EMPLOYMENT TRIBUNALS
(ENGLAND & WALES)

Presidential Guidance – General Case Management

1. This Presidential Guidance was first issued in England & Wales on 13 March 2014 under the provisions of Rule 7 of the First Schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013 ("the Rules"). It is now amended and reissued on 22 January 2018 to take account of the decision of the UK Supreme Court in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51 so as to remove all relevant and related references to Employment Tribunal fees. The opportunity has also been taken to make other editorial amendments.

Note

2. Whilst the Employment Tribunals in England & Wales must have regard to such Presidential Guidance, they will not be bound by it and they have the discretion available to them as set out in the Rules as to how to apply the various case management provisions.

3. This Presidential Guidance in relation to General Case Management matters does not supersede or alter any other Presidential Guidance.[1]

Background

4. The overriding objective set out in Rule 2 applies.

5. Rule 29 of the Rules permits a Tribunal to make Case Management Orders. The particular powers subsequently identified in the Rules do not restrict the general power contained in Rule 29.

6. Any Case Management Order may vary, suspend or set aside any earlier Case Management Order where that is necessary in the interests of justice. In particular, this may be necessary where a party affected by the earlier Order did not have a reasonable opportunity to make representations before it was made.

7. Rule 30 specifies details of how an application for a Case Management Order is made generally. Rules 31, 32, 34, 35, 36 and 37 deal with specific instances where Case Management Orders may be made.

8. Rule 38 deals specifically with the situation where Unless Orders can be made.

9. Rule 39 deals with the provision relating to Deposit Orders.

[1] Practice Directions and Presidential Guidance in general may be found at: https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.

10. The Rules generally contain other Case Management provisions: for example, Rule 45 in relation to timetabling.

11. In applying the provisions of the Rules this Presidential Guidance attempts to set out the procedure, processes and considerations that will normally apply in the circumstances specified below.

Action by Parties

12. While any application for a Case Management Order can be made at the hearing or in advance of the hearing, it should ordinarily be made in writing to the Employment Tribunal office dealing with the case or at a Preliminary Hearing which is dealing with Case Management issues.

13. Any such application should be made as early as possible.

14. Where the hearing concerned has been fixed – especially with the agreement of the parties – that will be taken into account by the Employment Judge considering the application.

15. The application should state the reason why it is made. It should state why it is considered to be in accordance with the overriding objective to make the Case Management Order applied for. Where a party applies in writing, they should notify the other parties (or other representatives, if they have them) that any objections should be sent to the Tribunal as soon as possible.

16. All relevant documents should be provided with the application.

17. If the parties are in agreement, that should also be indicated in the application to the Tribunal.

Examples of case management

18. These are examples of case management situations:

- amendment of claim and response
- adding or removing parties
- disclosure of documents
- preparation of hearing bundles
- witnesses and witness orders
- preparation and exchange of witness statements
- disability issues
- timetabling
- remedies
- costs
- concluding a case without a hearing

Further Guidance Notes on these matters are appended to this Presidential Guidance.

19. Where the parties' circumstances or contact details have changed, such changes should be notified to the Employment Tribunal office and to the other parties immediately.

Action by the Employment Judge

20. Where the appropriate information has been supplied, an Employment Judge will deal with the matter as soon as practicable. If any information has not been supplied, an Employment Judge may request further relevant information, which will have the effect of delaying consideration of the application.

21. The decision of the Employment Judge will be notified to all parties as soon as practicable after the decision has been made

22. Orders are important. Non-compliance with them may lead to sanctions. Therefore, if a party is having difficulty in complying with such an Order, they should discuss it with the other parties and then apply to the Tribunal to vary the Order.

Agenda for Preliminary Hearing

23. In preparation for a Preliminary Hearing concerned with Case Management matters, the Tribunal will often send out an agenda to the parties in advance of such a Preliminary Hearing. The agenda should be completed in advance of that Preliminary Hearing and returned to the Tribunal. If possible it should be agreed by the parties. A copy of the current form of agenda can be found at: https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.

Alternative dispute resolution

24. There is separate Presidential Guidance in respect of alternative dispute resolution (ADR) and, in particular, judicial assessments and judicial mediation at: https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.

Judge Brian Doyle
President
22 January 2018

GUIDANCE NOTE 1:
AMENDMENT OF THE CLAIM AND RESPONSE
INCLUDING ADDING AND REMOVING PARTIES

Amendment

1. Amendment means changing the terms of the claim or response. This note concentrates on amendments to the claim. The Employment Tribunal can allow amendments, but it will generally only do so after careful consideration and taking into account the views of the other parties. In some cases a hearing may be necessary to decide whether to allow an amendment.

2. Generally speaking, minor amendments cause no difficulties. Sometimes the amendment is to give more detail. There may have been a typographical error or a date may be incorrect. The Tribunal will normally grant leave to amend without further investigation in these circumstances.

3. More substantial amendments can cause problems. Regard must be had to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it. If necessary, leave to amend can be made conditional on the payment of costs by the claimant if the other party has been put to expense as a result of a defect in the claim form.

4. In deciding whether to grant an application to amend, the Tribunal must carry out a careful balancing exercise of all of the relevant factors, having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the amendment.

5. Relevant factors would include:

5.1 The amendment to be made. Applications can vary from the correction of clerical and typing errors to the addition of facts, the addition or substitution of labels for facts already described, and the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal must decide whether the amendment applied for is a minor matter or a substantial alteration, describing a new complaint.

5.2 Time limits. If a new complaint or cause of action is intended by way of amendment, the Tribunal must consider whether that complaint is out of time and, if so, whether the time limit should be extended. Once the amendment has been allowed, and time taken into account, then that matter has been decided and can only be challenged on appeal. An application for leave to amend when there is a time issue should be dealt with at a preliminary hearing to address a preliminary issue. This allows all parties to attend, to make representations and possibly even to give evidence.

5.3 The timing and manner of the application. An application can be made at any time, as can an amendment even after Judgment has been promulgated. Allowing an application is an exercise of a judicial discretion. A party will need to show why the application was not made earlier and why it is being made at that time. An example which may justify a late application is the discovery of new facts or information from disclosure of documents.

