Practice Direction of the Employment Appeal Tribunal 2024

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1. **INTRODUCTION**

1.1. **What does the Employment Appeal Tribunal do?**

1.1.1. The Employment Appeal Tribunal ("EAT") decides appeals from decisions of Employment Tribunals sitting in England, Wales and Scotland.

1.1.2. Special rules apply to national security appeals: see Section 14.

1.1.3. The EAT has some other functions: see Sections 15 and 16.

1.2. **What appeals does this Practice Direction apply to?**

1.2.1. This Practice Direction applies to all appeals commenced on or after 1 February 2025; and to appeals commenced before that date for steps that take place on or after it. This Practice Direction applies to England, Wales and Scotland. It amends and replaces the EAT Practice Direction 2023.

1.3. **What is this Practice Direction for?**

1.3.1. This Practice Direction explains the procedures of the EAT. It sets out procedural requirements with which parties are expected to comply. In order to assist parties, including litigants in person, the Practice Direction is intended to deal comprehensively with essential procedural requirements.

1.3.2. The EAT is established by the Employment Tribunals Act 1996 ("ETA") and operates under the Employment Appeal Tribunal Rules 1993 ("EAT Rules"). If any conflict should arise between the ETA and/or EAT Rules and this Practice Direction the ETA and/or EAT Rules take precedence.

1.3.3. The EAT may have regard to the Civil Procedure Rules, which apply to civil proceedings in England and Wales, and to the Rules of the Court of Session, which apply in Scotland, where appropriate.

1.3.4. Further guidance is provided in other Practice Directions and Guidance available on the EAT section of the Courts and Tribunals Judiciary website.

1.3.5. A Judge or Registrar may make an order that varies the usual procedures in this Practice Direction where appropriate for a particular appeal.

1.4. **Who should read this Practice Direction?**

1.4.1. **If you are thinking about submitting an appeal to the EAT you must read and carefully consider Sections 1 to 3 before doing so.** If you represent a person who is considering appealing to the EAT you should ensure that your client does so.

1.4.2. If you submit or respond to an appeal you must read and comply with the sections of this Practice Direction relevant to each step you take. You must also comply with the overriding objective and communicate with the EAT and any other party or parties in a respectful and appropriate manner.

1.4.3. This Practice Direction applies to all parties (including litigants in person) and representatives in EAT appeals.

1.5. **Who makes decisions in the EAT?**

1.5.1. Most decisions of the EAT are made by the Judges of the EAT (together with members of the EAT where a panel makes the decision).

1.5.2. The most senior Judge of the EAT is the President. The other Judges of the EAT are High Court Judges, Judges of the Court of Session, Deputy Judges of the High Court, Senior Circuit Judges, Circuit Judges, other visiting Judges and certain retired judges. A list of current Judges is available on the EAT section of the Courts and Tribunals Judiciary website.

1.5.3. All of the Judges of the EAT make independent judicial decisions. If you do not like a decision made by one Judge you are not entitled to have the decision made again by a different Judge. For example, you do not have the right to ask for a decision to be referred to the President. If you think a Judge has made an error of law you may consider seeking permission to appeal to the Court of Appeal (or Court of Session in Scotland).

1.5.4. Some decisions are made by the Registrar, or a person authorised to act on behalf of the Registrar. An appeal against a decision of the Registrar may be made to a Judge within 5 working days of the date when the Registrar's decision was sent to the parties. The way you calculate the time limit is set out at Section 3.4. Please use the form at Annex 2.

1.6. How should the EAT and parties approach an appeal? – the overriding objective

1.6.1. The role of the EAT is to deal with appeals **justly**. This is called the **overriding objective**. Dealing with an appeal justly includes, so far as is practicable:

a ensuring that the parties are on an equal footing (have a fair chance to bring or respond to an appeal)

b dealing with the appeal in ways which are proportionate to the importance and complexity of the issues

c ensuring that the appeal is dealt with expeditiously (reasonably quickly) and fairly

d saving expense

e giving a fair share of the EAT's resources to each appeal, while taking into account the need to provide resources for other appeals

f enforcing compliance with the EAT Rules, Practice Direction, orders and case management directions

1.6.2. The EAT will apply the overriding objective when it interprets any rule and/or exercises its powers.

1.6.3. The overriding objective also applies to parties and their representatives. This means that you **must** co-operate with the other party or parties to the appeal and with the EAT to ensure that the overriding objective is achieved. You must communicate with the other party or parties to the appeal and the EAT in a respectful and appropriate manner. **It should be remembered that if the interests of justice so require, a party's appeal or response may be struck out.**

1.7. Litigants in Person (in Scotland: Party Litigants)

1.7.1. Some people who bring or resist appeals in the EAT do so without legal representation. They are called litigants in person (England and Wales) or party litigants (Scotland) (for convenience, the term "litigants in person" is generally used in this Practice Direction). The Judges of the EAT are used to dealing with appeals brought, or resisted, by litigants in person.

1.7.2. The Judge will use plain language wherever possible and will explain the procedure of the EAT. If you do not understand something, please ask. The Judge will take account of the challenges that face a litigant in person. However, the Judge must act fairly to all parties to an appeal and cannot act as a legal or tactical advisor to a litigant in person. If the Judge cannot answer a question because doing so would involve offering legal or tactical advice the Judge will say so.

1.7.3. A party to the appeal may be represented by a lawyer. The lawyer should also use plain language. The lawyer can explain the procedure of the EAT. The lawyer may ask to discuss things with you when preparing for a hearing and before going in front of a Judge. The lawyer may try to clarify and narrow the issues in the appeal.

1.7.4. Remember that a lawyer has a professional duty to their own client. They are obliged to present their client's case and to follow their client's instructions.

1.7.5. Remember also that the EAT is required to ensure that every case receives its fair share of resources; it has to ensure that other appeals receive their fair share.

1.8. Responsibilities of Litigants in Person

1.8.1. If you are a litigant in person you are expected to co-operate with the EAT and the other party or parties to the appeal. This Practice Direction applies to litigants in person as well as to parties who have legal representation.

1.8.2. Bringing or defending an appeal can be stressful, but that is not an excuse for failing to co-operate with the other party or parties to the appeal.

1.9. Offensive or inappropriate communication

1.9.1. The majority of parties in the EAT communicate with each other and the EAT in a respectful and appropriate manner. Unfortunately, a minority do not, and in some cases have engaged in highly offensive and abusive communication.

