

## **Employment Appeal Tribunal Rules and Practice Direction Consultation Report**

This report provides a summary of the responses received in relation to the Employment Appeal Tribunal consultation regarding proposed amendments to the Employment Appeal Tribunal Rules 1993 and to the introduction of a new Practice Direction. Paragraph numbering refers to that used in the original consultation document, attached as Annex A.

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**(i) Who we consulted:**

<b>Group/Office/Organisation</b>
Senior President of Tribunals
Lord President
President of Tribunals (Scotland)
Ministry of Justice
Judicial Office
EAT Judges and Registrar
EAT Lay Members Committee
EAT administrative support
President ETs England & Wales
President ETs Scotland
ACAS
TUC
TUC Scotland
MAKE UK
EAT User Group
Employment Lawyers Association
Employment Law Bar Association
Discrimination Law Association
Scottish Bar Employment Law Group
Employment Committee of the Law Society England and Wales
Employment Committee of the Law Society Scotland
Scottish Employment Law Group
Law Centres Network
RCJ Advice
South West London Law Centres
Industrial Cases Law Reports

**(ii) Who we received responses from:**

Discrimination Law Association
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EAT User Group
Employment Lawyers Association
Employment Law Bar Association
Industrial Cases Law Reports
Law society of Scotland
ACAS
NASUWT
TUC
No. 5 Chambers
Cora Employment Law
Various individuals including Judges (EAT, ET), EAT Registrar, EAT administrative support (London and Edinburgh), barristers, solicitors, and one litigant in person

(iii) The responses:

**Rule Change:**

**20(C) Documents to be submitted with appeal**

Q1. Do you agree with these proposed amendments to the EAT Rules relating to the documents that are required to be lodged to institute an appeal?

Q2. Do you consider that any difficulties might arise from these changes? If so, what?

Q3. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	12 respondents agreed 1 respondent disagreed 1 respondent neutral Others provided no comment on this proposal
Difficulties:	Increased flexibility could be negative. May increase workload where ET systems have to be consulted in sift.
EAT Response:	We consider it is right to proceed with the amendment for the reasons provided in the consultation document.

**24(ii) Extension of time**

Q1. Do you agree with this proposed amendment to the EAT Rules?

Q2. Do you consider that any difficulties might arise from this change? If so, what?

Q3. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	10 respondents agreed 2 respondents disagreed 4 respondents neutral Others provided no comment on this proposal
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Difficulties:	Although the majority of respondents agreed with the proposed amendments, there were some polarised responses to this question. Most agreed that this flexibility should be apparent on the face of the rules but some thought a sub-rule may give rise to new litigation and expressed concerns as to the clarity of the test (albeit there was some acknowledgement this could be addressed by early guideline case-law). There were also some (limited) concerns that this change may dilute the strictness of the EAT time limits, undermining the finality of litigation.
EAT Response:	We consider it right to proceed with the amendment for the reasons provided in the consultation document, although with some clarification of the wording.

### 26 (iii) Declaration

Q1. Do you agree with this proposal?

Q2. Do you consider that any difficulties might arise from this change? If so, what?

Q3. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	5 respondents agreed 5 respondents disagreed 5 respondents neutral Others provided no comment on this proposal
Difficulties:	This proposal met with a mixed reaction from those who responded on this point. Most appreciated the need for a declaration of this nature but some considered it might be unfair on litigants in person, unfamiliar with legal procedure. It was also felt that it might act as an additional administrative burden that may not effectively deter those who act vexatiously.
EAT Response:	We have taken on board the concerns raised. Rather than seeking a declaration of agreement, the form will direct parties to read and comply with the Practice Direction, to comply with the overriding objective, and to communicate in a respectful and appropriate manner.

### *New Practice Direction*

#### 37(E) Read and comply

Q4. Do you agree that there should be an expectation on all parties that they will read and comply with the New PD insofar as they are able? If not, or you agree subject to some reservation, please explain?

Q5. Do you consider that any difficulties might arise from these proposals? If so, what?

Q6. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	11 respondents agreed 1 respondent disagreed
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	1 respondent neutral Others provided no comment on this proposal
Difficulties:	Although most of those responding on the point agreed with this proposal, some expressed concerns that this might discourage litigants in person. Some also identified the problem as being that some litigants do not read the PD at all.
EAT Response:	We consider the PD should include an expectation along the lines proposed in the consultation but we have modified the language used to take on board concerns raised in responses.

#### 44(F) Overriding objective

Q7. Do you agree with this clarification of the Overriding Objective?

Q8. Do you consider that any difficulties might arise from this change? If so, what?

Q9. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	13 respondents agreed Others provided no comment on this proposal
Difficulties:	All those responding on this point agreed with this proposal.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document.

#### 47(G) Adjustments

Q10. Do you agree with the proposed approach to adjustments?

Q11. Do you consider that any difficulties might arise from this change? If so, what?

Q12. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	10 respondents agreed 2 respondents partially agreed Others provided no comment on this proposal
Difficulties:	Some respondents raised concerns that it might be too burdensome for an appellant (particularly a litigant in person/an appellant with a disability) to be asked to provide medical information/evidence at an early stage and that this might increase delays.
EAT Response:	We consider the PD should include provisions relating to adjustments as proposed, for the reasons set out in the consultation, but we have modified the language used to take on board concerns raised in responses.

#### 49(H) Repeat Applications

Q13. Do you agree with the proposed approach to repeat applications?

Q14. Do you consider that any difficulties might arise from this change? If so, what?

Q15. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	10 respondents agreed 1 respondent disagreed 1 respondent neutral Others provided no comment on this proposal
Difficulties:	Some expressed concern that litigants in person may not fully comprehend the importance of reading the PD and/or the content of the additional forms and documents.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification of the wording and approach.

*Institution of appeals*

**52(i) Documents to be submitted with the appeal**

Q16. Do you agree with the proposed changes?

Q17. Do you consider that any difficulties might arise from these changes? If so, what?

Q18. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	8 respondents agreed 4 respondents disagreed Other provided no comment on this proposal
Difficulties:	Some expressed concern this would create the same issue of increased workload, just later on in the process. Moreover, some were concerned with the inflexibility of this approach.
EAT Response:	This proposal links with the amendments to the EAT Rules. We consider it right to proceed for the reasons provided in the consultation, although we have sought to clarify the wording and approach.

**53(ii) Access to the employment tribunal case management system**

Q19. Do you agree with the proposed approach?

Q20. Do you consider that any difficulties might arise from this approach to obtaining additional documents? If so, what?

Q21. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	10 respondents agreed 2 respondents unsure Others provided no comment on this proposal
Difficulties:	Whilst almost all respondents agreed with the proposed changes, there were some concerns as to how the ET case management system might

	be accessed and whether all the information will have been uploaded to it in time; it was, however, acknowledged that any perceived prejudice would be addressed by EAT Judges saying what they have seen.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification of the wording and approach.

**55(iii) Encouraging parties to adopt e-filing**

Q22. Do you agree with these proposals?

Q23. Do you consider that any difficulties might arise from this approach? If so, what?

Q24. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	12 respondents agreed Others provided no comment on this proposal
Difficulties:	Only minor concerns were expressed with this proposal, concerning the lack of familiarity with e-filing. There was a particular mention of potential exclusion of elder people or those with disabilities.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification of the wording and approach.

