be adjourned part-heard (often with substantial delay) until a day on which the judge and members are all available again. Any change in such estimate, or disagreement with an estimate made by the EAT on a sift or at a PH, is to be notified immediately to the EAT.

14.2 The estimate should include time for judgment to be considered and delivered orally on the day of hearing.

14.3 If the EAT concludes that the hearing is likely to exceed the estimate, or if for other reasons the hearing may not be concluded within the time available, it may seek to avoid such adjournment by placing the parties under appropriate time limits in order to complete the presentation of the submissions within the estimated or available time.

14.4 A judge may at any time during any hearing, and with a view to achieving the overriding objective (including ensuring that the appeal finishes within its allocated time) require submissions to take place in whatever order the judge considers appropriate, and within whatever time limit seems fit. It will not be a legitimate objection that different time limits are prescribed for different parties: where this happens, it will be with a view to ensuring overall fairness.

14.5 The EAT will normally consult the parties on dates, and will accommodate reasonable requests if practicable, but is not bound to do so. Once the date is fixed, the appeal will be set down in the list. A party finding that the date which has been fixed causes serious difficulties may apply to the EAT for it to be changed, having first notified all other parties entitled to appear on the date, of their application and the reasons for it.

14.6 Parties receiving such an application must, as soon as possible and within seven days, notify the EAT of their views.

14.7 In addition to this fixed date procedure, a list (“the warned list") may be drawn up. Cases will be placed in such warned list at the discretion of the EAT or may be so placed by the direction of a judge or the Registrar. These will ordinarily be short cases, or cases where expedition has been ordered. Parties or their representatives will be notified that their case has been included in this list, and as much notice as possible will be given of the intention to list a case for hearing, when representations by way of objection from the parties will be considered by the EAT and if necessary on appeal to the Registrar or a judge. The parties may apply on notice to all other parties for a fixed date for hearing.

14.8 Other cases may be put in the list by the EAT with the consent of the parties at shorter notice: for example, where other cases have been settled or withdrawn or where it appears that they will take less time than originally estimated. Parties who wish their cases to be taken as soon as possible and at short notice should notify the EAT. Representations by way of objection may be made by the parties to the EAT and if necessary by appeal to a judge or the Registrar.

14.9 Each week an up-to-date list for the following week will be prepared, including any changes which have been made, in particular specifying cases which by then have been given fixed dates. The list appears on the EAT website.

15 Skeleton Arguments

15.1 Paragraphs 15.2 to 15.14 of the Practice Direction do not apply to an appeal heard in Scotland, unless otherwise directed in relation to that appeal by the EAT.

15.2 Skeleton arguments must be provided by all parties in all hearings, unless the EAT is notified by a party or representative in writing that the Notice of Appeal or Respondent's Answer or relevant application contains the full argument, or the EAT otherwise directs in a particular case. It is the practice of the EAT for all the members to read the papers in advance. A well-structured skeleton argument helps the EAT and the parties to focus on the point(s) of law required to be decided and so makes the oral hearing more effective.

15.3 The skeleton argument should be concise. It should identify the paragraphs of the judgment appealed where an error or point of law is said to arise; and the argument should correspond to the numbered grounds set out in the Notice of Appeal. It should identify and summarise the point(s) of law, the steps in the legal argument and the statutory provisions and case law to be relied on, identifying these by name, page and paragraph and stating the legal principle for which legislation or case law is cited. It is not, however, the purpose of the skeleton argument to set out a full written argument and it should be as short as the nature of the case permits. The mere fact that the judgment under appeal is lengthy does not mean that the skeleton argument should be lengthy.

15.4 The skeleton argument should be self-contained: though it may give references for relevant legal authorities, it should not incorporate arguments set out in other documents by adopting them.

15.5 Where possible the skeleton argument should be in print, rather than hand-written, using A4 paper, 12 point typescript, arranged in consecutively numbered paragraphs each separated from the other by a double space, and in a standard readable font.

15.6 The parties should be referred to by name or as they appeared at the Employment Tribunal i.e. Claimant (C) and Respondent (R).