1.9.2. Offensive and abusive communication is not acceptable, however strongly a party feels about the appeal. If you engage in abusive communication:

a your appeal or response could be struck out, or other proportionate action could be taken

b if you communicate inappropriately in a telephone call a member of the EAT staff may terminate the call and require you to raise any further matters in written correspondence

c if you engage in excessive or abusive email correspondence, you could be told that you can only correspond with the EAT by post and that EAT staff will no longer open or read your emails, but will file or delete them

1.10. **Alternative Dispute Resolution**

1.10.1. The EAT encourages alternative dispute resolution. You should consider the possibility of resolving your dispute before continuing with litigation. The Registrar or a Judge may order the parties to consider alternative dispute resolution and to report on the steps taken to seek a settlement (without saying what you have been discussing). You may be able to obtain assistance from an ACAS officer.

2. **DECIDING WHETHER TO APPEAL A DECISION OF AN EMPLOYMENT TRIBUNAL**

2.1. **What do Employment Tribunals do?**

2.1.1. Employment Tribunals decide most employment law disputes. Employment Judges and members are independent and have experience in employment law and practice.

2.1.2. The EAT hears appeals from the Employment Tribunals but is a separate judicial tribunal.

2.1.3. Employment Tribunals have wide powers and duties of case management. Where a case management direction is given, parties should then comply with the direction and get on with the rest of the case, even if they disagree with the decision. Appeals against case management decisions will rarely succeed, as a party would need to show that the Employment Tribunal had erred in legal principle in the exercise of the discretion or that no reasonable tribunal could have made the decision.

2.1.4. At a preliminary or final hearing an Employment Tribunal considers any evidence, makes any necessary findings of fact and then applies the law to determine the issue(s).

2.2. When can a decision of an Employment Tribunal be challenged?

2.2.1. People who fail in a claim or response before an Employment Tribunal, or disagree with a case management order, may think that the outcome is wrong. An appeal to the EAT is not an opportunity to reargue the dispute. There is a strong public interest in disputes being resolved and in the decision of an Employment Tribunal being final.

2.2.2. Section 21 ETA states that an appeal "lies to the Appeal Tribunal on any question of law arising from any decision of, or arising in any proceedings before, an employment tribunal under or by virtue of" the types of proceedings listed in that section.

2.2.3. In practical terms, an appeal to the EAT can **only** be made where there is an arguable **error of law** in a decision of an Employment Tribunal. Because you can only appeal on a question of law, you must identify flaws in the legal reasoning for the original decision. The EAT will not normally re-examine issues of fact.

2.3. What laws do Employment Tribunals apply?

2.3.1. Employment Tribunals apply statutes, statutory instruments and case law. These sources of law set out the tests an Employment Tribunal applies to determine the issues in a claim. You can find the statute(s) or statutory instrument(s) an Employment Tribunal applies by searching on the internet and can find case law at the National Archives and the British and Irish Legal Information Institute (BAILII).

2.4. What is *not* an error of law?

2.4.1. It is not an error of law for an Employment Tribunal:

a to make a finding of fact that you disagree with

b to reject some or all of your evidence

c to prefer the evidence of the other side

d to exercise a discretion against you

e not to determine every dispute of fact

f to make a decision that you think should have been made differently

2.5. **What *might be* an error of law?**

2.5.1. There might be an arguable error of law where, **for example**, an Employment Tribunal:

a applied the wrong legal test (you would need to state what you say was the correct legal test and identify the incorrect legal test that you say the Employment Tribunal applied)

b incorrectly applied the correct legal test (you would need to state what you say was the correct legal test and say how the Employment Tribunal applied it incorrectly)

c reached a decision of fact for which there was **no** evidence (it is not sufficient to argue that there was more evidence for an alternative factual conclusion)

d reached a decision which no reasonable Employment Tribunal, directing itself properly on the law, could have reached (it is not sufficient to argue that a different Employment Tribunal may have made a different decision)

e failed to take into account a relevant matter or took into account an irrelevant matter (you would need to state what the relevant matter was and how the Employment Tribunal knew you relied on it and/or state what irrelevant matter was taken into account)

f decided a point that was not argued (you would need to clearly state the point that you contend was not argued)

g gave reasons that do not, in broad terms, enable you to understand why you lost

h did not follow the correct procedure in a way that affected the outcome (you would have to give full details of the procedure that was not followed and how it affected the outcome)

i conducted the hearing in an unfair way (you would have to give full details of what was done that was unfair and say whether and, if so, how it affected the outcome)

2.5.2. The above are only given as examples.

2.6. **Can the EAT advise parties whether there is an arguable error of law and/or how to bring an appeal?**

2.6.1. The EAT is an independent judicial body and cannot provide advice. If you require advice about whether there may be an arguable error of law in the decision of an Employment Tribunal you should consider obtaining advice from a solicitor or other independent advisor.

2.7. **Can anyone else advise parties whether there is an arguable error of law and/or how to bring an appeal?**

2.7.1. There are many online sources of advice about employment law and you may be able to obtain advice in person. At the date of the introduction of this Practice Direction some of the websites that you might wish to visit and organisations you should consider contacting include:

a Citizen's Advice
b ACAS
c a Law Centre if there is one in your area
d GOV.UK
e In England and Wales: Advocate
f In Scotland: the Faculty of Advocates Free Legal Services Unit

2.7.2. Relevant documents and decisions of the EAT are available on the EAT section of the Courts and Tribunals Judiciary website.

2.8. **Are there any things that parties should think about before submitting an appeal?**

2.8.1. Before appealing to the EAT you should consider:

a whether you have identified an arguable error of law in the decision of the Employment Tribunal; if you have not identified an arguable error of law in the decision of the Employment Tribunal you should not bring an appeal

b the time, expense and stress that can be involved in bringing an appeal

c the fact that appeals in the EAT are generally held in public; members of the public may attend the hearing and may be

entitled to see copies of the Notice of Appeal, Respondent's Answer and other documents

d the fact that if you appeal where you lost part of the case but won another part, the other party or parties may (if there is an arguable error of law) 'cross-appeal' against the part that you won

3. SUBMITTING AN APPEAL AGAINST A DECISION OF AN EMPLOYMENT TRIBUNAL

3.1. What decisions of an Employment Tribunal can parties appeal against?

3.1.1. You may be able to appeal against:

a a judgment

b an order, direction or other decision concerning matters such as the conduct of proceedings (referred to in the ET Rules as a "case management order")

3.1.2. The judgment, order, direction or other decision may include reasons, or the reasons could be in a separate document. You may need to ask the Employment Tribunal for written reasons. However, you should not wait until you receive written reasons before sending your appeal to the EAT unless one of the circumstances set out in paragraph 3.3.1 applies. If you wait in other circumstances the appeal may be out of time.