**56(iv) Explanation for not providing reasons for decision appealed**

Q25. Do you agree with the proposal?

Q26. Do you consider that any difficulties might arise from this approach? If so, what?

Q27. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	11 respondents agreed 1 respondent disagreed Others provided no comment on this proposal
Difficulties:	Almost all respondents agreed this move was positive. The main concerns expressed related to the need to ensure communication was clear and emphasised the requirement for written reasons.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification.

**57(v) Concise grounds of appeal**

Q28. Do you agree with the proposal?

Q29. Do you consider that any difficulties might arise from this approach? If so, what?

Q30. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	7 respondents agreed 3 respondents disagreed 2 respondents unsure Others provided no comment on this proposal
Difficulties:	Some respondents felt this could be alienating to litigants in person and/or that parties might ignore – or fail to appreciate – the proposed changes. It was also felt that without sanctions there would be no incentive to change behaviour.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification of wording and approach.

**58(vi) Identifying the decision appealed against**

Q31. Do you agree with the proposal?

Q32. Do you consider that any difficulties might arise from this approach? If so, what?

Q33. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	12 respondents agreed Others provided no comment on this proposal
Difficulties:	There was broad agreement on this proposal with some minor suggestions as to the language used.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification of wording.

**59(vii) Bias and/or procedural impropriety**

Q34. Do you agree with the proposal?

Q35. Do you consider that any difficulties might arise from this approach? If so, what?

Q36. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	5 respondents agreed 3 respondents partially agreed 4 respondents disagreed Others provided no comment on this proposal
Difficulties:	Some respondents were concerned that the requirement for a witness statement would cause confusion for litigants in person or incentivise verbosity. It was further felt that this might create a considerable amount of additional work within the time allowed and might deter the most vulnerable from making (potentially) valid complaints. A particular issue was identified in Scotland, where witness statements are not the norm.



EAT Response:	Taking on board the concerns raised in the consultation, we have adapted the approach to be taken.
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**60(viii) Parties to the appeal**

Q37. Do you agree with the proposal?

Q38. Do you consider that any difficulties might arise from this approach? If so, what?

Q39. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	12 respondents agreed 1 respondent neutral Others provided no comment on this proposal
Difficulties:	Those responding broadly agreed with this proposal although a concern was expressed as to whether a co-party could later change its mind about not taking part in the appeal.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification.

**61(J) The sift process**

Q40. Do you agree with the proposals?

Q41. Do you consider that any difficulties might arise from the adoption of these proposals? If so, what?

Q42. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	8 respondents agreed 3 respondents were unsure or agreed with some parts but not all 1 respondent disagreed Others provided no comment on this proposal
Difficulties:	Respondents broadly agreed with the proposals made regarding the sift process but some expressed concern that this would put too much pressure on EAT Judges to produce detailed reasons on the sift and might detract from the concept that rule 3(10) involves a fresh consideration of the appeal. Another concern was expressed that it may be unfair to require an appellant to accept or challenge (as the case may be) the rule 3(7) decision where they are reasonably expecting, but have not yet received, the assistance of a professional representative in advance of a rule 3(10) hearing. More generally, there was a concern that litigants in person may not be equipped to analyse a rule 3(7) as proposed.
EAT response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with some clarification of wording and approach (in particular, in respect of summary reasons and approved judgments, see under preliminary hearings, below).

**66(K) Preliminary hearings**

Q43. Do you agree with the proposals?

Q44. Do you consider that any difficulties might arise from these proposals? If so, what?

Q45. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	11 respondents agreed 2 respondents unsure Others provided no comment on these proposals
Difficulties:	There was broad agreement with the proposals made concerning preliminary hearings, with some questions as to what might happen should the Court of Appeal require more than the summary reasons that would normally be provided.
EAT Response:	We consider it right to proceed with the proposals made regarding preliminary hearings for the reasons provided in the consultation document. We have, however, clarified the wording and approach that will be adopted in respect of the provision of summary reasons and approved judgments (recording the reasons given orally at the hearing) both in relation to preliminary hearings and hearings under rule 3(10).

**67(L) Full Hearing**

Q46. Do you agree with the proposals?

Q47. Do you consider that any difficulties might arise from these proposals? If so, what?

Q48. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	12 respondents agreed 1 respondent disagreed 3 provided no comment on these proposals
Difficulties:	It was observed that it would be extremely difficult, if not impossible, time consuming and expensive to try and produce an agreed case summary, particularly where parties are not legally represented. Otherwise, there was broad agreement on the proposals made.
EAT Response:	We consider it right to proceed with the proposals made regarding preliminary hearings for the reasons provided in the consultation document, although we have made some adaptations to take on board the concerns raised.

**69(i) Postponement**

Q49. Do you agree with the proposals?

Q50. Do you consider that any difficulties might arise from these proposals? If so, what?

Q51. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?

Sentiments:	12 respondents agreed Others provided no comment on these proposals
Difficulties:	There was broad agreement with these proposals albeit some raised the concern that these might raise challenges for those with disabilities, particularly those without representation.
EAT Response:	We consider it right to proceed with the proposals made regarding preliminary hearings for the reasons provided in the consultation document, although we have made some adaptations to take on board the concerns raised.

### 70(ii) Open Justice

Q52. Do you agree with the proposals?

Q53. Do you consider that any difficulties might arise from these proposals? If so, what?

Q54. Do you have any other suggestions as to how Open Justice issues might otherwise be addressed?

Sentiments:	11 respondents agreed 1 respondent disagreed 2 respondents neutral Others provided no comment on these proposals
Difficulties:	Some concerns were expressed as to the need for the EAT to make efforts to signpost this point in advance and be flexible as to the timing and evidence required by applications for a derogation from the open justice principle. The proposal was, however, welcomed in terms of supporting open justice, in particular with the open reporting of details relating to appeals.
EAT Response:	We consider it right to proceed with this proposal for the reasons provided in the consultation document, although with clarification of wording and approach.

### 71(iii) Remote attendance

Q55. Do you agree with the proposals?

Q56. Do you consider that any difficulties might arise from these proposals? If so, what?

Q57. Do you have any other suggestions about the appropriate way to deal with remote attendance and/or observation?

Sentiments:	10 respondents agreed 2 respondents neutral Others provided no comment on these proposals
Difficulties:	Some respondents identified issues arising from the policing of the conduct of those who attend remotely, particularly audience members whose attendance has increased significantly in recent years. On the other hand, as much of the EAT's work is skewed towards London, it was recognised that parties and observers may find it difficult to attend in-

	person hearings (because of issues relating to travel and accommodation arrangements, family or childcare commitments, paid work, etc); this was particularly noted in relation to short hearings.
EAT Response:	It was felt that many of the concerns had been anticipated in the proposals (read alongside existing guidance for remote observation of EAT hearings). In the circumstances, we consider it right to proceed with the proposals made, for the reasons provided in the consultation document, although with some clarification of wording and approach.

74(iv) Permission to appeal

Q58. Do you agree with the proposal?

Q59. Do you consider that any difficulties might arise from this proposal? If so, what?