6. The Tribunal draws a distinction between amendments as follows:

6.1 those that seek to add or to substitute a new claim arising out of the same facts as the original claim; and

6.2 those that add a new claim entirely unconnected with the original claim.

7. In deciding whether the proposed amendment is within the scope of an existing claim or whether it constitutes an entirely new claim, the entirety of the claim form must be considered.

Re-labelling

8. Labelling is the term used for the type of claim in relation to a set of facts (for example, “unfair dismissal”). Usually, mislabelling does not prevent the re-labelled claim being introduced by amendment. Seeking to change the nature of the claim may seem significant, but very often all that is happening is a change of label. For instance, a claimant may describe his or her claim as for a redundancy payment when, in reality, he or she may be claiming that they were unfairly dismissed.

9. If the claim form includes facts from which such a claim can be identified, the Tribunal as a rule adopts a flexible approach and grants amendments that only change the nature of the remedy claimed. There is a fine distinction between raising a claim which is linked to an existing claim and raising a new claim for the first time. In the leading case, the claimant tried to introduce an automatically unfair dismissal claim on the specific ground of his trade union activity in addition to the ordinary unfair dismissal claim in his claim form. The appeal court refused the amendment because the facts originally described could not support the new claim. Furthermore, there would be a risk of hardship to the employer by increased costs if the claimant was allowed to proceed with this new claim.

10. While there may be a flexibility of approach to applications to re-label facts already set out, there are limits. Claimants must set out the specific acts complained of, as Tribunals are only able to adjudicate on specific complaints. A general complaint in the claim form will not suffice. Further, an employer is entitled to know the claim it has to meet.

Time Limits

11. The Tribunal will give careful consideration in the following contexts:

11.1 The fact that the relevant time limit for presenting the new claim has expired will not exclude the discretion to allow the amendment. In one case, a Tribunal allowed the amendment of a claim form complaining of race discrimination to include a complaint of unfair dismissal. The appeal court upheld the Tribunal’s decision, although the time limit for unfair dismissal had expired. The facts in the claim form were sufficient to found both complaints. The amendment would neither prejudice the respondent nor cause it any injustice.

11.2 It will not always be just to allow an amendment even where no new facts are pleaded. The Tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Where for instance a claimant fails to provide a clear statement of a proposed amendment when given the opportunity through case management orders to do so, an application at the hearing may be refused because of the hardship that would accrue to the respondent.

Seeking to add new ground of complaint

12. The Tribunal looks for a link between the facts described in the claim form and the proposed amendment. If there is no such link, the claimant will be bringing an entirely new cause of action.

13. In this case, the Tribunal **must consider** whether the new claim is in time.

14. The Tribunal will take into account the tests for extending time limits:

14.1 the “just and equitable” formula in discrimination claims;

14.2 the “not reasonably practicable” formula in most other claims;

14.3 the specific time limits in redundancy claims;

14.4 the special time limits in equal pay claims.

Adding a new party

15. The Tribunal may of its own initiative, or on the application of a party, or a person wishing to become a party, add any other person as a party by adding them or substituting them for another party. This can be done if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal and which it is in the interests of justice to have determined in the proceedings.

Adding or removing parties

16. These are some of the circumstances which give rise to addition of parties:

16.1 Where the claimant does not know, possibly by reason of a business transfer situation, who is the correct employer to be made respondent to the claim.

16.2 Where individual respondents, other than the employer, are named in discrimination cases on the grounds that they have discriminated against the claimant and an award is sought against them.

16.3 Where the respondent is a club or an unincorporated association and it is necessary to join members of the governing body.

16.4 Where it is necessary in order to decide a claim which involves a challenge to a decision of the relevant Secretary of State. The Secretary of State is responsible by statute for certain sums of money in different insolvency situations. The Tribunal decides if a refusal to pay is correct, provided conditions are met in relation to timing.

17. Asking to add a party is an application to amend the claim. The Tribunal will have to consider the type of amendment sought. The amendment may deal with a clerical error, add factual details to existing allegations, or add new labels to facts already set out in the claim. The amendment may, if allowed, make new factual allegations which change or add to an existing claim. The considerations set out above in relation to amendments generally apply to these applications.

18. When you apply to add a party you should do so promptly. You should set out clearly in your application the name and address of the party you wish to add and why you say they are liable for something you have claimed. You should further

explain when you knew of the need to add the party and what action you have taken since that date.

19. The Tribunal may also remove any party apparently wrongly included. A party who has been added to the proceedings should apply promptly after the proceedings are served on them if they wish to be removed.

20. A party can also be removed from the proceedings if the Claimant has settled with them or no longer wishes to proceed against them.

21. 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. This could involve where they will be liable for any remedy awarded, as well as other situations where the findings made may directly affect them.

GUIDANCE NOTE 2:
DISCLOSURE OF DOCUMENTS
AND PREPARING HEARING BUNDLES

1. The Employment Tribunal often requires the parties to co-operate to prepare a set of documents for the hearing. Even if no formal order is made, the Tribunal prefers that documentary evidence is presented in one easily accessible set of documents (often known as "the hearing bundle") with everyone involved in the hearing having an identical copy.

Why have an agreed set of documents?

2. Early disclosure of documents helps the parties to see clearly what the issues are. It helps them to prepare their witness statements and their arguments. There is no point in withholding evidence until the hearing. This only causes delay and adds to the costs. It may put you at risk of having your case struck out.

3. Agreeing a set of documents means that all parties agree which documents are relevant and the Tribunal will need to see. It does not mean they agree with what the documents contain or mean.

4. It avoids problems at a hearing when a party produces a document which the other party has not seen before. This is unfair and may lead to the hearing being delayed or adjourned. This is costly to all concerned and may result in the offending party paying the costs of the adjournment.

5. An agreed set of documents – rather than each party bringing their own set of documents to the hearing – prevents uncertainty and delay at the hearing.

What is the disclosure of documents?

6. Disclosure is the process of showing the other party (or parties) all the documents you have which are relevant to the issues the Tribunal has to decide. Although it is a formal process, it is not a hostile process. It requires co-operation in order to ensure that the case is ready for hearing.

7. Relevant documents may include documents which record events in the employment history: for example, a letter of appointment, statement of particulars or contract of employment; notes of a significant meeting, such as a disciplinary interview; a resignation or dismissal letter; or material such as emails, text messages and social media content (Facebook, Twitter, Instagram, etc). The claimant may have documents to disclose which relate to looking for and finding alternative work.