3.2. What should parties do if they want to appeal against more than one decision of an Employment Tribunal?

3.2.1. **If you wish to appeal against more than one judgment, order, direction or other decision of an Employment Tribunal (given on different occasions or on the same occasion but in separate documents) you should generally submit a separate Notice of Appeal for each decision you are appealing against. If you appeal against decisions given at different stages of the same tribunal case, you should submit them on a separate Notice of Appeal for each decision.** If you do appeal against more than one decision in a single Notice of Appeal you must make it clear what each of the decisions are, and which grounds of appeal relate to which decision. If you do not do so, you may be required to resubmit separate grounds of appeal for each decision.

3.2.2. The EAT will set up a separate file for each judgment, order, direction, or other decision you appeal against. This is because there may be separate time limits and/or the separate appeals may be managed differently if, for example, one is considered to be reasonably arguable and another is not.

3.2.3. **If you are appealing more than one decision of an Employment Tribunal set out in a single judgment, order, direction, or other document you should make all the challenges to the decisions set out in that one document in one Notice of Appeal.**

3.3. What is the time limit for appealing against a decision of an Employment Tribunal?

3.3.1. If you are appealing against a **judgment** of an Employment Tribunal the time limit is:

a 42 days from the date on which the written record of the judgment was sent to the parties; or

b 42 days from the date on which the written reasons were sent to the parties **but only in one of the following circumstances**:

i written reasons were requested orally at the hearing

ii written reasons were requested in writing within 14 days of the date on which the written record of the judgment was sent to the parties

iii the judgment and/or reasons were reserved (not given orally at the hearing) and given in writing by the Employment Tribunal

3.3.2. If you are appealing an **order, direction or other decision** of an Employment Tribunal, the time limit is 42 days from the date of the order, direction, or other decision.

3.3.3. The time limit applies even if compensation or other remedy has not yet been determined.

3.3.4. The time limit applies even if an application has been made to the Employment Tribunal for reconsideration of a judgment or asking it to revoke or vary an order, direction or determination.

3.4. **How is time calculated in the EAT?**

3.4.1. The day on which a judgment or written reasons (where this is the date from which time runs) of an Employment Tribunal are sent to the parties or an order, direction or other decision is dated, does not count when calculating the time limit for serving a Notice of Appeal. For example, if the judgment was sent to the parties on a Wednesday, the Notice of Appeal must arrive at the EAT before, or by 4pm on, the Wednesday 6 weeks (42 days) later.

3.4.2. **When a date is given for serving a document, the complete document must be received by the EAT, or the relevant party, by 4pm on the date that has been given.** Any document received after 4pm will be treated as having been served on the next working day.

3.4.3. Except as provided by paragraph 3.4.4 below, all days count for calculating a time limit, but if a time limit would expire on a day when the central office of the EAT, or the EAT office in Edinburgh (as appropriate), is closed then it will instead expire on the next working day.

3.4.4. Where the time limit is 5 days (e.g. for an appeal from a decision made by the Registrar), Saturdays, Sundays, Christmas Day, Good Friday and Bank Holidays do not count. For example, an appeal against a Registrar's order made on a Wednesday must arrive at the EAT on, or before, 4pm on the following Wednesday.

3.4.5. An appeal is only properly instituted when the complete Notice of Appeal is received (together with any document you are required to serve with the Notice of Appeal by the EAT Rules) at the central office of the EAT, or the EAT office in Edinburgh (as appropriate), whatever the method used to deliver it.

3.4.6. **Time limits are strictly enforced, including the 4pm deadline.**

3.4.7. **Do not leave serving your Notice of Appeal and required documents until shortly before the end of the time limit.** Parties often experience technical difficulties, other unexpected problems, or delays and serve their Notice of Appeal out of time. In such circumstances it is unlikely that time for appealing would be extended.

3.5. **Can I ask for an extension of time?**

3.5.1. Because time limits are applied strictly by the EAT, an extension of time to submit a Notice of Appeal will only be granted in exceptional circumstances.

3.5.2. You can make an application to the EAT for an extension of time when you lodge your proposed Notice of Appeal (together with any documents you are required to serve with the Notice of Appeal by the EAT Rules). An application for an extension of time to appeal cannot be considered until your proposed Notice of Appeal and the required documents have been sent to the EAT.

3.5.3. Any application for an extension of time for appealing should be made to the Registrar. The application should be made in accordance with Section 7, using the form at Annex 2.

3.5.4. The Registrar will normally determine the application after asking for, and considering, written representations from all the parties. The Registrar's decision can be appealed to a Judge. The appeal from the Registrar's decision must be received by the EAT within 5 working days of the date when the Registrar's decision was sent to the parties (see Section 3.4.4 for the calculation of the time limit).

3.5.5. You must provide a full and honest explanation for the delay. The Registrar, or Judge on appeal from the Registrar, will consider the explanation, whether it is a good excuse for the delay and whether there are circumstances which justify the tribunal taking the exceptional step of granting an extension of time.

3.5.6. The following are generally **not** good excuses that explain submitting a Notice of Appeal late:

a you did not know the time limit

b you missed the time limit by mistake

c you are seeking help from a legal advisor or some other organisation

d you are waiting for the result of an application for reconsideration of a judgment or for an order, direction or other decision to be varied or revoked

e you are in negotiations with the other party or parties about resolving your dispute

3.5.7. If you make a minor error in complying with the requirement under Rule 3(1) of the EAT Rules to submit relevant documents to the EAT, and rectify that error (on a request from the EAT 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 all the circumstances, including the manner in which, and the timeliness with which, the error has been rectified and any prejudice to the respondent.

3.5.8. If you are not sure what to do, you should send a Notice of Appeal to the EAT in time and make an application to the Registrar for directions.

3.6. **The Notice of Appeal**

3.6.1. An appeal against a decision of an Employment Tribunal **must** be commenced by serving on the EAT a Notice of Appeal in, or substantially in, accordance with **Form 1** in the Schedule to the EAT Rules. **The Notice of Appeal must set out the grounds of appeal as provided for at Section 3.8**.

