



EMPLOYMENT TRIBUNALS (SCOTLAND)

CASE MANAGEMENT ORDER OF THE PRESIDENT (No. 2)

In the matter of claims and applications brought to the Employment Tribunal in Scotland in reliance upon the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor*

HAVING REGARD TO the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 (26 July 2017);

AND having regard to the Case Management Order of the President made on 9 August 2017;

AND having regard to the overriding objective under rule 2 of the First Schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, SI 2013/137 as amended;

AND having regard to the general power to make case management orders under rule 29 of the First Schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, SI 2013/137 as amended;

AND having regard to administrative decisions proposed to be taken by the Ministry of Justice and Her Majesty's Courts and Tribunals Service of which notice is expected to be given shortly

IT IS ORDERED THAT:

1. The President's Case Management Order of 9 August 2017 is amended as follows.
2. The sist of all claims or applications brought to the Employment Tribunal in Scotland in reliance upon the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 (26 July 2017) is lifted with immediate effect.
3. So far as is necessary, applications for reimbursement of fees, however paid or by whom, shall be made in accordance with administrative arrangements to be announced by the Ministry of Justice and Her Majesty's Courts and Tribunals Service shortly.
4. So far as is necessary, applications for the reinstatement of claims (of whatever kind) rejected or dismissed for non-payment of fees shall be made

in accordance with administrative arrangements to be announced by the Ministry of Justice and Her Majesty's Courts and Tribunals Service shortly.

5. All other claims or applications brought to the Employment Tribunal in Scotland in reliance upon the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 (26 July 2017) shall proceed to be considered judicially in accordance with the appropriate legal and procedural principles in the usual way.

6. Any party or representative wishing to make representations for the further conduct of such claims or applications should do so upon application to the President.

7. A copy of this Case Management Order shall be sent to Acas and to all known interested parties or persons and shall be published on the Judiciary website at <https://www.judiciary.gov.uk/publications/directions-employment-tribunals-scotland>

Explanatory note

(1) On 9 August 2017 a Case Management Order in nearly identical terms was made by the President of the Employment Tribunal in England & Wales and the President of the Employment Tribunal in Scotland. The Orders had the intended effect of sisting or staying all claims and applications made to the Employment Tribunal in reliance upon the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 (26 July 2017).

(2) The Employment Tribunal and its judiciary are separate from and independent of the Ministry of Justice and Her Majesty's Courts and Tribunals Service.

(3) The Case Management Order of 9 August 2017 and the present Order are not made by or at the behest of the Ministry of Justice and Her Majesty's Courts and Tribunals Service. They are judicial Orders made to further the overriding objective and thereby to safeguard the position of parties to actual or prospective Employment Tribunal claims.

(4) Since the Case Management Order of 9 August 2017, the intentions of the Ministry of Justice and Her Majesty's Courts and Tribunals Service in relation to the practical implications of the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 (26 July 2017) have become clearer. It is expected that they will make an announcement in relation to administrative arrangements in respect of those implications shortly.

(5) As a result, it is apparent that the reimbursement of fees and the reinstatement of claims rejected or dismissed for non-payment of fees will be

dealt with administratively and almost certainly without need for judicial intervention or judicial decision.

(6) On that basis, the general sist may be lifted. Claims or applications that rely to any extent upon the decision of the Supreme Court in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 (26 July 2017), other than in respect of reimbursement of fees or reinstatement of claims as above, may proceed to be considered in the usual way.

A handwritten signature in black ink, appearing to read 'Shona M W Simon', written in a cursive style.

Judge Simon
President (Scotland)

18 August 2017