8. Any relevant document in your possession (or which you have the power to obtain) which is or may be relevant to the issues must be disclosed. This includes documents which may harm your case as well as those which may help it. To conceal or withhold a relevant document is a serious matter.

9. A party is usually not required to disclose a copy of a "privileged" document: for example, something created in connection with the preparation of a party's Tribunal case (such as notes of interviews with witnesses); correspondence between a party and their lawyers; correspondence between parties marked "without prejudice"; or part of discussions initiated on a "without prejudice" basis with a view to settlement of the matters in issue; or records of exchanges with ACAS.

How and when does disclosure take place?

10. The process should start and be completed as soon as possible. A formal order for disclosure of documents usually states the latest date by which the process must be completed.

11. In most cases, the respondent (usually the employer) has most or all of the relevant documents. This often makes it sensible for the respondent to take the lead in disclosure. Each party prepares a list of all relevant documents they hold and sends it as soon as possible to the other party.

12. Sometimes the parties meet and inspect each other's documents. More commonly, they agree to exchange photocopies of their documents in the case, which should be "clean" copies (that is, unmarked by later notes or comments, unless those notes or comments are themselves evidence).

How is the hearing bundle produced?

13. The parties then co-operate to agree the documents to go in the hearing bundle. The hearing bundle should contain only the documents that are to be mentioned in witness statements or to be the subject of cross-examination at the hearing, and which are relevant to the issues in the proceedings. If there is a dispute about what documents to include, the disputed documents should be put in a separate section or folder, and this should be referred to the Tribunal at the start of the hearing.

14. One party then prepares the hearing bundles. This is often the respondent because it is more likely to have the necessary resources. Whoever is responsible for preparing the hearing bundles prepares the documents in a proper order (usually chronological), numbers each page (this is called "pagination") and makes sufficient sets of photocopies, which are stapled together, tagged or put into a ring binder.

15. Each party should have at least 1 copy. The Tribunal will need 5 copies for a full Tribunal panel or 3 copies if the Employment Judge is to sit alone. That is 1 copy for the witness table, 1 for each member of the Tribunal and 1 to be shown to the public or media, where appropriate. The copies for the Tribunal must be brought to the hearing. They should not be sent to the Tribunal in advance, unless requested.

Are the documents confidential?

16. All documents and witness statements exchanged in the case are to be used only for the hearing. Unless the Tribunal orders otherwise, they must only be shown to a party and that party's adviser/representative or a witness (insofar as is necessary). The documents must not be used for any purpose other than the conduct of the case.

17. Because it is a public hearing, the Tribunal will enable persons (including the press and media) present at the hearing to view documents referred to in evidence before it (unless it orders otherwise).

GUIDANCE NOTE 3:
WITNESSES AND WITNESS STATEMENTS

Witnesses

1. The parties should consider who they need to give evidence in support of their case at the Employment Tribunal hearing.

2. As part of the Case Management of the proceedings, the Tribunal will need to know how many witnesses are to be called, so that the required length of the hearing can be properly allocated and, if necessary, timetabled. The identity of the witnesses and the relevance of their evidence to the issues will also often be important.

3. Rule 43 provides that where a witness is called to give oral evidence, any witness statement of that person shall stand as that witness's evidence in chief unless the Tribunal orders otherwise. Witnesses are required to give their oral evidence on oath or affirmation.

4. 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. This is not the usual practice of the Employment Tribunal in England & Wales.

Witness orders

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

6. If a party believes that a person has relevant information or evidence to give, but that they might not attend the hearing voluntarily, that party can apply to the Tribunal for a witness order. A witness order requires the witness to attend the hearing. It can also be useful where the witness is willing to attend, but their employer will not release them to attend.

7. An application for a witness order may be made at a hearing or by an application in writing to the Tribunal. In order that the Tribunal can send the witness order to the witness in good time before the hearing, it is important to make any application as early as possible. A witness order might be refused if the attendance of the witness cannot be ensured in time.

8. The application will need to give the name and address of the witness; a summary of the evidence it is believed they will give (or a copy of their witness statement, if there is one); and an explanation as to why a witness order is necessary to secure their attendance.

9. Exceptionally, an application for a witness order does not have to be copied to the other parties, unless the Tribunal considers that it is in the interests of justice to do otherwise. If the Tribunal grants a witness order, the other parties will then be informed that a witness order has been made and who the witness is, unless there is a good reason not to do so.

Witness statements

10. The Tribunal often orders witness statements to be prepared and exchanged. Even if no formal order is made, the Tribunal generally prefers evidence to be presented by means of written statements. These are normally read in advance by

the Tribunal so that they stand as the evidence in chief (that is, the main evidence of the witness before questions are put in cross-examination) without being read out loud by the witness.

Why prepare witness statements?

11. It helps to write down what you have to say in evidence. You often remember much more and feel more comfortable when giving evidence having done so.

12. Early exchange of witness statements enables the parties to know the case they have to meet and what the issues are going to be. All the relevant evidence will come out at the hearing. There is nothing to gain (and much to lose) by withholding it until then.

13. Preparation of witness statements helps the Tribunal to identify the issues and to ensure that the case is completed in the time allowed.

14. A witness statement should be prepared for each witness who is to give evidence. This includes the claimant (and the respondent where he or she is an individual).

How should a witness statement be set out and what should it contain?

15. It is easier for everyone if the statement is typewritten or word-processed (although a clear and legible handwritten statement is acceptable) with each page numbered.

16. The witness statement should be in a logical order (ideally, chronological) and contain numbered paragraphs. It should cover all the issues in the case. It should set out fully what the witness has to tell the Tribunal about their involvement in the matter, usually in date order.

17. The statement should be as full as possible because the Tribunal might not allow the witness to add to it, unless there are exceptional circumstances and the additional evidence is obviously relevant.

18. When completed, it is good practice for the statement to be signed, particularly if the witness is unavailable to attend the hearing. The Employment Tribunal Rules of Procedure do not require a witness statement to contain a "statement of truth" (such as "This statement is true to the best of my knowledge and belief" or "I believe the facts in this statement to be true") at the end. There is no objection to a witness statement that does or does not contain such a statement of truth.