3.6.2. **You must provide your postal address and any email address and telephone number to be used for correspondence. You should state your preferred method of communication. You must also provide an up to date postal address and any email address and telephone number for the other people or companies who were parties in the Employment Tribunal.**

3.6.3. If a hearing is listed in the Employment Tribunal you should tell us the date and type of hearing.

3.7. **Documents to be served with the Notice of Appeal**

3.7.1. If you are appealing against a **judgment** of an Employment Tribunal you **must**:

a state the date the judgment was sent to the parties

b provide a copy of the judgment

c provide a copy of the written reasons (remember that there may be two documents, the judgment and the reasons for the judgment)

3.7.2. If you do not provide a copy of the written reasons, you must provide a written explanation of why you are not able to do so within the time limit for submitting the appeal. An unsatisfactory explanation, such as having failed to apply for them in time, may mean that it is not possible for you to pursue an appeal because there are no reasons for you to challenge. The EAT can direct that the Employment Tribunal provide written reasons out of time, but may decide not to do so if you had no good reason for failing to request them within time.

3.7.3. If you are not able to obtain written reasons because, for example, your request for written reasons has been refused by the Employment Tribunal, you must ask the EAT to exercise its discretion to hear the appeal without written reasons or to exercise its power to request written reasons from the Employment Tribunal, setting out the full grounds of that application. The application should be made in accordance with Section 7, using the form at Annex 2.

3.7.4. If you are appealing against an **order, direction or other decision** of an Employment Tribunal (which may be set out in a letter or email, and may include a refusal of a request made to the tribunal) you must:

a state the date of the order, direction or other decision (this will normally be recorded on the document that sets out the order, direction or other decision)

b serve a copy of the order, direction or other decision

c serve a copy of any written reasons for the order, direction or other decision that are available

3.7.5. **An appeal must be properly instituted within the time limit. That means that you must send the Notice of Appeal and all other documents required to be sent with the Notice of Appeal (set out in the EAT Rules and above) within the time limit.**

3.7.6. If you have made an application to the Employment Tribunal for reconsideration of a judgment or for an order, direction or other decision to be varied or revoked, a copy of the application should be sent with the Notice of Appeal. You should also provide any decision and written reasons of the Employment Tribunal determining the application if you have received them. If you have not yet received the decision determining the application and any written reasons you should say so.

3.7.7. If there was an order limiting publicity in the Employment Tribunal you should send a copy of the order with the Notice of Appeal.

3.7.8. Other documents, such as the bundle used for the hearing at the Employment Tribunal, must not be sent to the EAT when you send your Notice of Appeal. If you do send such documents they may not be kept and/or may not be considered by a Judge who considers the appeal at the Sift stage (see Section 4).

3.8. **The Grounds of Appeal**

3.8.1. **The grounds of appeal are very important.** The grounds of appeal must set out clearly and briefly the error(s) of law that you say the Employment Tribunal made. **An error of law should be easy to identify in a few words. The experience of the Judges of the EAT over many years is that short and focussed grounds of appeal are usually more persuasive than a long one and, in general, the more grounds raised the more it suggests that none is a good one.**

3.8.2. If introductory or explanatory text is necessary before the grounds of appeal, it should be as short as possible. In any introductory text you should not make a complaint about the decision of the Employment Tribunal that is not made as one of the numbered grounds of appeal.

3.8.3. Each ground of appeal should be separately numbered starting from Ground 1. The heading of each ground of appeal should state in bold (or underlined) "**Ground 1**", "**Ground 2**" etc. Each ground should have in the heading a brief description of the error of law. For example "**Ground 1 - Misinterpreted Section 136 of the Equality Act 2010**" or "**Ground 2 - Reached a decision on a point which had not been argued**". The heading should be followed by a brief explanation of the error of law that is sufficient to enable a Judge to understand the error of law that is being asserted, but no more. It is helpful to number the paragraphs of the grounds of appeal. It is important that it is clear which paragraphs are relevant to which ground of appeal.

3.8.4. The grounds of appeal **should**:

a be short and focussed

b clearly set out separately numbered grounds of appeal that clearly assert errors of law

c usually be no more than 1 to 5 A4 pages in length;

3.8.5. The grounds of appeal **should not**:

a be lengthy (usually they should be no more than 1 to 5 A4 pages in length)

b criticise the decision of the Employment Tribunal paragraph by paragraph

c seek to argue the claim or response in the Employment Tribunal again; an appeal to the EAT is not a second opportunity to run the case that was argued in the Employment Tribunal; there must be an arguable error of law

d include lengthy or extensive quotations from the decision of the Employment Tribunal; you can refer to the relevant paragraph numbers where you assert the error of law occurs; the EAT will read the decision of the Employment Tribunal

e include lengthy or extensive quotations from case law; you can refer to case law by giving the name of the case, the case reference (such as a case number and/or neutral citation number that will be on the first page of the case) and the paragraph number(s) you rely on (or if there are no paragraph numbers the page number and any letter in the side margin); and/or you can briefly set out the legal principle(s) you rely on the case to establish

f seek to incorporate any other document or documents (such as a witness statement or application for reconsideration etc.); any such document will not be part of the grounds of appeal and may be disregarded by the EAT

g have footnotes

3.8.6. **In the grounds of appeal you must state the order that you will ask the EAT to make if you win (will you ask the EAT to send back the whole or part of the case for a new decision to the same or a different Employment Tribunal, or to substitute a different decision for that of the original Employment Tribunal?).**

3.8.7. If your grounds of appeal fail to comply with this Practice Direction because, for example, they lack clarity and/or do not identify arguable

errors of law, a Judge or the Registrar may send them back and require you to submit grounds of appeal that fully comply with this Practice Direction. Alternatively, a Preliminary Hearing (see Section 6) may be fixed for you to seek to persuade a Judge that there are reasonably arguable grounds for bringing the appeal.

3.8.8. You cannot "reserve a right" to amend, alter or add, to your grounds of appeal. You do not have a right to amend the grounds of appeal without permission of the EAT. Any application for permission to amend should be made in accordance with the procedure set out at Section 8.2.

3.9. **Grounds of appeal alleging perversity**

3.9.1. Perversity grounds of appeal rarely succeed because it is necessary to establish that the Employment Tribunal reached a decision which no reasonable tribunal, directing itself properly on the law, could have reached. It is not sufficient to argue that a different Employment Tribunal may have made a different decision or that the tribunal did not accept your evidence or arguments.

3.9.2. You should clearly state whether you allege that:

a no reasonable Employment Tribunal could have reached the conclusion reached by the Employment Tribunal on the basis of the findings of fact it made; and/or

b no reasonable Employment Tribunal could have made the findings of fact that the Employment Tribunal made on the basis of the evidence

3.9.3. It is particularly difficult to establish that no reasonable Employment Tribunal could have made the findings of fact it did on the basis of the evidence it heard. Findings of fact are matters for an Employment Tribunal.