Q60. Do you have any other suggestions about the appropriate way to deal with applications for permission to appeal?

Sentiments:	4 respondents agreed 2 respondents unsure 6 respondents disagreed Others provided no comment on this proposal
Difficulties:	Concern was expressed that time is needed to take instructions and consider the written reasons, and that full grounds of appeal may not be formulated in the relevant time.
EAT Response:	In broad terms, we retain the view that the proposal made in this regard is correct. We have, however, taken on board the concerns expressed in the consultation and have modified the approach adopted (making this less prescriptive) accordingly.

75(v) Costs

Q61. Do you agree with these proposals?

Q62. Do you consider that any difficulties might arise from such proposals? If so, what?

Q63. Do you have any other suggestions about the appropriate way to deal with applications for costs?

Sentiments:	8 respondents agreed 2 respondents unsure 1 respondent disagreed Others provided no comment on these proposals
Difficulties:	There was a general consensus on the provision for the recoupment of costs in <i>pro bono</i> cases. Concerns were, however, expressed regarding the proposals for costs applications. It was pointed out that these can (and should) require careful consideration and can be costly to put together: requiring such applications to be made at the conclusion of the hearing could reduce the quality of the application, and waste pre-emptively incurred costs when not pursued.

EAT Response:	In broad terms, we retain the view that the proposal made in this regard is correct. We have, however, taken on board the concerns expressed in the consultation and have modified the approach adopted (making this less prescriptive) accordingly.
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### 77(vi) Appeals from decision of ET Legal Officer

Q64. Do you agree with this proposal?

Q65. Do you consider that any difficulties might arise from this proposal? If so, what?

Q66. Do you have any other suggestions about the appropriate way to deal with such appeals?

Sentiments:	12 respondents agreed Others provided no comment on this proposal
Difficulties:	Among those responding there was unanimous agreement on this proposal.
EAT Response:	We consider it is right to proceed with this proposal for the reasons provided in the consultation document.

### 78(vii) Appeals where a claim has been rejected by the ET or where a respondent failed to respond to a claim in the ET

Q67. Do you agree with the proposal?

Q68. Do you consider that any difficulties might arise from this proposal? If so, what?

Q69. Do you have any other suggestions as to how such appeals might otherwise be addressed?

Sentiments:	12 respondents agreed Others provided no comment on this proposal
Difficulties:	Among those responding there was unanimous agreement on this proposal, which was welcomed.
Suggestions:	We consider it is right to proceed with this proposal for the reasons provided in the consultation document.

### 79(N) Other proposals

Q70. Do you have other suggestions for changes in the New PD that would simplify EAT procedures?

Q71. Do you have other suggestions for changes in the New PD that would increase the efficiency of EAT procedures?

Q72. Do you have other suggestions for changes in the New PD that would improve access to justice in the EAT?

Various:	Various proposals were suggested to simplify and increase the efficiency of EAT procedures and to improve access to justice in this jurisdiction. These generally adopted and built on the approach proposed in the consultation document.
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EAT Response:	We welcomed the positive response from consultees, which has better informed the drafting of the new Practice Direction.
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## **Employment Appeal Tribunal Rules and Practice Direction Consultation Report: Annex A**

### **Employment Appeal Tribunal Rules and Practice Direction June/July 2023 Consultation**

Views are sought on the proposals set out below relating to the Rules and Practice Direction of the Employment Appeal Tribunal.

The consultation period will run from midday on 19 June 2023 until midday on 19 July 2023.

Responses should be emailed to [EATJudiciaryPresidentsOfficeInbox@justice.gov.uk](mailto:EATJudiciaryPresidentsOfficeInbox@justice.gov.uk) with the title “EAT Consultation” clearly marked in the subject field.

#### **(A) Introduction**

1. We propose to make limited amendments to the Employment Appeal Tribunal Rules 1993 SI 1993/2845 (“EAT Rules”), as follows:
  - 1.1 to remove the requirement under rule 3 of the EAT Rules to file the ET1 and ET3 in order to properly institute an appeal before the Employment Appeal Tribunal (“EAT”);
  - 1.2 to add a provision to rule 37 of the EAT Rules to clarify the approach that may be taken when considering an application to extend time, where the late lodgement of an appeal arises from a minor error in complying with the requirement under rule 3(1) to submit relevant documents to the EAT that has subsequently been rectified;
  - 1.3 to add a declaration to each form used for lodging an appeal, application or response in the EAT (as provided by schedule 1 EAT Rules).
2. We also propose to introduce a new EAT Practice Direction (“the New PD”), which will include consequential provisions necessitated by the amendments to the EAT Rules, and make other substantial changes to better enable the EAT to deal with appeals efficiently and justly.

**(B) The statutory framework**

3. Section 30 Employment Tribunals Act 1996 (“ETA”) confirms the power to make rules with respect to proceedings before the EAT. The procedure of the EAT is governed by the EAT Rules. Originally made under powers conferred by the Employment Protection (Consolidation) Act 1978 Schedule 11 paragraph 17(1), following repeal of that Act, the EAT Rules are treated as if they had been made under section 30(1) of the ETA (see ETA Schedule 2 Part 1 paragraph 2).
4. By section 29A ETA, it is provided that the President of the EAT may give directions about the practice and procedure of the EAT. The general procedures operated by the EAT, and what it requires of parties, are traditionally set out by way of Practice Direction; at present, general directions as to the practice and procedure of the EAT are provided by the EAT PD 2018 (the PD”), issued by the former President, the Honourable Mrs Justice Simler DBE (as she then was) on 19 December 2018.
5. More generally, section 30(3) ETA provides that, subject to the EAT Rules and PD, the EAT has a general power to regulate its own procedure.



## (C) The Proposed Amendments to the EAT Rules

### (i) Documents to be lodged to institute an appeal

6. The EAT Rules prescribe the documents that must be lodged in order to institute an appeal before the EAT. At present, rule 3(1) of the EAT Rules provides as follows:

#### Institution of appeal

3 (1) Every appeal to the Appeal Tribunal shall, subject to paragraphs (2) and (4), be instituted by serving on the Tribunal the following documents—

(a) a notice of appeal in, or substantially in, accordance with Form 1, 1A or 2 in the Schedule to these rules;

(b) in the case of an appeal from a judgment of an employment tribunal a copy of any claim and response in the proceedings before the employment tribunal or an explanation as to why either is not included; and

(c) in the case of an appeal from a judgment of an employment tribunal a copy of the written record of the judgment of the employment tribunal which is subject to appeal and the written reasons for the judgment, or an explanation as to why written reasons are not included;

(d) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations or regulation 57(6) of the 2007 Regulations from a declaration or order of the CAC, a copy of that declaration or order; and

(e) in the case of an appeal from an order of an employment tribunal a copy of the written record of the order of the employment tribunal which is subject to appeal and (if available) the written reasons for the order;

(f) in the case of an appeal from a decision or order of the Certification Officer a copy of the decision or order of the Certification Officer which is subject to appeal and the written reasons for that decision or order.