19. A copy of any witness statements should be provided to the other party. You should bring 5 copies with you to the hearing if there is a full Tribunal panel and 3 copies if the Employment Judge is to sit alone. That is 1 copy for the witness table, 1 for each member of the Tribunal and 1 to be shown to the public and media, where appropriate.

20. If you realise that your statement has left out something relevant when you receive the other party's statements, you should make a supplementary statement and send it immediately to the other party. You do not need to comment on or respond to every point in the other side's statements or repeat what you said originally.

How should a witness statement be exchanged?

21. When the witness statements are ready, a copy should usually be sent to the other side, whether or not their statements have been received or are ready to be exchanged.

22. Exchange of witness statements at the same time is the norm, but it is not always appropriate. In some cases, it makes sense for the claimant's witness statement to be sent first. The respondent will then know exactly what case has to be answered. This avoids irrelevant statements being taken from witnesses who are not needed. In other cases, however, it may make sense for the respondent's statements to be sent first. Any particular directions made by the Tribunal must be followed.

23. Unless there is a different date fixed, the exchange of witness statements should be completed by no later than 2 weeks before the hearing.

Inspection of witness statements

24. Rule 44 provides that 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 (that includes the media) attending the hearing. That is, unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence. In that case, the statement or that part of it shall not be available for inspection.

25. There are exceptions to this rule where the Tribunal has made an order protecting the privacy of a witness or restricting the disclosure of documents (rule 50) or in national security proceedings (rule 94).

GUIDANCE NOTE 4:
DISABILITY

1. The terms “disabled”, “disabled person” and “disability” are words in common use. In disability discrimination cases in Employment Tribunals these terms have a particular meaning set out in section 6 of the Equality Act 2010 (and Schedule 1 to that Act) and regulations made under those provisions.

2. Reference should be made to those statutory provisions and to those regulations, as well as to the statutory *Guidance on matters to be taken into account in determining questions relating to the definition of disability* (2011) issued by the Secretary of State. That *Guidance* is available at: https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-guidance-matters-be-taken-account-determining-questions.

Evidence of disability

3. A claimant who relies upon the protected characteristic of disability may be able to provide much of the information required without medical reports. A claimant may be able to describe their impairment and its effects on their ability to carry out normal day to day activities.

4. Sometimes medical evidence may be required. For instance, where there is a dispute about whether the claimant has a particular disability or whether an impairment is under effective control by medication or treatment.

5. The question then to be answered is what effects the impairment would have if the medication was withdrawn. Once more, a claimant may be able to describe the effects themselves, but respondents frequently ask for some medical evidence in support.

6. Claimants must expect to have to agree to the disclosure of relevant medical records or occupational health records.

7. Few people would be happy to disclose all of their medical records or for disclosure to be given to too many people. Employment Judges are used to such difficulties. They will often limit the documents to be disclosed and the people to whom disclosure should be made. Disclosure is generally for use only in the proceedings and not for sharing with third parties.

8. Even after a claimant’s description of their impairment and disclosure of relevant documents in support, respondents may dispute that the claimant is disabled. If that happens the intervention of an Employment Judge may be necessary.

9. The following possibilities might arise, although there might be others:

9.1 That the claimant has to agree to undergo medical examination by a doctor or specialist chosen and paid for by the respondent.

9.2 That the claimant agrees to provide further medical evidence at their own expense.

9.3 That the claimant and the respondent may agree to get a report jointly. That would involve sharing the decision as to who to appoint, the instructions to be given and the cost of any report. This may be the most effective course, but neither party

may in the end be bound by the findings of the report, even if they agree to this course of action.

10. It can be expensive to obtain medical evidence. Limited financial assistance may be available. Whether it is granted is a matter which only a member of the administrative staff of Her Majesty's Courts & Tribunals Service can decide. Any application for such assistance should be made to the manager of the relevant Employment Tribunal office.

11. Care should be taken to decide whether a medical report is necessary at all. For instance, if a claimant has epilepsy which is well-controlled by medication, then medical evidence may be unnecessary for a Tribunal to consider what effect would follow if the medication was not taken.

12. Claimants must remember that they have the burden of proving that they are disabled. They may be satisfied that they can do this, perhaps with the assistance of the records of their General Practitioner, their medical consultant and their own evidence.

Reasonable adjustments to the Tribunal hearing or procedure

13. If the disability of a party, representative, witness or other person might affect their participation in the Tribunal hearing or procedure, an application should be made to the Tribunal as soon as possible so that the Tribunal can consider what reasonable adjustments might be made.

GUIDANCE NOTE 5:
TIMETABLING

1. The overriding objective in Rule 2 of the Employment Tribunals Rules of Procedure means that each case should have its fair share of available time, but no more. Otherwise other cases would be unjustly delayed. Each party must also have a fair share of the time allowed for the hearing of their case.

What is timetabling?

2. Each party has a duty to conduct the case so that wherever possible the Tribunal can complete the case within the time allowed. Failing to do that may mean a delay of many weeks before the case can return for further hearing. It also means that other cases waiting to be heard might be delayed.

3. To avoid the risk of this happening the Tribunal sometimes divides up the total time allowed for a hearing into smaller blocks of time to be allowed for each part of the hearing. This is called “timetabling”. It is necessary in particularly long or complicated hearings or sometimes where a party has no experience of conducting hearings.

4. Timetabling is permitted by Rule 45. It provides that a Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions. The Tribunal may then prevent the party from proceeding beyond any time so allotted.

How and when is timetabling done?

5. Employment Judges estimate the amount of time to be allowed for a hearing based on all the information they have when the hearing is listed. In straightforward cases that might be when the claim first comes in or when the response arrives. In complex cases it is often done at a preliminary hearing as part of case management.

6. For very short cases it is rare for a formal timetable to be issued. Nevertheless, even for a hearing of one day it might be helpful for the judge and the parties to agree at the beginning of the hearing roughly how long they expect each of the various stages to take. For longer or more complex hearings a timetable is often decided in consultation with the parties at a preliminary hearing or at the start of the hearing itself.