3.9.4. It is not sufficient to make a generalised allegation in a ground of appeal such as "the judgment was contrary to the evidence", or that "there was no evidence to support the judgment", or that "the judgment, order, direction or other decision was one which no reasonable Employment Tribunal could have reached and was perverse". The grounds of appeal must set out full details of the matters relied on in support of any allegation of perversity.

3.10. **Grounds of appeal alleging bias or procedural impropriety**

3.10.1. If you complain about the conduct of an Employment Tribunal (for example you allege bias, apparent bias or improper conduct by the Employment Judge, a member, and/or any material procedural irregularity at the hearing) you must include in the specific ground(s) of appeal full details of each complaint made.

3.10.2. **Any ground of appeal alleging bias or procedural impropriety must include a Statement of Truth.**

3.10.3. If you are not legally represented the Statement of Truth must state "**I believe that the facts stated in this ground of appeal are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.**" You must sign the Statement of Truth.

3.10.4. If you are legally represented and a legal representative signs the Statement of Truth it must state "'**The appellant believes that the facts stated in this ground of appeal are true. The appellant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth**."

3.10.5. A failure to comply with these specific provisions about grounds of appeal that allege bias or procedural impropriety may be sufficient for a Judge to conclude at the Sift stage (see Section 4), Rule 3(10) Hearing (see Section 5) or Preliminary Hearing (see Section 6) that the allegation is not properly supported so that there are no reasonable grounds for bringing that ground of appeal.

3.11. **Restriction of Proceedings Order**

3.11.1. Where an application is made for permission to institute or continue relevant proceedings by a person who has been made the subject of a Restriction of Proceedings order pursuant to section 33 ETA 1996, the application will be considered on paper by a Judge, who may make an order granting, refusing or otherwise dealing with the application on paper.

3.12. **Can parties appeal if they did not enter an ET3 Response in the Employment Tribunal?**

3.12.1. If a judgment was made against you by an Employment Tribunal when you had failed to enter an ET3 Response in time you should generally seek permission to enter a response out of time in the Employment Tribunal (which can be done even where a judgment has been entered against you). The decision whether to permit an ET3 Response to be entered out of time is usually best made in the Employment Tribunal. However, you can appeal at the same time; and you should note that making an application to enter a response out of time in the Employment Tribunal will not stop the time limit for appealing to the EAT from running (see Section 3.3).

3.12.2. If you appeal a judgment in such circumstances you should serve a witness statement with the Notice of Appeal (verified by a statement of truth; see Section 7.3.2.d):

a setting out a full and honest explanation of why you did not submit your ET3 Response in time

b if you applied to submit an ET3 Response out of time, attaching a copy of that application and the ET3 Response, and stating whether the application has been decided and, if so, the result (together with a copy of the document setting out the result)

c if you did not apply to submit an ET3 Response out of time, explaining why not and setting out the full grounds of your proposed defence to the claim in the Employment Tribunal and providing a draft ET3 Response

d attaching any relevant correspondence with the Employment Tribunal and the other party or parties

3.12.3. The appeal may be stayed (or, in Scotland, sisted) (stopped for a period before the EAT takes any further action):

a if you have not already sought the permission of the Employment Tribunal to submit an ET3 Response out of time to permit you to do so

b if you have sought the permission of the Employment Tribunal to submit an ET3 Response out of time, but the application has not

yet been determined, to allow time for the application to be determined

3.13. **Applications when submitting your Notice of Appeal**

3.13.1. When you are preparing your Notice of Appeal you should consider whether there are any applications that you should make at the same time as submitting the Notice of Appeal (see Sections 7 and 8).

3.14. **How do I send a Notice of Appeal and other documents to the EAT?**

3.14.1. The EAT operates an online secure portal for the submission of Notices of Appeal and other documents except in the case of National Security appeals. Please contact the EAT for further information about how to submit documents in a National Security Appeal.

3.14.2. The online secure portal (for the purposes of Rule 35 of the EAT Rules) currently used by the EAT is CE-File.

3.14.3. A legal representative (as defined by Rule 2(1) EAT Rules) must use the online secure portal (except in National Security appeals). If a legal representative uses another method that is permitted for those who are not legal representatives that failure will not, by itself, render void the proceedings or any step in the proceedings. The EAT may take such action as it considers just, which may include waiving the requirement, requiring the failure to be remedied, striking out the proceedings, or restricting the party's participation in the proceedings.

3.14.4. The online secure portal is also the EAT's preferred method for parties who are not legal representatives to submit appeals and send any other documents to the EAT. You should use the online secure portal unless there is a good reason not to, such as inability to access or use a computer. For further information about the online secure portal see the EAT Guidance on E-Filing.

3.14.5. The online secure portal cannot be used to provide documents to another party. Documents which are required to be provided to another party must be sent or delivered to that party by another method permitted by Rule 35 EAT Rules.

3.14.6. If the online secure portal is malfunctioning you should use one of the alternative methods for submitting documents permitted by Rule 35 EAT

Rules and, if you are a legal representative, explain why you were not able to use the online secure portal.

3.14.7. If there is good reason not to use the online secure portal, then a Notice of Appeal and any other document(s) may be lodged by email, by post or by hand to the addresses provided on the EAT section of the Courts and Tribunals Judiciary website.

3.14.8. If you use email, the size of any one email, including attachments, should not exceed 10MB. This limit is very easily exceeded if scanned documents are included. If you attach scanned documents you should check that they do not exceed that size. If they do, you may need to rescan them at lower resolution, compress them and/or send them in more than one email.

3.14.9. Documents uploaded to the online secure portal should not exceed 50MB or such other limit that may be specified by His Majesty's Courts and Tribunals Service.

3.14.10. Documents uploaded to the online secure portal or attached to emails should be in PDF format (or if that is not possible in a format which can be read by the computers used by the EAT - see guidance on the EAT section of the Courts and Tribunals Judiciary website) and clearly marked (Notice of Appeal, Respondent's Answer, Employment Tribunal Judgment, Application, ET1 Claim Form, ET3 Response etc). The EAT cannot receive encrypted files – any email with an encrypted file attached will be blocked. A document is **not** validly lodged by sending a link to its location (e.g. where it is saved in the Cloud).