7. All the prescribed documents must be lodged before an appeal will be treated as being properly instituted (which will then dictate the date on which the appeal is treated as having been received by the EAT for time limit purposes). To lodge a document properly every single page must be lodged. A failure to lodge a single page of any of the documents will mean that the appeal is not properly instituted (“NPI”).
8. The EAT does not have a discretion to allow an appeal to be treated as properly instituted if the putative appellant has not fully complied with the requirements of rule 3: **Kanapathiar v London Borough of Harrow** [2003] IRLR 571. The EAT does have the power to extend the time within which an appeal should be properly

instituted but such extensions are a rare exception to the strict approach adopted to time limits in the EAT as a result of long-standing case law.

9. It has become increasingly apparent that a number of potential appellants find it difficult to comply with the requirement to lodge all the required documents within the 42-day time limit. At present an average of 1/5 of putative appeals are NPI. It seems likely that the reasons for such a high number of NPI appeals are two-fold: (1) an increasing number of appellants file documents from a digital bundle used before the Employment Tribunal, which may not have contained complete versions of the ET1 and ET3; (2) the higher workload levels experienced by EAT staff (largely resulting from the covid-19 backlog) have meant that they have been unable to pick up omissions in the lodging of appeal documents as quickly as they had been able to do in the past, resulting in the appeal remaining NPI at the end of the 42-day time limit.
10. As well as frustrating the would-be appellants concerned, the high number of NPI appeals has a number of negative consequences for the administration of justice in the EAT:
  - 10.1. Carrying out checks to ensure that appeals comply with EAT rule 3 is time-consuming and places an additional burden on EAT staff.
  - 10.2. Although the EAT Rules provide a discretionary power for time to be extended for the lodgement of an appeal (rule 37), the process for determining extension of time (“EoT”) applications is inevitably resource-intensive (all other parties have to be provided with an opportunity to make representations on the application and the would-be appellant has to be given an opportunity to respond) and places a considerable additional burden on staff.
  - 10.3. Inevitably, EoT applications place additional burdens on the parties. In particular, putative respondents need to be given the opportunity to respond to the EoT application and make representations. Although this is obviously a matter of choice, most will wish to take up this opportunity, thus expending time and costs on the appeal, regardless of its underlying merit.
  - 10.4. The determination of an EoT application is carried out by the EAT Registrar and the number of such applications that arise because the appeal was initially NPI has placed an undue burden on the EAT’s Registrar, leading to delays.
  - 10.5. The decision of the Registrar can then be appealed to a Judge. The number of appeals from Registrar’s orders has increased accordingly. This places a considerable additional demand on the judicial resources of the EAT, together with a further burden on the administrative staff.
  - 10.6. The EoT process thus introduces delay that is contrary to the overriding objective. In turn, this has led to an increasing number of complaints, many of which arise from a sense of grievance that the appeal was treated as

NPI. Having to address such complaints places yet another demand on the over-stretched resources of the EAT.

11. The case-law relating to the lodgement of appeals in the EAT is clear (**United Arab Emirates v Abdelghafar & Anor** [1995] ICR 65) and requires that all documents prescribed by rule 3(1) EAT Rules 1993 are lodged within the 42-day time limit (**Kanapathiar**).
12. Although the burden for lodging the required documents must remain on the would-be appellant, allowing for a more flexible approach to be taken in respect of documents would have a significant beneficial impact on the administration of justice in this jurisdiction. We consider that lodging a notice of appeal and the decision under challenge (including the reasons for that decision) constitutes the basic minimum for an appeal to be lodged against a decision of the employment tribunal. Although the appeal documentation will also need to include the claim and response (the ET1 and ET3 in most appeals), we are considering whether the lodgement of these documents should be required in order for an appeal to be properly instituted.
13. The EAT is proposing to ask the Lord Chancellor to consider amending rule 3(1) of the EAT Rules, as follows:

#### Institution of appeal

3 (1) Every appeal to the Appeal Tribunal shall, subject to paragraphs (2) and (4), be instituted by serving on the Tribunal the following documents—

(a) a notice of appeal in, or substantially in, accordance with Form 1, 1A or 2 in the Schedule to these rules;

~~(b) in the case of an appeal from a judgment of an employment tribunal a copy of any claim and response in the proceedings before the employment tribunal or an explanation as to why either is not included; and~~

(c) in the case of an appeal from a judgment of an employment tribunal a copy of the written record of the judgment of the employment tribunal which is subject to appeal and the written reasons for the judgment, or an explanation as to why written reasons are not included;

(d) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations or regulation 57(6) of the 2007 Regulations from a declaration or order of the CAC, a copy of that declaration or order; and

(e) in the case of an appeal from an order of an employment tribunal a copy of the written record of the order of the employment tribunal which is subject to appeal and (if available) the written reasons for the order;

(f) in the case of an appeal from a decision or order of the Certification Officer a copy of the decision or order of the Certification Officer which is subject to appeal and the written reasons for that decision or order.

14. The proposed amendment to rule 3(1) thus removes the requirement that a would-be appellant file the claim and response from the lower proceedings in order for the appeal to be treated as properly instituted.
15. There will also need to be consequential amendments to rule 3(2) in respect of national security appeals and Form EAT 1 (within the schedule to the EAT Rules) to reflect this change.
16. The proposed amendment to rule 3(2) is as follows:
  - (2) In an appeal from a judgment or order of the employment tribunal in relation to national security proceedings where the appellant was the claimant—
    - ~~(i) the appellant shall not be required by virtue of paragraph (1)(b) to serve on the Appeal Tribunal a copy of the response if the response was not disclosed to the appellant; and~~
    - (ii) the appellant shall not be required by virtue of paragraph (1)(c) or (e) to serve on the Appeal Tribunal a copy of the written reasons for the judgment or order if the written reasons were not sent to the appellant but if a document containing edited reasons was sent to the appellant, he shall serve a copy of that document on the Appeal Tribunal.
17. The proposed amendment to Form EAT 1 is to substitute paragraph 5 with a new paragraph 5.
18. Currently paragraph 5 of Form EAT 1 provides:
  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.
19. The proposed amendment to paragraph 5 is as follows:
  5. A copy of the written record of the employment tribunal's judgment, decision or order under challenge, and the written reasons of the employment tribunal for that judgment, decision or order, or an explanation as to why either of these documents have not been included is attached to this notice.
20. Although it is therefore proposed to amend the EAT Rules to remove a requirement to file the claim and response at the time of lodging an appeal, it is recognised that there will still be a need for the appeal documentation to include those documents.

To this end, it is proposed that provision is made in this regard in the new PD (see below) which would allow for greater flexibility if there is a failure properly to lodge those documents in whole or in part.

**Q1. Do you agree with these proposed amendments to the EAT Rules relating to the documents that are required to be lodged to institute an appeal?**

**Q2. Do you consider that any difficulties might arise from these changes? If so, what?**

**Q3. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(ii) Extensions of time**

21. By rule 37 of the EAT Rules, the time for the lodgement of an appeal may be extended. As presently drafted, rule 37 provides:

37 Time

- (1) The time prescribed by these Rules or by order of the Appeal Tribunal for doing any act may be extended (whether it has already expired or not) or abridged, and the date appointed for any purpose may be altered, by order of the Tribunal.
- (1A) Where an act is required to be done on or before a particular day it shall be done by 4 pm on that day.
- (2) Where the last day for the doing of any act falls on a day on which the appropriate office of the Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office is open.
- (3) An application for an extension of the time prescribed for the doing of an act, including the institution of an appeal under rule 3, shall be heard and determined as an interim application under rule 20.
- (4) An application for an extension of the time prescribed for the institution of an appeal under rule 3 shall not be heard until the notice of appeal has been served on the Appeal Tribunal.