7. Fairness does not always mean that the hearing time must be divided equally between the parties or each witness.

8. For example, the party giving evidence first – in unfair dismissal cases this is usually the employer, but in discrimination cases this is often the employee – will often have to explain the relevance of the documents referred to in the witness statements, which requires time. Also some witnesses might have to give evidence about many separate incidents, whereas others perhaps just one short conversation. If an interpreter is required extra time has to be allowed. The Tribunal will take these things into account when estimating how long the evidence and examination of each witness should take.

9. The Tribunal will set the timetable using its own experience, but the Employment Judge will often ask for the parties’ views on how long each stage of the hearing might take.

10. The stages involved in a typical hearing are as follows:

10.1 At the start of the hearing, if this has not already been done, the Tribunal should make sure that everybody understands the questions the Tribunal has to answer. This is about identifying the issues that are to be decided. The Tribunal will also check that everyone has copies of all of the documents, etc.

10.2 Often the Tribunal will then read the witness statements and any pages in the agreed bundle of documents to which they refer.

10.3 Each witness is then questioned on their own statement. This is called "cross–examination". The Tribunal may also ask questions of the witnesses. A specific time may be allocated for questions in respect of each witness and for the witness to clarify any points that have arisen from those questions (this is called "re-examination").

10.4 When the evidence is finished, each party is entitled to make "submissions". This means that they may summarise the important evidence in their case and may highlight any weak parts of the other side's case. They may also refer the Tribunal to any legal authorities (statutory provisions or previous case law) which might be relevant. Although each party has the right to make submissions, they are not obliged to do so. Again, the Tribunal might timetable the amount of time for submissions.

10.5 After submissions, the Tribunal will reach its decision. Sometimes it needs to "retire" or "adjourn" (which simply means to leave the hearing room) in order to consider everything that has been said. The length of time it needs to do this might just be a few minutes or an hour in a simple, straightforward case. It may be days or weeks in a very long or complex case, in which instance the parties will usually be sent away with an indication of when a decision might be expected.

10.6 The Tribunal will then tell the parties what has been decided and why. This is referred to as "delivering judgment". This might be done orally – that is, by telling the parties the decision in their presence in the hearing room. If the decision has been made later (a "reserved decision"), then it may be sent to the parties in writing.

10.7 After delivering judgment, the Tribunal will, if the claim succeeds, hear evidence about the claimant's loss. The parties may then make submissions on what award is necessary. The Tribunal may then have to retire or to adjourn again to decide on remedy. It will then deliver its judgment on remedy either orally or reserve it and send it later in writing.

10.8 Lastly, the Tribunal might have to consider orders in respect of any costs matters. Orders for costs are not the norm. The Tribunal will then give judgment with reasons on those matters, again either orally or in writing.

11. If a party believes that the time estimate for the whole or any part of the hearing is wrong, the Tribunal will expect them to say so as soon as possible. Waiting till the day before the hearing or the start of it to ask for extra time is not helpful. It can save time to try to agree a more accurate estimate and then to ask the Tribunal to change the timetable.

What can a party do to assist the Tribunal to keep to the timetable?

12. It is helpful for each party to make a list, for their own use, of the questions to be asked of the witnesses about each of the issues in the case. It is also useful to decide which of the questions are the most important, so that if time is running out the really important questions can be asked, even if others have to be abandoned.

13. Being able to find and quote the page number of the relevant documents in the bundle can save a lot of time. Asking questions using words the witness will understand, so that less time is wasted having to explain what is being asked, also saves time. A series of short, precise questions is generally better than one long, complicated one. They take less time to ask and to answer, and are easier for the witness and the Tribunal to understand and for everyone to take a note of.

14. There is nothing to be gained by asking the same question several times or to argue with the witness. That will just waste the time allowed. The purpose of asking questions is not to try to make the witness agree with the questioner, but to show the Tribunal which side's evidence is more likely to be accurate. If necessary, the Tribunal can be reminded in submissions at the end of the case that, for example, the witness would not answer a question or gave an answer which was not believable or which was not consistent with a document in the bundle, etc. An explanation of why your evidence is more reliable can be given at that stage.

What if the time allowed is exceeded?

15. The parties must try to conclude their questioning of each witness, and their submissions, within the time limit allocated. Usually the Employment Judge will remind a party of how long they have left when time is nearly up. If a party does not finish in time, they run the risk that the Tribunal may stop their questioning of that witness (which is sometimes called "guillotining" the evidence). This is not a step the Tribunal likes to take. Sometimes it is necessary, especially if one side takes so long that they might prevent the other side from having a fair opportunity to ask their own questions.

16. If later witnesses take less time than expected, it might be possible to "re-call" the witness who did not have enough time, if the Tribunal agrees.

GUIDANCE NOTE 6:
REMEDY

What is remedy?

1. After an Employment Tribunal has decided whether the claimant's claim succeeds it will consider how the successful party should be compensated. This part of the judgment is called "Remedy". Sometimes it is done immediately after the merits or liability judgment, but in long or complex cases it may be adjourned to another day.

2. The Tribunal has different powers for each different type of claim. It must calculate loss and order an appropriate remedy for each part of a successful claim. Accurate and often detailed information from both parties is needed to make correct calculations and to issue a judgment which is fair to all. Sometimes the Tribunal can only estimate the loss: for example, for how long a party may be out of work.

Different types of remedy

3. For some claims the only remedy is to order the employer/respondent to pay a sum of money: for example, wages due, holiday pay and notice pay.

4. For unfair dismissal the Tribunal may:

4.1 Order the employer to "reinstate" the dismissed employee. This is to put them back in their old job, as if they had not been dismissed; or to "re-engage" them, which is to employ them in a suitable but different job. In each case the Tribunal may order payment of lost earnings, etc.

4.2 If those orders are not sought by the claimant or are not practicable, the Tribunal may order the employer to pay compensation. This is calculated in two parts:

- a "Basic Award", which is calculated in a similar way to a statutory redundancy payment; and
- a "Compensatory Award", which is intended to compensate the employee for the financial loss suffered.

5. In claims of unlawful discrimination, the Tribunal may:

5.1 make a declaration setting out the parties' rights; and/or

5.2 order compensation to be paid by the employer and/or fellow workers who have committed discriminatory acts. If the employer can show that it has taken all reasonable steps to prevent employees from committing such acts (called the "statutory defence"), the only award which can be made is against the fellow worker, not the employer; and/or

5.3 make a recommendation, such as for the claimant's colleagues or managers to be given training to ensure that discrimination does not happen again.