3.14.11. You should leave enough time to allow for delays, or to correct errors. Receipt of emails and uploading to the online secure portal is not instantaneous; documents may take many minutes, or longer, to arrive and you should bear this in mind when lodging your appeal or sending other documents. **Electronic documents are only treated as received by the EAT once they are on the online secure portal/EAT computer system**.

3.14.12. If you use the post you should bear in mind the likelihood of delay or loss and should contact the EAT if you have received no acknowledgement after 5 working days. A delay in submitting a Notice of Appeal caused by loss or delay in the post will generally not be considered to be a good reason for the delay as you should make sure the Notice of Appeal is submitted in ample time to remedy any such problem.

3.14.13. **It is your responsibility to make sure that your Notice of Appeal, with all the required documents, reaches the EAT in time**.

3.15. Can parties apply to amend their grounds of appeal?

3.15.1. If you wish to amend your grounds of appeal you must make an application to do so. The way you should make such an application is set out at Section 8.2.

4. THE "SIFT"

4.1. What happens when the appeal is properly instituted?

4.1.1. Once the appeal has been properly instituted within time, the Notice of Appeal will be referred to a Judge for "Sift". The Judge will read the judgment, order, direction or other decision of the Employment Tribunal and your Notice of Appeal and decide whether there are any reasonable grounds for bringing each ground of appeal.

4.2. Stay or Sist (in Scotland)

4.2.1. The Judge sifting the appeal may decide to stay (or in Scotland to sist) the appeal (stop it for a period of time):

a because you have applied for reconsideration of a judgment of an Employment Tribunal and the application has not been determined

b to allow you to apply for reconsideration of a judgment of an Employment Tribunal (possibly out of time)

c to allow you to apply for an order, direction or other decision of an Employment Tribunal to be varied or revoked because of a material change in circumstances

d to allow you to ask for a decision of a legal officer in the Employment Tribunal to be considered afresh by an Employment Judge

e to allow you to seek reconsideration of the rejection of a claim by an Employment Tribunal

f to allow you to seek an extension of time to enter a response to a claim in the Employment Tribunal

g if you are challenging a failure of an Employment Tribunal to make a judgment, order, direction or decision, to allow time for the Employment Tribunal to do so

4.3. **The "Sift"**

4.3.1. The Judge will consider each ground of appeal in your Notice of Appeal and decide whether it discloses a reasonable ground for bringing the appeal. There are no reasonable grounds for bringing a ground of appeal if it does not assert an arguable error of law or where, even if correct, it is of no practical significance. If there are no reasonable grounds for bringing a ground of appeal (subject to Section 4.4 below) no further action will be taken on that ground.

4.3.2. If a Judge considers that a ground of appeal is an abuse of the EAT process or is otherwise likely to obstruct the just disposal of proceedings then, subject to any challenge to that opinion under rule 3(10) (see Section 4.4 below), no further action will be taken on that ground. In the rest of this Section the term "no reasonable grounds for bringing a ground of appeal" should be treated as including a case where the ground of appeal is an abuse of the EAT process or is otherwise likely to obstruct the just disposal of proceedings.

4.3.3. If the Judge needs to read additional documents (such as the ET1 and ET3) you may be asked to provide them, or they may be obtained from the Employment Tribunal electronic case management system. If documents are obtained from the Employment Tribunal electronic case management system, you will be told what additional documents were considered by the Judge.

4.3.4. If the Judge considers that there are no reasonable grounds for bringing some or all of your grounds of appeal you will be provided with a written notice informing you of the Judge's opinion, which will include the Judge's reasons for forming that opinion. This is called a Rule 3(7) letter. If you wish to consider challenging the Judge's opinion see Section 4.4.

4.3.5. If the Judge, in addition to forming the opinion that there are no reasonable grounds for bringing some or all of your grounds of appeal, also decides that any of the grounds of appeal are so defective that they are **totally without merit** you will be told why in writing in a Rule 3(7ZA) order. You will not be able to challenge that order in the EAT. If you wish to challenge an order stating that a ground of appeal is totally without merit in England and Wales you should apply for permission to

appeal from the Court of Appeal within 7 days of the date of the service of the Rule 3(7ZA) order (see CPR 52.11) or in Scotland in accordance with the provisions of Rule 41 of the Rules of the Court of Session 1994.

4.3.6. If the Judge considers that there may be reasonable grounds for bringing some or all of your grounds of appeal a Preliminary Hearing may be fixed to consider them further (see Section 6). The Judge fixing the Preliminary Hearing may direct you to produce a draft amended grounds of appeal that fully complies with Section 3.8 for consideration at the Preliminary Hearing.

4.3.7. If the Judge considers that there are reasonable grounds for bringing some or all of your grounds of appeal a full hearing will be fixed (see Section 11). A listing category will be assigned:

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

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

c B (any other cases)

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

4.3.8. Note that the opinion formed by the Judge at the Sift stage could be different for different grounds of appeal. The Judge could form one or more of the following opinions:

a there are reasonable grounds for bringing some or all of the grounds of appeal and they should be heard at a Full Hearing

b there may be reasonable grounds for bringing some or all of the grounds of appeal and they should be considered further at a Preliminary Hearing

c there are no reasonable grounds for bringing some or all of the grounds of appeal and no further action should be taken on them

4.4. What should parties do if the Judge is of the opinion there are no reasonable grounds for bringing some or all of their grounds of appeal?

4.4.1. **The first thing you should do is read and carefully consider the reasons given by the Judge in the Rule 3(7) letter.** The Judges of the EAT have experience of employment law and in deciding whether a ground of appeal should be considered at a Full Hearing.

4.4.2. Rule 3(10) of the EAT Rules provides that where you have received a Rule 3(7) letter you may (except where a ground of appeal is totally without merit) express dissatisfaction in writing with the reasons given by the Judge provided you do so within 28 days of the date the notification was sent to you. If you do so, you are entitled to have the matter heard before a Judge who will decide whether the ground of appeal should be permitted to proceed. You must use this process rather than seek a review under Rule 33 of the EAT Rules.

4.4.3. **If you decide to express dissatisfaction and attend a Rule 3(10) Hearing you should complete the form at Annex 1.**

4.4.4. You should consider which paragraphs of the reasons in the Rule 3(7) letter you accept. The Rule 3(10) Hearing is likely to be more focussed if you state which paragraphs of the Rule 3(7) letter you agree with.