22. In determining any application for an extension of time, the EAT will apply the test laid down in **Abdelghafar**, considering: (a) what is the explanation for the default? (b) does it provide a good excuse for the default? and (c) are there circumstances

which justify the tribunal taking the exceptional step of granting an extension of time?

23. The EAT adopts a strict approach when considering applications for extensions of time to lodge appeals (see the observations of Ward LJ in **Woods v Suffolk Mental Health Partnership NHS Trust** [2007] EWCA Civ 1180), but the policy reasons for so doing have been acknowledged in a number of decisions of the Court of Appeal (see, for example, **Aziz v Bethnal Green City Challenge Company Ltd** [2000] IRLR 111; **Jurkowska v Hlmad Ltd** [2008] EWCA Civ 251; **Green v Mears Ltd** [2018] EWCA Civ 751).
24. In proposing a possible amendment to rule 37 of the EAT Rules, it is not intended to change the approach laid down in **Abdelghafar**. Mindful, however, of the issues identified at paragraphs 9-10 above, the EAT is also proposing to ask the Lord Chancellor to consider amending this rule, to add an additional sub-paragraph (5), as follows:

(5) If the appellant makes a minor error in complying with the requirement under rule 3(1) to submit the relevant documents to the Appeal Tribunal, and rectifies the error on a request from the Appeal Tribunal or otherwise, the time prescribed for the institution of an appeal under rule 3 may be extended if it is considered just to do so having regard to relevant factors including the significance of the error, the manner in which and the timeliness with which the error has been rectified and any prejudice to the respondent.

**Q1. Do you agree with this proposed amendment to the EAT Rules?**

**Q2. Do you consider that any difficulties might arise from this change? If so, what?**

**Q3. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(iii) Declaration when lodging an appeal, application or response**

25. The majority of those engaged in proceedings before the EAT seek to comply with the EAT Rules and PD, and communicate in an appropriate fashion. There are, however, parties and representatives who pay no regard to the PD, some of whom also engage in abusive and threatening correspondence with EAT staff, Judges and other parties. Such conduct places additional pressures on the resources of the EAT and we wish to take proportionate steps to address this.

26. We return to this point in discussing the proposals for the New PD but we are also minded to recommend to the Lord Chancellor that schedule 1 of the EAT Rules is amended, so that the following declaration is added to each of the forms used when lodging an appeal, application or response in this jurisdiction:

I confirm that I have read and complied with the relevant provisions of the Appeal Tribunal Practice Direction. I accept that I must co-operate with the other party or parties to the appeal and the Appeal Tribunal, and that I have and will continue to comply with the Overriding Objective.

**Q1. Do you agree with this proposal?**

**Q2. Do you consider that any difficulties might arise from this change? If so, what?**

**Q3. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(D) The Proposal for the New PD**

27. Since the PD was issued, a number of changes have impacted upon the practice and procedure of the EAT. Most obviously, changes have arisen as a result of the EAT's experience of continuing to operate during the course of the COVID 19 pandemic (with the increased use of remote telephone and video hearings that brought about) and the introduction of a digital case management system in this jurisdiction.
28. More generally, it is considered that there are a number of areas where changes can be introduced to improve the efficient working of the EAT, to better clarify certain provisions, and to strengthen the EAT's ability to deal with cases proportionately and justly.
29. We are approaching the introduction of the New PD with an entirely open mind and positively welcome input from EAT users. Although, therefore, we have made certain suggestions under the broad headings set out below, consultees should not feel constrained by those proposals, or those headings, if they wish to express views on matters that we have not addressed.

**(E) Reading and complying with the New PD**

30. We wish to keep the New PD as concise and easy to read as possible. We consider that it should be read and complied with by all parties, including Litigants in Person ("LiPs"), insofar as they are able to do so.
31. We propose that it be stated in the New PD that in instituting or responding to an appeal a party is agreeing that they have read the New PD and will comply with it.
32. The majority of the parties in the EAT co-operate and comply with the PD and Overriding Objective.
33. Unfortunately, there is a minority of parties in the EAT who do not read the PD, and/or do not appear to make any effort to comply with it. Some parties also engage in abusive and threatening correspondence with the staff and Judges of the EAT. We wish to take proportionate steps to require parties to read and comply with the New PD and to correspond in an appropriate manner.
34. Compliance with the New PD would be a matter to be policed by the Judges of the EAT and we would not condone or permit the other parties to an appeal inappropriately or repeatedly applying for strike out on the basis that another party (particularly if unrepresented) has failed to comply with the New PD or Overriding Objective, where no material prejudice arises.
35. We are also considering introducing a simple form to be used when making an application to the EAT (such as an application pursuant to Rule 3(10) challenging the opinion of a judge



that there are no reasonable grounds for bringing the appeal) which could include a similar declaration (see Annex 1).

36. Failure to use the application form would not automatically result in the application being rejected but the Registrar or a Judge might require an application to be resubmitted on the form, or determine it without the form being completed, but require that future applications be made on the form.
37. In the most serious cases of abusive correspondence we are considering the possibility of a provision in the New PD under which a Judge can issue an order requiring a party to sign an agreement that they will cease to engage in inappropriate conduct, such as abusive or threatening correspondence. A failure to sign the agreement, or a breach of the agreement, would result in consideration being given to striking out the appeal or to a direction that further correspondence will not be read.

**Q4. Do you agree that there should be an expectation on all parties that they will read and comply with the New PD insofar as they are able? If not, or you agree subject to some reservation, please explain?**

**Q5. Do you consider that any difficulties might arise from these proposals? If so, what?**

**Q6. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(F) The Overriding Objective and conduct of appeals in the EAT**

38. The EAT has limited resources that must be used to provide access to justice to the parties in all appeals. Justice requires a fair and proportionate application of the resources of the EAT between all parties.
39. We consider that the clarification and application of the Overriding Objective will be key elements of the New PD.
40. We intend to provide more detail about the specific components of the Overriding Objective and to require that parties agree to abide by it as a condition of participating in an appeal, as explained above
41. At present the Overriding Objective is set out at Rule 2A EAT Rules and provides:
- (1) The overriding objective of these Rules is to enable the Appeal Tribunal to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable —

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with the case in ways which are proportionate to the importance and complexity of the issues;
- (c) ensuring that it is dealt with expeditiously and fairly; and
- (d) saving expense.

(3) The parties shall assist the Appeal Tribunal to further the overriding objective.

42. The Overriding Objective is replicated in the PD at paragraph 1.5. In addition, it is explained at paragraph 1.6 that:

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.

43. While the Overriding Objective set out in the New PD will need to continue to reflect the wording of the EAT Rules, we consider that further explanation set out in the New PD should better accord with the Civil Procedure Rules, so as to read:

Dealing with a case justly also includes: (i) allotting to it an appropriate share of the EAT's resources, while taking into account the need to allot resources to other cases; and (ii) enforcing compliance with the EAT Rules, Practice Direction, orders and case management directions.