Mitigation

6. All persons who have been subjected to wrongdoing are expected to do their best, within reasonable bounds, to limit the effects on them. If the Tribunal concludes that a claimant has not done so, it must reduce the compensation so that a fair sum is payable.

7. The Tribunal will expect evidence to be provided by claimants about their attempts to obtain suitable alternative work and about any earnings from alternative employment.

8. The Tribunal will expect respondents, who consider that the claimant has not tried hard enough, to provide evidence about other jobs which the claimant could have applied for.

Statement of remedy

10. The Tribunal will usually order the claimant to make a calculation showing how each amount claimed has been worked out. For example: *x* weeks' pay at £*y* per week. Sometimes this is called a "Schedule of loss" or a "Statement of remedy".

11. Tribunals are expected to calculate remedy for each different type of loss – sometimes called "Heads of loss" or "Heads of damage". Therefore the statement should show how much is claimed under each head.

12. If the claimant has received State benefits, he or she should also specify the type of benefit, the dates of receipt, the amount received and the claimant's national insurance number. (See also "Recoupment" below).

13. Typical heads of loss include;
- wages due
- pay in lieu of notice (where no notice or inadequate notice was given)
- outstanding holiday pay
- a basic award or redundancy payment
- past loss of earnings
- future loss of earnings
- loss of pension entitlements.

14. In discrimination cases, the heads of loss will also typically include:
- injury to feelings
- aggravated or exemplary damages (which are rare)
- damages for personal injury (but only when the act of discrimination is the cause of the claimant becoming ill).

15. The Tribunal will usually order the statement to be produced early in the proceedings, as it can help in settlement negotiations, when considering mediation and when assessing the length of the hearing. It should be updated near to the hearing date.

Submissions on *Polkey* and contributory fault

16. In an unfair dismissal claim, if an employee has been dismissed, but the employer has not followed a proper procedure (such as the ACAS Code), the Tribunal will follow the guidance in the case of Polkey v AE Dayton Services Limited and subsequent cases. The Tribunal will consider whether, if a fair procedure had been followed, the claimant might still have been fairly dismissed, either at all, or at some later time. This question is often referred to as the "Polkey" question or deduction.

17. There are also cases where the dismissal may be procedurally unfair, but the employee's own conduct has contributed to the position they now find themselves in. This is called "contributory conduct".

18. Where either or both of these are relevant, the Tribunal will reduce the compensation awarded by an appropriate percentage in each case. This means that there may be two reductions, which, where there has been really serious misconduct, could be as high as 100%, so that nothing would be payable.

19. Generally the Tribunal will decide these issues at the same time as it reaches its decision on the merits of the claim. Sometimes this will be done at a separate remedy hearing. The Tribunal will usually explain at the start of the hearing which of those options it will follow. If it does not, then the parties should ask for clarification of when they are expected to give evidence and to make submissions on these matters.

Injury to Feelings

20. In discrimination cases and some other detriment claims, Tribunals may award a sum of money to compensate for injury to feelings. When they do so, they must fix fair, reasonable and just compensation in the particular circumstances of the case. The Tribunal will bear in mind that compensation is designed to compensate the injured party rather than to punish the guilty one. It will also remind itself that awards should bear some relationship to those made by the courts for personal injury.

21. The Tribunal will follow guidelines first given in the case of Vento v Chief Constable of West Yorkshire Police and in subsequent cases. These guidelines are referred to as the "Vento guidelines" or the "Vento bands". The President of Employment Tribunals will issue from time to time separate guidance on the present value of the Vento bands or guidelines.

22. The Tribunal will expect claimants to explain in their statement of remedy which Vento band they consider their case falls in. They will also expect both parties to make submissions on this during the remedy part of the hearing.

Information needed to calculate remedy

23. This varies in each case dependent on what is being claimed. Each party should look for any relevant information which could help the Tribunal with any necessary calculations in their case. They should provide copies of this information to each other and include those copies in the hearing bundle.

24. Thhe types of information that could be relevant include:

- the contract of employment or statement of terms & conditions with the old employer
- the date the claimant started work with that employer
- details of any pension scheme and pension contributions
- pay slips for the last 13 weeks in the old employment
- any other document showing the claimant's gross pay and net pay
- proof of any payments actually made by the old employer, such as a redundancy payment or payment in lieu of notice
- any document recording the day the claimant last actually worked
- any document explaining how many days and hours per week the claimant worked
- any document explaining how overtime was paid
- any document recording when the holiday year started
- any document recording when holiday has been taken in that year and what has been paid for those days
- any documents setting out the terms of the old employer's pension scheme

- any documents showing the claimant's attempts to find new or other work
- contract of employment and payslips for any new job with a new employer
- documents such as bank statements, if losses for bank charges are claimed
- medical reports or "Fit notes" if unable to work since dismissal
- any documents showing that jobs were or are available in the locality for which the claimant could have applied.

25. The witness statements should tell the Tribunal which parts of these documents are important and why. Providing enough information to the Tribunal at an early stage could help to promote a settlement and so avoid a hearing.

Is all loss awarded?

26. For claims such as unpaid wages, holiday pay and notice pay the Tribunal will order the difference between what should have been paid and what has actually been paid. Wages and holiday pay are usually calculated gross, but pay in lieu of notice is usually calculated net of tax and national insurance. The judgment should specify whether each payment ordered has been calculated gross or net.

27. In the case of unfair dismissal there are several limits (called statutory caps) on what can be awarded.

Grossing up

28. The rules on when tax is payable on awards made by Tribunals are too complex for inclusion here. When it is clear that the claimant will have to pay tax on the sum awarded, the Tribunal will award a higher figure, calculated so that tax can be paid and the claimant will receive the net sum which properly represents the loss. This calculation is called "grossing up".

Interest

29. There are two separate situations where interest is relevant.

30. First, when a Tribunal calculates compensation for discrimination, it is obliged to consider awarding interest. If it decides to do so, it calculates interest from the date of the act of discrimination up to the date of the calculation. The exception is for interest on lost wages, where the calculation is made from the middle of that period (as that is simpler than calculating interest separately on each missing wage, but leads to a roughly similar result). The Tribunal will then include that interest in the award made.