4.4.5. You should then consider which paragraphs of the reasons provided by the Judge in the Rule 3(7) letter you disagree with. You need to have a good reason for asserting that the Judge's opinion is wrong. Where the Judge has formed the opinion that a ground of appeal does not set out any arguable error of law you will need to explain the arguable error of law that you are asserting.

4.4.6. The Rule 3(10) application allows you to explain why you disagree with the opinion of the Judge in the Rule 3(7) letter. If you fail to do so the Judge at the Rule 3(10) Hearing may conclude you do not have any proper basis for disagreeing with it.

5. RULE 3(10) HEARINGS

5.1. What should parties do before asking for a Rule 3(10) Hearing

5.1.1. Before expressing dissatisfaction with the opinion of a Judge, set out in a Rule 3(7) letter, that there are no reasonable grounds for bringing some

or all of your grounds of appeal, you should carefully read Sections 1-4 above.

5.2. What should parties do to prepare for a Rule 3(10) Hearing?

5.2.1. If you wish to have any other application(s) considered at the Rule 3(10) Hearing you should make the application(s) when you send your application (on the form at Annex 1) expressing dissatisfaction with the Rule 3(7) letter. The way you should make an application for a direction about the conduct of an appeal is set out at Sections 7 and 8. The application should be made on the form at Annex 2.

5.2.2. You can provide a bundle of documents for the Rule 3(10) Hearing, but you are not required to do so, unless:

a the EAT orders you to do so

b you want the Judge at the Rule 3(10) Hearing to consider documents in addition to the judgment, order, direction or other decision you are appealing against, and any written reasons for it, and your Notice of Appeal.

5.2.3. If you do provide a bundle it must include the following documents (but no other documents):

a the judgment, order, direction or other decision you are appealing against and any written reasons

b the sealed Notice of Appeal

c the Rule 3(7) letter

d your application (on the form at Annex 1) expressing dissatisfaction with the Rule 3(7) letter

e any other relevant orders and judgments of the EAT

f any other applications you have made to the EAT

g the ET1 claim(s) and any document(s) that were attached

h the ET3 response(s) and any document(s) that were attached

i any other relevant judgment, order, direction or other decision and written reasons of the Employment Tribunal

5.2.4. You should only submit any other documents if they are absolutely necessary for your argument at the Rule 3(10) Hearing. If you do so the additional documents should be in a supplementary bundle and you must (rather than may – see paragraph 5.2.6) submit a skeleton argument that refers to each document in the supplementary bundle and clearly explains why it is necessary for the Judge to read it. If you do not provide such a skeleton argument, the Judge need not read the additional documents. Save in exceptional circumstances, a supplementary bundle should not exceed 50 pages of documents. Usually, a supplementary bundle is unnecessary.

5.2.5. If you do decide to submit a bundle of documents you must send it (together with any supplementary bundle) to the EAT and the other parties to the appeal no later than 28 days prior to the Rule 3(10) Hearing. The documents should be in the order set out above and be paginated. You must provide the EAT with one hard copy and an electronic copy in PDF format. The format of the bundle should comply with Section 11.4. Bundles that are sent to the EAT or the other parties less than 28 days prior to the hearing may not be considered by the Judge.

5.2.6. You may provide a skeleton argument summarising why you contend there are reasonable grounds for bringing the ground(s) of appeal, but you are not required to do so, because this should be apparent from each ground of appeal itself. If you do prepare a skeleton argument it should comply with Section 11.6 and be sent to the EAT and the other parties no later than 14 days before the Rule 3(10) Hearing. A skeleton argument sent to the EAT or the other parties less than 14 days before the hearing may not be considered by the Judge.

5.2.7. If you wish to rely on any authorities (case law) you must send a bundle of authorities to the EAT and the other parties no later than 7 days prior to the Rule 3(10) Hearing. You must provide the EAT with one hard copy and an electronic copy in PDF format. The format of the authorities bundle should comply with Section 11.7.

5.3. **Can parties get any help at the Rule 3(10) Hearing?**

5.3.1. If you are a litigant in person you will be offered the opportunity to request an advisor under the Employment Law Appeal Advice Scheme

(ELAAS), or the Scottish Employment Appeal Law Advice Scheme (SEALAS) for appeals in Scotland.

5.3.2. There is no guarantee that an ELAAS or SEALAS advisor will be available or consider it appropriate to represent you, and you must be prepared to represent yourself.

5.3.3. See Section 2.7 for other sources of advice that may be available.

5.4. **What will happen at the Rule 3(10) Hearing?**

5.4.1. The Rule 3(10) Hearing will give you the opportunity to persuade the Judge that there are reasonable grounds for bringing some or all of the ground(s) of appeal. The Judge considers the matter afresh at the Rule 3(10) Hearing. However, particularly if you have not explained why the opinion in the Rule 3(7) letter is wrong, the Judge may adopt some or all of the reasons of the Sift Judge, and may add or substitute additional reasons.

5.4.2. The other party or parties to the appeal will not usually be able to speak at the Rule 3(10) Hearing but may attend to observe. If they do attend, the Judge may give them an opportunity to make brief submissions on any particular issue if it is in accordance with the overriding objective.

5.4.3. The Rule 3(10) Hearing will usually last **1 hour**. This includes time for the Judge to give a decision. In practical terms, that means that your submissions should usually take no more than 40 minutes. The Judge will be entitled to require you to complete your submissions to ensure that the Rule 3(10) Hearing finishes in time. You should prepare to argue your strongest points first. Sometimes more than one Rule 3(10) Hearing may be listed together (or a Rule 3(10) Hearing may be listed with a Preliminary Hearing and/or an Appeal from a Registrar's Order). This does not mean that the listing will be one hour for each of the matters. They will have been listed together because there is some connection or overlap and will not require a significantly increased listing. Only in exceptional circumstances will a combined hearing be listed for more than two hours.

5.4.4. Permission to amend the Notice of Appeal may be granted at a Rule 3(10) Hearing. The proposed amendment should be made available in writing before or at the hearing wherever practicable, and will not take effect unless the Judge has approved it.

5.4.5. If an amendment is permitted at a Rule 3(10) Hearing, or a direction is made to submit amended grounds of appeal that are subsequently approved, the other party or parties will generally be given the opportunity to apply on notice to vary or discharge the permission to proceed, and for consequential directions, particularly if the appeal might not have been permitted to proceed but for the amendment.