15.7 The skeleton argument should state the form of order which the party will ask the EAT to make at the hearing: for example, in the case of an Appellant, whether the EAT will be asked to remit the whole or part of the case to the same or to a different Employment Tribunal, or whether the EAT will be asked to substitute a different decision for that of the Employment Tribunal.

15.8 The Appellant's skeleton argument must unless dispensed with by direction of the Registrar or a judge be accompanied by a Chronology of events relevant to the appeal which, if possible, should be agreed by the parties. That will normally be taken as an uncontroversial document, unless corrected by another party or the EAT. It is good practice to give references to paragraphs in the ET Judgment or pages in the EAT bundle.

15.9 Unless impracticable, the skeleton argument should be prepared using the pagination in the index to the appeal bundle. In a case where a note of the evidence at the Employment Tribunal has been produced, the skeleton argument should identify the parts of the record to which that party wishes to refer.

15.10 Represented parties should give the instructions necessary for their representative to comply with this procedure within the time limits.

15.11 The fact that conciliation or settlement negotiations are in progress in relation to the appeal does not excuse delay in lodging and exchanging skeleton arguments.

15.12 A skeleton argument may be lodged by the Appellant with the Notice of Appeal or by the Respondent with the Respondent's Answer.

15.13 Skeleton arguments must (if not already so lodged):

15.13.1 be lodged at the EAT not less than 14 days (unless otherwise ordered) before the date fixed for the hearing; or, if the hearing is fixed at less than 14 days notice, as soon as possible after the hearing date has been notified, and unless otherwise directed be provided to the other party (or parties);

15.13.2 in cases that are either fast-tracked or in the warned list, be lodged at the EAT and exchanged between the parties as soon as possible and (unless the hearing date is less than seven days later) in any event within seven days after the parties have been notified that the case is expedited or in the warned list.

15.14 Failure to comply with the requirement to lodge skeleton arguments in time or at all may lead to postponement of an appeal or dismissal for non-compliance with the PD pursuant to Rule 26, and to an award of costs. The party in default may also be required to attend before the EAT to explain their failure. It will always mean that:

(a) the defaulting party must immediately despatch any delayed skeleton argument to the EAT by hand or by fax, or by email to londoneat@justice.gov.uk or, as appropriate, edinburgheat@justice.gov.uk; and

(b) unless notified by the EAT to the contrary, the defaulting party must bring to the hearing sufficient copies (a minimum of 4, or 6 if the judge is sitting

with Lay Members) of the skeleton argument. The EAT staff will not be responsible for printing or copying skeleton arguments on the day of the hearing.

See section 16.7 below for the similar provisions which apply for authorities.

15.15 **Scotland: Skeleton Arguments** Skeleton arguments are considered particularly helpful to the EAT. Subject to any direction specific to a particular case, parties are at liberty to present a skeleton argument to the EAT. If they do so, however, they must serve a copy on every other party at the same time as presenting it to the EAT; and since the purpose is to indicate to the EAT in advance of a hearing how the argument is to be developed, in enough time for the judge (and members, if any) to consider it before the hearing, it should be presented at least 7 days prior to the day appointed for the hearing. Any skeleton argument presented later than that may not be read, and the party presenting it will lose the advantage of it. A party is entitled to present a skeleton argument even if the opposing party does not choose to do so.

16 Authorities

General

16.1 It is undesirable for parties to cite the same case from different sets of reports. The parties should, if practicable, agree which report will be used at the hearing. Where the Employment Tribunal has cited from a report it may be convenient to cite from the same report.

16.2 The parties must co-operate in agreeing a list of authorities.

16.3 It is the responsibility of a party wishing to cite any authority to provide photocopies for the use of each member of the Tribunal and photocopies or at least a list for the other parties. All authorities should be indexed and incorporated in an agreed bundle.

16.4 For those parties who are represented, best practice is to use photo or online copies of formal reports, such as the ICR's or IRLR's rather than those available from other on-line sources. These reports have head notes and are more useful to the Court than other electronic copies of the same case. The reports should be presented in a bundle, in chronological order, because that assists the Court in seeing how the law has developed. Relevant passages on which a party intends to rely should be sidelined and/or highlighted clearly.

