

EMPLOYMENT APPEAL TRIBUNAL

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EMPLOYMENT APPEAL TRIBUNAL **CONCILIATION PROTOCOL**

1. Since its inception in 1976, the EAT has, by its Rules, had power to take any steps it thinks fit to enable the parties to avail themselves of conciliation, if it appears to the EAT that there is a reasonable prospect of agreement being reached between them: see Rule 36.
2. Conciliation by ACAS officers is an integral part of most claims presented to an Employment Tribunal: see s21 Employment Tribunals Act 1996. ACAS has unique experience and expertise involving its duties and powers to assist the parties to a Tribunal claim.
3. The modern approach to litigation requires parties at all stages to be alert to the possible settlement of cases without resort to a hearing, using, wherever possible, alternative methods of dispute resolution. It also involves firm case management so that cases can be heard efficiently and fairly, recognising that ET and EAT resources are limited and there are many claims to be heard. These are embodied in the overriding objective: see Rule 2A.
4. From its experience of appeals, the EAT considers that some may be amenable to conciliation, particularly those relating to monetary awards only, or where the overwhelmingly likely result of a successful appeal would be a remission to the ET, or the case concerns remedies, or the parties' employment relationship is continuing.
5. ACAS agrees in principle with this approach and has agreed to help the EAT to use its powers under Rule 36. It reflects in modified form the pilot scheme introduced in 2004/05, and it will take effect for one year from 1 June 2007 when this modified pilot scheme will be reviewed.
6. This Protocol has consequential effects upon the provisions of PD para 9 and will now be operated in the following way:
 - 6.1. a case manager checks the Notice of Appeal to ensure compliance with rules on lodging of appropriate papers and time limits.
 - 6.2. a judge sifts the Notice of Appeal and considers whether there are reasonable grounds for bringing an appeal. If the judge concludes that there are not, Rule 3(7) applies and the Appellant is notified that no further action is to be taken. Reasons are given.
 - 6.3. if the judge considers more material is needed, either to form an opinion under Rule 3(7) or to send the case to a Preliminary Hearing or a Full Hearing, the judge may direct that more information is given of the ground; and in cases alleging bias or procedural irregularity may order a stay while the Appellant or a representative is ordered to provide an affidavit.
 - 6.4. after deciding whether to sift the appeal to a hearing track, and whether or not to continue any stay, a direction may be given to:
 - 6.4.1. require the parties to consider conciliation by ACAS, and, if asked, to attend a meeting called by, or respond to other communications from, the nominated ACAS officer;

- 6.4.2. send the papers to the nominated ACAS officer, inviting the officer to conciliate a settlement of the appeal or of the ground;
 - 6.4.3. require the Appellant to report back to the EAT on the outcome.
- 6.5. the judge will then consider the papers and decide what further steps should be directed in the appeal. If a settlement is achieved, the appeal, or any particular ground, will be dismissed by the Registrar on withdrawal by the Appellant. If the parties wish and so apply, the terms of the settlement may be annexed as a Schedule to the Registrar's Order. If the parties seek to have the appeal allowed by consent, they must give adequate reasons. Directions under PD para 15 will be considered by a judge.
7. To assist the parties and the ACAS officer, the judge may indicate brief reasons for considering why conciliation might be sought. In every appropriate case, the following paragraph will be included in an order made on the papers or at a hearing:

Pursuant to Rule 36 and the EAT/ACAS Protocol 2007, it is considered that there is potential for some or all of the matters at issue between parties being resolved by means of conciliation. The papers will be sent to an ACAS Officer. The parties are each directed to give consideration to any offer of conciliation and respond promptly to any invitation made by the ACAS Officer. The Appellant is directed within 28 days of the seal date of this Order to inform the EAT what has occurred, when any necessary further directions can be given.

8. After any hearing disposing of an appeal under Employment Tribunals Act 1996 s 35 when a further ET hearing is to take place, the EAT may exercise its power under EAT Rule 36 and give directions as to steps in relation to conciliation or other settlement.
9. This Protocol applies in Scotland, as it does in England and Wales.

THE HONOURABLE MR JUSTICE ELIAS
PRESIDENT

1 June 2007