44. Furthermore, in reminding parties of their obligation to help the EAT to further the Overriding Objective (presently paragraph 1.7 PD), it is proposed to also emphasise the need for courteous and appropriate communication with the EAT staff, judges, and other litigants, thus explaining:

The parties are required to co-operate with each other and the EAT to further the overriding objective and to communicate with each other and the EAT in a respectful and appropriate manner.

**Q7. Do you agree with this clarification of the Overriding Objective?**

**Q8. Do you consider that any difficulties might arise from this change? If so, what?**

**Q9. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(G) Adjustments, including for people with disabilities**

45. The EAT will make appropriate adjustments to its procedures to assist those who require them to obtain access to justice where to do so is reasonable, fair to the other party and consistent with the Overriding Objective. To enable the EAT to make appropriate adjustments it is necessary that the EAT has the material that will allow a proper consideration of what adjustments would be appropriate.
46. Currently, many applications are unclear as to the reason why an adjustment is sought, are unsupported by any, or sufficient, evidence and do not state what adjustment is sought.
47. We are considering the introduction of a procedure in the New PD in which a party that seeks an adjustment should set out the condition or conditions it is contended require an adjustment to the procedures of the EAT, possibly on a standard application form, attaching relevant evidence (including medical evidence where appropriate) and setting out the adjustment(s) sought.

**Q10. Do you agree with the proposed approach to adjustments?**

**Q11. Do you consider that any difficulties might arise from this change? If so, what?**

**Q12. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(H) Repeat applications**

48. There is a problem with parties making the same application repeatedly, while gradually providing more evidence. We are considering introducing an application form that requires parties to set out the full grounds of the application and to attach all supporting evidence, which will make clear that the same application cannot be repeated unless there is a material change of circumstances.
49. Similarly, we consider that an application for review of a decision of the EAT should be made on a similar form to prevent repeated applications for review unless there is a material change of circumstances.

**Q13. Do you agree with the proposed approach to repeat applications?**

**Q14. Do you consider that any difficulties might arise from this change? If so, what?**

**Q15. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(I) Institution of appeals**

**(i) Documents to be submitted with the appeal**

50. We intend to reduce the documents that are required to be lodged to institute an appeal properly by the rule change explained above. The EAT may at the sift stage or later in the progress of an appeal require further documents. We consider the stage at which further documents are generally required should be set out in the New PD.
51. One possibility would be to introduce a requirement that, at the point when an appellant is informed that their appeal is properly instituted, they must then send copies of the ET1 (and any attached grounds of claim), the ET3 (and any attached grounds of resistance), and any reconsideration application and response. Where an appellant fails to comply with this requirement, it would be made clear that the EAT might itself obtain these documents from the ET (see further below); alternatively, that further directions might be given requiring the appellant to provide the documentation in question, with the warning that failure to comply with such a requirement might ultimately lead to the appeal being struck out.
52. Parties often send voluminous additional documentation when instituting an appeal that takes a great deal of time for EAT staff to upload to the EAT case management system. We are considering a provision that would permit the submission of claim forms and responses in addition to the other documents required to institute the appeal properly and to state that any other documents will not be accepted at the stage the appeal is lodged.

**Q16. Do you agree with the proposed changes?**

**Q17. Do you consider that any difficulties might arise from these changes? If so, what?**

**Q18. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(ii) Access to the employment tribunal case management system**

53. On occasions when sifting an appeal, or later, if the appeal progresses, a Judge of the EAT may wish to consider documents that were before the employment tribunal (“ET”). It would be possible for judges of the EAT to have access to the ET case management system so that they can obtain any documents that they consider necessary to sift the appeal or to consider it further if it proceeds. Provided the parties are informed of any documents that the Judge considers relevant we consider this would be a proportionate way to deal with additional documentation, in a similar manner to the way in which the Court of Appeal Criminal Division has access to the Crown Court case management system.

**Q19. Do you agree with the proposed approach?**

**Q20. Do you consider that any difficulties might arise from this approach to obtaining additional documents? If so, what?**

**Q21. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

(iii) **Encouraging parties to adopt e-filing**

54. Uploading documents to the EAT electronic case management system is extremely time consuming for EAT staff and takes them away from more important duties. It is not currently proposed that e-filing will be mandated (although this is something that will be kept under review). However, we are keen to encourage parties, especially those who are represented, to use e-filing, and the New PD will refer parties to a user-friendly guide to e-filing in the EAT. We are considering stating in the New PD a preference for all parties to use e-filing and an expectation of represented parties to use e-filing or to explain, with reasons, why e-filing is not being used.
55. As e-filing provides the EAT with a record of the date and time of submission of the appeal, it is further proposed that the New PD should reflect this by removing the current requirement for documents submitted this way to be separately stamped with the EAT seal (showing the date and time of receipt).

**Q22. Do you agree with these proposals?**

**Q23. Do you consider that any difficulties might arise from this approach? If so, what?**

**Q24. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(iv) Explanation for not providing reasons for decision appealed**

56. Rule 3(1)(c) EAT Rules allows a party to provide an explanation for not including the reasons for a decision. There is no specific requirement that the explanation is a good or acceptable one. Sometimes parties give the explanation that they failed to ask the ET for the reasons. We are considering emphasising in the New PD that a failure to request reasons within time may result in the conclusion that there are no reasonable grounds for bringing the appeal on the basis that there are no reasons to challenge. There should be no expectation that the EAT will require the ET to provide reasons if they were not requested within time.

**Q25. Do you agree with the proposal?**

**Q26. Do you consider that any difficulties might arise from this approach? If so, what?**

**Q27. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(v) Concise grounds of appeal**

57. The PD states that the numbered grounds of appeal should be no more than two pages. Grounds of appeal, particularly those submitted by LiPs, often are much longer. We are keen to require parties to submit grounds of appeal that are concise and set out properly identified errors of law. This not only assists EAT Judges when considering a proposed appeal at the initial sift stage, it also helps parties (especially LiPs) to better focus their case. We are considering ways in which this point might be more effectively communicated; whether, for example, it would be possible to require that parties confirm when submitting the appeal that they have specifically considered the requirements in the New PD concerning grounds of appeal, and that the grounds of appeal comply with the requirement, or, if not, to state the reasons.

**Q28. Do you agree with the proposal?**

**Q29. Do you consider that any difficulties might arise from this approach? If so, what?**

**Q30. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(vi) Identifying the decision appealed against**

58. EAT Form 1 requires the appellant to state the decision appealed against. Parties commonly appeal against more than one decision in the Notice of Appeal and do not clarify the judgments or orders they are appealing against. We are considering reiterating the requirement that the decision, or decisions, appealed against must be identified (including the date of the decision and the date it was sent to the parties if different) and if more than one decision is appealed against, the grounds of appeal must identify which grounds relate to which decisions, failing which the appeal will not be progressed until the fault has been rectified.