16.5 Some familiar authorities are so frequently cited to the Appeal Tribunal that sufficient copies of those authorities for any hearing are maintained at the EAT in every court. This avoids unnecessary work for the parties, and overuse of paper and copying resources. A list of such cases will be maintained on the website of the Appeal Tribunal, and any case on the list should not be photocopied. It may be relied on if necessary in argument before the Appeal Tribunal (which may refer to the maintained copy), and if so it will be sufficient

for the party relying upon it to identify the principle contended for, or said to be inapplicable, by reference to the paragraph number(s) of the report.

16.6 The Practice Direction in respect of civil appeals in England and Wales issued by the Lord Chief Justice and Heads of Division on 23rd. March 2012 applies to appeals to the EAT in England and Wales, subject only to necessary adaptations. It directs that in cases to which it relates reference should be made to no more than 10 authorities unless the scale of the appeal warrants more extensive citation. The same general principle applies to the Employment Appeal Tribunal in both Scotland and England/Wales. Authorities should set out legal principle, rather than be merely illustrative of an application of it. Parties must be prepared to justify more extensive citation of authority.

16.7 If a requirement for additional authorities is identified close to the date of the hearing (e.g. if the skeleton argument has been lodged late, see paragraph 15.14 above) the party wishing to refer to such authorities must (unless notified by the EAT to the contrary) bring to the hearing sufficient copies of any authority not contained in the "familiar authorities" bundle. A minimum of 4 copies (6 if the judge is sitting with Lay Members) will be required. EAT staff will not supply copies of authorities on the day of the hearing.

PH Cases

16.8 If it is thought necessary to cite any authority at a PH, appeal against Registrar's Order, Rule 3(10) or 6(16) hearing or Appointment for Directions, two copies should be provided for the EAT (four copies if a judge is sitting with members) no less than 10 days before the hearing, unless otherwise ordered: and additional copies for any other parties notified. All authorities should be bundled, indexed and incorporated in one bundle as set out above.

16.9 The parties are reminded that the Employment Appeal Tribunal will expect them to identify authorities which stand in opposition to their case on the question of law raised in the appeal, just as much as those which favour it.

17 Disposal of Appeals by Consent

17.1 An Appellant who wishes to abandon or withdraw an appeal should notify the other parties and the EAT immediately. If a settlement is reached, the parties should inform the EAT as soon as possible. The Appellant should submit to the EAT a letter signed by or on behalf of the Appellant and by or on behalf of the Respondent, asking the EAT for permission to withdraw the appeal and to make a consent order in the form of an attached draft signed by or for both parties dismissing the appeal, together with any other agreed order sought.

17.2 If the other parties do not agree to the proposed order the EAT should be informed. Written submissions should be lodged at the EAT and served on the parties. Any outstanding issue may be determined on the papers by the EAT,

particularly if it relates to costs, but the EAT may fix an oral hearing to determine the outstanding matters in dispute between the parties.

17.3 If the parties reach an agreement that the appeal should be allowed by consent, and that an order made by the Employment Tribunal should be reversed or varied or the matter remitted to the Employment Tribunal on the ground that the decision contains an error of law, it is usually necessary for the matter to be heard by the EAT to determine whether there is a good reason for making the proposed order. On notification by the parties, the EAT will decide whether the appeal can be dealt with on the papers or by a hearing at which one or more parties or their representatives should attend to argue the case for allowing the appeal and making the order that the parties wish the EAT to make.

17.5 If the application for permission to withdraw an appeal is made close to the hearing date the EAT may require the attendance of the Appellant and/or a representative to explain the reasons for delay in making a decision not to pursue the appeal.

18 Appellant's Failure to Present a Response

18.1 If the Appellant in an appeal did not present a response (ET3) to the Employment Tribunal and did not apply to the Employment Tribunal for an extension of time for doing so, or applied for such an extension and was refused, the Notice of Appeal must include particulars directed to the following issues, namely whether:

18.1.1 there is a good excuse for failing to present a response (ET3) and (if that be the case) for failing to apply for such an extension of time; and

18.1.2 there is a reasonably arguable defence to the claim (ET1).