31. In addition, interest is payable on awards for all claims if they are not paid when due. A note accompanying the Tribunal's judgment will explain how interest has been calculated. In respect of all claims presented on or after 29 July 2013 interest is calculated from the day after the day upon which the written judgment was sent to the parties, unless payment is actually made within the first 14 days, in which case no interest is payable.

32. The Employment Tribunal plays no part in enforcing payment of the award it makes. That is done by the civil courts, who issue separate guidance on how to enforce payments.

Recoupment

33. For some claims, such as unfair dismissal, if the claimant has received certain State benefits the Tribunal is obliged to ensure that the employer responsible for causing the loss of earnings reimburses the State for the benefits paid. In those cases the Tribunal will order only part of the award to be paid to the claimant straightaway, with the rest set aside until the respondent is told by the State how much the benefits were. The respondent then pays that money to the State and anything left over to the claimant.

34. This is called "recoupment". The Tribunal should set out in the judgment whether or not recoupment applies, and if it does, how much of the award is set aside for recoupment purposes. If either party is in any doubt about recoupment, they should ask the Tribunal to explain how it affects them.

Costs

35. See the separate guidance on "Costs".

Pensions loss

36. The President of Employment Tribunals has issued separated guidance and principles on the calculation of pensions loss. See:

https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf

https://www.judiciary.gov.uk/wp-content/uploads/2015/03/principles-for-compensating-pension-loss-20170810.pdf.

GUIDANCE NOTE 7:
COSTS

1. The basic principle is that Employment Tribunals do not order one party to pay the costs which the other party has incurred in bringing or defending a claim. However, there are a number of important exceptions to the basic principle, as explained below.

What are costs?

2. "Costs" means some or all of the legal and professional fees, charges, payments or expenses incurred by a party in connection with the Tribunal case. It includes the expenses incurred by a party or witness in attending a hearing.

What orders for payment of costs can be made?

3. There are three different types of payment orders: costs orders; preparation time orders (sometimes referred to as PTOs); and wasted costs orders. These specific terms have the following meanings.

4. A costs order generally means that a party is ordered to pay some or all of the costs paid by the other party to its legal representatives (barristers and solicitors) or to its lay representative. No more than the hourly rate of a preparation time order can be claimed for a lay representative. Separately, costs orders can be made for the expenses reasonably and proportionately incurred by a party or witness in attending a hearing.

5. Preparation time orders are for payment in respect of the amount of time spent working on the case by a non-represented party, including its employees or advisers, but not the time spent at any final hearing.

6. Wasted costs orders are for payment of costs incurred by a party as a result of any improper, unreasonable or negligent act or failure to act by a representative or for costs incurred after such act where it would be unreasonable to expect the party to bear them. They require payment by a representative to any party, including the party represented by the payer.

When may orders for costs and preparation time be made?

7. Apart from costs orders for the attendance of witnesses or parties at hearings, a party cannot have both a costs order and a preparation time order made in its favour in the same proceedings. So it is often sensible for a Tribunal in the course of the proceedings (for example, at a preliminary hearing) to decide only that an order for payment will be made, but to leave to the end of the case the decision about which type of order and for how much.

8. Orders for payment of costs or for preparation time may be made on application by a party, a witness (in respect of their expenses) or on the Tribunal's initiative up to 28 days after the end of the case. If judgment on the claims is given at a hearing, it will usually be sensible to make any application for costs or PTOs then, in order to avoid delay and the additional cost of getting everyone back for another hearing.

9. The circumstances when payment orders may be made are as follows.

10. If an employer in unfair dismissal proceedings requires an adjournment to obtain evidence about the possibility of re-employment, the Tribunal must order the employer to pay the costs of the adjournment provided:

- the claimant notified the desire to be re-employed at least 7 days before the hearing;
- the employer cannot prove a special reason why it should not pay.

11. A party may be ordered to pay costs or preparation time to the other party, without any particular fault or blame being shown, where:

- the paying party has breached an order or practice direction; or
- an adjournment or postponement is granted at the request of or due to the conduct of the paying party.

12. A party may be ordered to pay costs in the form of the expenses incurred or to be incurred by a witness attending a hearing, without any particular fault or blame being shown. The order may be in favour of or against the party who called the witness. It may be made on the application of a party, the witness or at the Tribunal's own initiative. It may be payable to a party or to the witness.

13. A party may be ordered to pay costs or preparation time to the other party where the Tribunal considers that:

- a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or defending the proceedings or in its conduct of the proceedings; or
- the claim or response had no reasonable prospect of success.

14. The circumstances described at paragraph 13 require a Tribunal to consider first whether the criteria for an order are met. Each case will turn on its own facts. Examples from decided cases include that it could be unreasonable where a party has based the claim or defence on something which is untrue. That is not the same as something which they have simply failed to prove. Nor does it mean something they reasonably misunderstood. Abusive or disruptive conduct would include insulting the other party or its representative or sending numerous unnecessary e-mails.

15. If the criteria are met, the Tribunal is at the threshold for making an order. It will decide whether it is appropriate to order payment. It will consider any information it has about the means of the party from whom payment is sought, the extent of any abusive or unreasonable conduct, and any factors which seem to indicate that the party which is out-of-pocket should be reimbursed. For example, sometimes it becomes clear that a party never intended to defend on the merits (that is, for example, whether the claimant was unfairly dismissed), but pretended that it was doing so until the last minute, causing the claimant to use his or her lawyer more, before conceding what was really always obvious.

When may a wasted costs order be made?

16. A Tribunal may consider making a wasted costs order of its own initiative or on the application of any party, provided the circumstances described at paragraph 6 above are established. This is a very rare event. When it happens, usually a party will seek costs from the other party and, in the alternative, wasted costs from that party's representative. The representative from whom payment is sought is entitled to notice and so is the party – because they may need separate representation at this costs hearing.

Amount of costs, preparation time and wasted costs orders

17. Broadly speaking, costs orders are for the amount of legal or professional fees and related expenses reasonably incurred, based on factors like the significance of the case, the complexity of the facts and the experience of the lawyers who conducted the litigation for the receiving party.