**Q31. Do you agree with the proposal?**

**Q32. Do you consider that any difficulties might arise from this approach? If so, what?**

**Q33. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(vii) Bias and/or procedural impropriety**

59. A significant number of appeals assert bias and/or procedural impropriety without any proper basis for making such an allegation. Such appeals take up a disproportionate amount of the resources of the EAT. We are considering requiring that any appeal asserting bias and/or procedural impropriety must be supported when it is submitted by a signed witness statement, supported by a statement of truth, deposing to the specific allegations. A failure to do so would be likely to result in the appeal being dismissed at the sift stage.

**Q34. Do you agree with the proposal?**

**Q35. Do you consider that any difficulties might arise from this approach? If so, what?**

**Q36. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(viii) Parties to the appeal**

60. All parties in the ET other than the appellant are respondents to the appeal pursuant to rule 5 EAT Rules. Thus a co-claimant in the ET becomes a respondent to the appeal even if they have no interest in it. We are considering setting out a procedure in the New PD whereby a respondent can apply to take no part in the appeal, stating whether they oppose the appeal/do not oppose the appeal/take no position on the appeal.

**Q37. Do you agree with the proposal?**

**Q38. Do you consider that any difficulties might arise from this approach? If so, what?**

**Q39. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

#### **(J) The sift process**

61. Once an appeal has been properly instituted it is referred to a Judge to consider whether there are reasonable grounds for bringing the appeal. Where the Judge concludes that some or all of the grounds of appeal are not arguable the Judge will provide an opinion concisely setting out the reasons pursuant to rule 3(7) EAT Rules. Where such an opinion is given the appellant may express dissatisfaction and is then entitled to a hearing before another Judge pursuant to rule 3(10) EAT Rules. The hearing Judge is not bound by the rule 3(7) decision and considers the matter afresh. Many parties take the opportunity to attend a rule 3(10) hearing apparently without having considered the reasons given by the Judge at the rule 3(7) stage or explaining why they consider the opinion is incorrect.
62. We are considering introducing a requirement when dissatisfaction with a rule 3(7) decision is asserted to complete a form stating:
- 62.1. The appellant has read and considered the rule 3(7) opinion
  - 62.2. which paragraphs (we will introduce a practice that the paragraphs of the rule 3(7) decision are numbered) are accepted and any grounds of appeal that are no longer pursued
  - 62.3. which paragraphs of the rule 3(7) decision are challenged, giving the reasons why they are challenged
  - 62.4. that the appellant has read and complied with the New PD and if the grounds of appeal do not comply with the New PD attaching draft amended grounds of appeal that fully comply with the New PD



63. We are also considering simplifying the procedure for the rule 3(10) hearing. A considerable amount of time is spent by the staff of the EAT requiring appellants to provide a bundle when the EAT already has the relevant documents, and in requiring an appellant to provide a skeleton argument when the grounds of appeal should speak for themselves. We are considering changing the process so that:
- 63.1. there is no requirement to provide a bundle for a rule 3(10) hearing – although an appellant may choose to do so (albeit, subject to a limited number of pages)
  - 63.2. there is no requirement to provide a skeleton argument for a rule 3(10) hearing – although an appellant may choose to do so
64. We are considering seeking to ensure that rule 3(10) hearings only take up a proportionate amount of judicial time by clarifying that:
- 64.1. the Judge may guillotine submissions at a rule 3(10) hearing to ensure that it is completed in time and that parties should prepare to argue their strongest points first
  - 64.2. under the CPR in England and Wales the time limit for an appeal against a rule 3(10) decision to the Court of Appeal is 7 days
65. We are also considering simplifying the requirement for reasons after the rule 3(10) hearing to permit the Judge to
- 65.1. adopt some or all of the reasons given for the rule 3(7) opinion and/or to add additional reasons
  - 65.2. provide summary written reasons for rejecting a rule 3(10) application in which case there will be no right to be provided with a transcript of the oral decision (although the appellant may seek a transcript on payment of a fee, or subject to being granted an exception to the requirement to pay the fee)

**Q40. Do you agree with the proposals?**

**Q41. Do you consider that any difficulties might arise from the adoption of these proposals? If so, what?**

**Q42. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

#### **(K) Preliminary hearings**

66. We are considering adopting an equivalent approach to Preliminary Hearings (“PH”), including:
- 66.1. the Judge fixing the preliminary hearing may require as a condition of the PH proceeding that the appellant produces an amended Notice of Appeal that fully complies with the New PD
  - 66.2. removing the requirement to provide a bundle and skeleton argument – although an appellant may choose to do so
  - 66.3. the Judge may provide summary written reasons for rejecting some or all of the grounds of appeal in which case there will be no right to be provided with a transcript of the oral decision (although the appellant may seek a transcript on payment of a fee, or subject to being granted an exception to the requirement to pay the fee)

**Q43. Do you agree with the proposals?**

**Q44. Do you consider that any difficulties might arise from these proposals? If so, what?**

**Q45. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(L) Full Hearing**

67. We are considering only limited changes to the procedure at Full Hearings, but are proposing that the New PD should address the following:
- 67.1. the expectation that the time estimate for the hearing will include time for giving judgment will be emphasised and more strictly adhered to: it will be made clear that it will not be acceptable for parties to assume that the length of the hearing simply relates to the time allowed for submissions
  - 67.2. relatedly, there will be specific reference to the power of the EAT to limit the length of oral submissions
  - 67.3. it will be made clear that in appropriate cases, and where parties are legally represented, it may be directed that an agreed case summary and timetable for submissions is provided in advance of the hearing
  - 67.4. there will be no expectation that the Judge or EAT panel consider documents in a supplementary bundle unless the party seeking to rely on the document clearly

explains in their skeleton argument why the document is relevant to the grounds of appeal and the basis upon which it is relied on

- 67.5. where an extempore judgment is given and a request is made for the reasons in writing, written reasons will be provided rather than a transcript to emphasise that written reasons may be significantly amended to make them read more clearly provided the determination and reasons are not substantially altered. If reasons given orally are supplemented or substantially clarified this will generally be stated in the written reasons
- 67.6. if a party does not attend a hearing there will be no automatic entitlement to a transcript (although the appellant may seek a transcript on payment of a fee, or subject to being granted an exception to the requirement to pay the fee)

**Q46. Do you agree with the proposals?**

**Q47. Do you consider that any difficulties might arise from these proposals? If so, what?**

**Q48. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

### **(M) General**

68. We also intend to introduce various changes to clarify and increase the efficiency of appeals in the EAT. We summarise key points but will use the process of redrafting to identify points in the PD that can be clarified in the New PD. At the conclusion of this document, we provide an opportunity to raise any other matters you consider should be amended in the New PD.

#### **(i) Postponement**

69. Repeated applications for postponement, often in which medical evidence is provided piecemeal, have become an increasing problem, in particular in diverting administrative and judicial resources away from dealing with other matters and in placing an unnecessary additional burden on other parties. We are considering introducing a procedure to require that such applications are made on a form in which the party applying confirms that they have provided the grounds and supporting evidence, complied with the New PD and Overriding Objective, copied in the other party and will not make the same application again subject to a material change in circumstances.