18.2 In order to satisfy the EAT on these issues, the Appellant must in addition to the Notice of Appeal, present a witness statement explaining in detail the circumstances in which there has been a failure to serve a response (ET3) in time or apply for such an extension of time, the reason for that failure and the facts and matters relied upon for contesting the claim (ET1) on the merits. There should be exhibited to the witness statement all relevant documents and a completed draft response (ET3).

19 Hearings

Hearings Before Judge and One Lay Member

19.1 Where consent is to be obtained from the parties pursuant to s28(4) of the ETA 1996 to an appeal commencing or continuing to be heard by a judge together with only one lay member, the parties must, prior to the commencement or continuation of such hearing before a two-member court,

themselves or by their representatives, each sign a form containing the name of the one member remaining, and stating whether the member is a person falling within s28(6)(a) or (b) of the ETA 1996.

Video and Telephone Hearings

19.2 Facilities can exceptionally be arranged for the purpose of holding short PHs or short Appointments for Directions by telephone link, upon the application (in writing) of an Appellant or Respondent who, or whose representative, has a relevant disability (supported by appropriate medical evidence). An application for a telephone hearing will be determined by a judge or the Registrar, and must be made well in advance of the intended hearing date, so that arrangements may be made. Video conferencing facilities are not currently available at the EAT's premises. Where a hearing by video link is considered necessary and proportionate in a particular case and having regard to all the circumstances, arrangements may be made for such a hearing to take place at an alternative location.

Recording of Hearings

19.3 Hearings will not normally be recorded, except for the giving of any judgment. Parties are reminded that they are NOT permitted to make any video or audio recording nor take any photograph of the proceedings except with the express prior consent of the judge at the hearing, for which good reason must be shown, and that it is a contempt of court to do so, the penalties for which include fines and imprisonment.

20 Handing Down of Judgments

England and Wales

20.1 When the EAT reserves judgment to a later date, the parties will be notified of the date when it is ready to be handed down. It is not generally necessary for a party or representative to attend.

20.2 The judgment will be pronounced without being read aloud, by the judge who presided or by another judge, on behalf of the EAT. The judge may deal with any application or may refer it to the judge and/or the Tribunal who heard the appeal, whether to deal with on the papers or at a further oral hearing on notice. Applications for permission to appeal should be made pursuant to paragraph 24 below. Applications for costs should be made pursuant to paragraph 21.2 below.

20.3 Transcripts of unreserved judgments at a PH, appeals against Registrar's Orders, Appointment for Directions and Rule 3(10) or 6(16) hearings will not (save as below) be produced and provided to the parties:

20.3.1 Where an appeal, or any ground of appeal, is dismissed in the presence of the Appellant, no transcript of the judgment is produced

unless, within 14 days of the seal date of the order, either party applies to the EAT for a transcript, or the EAT of its own initiative directs that a judgment be transcribed (in circumstances such as those set out in paragraph 20.4.2 below).

20.3.2 Where an appeal or any ground of appeal is dismissed in the absence of the Appellant, a transcript will be supplied to the Appellant.

20.3.3 Where an appeal is allowed to go forward to a PH or an FH, reasons will usually be given by the judge for permitting the appeal to go forward. In general a written note of the judge's reasons will be provided to all parties to the appeal.

20.4 Transcripts of unreserved judgments at an FH: where judgment is delivered at the hearing, no transcript will be produced and provided to the parties unless:

20.4.1 either party applies for it to the EAT within 14 days of that hearing;

20.4.2 the EAT of its own initiative directs that the judgment be transcribed, e.g. where it is considered that a point of general importance arises or that the matter is to be remitted to, or otherwise continued before, the Employment Tribunal; or

20.4.3 a party is not present at the hearing of the appeal.

20.5 Where judgment at either a PH or an FH is reserved, and later handed down in writing, a copy is provided to all parties, and to recognised law reporters. It will at the discretion of the judge be provided in advance on suitable undertakings as to confidentiality for the purpose of correcting any obvious errors of transcription or expression: the reasoning is not open to revision unless a review (see Rule 33) is applied for and granted. The parties may apply in advance of the handing down in respect of costs, or permission to appeal, and unless it is otherwise directed that application will normally be dealt with on paper without an oral hearing.