18. In addition to costs for witness expenses, the Tribunal may order any party to pay costs as follows:

18.1 up to £20,000, by forming a broad-brush assessment of the amounts involved; or working from a schedule of legal costs; or, more frequently and in respect of lower amounts, just the fee for the barrister at the hearing (for example);

18.2 calculated by a detailed assessment in the County Court or by the Tribunal up to an unlimited amount;

18.3 in any amount agreed between the parties.

19. Preparation time orders are calculated at the rate of £33 per hour (until April 2014, when the rate increases by £1 as at every April) for every hour which the receiving party reasonably and proportionately spent preparing for litigation. This requires the Tribunal to bear in mind matters such as the complexity of the proceedings, the number of witnesses and the extent of documents.

20. Wasted costs orders are calculated like costs orders: the amount wasted by the blameworthy (as described at paragraph 6 above) conduct of the representative.

21. When considering the amount of an order, information about a person's ability to pay may be considered. The Tribunal may make a substantial order even where a person has no means of payment. Examples of relevant information are: the person's earnings, savings, other sources of income, debts, bills and necessary monthly outgoings.

GUIDANCE NOTE 8:
CONCLUDING CASES WITHOUT A HEARING

1. A claim or response which has been accepted may be disposed of by the Employment Tribunal at any point in any number of stages before the final hearing. This note sets out most of the situations generally encountered and refers you to the relevant rules.

Rejection at presentation stage

2. A claim may be rejected by an Employment Judge at the time of presentation under Rule 12 where there are certain substantive defects. A claimant may have a right to make representations and attend a hearing before this occurs.[2]

3. The claimant may apply for reconsideration of that rejection by an Employment Judge within 14 days on the grounds that it is wrong or that the defect can be rectified. Unless the claimant asks for a hearing, the issue is decided on paper by the Employment Judge. If there is a hearing, only the claimant attends.

Failure to respond and Rule 21 judgment

4. If no response to the claim is received from the respondent within the prescribed time, the Tribunal considers whether a judgment can be issued under Rule 21 on the available material. An Employment Judge may seek further information from the claimant or order a hearing. The respondent will receive notice of the hearing, but will only be allowed to participate in the hearing to the extent permitted by the judge.

Notice under Rule 26 after response received

5. If a response to the claim from the respondent is accepted, the Tribunal conducts an initial consideration of the claim form and response form under Rule 26. If the Employment Judge considers that the Tribunal has no jurisdiction to hear the claim, or that the claim or the response has no reasonable prospect of success, notice will be sent to the parties setting out the judge's view and the reasons for it. The judge will order that the claim or response (or any part of it) shall be dismissed on a date specified unless the claimant or respondent (as the case might be) has before that date written to explain why that should not happen.

6. If no representations are received then the claim or response or the relevant part will be dismissed. If representations are received, they will be considered by an Employment Judge, who will either permit the claim or response to proceed or fix a hearing for the purposes of deciding whether it should be permitted to do so. Such a hearing may consider other matters in relation to preparing the case for hearing.

Preparation for the final hearing

7. If the Employment Judge directs the case is to proceed to final hearing, orders will normally be made under Rule 29 to prepare for the hearing which is listed. These may include disclosure of documents and exchange of witness statements. Failure to comply with these orders may lead to sanctions as set out below.

[2] The guidance in paragraphs 2 and 3 are subject to the decision of the Employment Appeal Tribunal in *Trustees of the William Jones's Schools Foundation v Parry* [2016] ICR 1140 which has put the scope and validity of rule 12 in doubt.

Striking out under Rule 37

8. Under rule 37 the Tribunal may strike out all or part of a claim or response on a number of grounds at any stage of the proceedings, either on its own initiative, or on the application of a party. These include that it is scandalous or vexatious or has no reasonable prospect of success, or the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious.

9. Non-compliance with the rules or orders of the Tribunal is also a ground for striking out, as is the fact that the claim or response is not being actively pursued.

10. The fact that it is no longer possible to have a fair hearing is also ground for striking out. In some cases the progress of the claim to hearing is delayed over a lengthy period. Ill health may be a reason why this happens. This means that the evidence becomes more distant from the events in the case. Eventually a point may be reached where a fair hearing is no longer possible.

11. Before a strike out on any of these grounds a party will be given a reasonable opportunity to make representations in writing or request a hearing. The Tribunal does not use these powers lightly. It will often hold a preliminary hearing before taking this action.

12. In exercising these powers the Tribunal follows the overriding objective in seeking to deal with cases justly and expeditiously and in proportion to the matters in dispute. In some cases parties apply for strike out of their opponent at every perceived breach of the rules. This is not a satisfactory method of managing a case. Such applications are rarely successful. The outcome is often further orders by the Tribunal to ensure the case is ready for the hearing.

13. It follows that before a claim or response is struck out you will receive a notice explaining what is being considered and what you should do. If you oppose the proposed action you should write explaining why and seeking a hearing if you require one.

Unless orders under Rule 38

14. The Tribunal may, in order to secure compliance with an order for preparation of the case, make an “unless order” under rule 38. This is an order that will specify that, if it is not complied with, the claim or response or part of it shall be dismissed without further order. The party may apply, within 14 days of the date that the “unless order” was sent, to have the order set aside or for time for compliance to be extended. If the party does not comply with the order then the case is struck out without further order. A party may also apply after the strike out for the claim or response to be reinstated.

Deposit orders under Rule 39

15. The Tribunal has power under Rule 39 to order that a deposit be paid on the ground that a specific allegation or argument has little reasonable prospect of success. If such an order is made the deposit must be paid in the time specified as a condition of continuing to advance the allegation or argument. If the party fails to pay the deposit by the date specified, the allegation to which the deposit relates is struck out.

Withdrawal under Rule 51

16. When a claimant withdraws the claim it comes to an end. The Tribunal must issue a dismissal judgment under Rule 52, unless for some reason this is inappropriate. Often the settlement of a claim includes an agreement that the claimant withdraws the claim and that a dismissal judgment is made.

Compromise agreements and ACAS

17. Section 203 of the Employment Rights Act 1996 and section 144 of the Equality Act 2010 restrict any contracting out of the provisions of these two Acts. Claims can be settled using an ACAS conciliator to produce a COT3 agreement or, where legal advice is available to the claimant, a compromise or settlement agreement.

Conclusion

18. In the absence of one of the outcomes outlined above the case will be determined at a final hearing following consideration of the evidence and law by a Tribunal.