**Q49. Do you agree with the proposals?**

**Q50. Do you consider that any difficulties might arise from these proposals? If so, what?**

**Q51. Do you have any other suggestions as to how the problems identified above might otherwise be addressed?**

**(ii) Open Justice**

70. We wish to update the approach to Open Justice in the New PD to conform with the approach adopted in the High Court
- 70.1. parties should expect that documents submitted during the course of an appeal may be made available to members of the public where necessary to comply with the Open Justice principle
- 70.2. those who seek to inspect a document may generally do so by requesting a copy
- 70.3. bundles and skeleton arguments will generally be available on request to members of the public at a hearing and may be made available thereafter
- 70.4. if any derogation from the Open Justice principle is sought in an appeal an application supported by evidence should be made to the EAT.

**Q52. Do you agree with the proposals?**

**Q53. Do you consider that any difficulties might arise from these proposals? If so, what?**

**Q54. Do you have any other suggestions as to how Open Justice issues might otherwise be addressed?**

**(iii) Remote attendance**

71. The default position is for in person hearings in the EAT. We are considering introducing a specific process for parties or observers who wish to attend remotely to make an application and to provide, where necessary, the information required to comply with the Remote Observation and Recording (Courts and Tribunals) Regulations 2022/705.

72. Generally, remote attendance from outside of the jurisdiction will not be permitted because the difficulties in ensuring that parties out of the jurisdiction comply with the directions of the EAT and in dealing with contempt of court issues that can arise from remote attendance.
73. We are also considering making provision for the very limited circumstances in which there might be an application for evidence to be given from outside of the jurisdiction (such as in an application for extension of time to properly institute an appeal), taking into account the factors set out in **Agbabiaka (evidence from abroad; Nare guidance [2021] UKUT 00286 (IAC)**.

**Q55. Do you agree with the proposals?**

**Q56. Do you consider that any difficulties might arise from these proposals? If so, what?**

**Q57. Do you have any other suggestions about the appropriate way to deal with remote attendance and/or observation?**

**(iv) Permission to appeal**

74. We are considering including an expectation, particularly where parties are represented, that any application for permission to appeal is made at a hearing where an extempore judgment is given.

**Q58. Do you agree with the proposal?**

**Q59. Do you consider that any difficulties might arise from this proposal? If so, what?**

**Q60. Do you have any other suggestions about the appropriate way to deal with applications for permission to appeal?**

**(v) Costs**

75. We are considering including an expectation, particularly where parties are represented, that any application for costs is made at a hearing where an extempore judgment is given.
76. We are considering introducing provisions to deal with applications for Pro Bono Costs Orders (s194A Legal Services Act 2007).

**Q61. Do you agree with these proposals?**

**Q62. Do you consider that any difficulties might arise from such proposals? If so, what?**

**Q63. Do you have any other suggestions about the appropriate way to deal with applications for costs?**

**(vi) Appeals from decision of ET Legal Officer**

77. Some parties have appealed against decisions of ET legal officers in circumstances in which there is a right to appeal to a judge of the ET. We are considering introducing a procedure under which such appeal will be stayed/sisted for fresh consideration in the ET.

**Q64. Do you agree with this proposal?**

**Q65. Do you consider that any difficulties might arise from this proposal? If so, what?**

**Q66. Do you have any other suggestions about the appropriate way to deal with such appeals?**

**(vii) Appeals where a claim has been rejected by the ET or where a respondent failed to respond to a claim in the ET**

78. We receive appeals relating to the rejection of claims for failure to seek Acas early conciliation, where an application can be made to the ET for reconsideration under Rule 13 Employment Tribunal Rules 2013, and appeals from judgments issued under Rule 21 Employment Tribunal Rules 2013, where the respondent failed to respond to the claim in time and in which the respondent has not sought permission pursuant to Rule 20 ET Rules to enter a response out of time. We are considering an approach under which such appeals will be stayed/sisted while such an application is made in the ET.

**Q67. Do you agree with the proposal?**

**Q68. Do you consider that any difficulties might arise from this proposal? If so, what?**

**Q69. Do you have any other suggestions as to how such appeals might otherwise be addressed?**



**(N) Other proposals**

79. We are keen to hear any other suggestions you have for simplifying the procedures of the EAT to increase efficiency and to improve access to justice.

**Q70. Do you have other suggestions for changes in the New PD that would simplify EAT procedures?**

**Q71. Do you have other suggestions for changes in the New PD that would increase the efficiency of EAT procedures?**

**Q72. Do you have other suggestions for changes in the New PD that would improve access to justice in the EAT?**

**Annex 1**  
**Employment Appeal Tribunal**  
**Application for direction or order**

Name  Appeal number	I am <ul style="list-style-type: none"> <li>• An appellant <input type="checkbox"/></li> <li>• A respondent <input type="checkbox"/></li> <li>• Other – please specify <input type="checkbox"/></li> </ul> <input style="width: 100%; height: 20px;" type="text"/>
This is an application <ul style="list-style-type: none"> <li>• For the postponement of a hearing <input type="checkbox"/></li> <li>• For an adjustment because of a medical condition or disability <input type="checkbox"/></li> <li>• For a review of a previous decision <input type="checkbox"/></li> <li>• Challenging the opinion of a judge that there are no reasonable grounds bringing the appeal <input type="checkbox"/> or <input type="checkbox"/></li> <li>• For some other type of direction or order – please specify <input type="checkbox"/></li> </ul> <div style="border: 2px solid blue; height: 50px; width: 100%; margin-top: 10px;"></div>	
I confirm that I have read and complied with the relevant provisions of the Appeal Tribunal Practice Direction. I accept that I must co-operate with the other party or parties to the appeal and the Appeal Tribunal, and that I have and will continue to comply with the Overriding Objective. I understand that, if I fail to do so, that may result in the refusal of this application or such other action as the Registrar or a Judge considers appropriate.	
Signed	Dated
I will copy this application to the other party or parties to the appeal	
Yes <input type="checkbox"/>	
No – if no, state your reason <input type="checkbox"/>	<input style="width: 100%; height: 20px;" type="text"/>



Have you made a similar application before	
No	<input type="checkbox"/>
Yes – if yes, state what change in circumstances is relied on for making the application again	<input type="checkbox"/> <input type="text"/>
In making this application I confirm that:	
<ul style="list-style-type: none"><li>• I have set out all the grounds on which I wish to rely</li><li>• I will not make a similar application again unless there has been a material change in circumstances</li></ul>	
Signed	Dated
<b>Applications that rely on medical evidence (eg for adjustments or postponement)</b>	
I have attached all relevant medical evidence	
Yes	<input type="checkbox"/>
No – if no state your reason	<input type="text"/>
<b>Applications under Rule 3(10) EAT Rules</b>	
I have read and carefully considered the reasons the Judge gave for deciding that one or more of the grounds of appeal were not reasonably arguable.	
I agree with the following paragraphs of the Judge’s reasons: (set out the numbers of the paragraphs you agree with and grounds of appeal no longer pursued):	
<input type="text"/>	
Set out the numbers of the paragraphs you disagree with and, briefly, the reasons why you disagree:	
<input type="text"/>	
You must also confirm that you have either:	
(A) Read the EAT Practice Direction and that the grounds of appeal you are pursuing comply with it [TICK BOX] or	

(B) Attached draft amended grounds of appeal that fully comply with the Practice Direction [TICK BOX]

Signed

Dated

**All applications**

The grounds for my application are:

*(You must set out the grounds using numbered paragraphs.)*

Signed

Dated