Scotland

20.6 Judgments are often reserved in Scotland and will be handed down as soon as practicable thereafter on a provisional basis to both parties who will thereafter have a period of 14 days to make any representations with regard to expenses, leave to appeal or any other relevant matter. At the expiry of that period or after such representations have been dealt with, whichever shall be the later, an order will be issued to conform to the original judgment.

EAT Website

20.7 All FH judgments which are transcribed or handed down will be posted on the EAT website. Any other judgment may be posted on the EAT website if so directed by the Registrar or a Judge.

21 Costs (referred to as Expenses in Scotland)

21.1 In this PD “costs” includes legal costs, expenses, allowances paid by the Secretary of State and payment in respect of time spent in preparing a case. Such costs may relate to interim applications or hearings or to a PH or FH.

21.2 An application for costs must be made either during or at the end of a relevant hearing, or in writing to the Registrar within 14 days of the seal date of the relevant order of the EAT or, in the case of a reserved judgment, as provided for in paragraph 21.4 below, copied to all parties.

21.3 The party seeking the order must state the legal ground and facts on which the application is based and, by a schedule or otherwise, show how the costs have been incurred. If the application is made in respect of only part of the proceedings, particulars must be given showing how the costs have been incurred on that specific part. If the party against whom the order is sought wishes the EAT to have regard to means and/or an alleged inability to pay, a witness statement giving particulars and exhibiting any documents must be served on the other party (or parties) and presented to the EAT. Further directions may need to be given by the EAT in such cases.

21.4 Such application may be resolved by the EAT on the papers, provided that the opportunity has been given for representations in writing by all relevant parties, or the EAT may refer the matter for an oral hearing, and may assess the costs either on the papers or at an oral hearing, or refer the matter for detailed assessment.

21.5 **Wasted Costs:** An application for a wasted costs order must be made in writing, setting out the nature of the case upon which the application is based and the best particulars of the costs sought to be recovered. Such application must be presented to the EAT and served upon the party (or parties) who will pay the costs/expenses if the application succeeds. Further directions may need to be given by the EAT in such cases.

21.6 Where the EAT makes any costs order by decision on the papers it shall provide written reasons for so doing. If such order is made at a hearing, then written reasons will be provided if a request is made at the hearing or within 21 days of the seal date of the costs order. The Registrar shall send a copy of the written reasons to all the parties to the proceedings.

22 Remission of Cases to the Employment Tribunal

22.1 Where the EAT makes an order remitting the case or part of it to an Employment Tribunal for further or re-hearing, the parties must immediately raise any uncertainty as to the precise scope of the remission, for it is this which defines the jurisdiction of the Employment Tribunal on the remitted issues. The scope of the remission will be recorded in the Order following the hearing. It is the obligation of each party to ensure that the scope as there set

out corresponds with their understanding and to raise any question without delay if it appears not to do so.

22.2 If at a later hearing before an Employment Tribunal an issue arises as to the scope of remission, the Tribunal may invite the EAT to give whatever clarification is thought necessary, and if given this will be conclusive.

23 Review

23.1 Where an application is made for a review of a judgment or order of the EAT, it will normally be considered by the judge or judge and lay members who heard the appeal in respect of which the review is sought, who may exercise any power of case management as seems appropriate. If the original judgment or order was made by the judge together with lay members, then the judge may, pursuant to Rule 33, consider and refuse such application for review on the papers. If the judge does not refuse the application, he or she may make any relevant further order, but will not grant the application without notice to the opposing party and reference to the lay members, for consideration with them, either on paper or in open court. A request to review a judgment or order of the EAT must be made within 14 days of the seal date of the order, or must include an application, for an extension of time, with reasons, copied to all parties.

24 Appeals from the EAT

Appeals Heard in England and Wales

24.1 An application to the EAT for permission to appeal to the Court of Appeal must be made (unless the EAT otherwise orders) at the hearing or when a reserved judgment is handed down or in writing within seven days thereafter as provided in paragraph 20.5 above. If not made then, or if refused, or unless the EAT otherwise orders, any such application must be made to the Court of Appeal within 21 days of the sealed order. An application for an extension of time for permission to appeal may be entertained by the EAT where a case is made out to the satisfaction of a judge or Registrar that there is a need to delay until after a transcript is received (expedited if appropriate) or for other good reason. Applications for an extension of time for permission to appeal should however normally be made to the Court of Appeal.

24.2 The party seeking permission must state the point of law to be advanced and the grounds.

Appeals Heard in Scotland

24.3 An application to the EAT for permission to appeal to the Court of Session must be made within 42 days of the date of the hearing where judgment is delivered at that hearing: if judgment is reserved, within 42 days of the date the transcript was sent to parties.

24.4 The party seeking permission must state the point of law to be advanced and the grounds.

Leapfrog Appeals to the Supreme Court

24.5 Section 37A of the Employment Tribunals Act 1996 (as amended) permits the grant of a certificate by the EAT for an appeal from the EAT directly to the Supreme Court in cases where the appeal involves a point of law of general public importance and satisfies the conditions set out at subsection (4) or (5) and the EAT is satisfied that a sufficient case for an appeal to the Supreme Court is made out to justify an application under section 37B.

24.6 An application to the EAT for permission to pursue a 'leapfrog' appeal to the Supreme Court must be made at the hearing or when a reserved judgment is handed down or in writing within seven days thereafter. An application for an extension of time for permission to pursue a 'leapfrog' appeal may be entertained by the EAT where a case is made out to the satisfaction of a judge or the registrar that there is a need to delay until after a transcript is received (expedited where appropriate) or for other good reason.

24.7 The party seeking permission must state the point of law to be advanced and the grounds, and must identify how and in what way the conditions for a 'leapfrog' appeal are met.

25 Conciliation

25.1 Pursuant to Rule 36 and the overriding objective, the EAT encourages alternative dispute resolution.

25.2 In all cases the parties should, and when so directed must, consider conciliation of their appeals. The Registrar or a judge may at any stage make such a direction and require the parties to report on steps taken, but not the substance, to effect a conciliated settlement with the assistance of an ACAS officer notified by ACAS to the EAT.

The Honourable Mrs Justice Simler DBE President
Dated: 19 December 2018

Contact information revised 10 May 2019

Notice of Appeal from Decision of Employment Tribunal

1. The appellant is (*name and address of appellant*).

2. Any communication relating to this appeal may be sent to the appellant at (*appellant's address for service, including telephone number if any*).

3. The appellant appeals from (*here give particulars of the judgment, decision or order of the employment tribunal from which the appeal is brought including the location of the employment tribunal and the date*).

4. The parties to the proceedings before the employment tribunal, other than the appellant, were (*names and addresses of other parties to the proceedings resulting in judgment, decision or order appealed from*).

5. Copies of—

(a) the written record of the employment tribunal's judgment, decision or order and the written reasons of the employment tribunal;

(b) the claim (ET1);

(c) the response (ET3); and/or (*where relevant*)

(d) an explanation as to why any of these documents are not included;

are attached to this notice.

6. If the appellant has made an application to the employment tribunal for a review of its judgment or decision, copies of—

(a) the review application;

(b) the judgment;

(c) the written reasons of the employment tribunal in respect of that review application; and/or

(d) a statement by or on behalf of the appellant, if such be the case, that a judgment is awaited;

are attached to this Notice. If any of these documents exist but cannot be included, then a written explanation must be given.

7. The grounds upon which this appeal is brought are that the employment tribunal erred in law in that (*here set out in paragraphs the various grounds of appeal*).

Date: ..... Signed: .....

NB. The details entered on your Notice of Appeal must be legible and suitable for photocopying or electronic scanning. The use of black ink or typescript is recommended.

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings. For details of the standards we follow when processing your data, please visit the following address https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter *To receive a paper copy of this privacy notice, please call 0300 123 1024/ Textphone 18001 0300 123 1024. If calling from Scotland, please call 0300 790 6234 Textphone 18001 0300 790 6234.*