5.4.6. If the Judge is persuaded that there are reasonable grounds for bringing some or all of the grounds of appeal the Judge will direct a Full Hearing (see Section 11) and give directions to prepare for it. This will be set out in an order. The Judge will usually give brief oral reasons and provide very brief written reasons attached to the order that are sufficient for the Judge or panel at the Full Hearing to understand why the ground(s) was permitted to proceed. A listing category will be assigned:

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

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

c B (any other cases)

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

5.4.7. Unless the other party or parties have already had an opportunity to comment on the directions in the order permitting the appeal to proceed they will be given an opportunity to apply on notice to vary or discharge the directions given in the order.

5.4.8. If the Judge decides that there may be reasonable grounds for bringing some or all of the grounds of appeal a Preliminary Hearing could be fixed (see Section 6). The Judge fixing the Preliminary Hearing may direct you to produce a draft amended grounds of appeal that fully complies with Section 3.8 for consideration at the Preliminary Hearing.

5.4.9. If the Judge decides that there are no reasonable grounds for bringing some or all of the grounds of appeal no further action will be taken on the appeal or relevant grounds of appeal.

5.4.10. If an order is made dismissing the application in respect of some or all of the grounds of appeal the Judge will usually give oral reasons at the hearing and provide short-form written reasons attached to the order. The Judge can direct that an approved written judgment will be provided

if the Judge considers it is appropriate. If the Judge does not do so, you may within 14 days of the seal date of the order, apply for the oral reasons given at the hearing to be provided to you in writing (on payment of a fee in England and Wales, subject to being granted an exception to the requirement to pay the fee). If this is done, a written judgment will be provided, as approved by the Judge (see Section 11.9). There is, however, no general right to be provided with a written judgment at public expense unless the Judge or the Court of Appeal (or Court of Session in Scotland) directs otherwise. Where short-form reasons are provided, they will usually be sufficient.

5.4.11. If you wish to challenge a decision made at a Rule 3(10) Hearing that there are no reasonable grounds for bringing a ground of appeal and that no further action should be taken on it you should seek permission to appeal in England and Wales from the Court of Appeal within 7 days of the date of the direction made under Rule 3(10) (see CPR 52.11) or in Scotland in accordance with Section 13.1(b).

6. **PRELIMINARY HEARINGS**

6.1. **What should parties do to prepare for a Preliminary Hearing?**

6.1.1. If some or all of your grounds are put through to a Preliminary Hearing you should read and carefully consider Sections 1-4 above.

6.1.2. The Judge fixing the Preliminary Hearing may direct you to produce a draft amended grounds of appeal that fully complies with Section 3.8 for consideration at the Preliminary Hearing.

6.1.3. If you wish to have any application(s) considered at the Preliminary Hearing you should make the application(s) at least 14 days before the Preliminary Hearing. The way you should make an application is set out at Sections 7 and 8.

6.1.4. Usually, the other party or parties to the appeal will be permitted or required to submit brief written submissions limited to seeking to establish that there are no reasonable grounds for bringing the ground(s) of appeal put through to the Preliminary Hearing. Sometimes the other party or parties may be permitted to attend the Preliminary Hearing to make oral representations.

6.1.5. You can provide a bundle of documents for the Preliminary Hearing, but you are not required to do so, unless:

a the EAT orders you to do so

b you want the Judge at the Preliminary Hearing to consider documents in addition to the judgment, order, direction or other decision you are appealing against, and any written reasons for it, and your Notice of Appeal.

6.1.6. If you do provide a bundle it must include the following documents (but no other documents):

a the judgment, order, direction or other decision you are appealing against and any written reasons

b the sealed Notice of Appeal

c the order putting the matter through to the Preliminary Hearing

d any other relevant orders and judgments of the EAT

e any other applications you have made to the EAT

f the ET1 claim(s) and any document(s) that were attached

g the ET3 response(s) and any document(s) that were attached

h any other relevant judgment, order, direction or other decision and written reasons of the Employment Tribunal

6.1.7. You should only submit any other documents if they are absolutely necessary for your argument at the Preliminary Hearing. If you do so the additional documents should be in a supplementary bundle and you must (rather than may – see paragraph 6.1.10) submit a skeleton argument that refers to each document in the supplementary bundle and clearly explains why it is necessary for the Judge to read it. If you do not provide such a skeleton argument, the Judge need not read the additional documents. Save in exceptional circumstances, a supplementary bundle should not exceed 50 pages of documents. Usually, a supplementary bundle is unnecessary.

6.1.8. If the other party or parties are permitted to attend the Preliminary Hearing you should agree the bundle with them in good time to submit it to the EAT by the required date.

6.1.9. If you decide to submit a bundle of documents you must send it (together with any supplementary bundle) to the EAT and the other parties not later

than 28 days prior to the Preliminary Hearing. The documents should be in the order set out above and be paginated. You must provide the EAT with one hard copy and an electronic copy in PDF format. The format of the bundle should comply with Section 11.4. Bundles that are sent to the EAT or the other parties less than 28 days prior to the hearing may not be considered by the Judge.

6.1.10. You can provide a skeleton argument summarising why you contend there are reasonable grounds for bringing the ground(s) of appeal, but you are not required to do so because this should be apparent from the ground itself. If you do prepare a skeleton argument it should comply with Section 11.6 and be sent to the EAT and the other parties no later than 14 days before the Preliminary Hearing. A skeleton argument sent to the EAT or the other parties less than 14 days before the hearing may not be considered by the Judge.

6.1.11. If you wish to rely on any authorities (case law) you must send a bundle of authorities to the EAT and the other parties no later than 7 days prior to the Preliminary Hearing. You must provide the EAT with one hard copy and an electronic copy in PDF format. The format of the authorities bundle should comply with Section 11.7.

6.2. **Can parties get any help at the Preliminary Hearing?**

6.2.1. If you are a litigant in person you will be offered the opportunity to request an advisor under the Employment Law Appeal Advice Scheme (ELAAS), or the Scottish Employment Appeal Law Advice Scheme (SEALAS) for appeals in Scotland.

6.2.2. There is no guarantee that a ELAAS or SEALAS advisor will be available or consider it appropriate to represent you, and you must be prepared to represent yourself.

6.2.3. See Section 2.7 for other sources of advice that may be available.

6.3. **What will happen at the Preliminary Hearing?**

6.3.1. The Preliminary Hearing will give you the opportunity to persuade the Judge that there are reasonable grounds for bringing some or all of the grounds of appeal.

6.3.2. Unless permission has been granted (see paragraph 6.1.4), the other party or parties to the appeal will not usually be able to speak at the Preliminary Hearing but may attend to observe. If they do attend, the

Judge may give them an opportunity to make brief submissions on any particular issue if it is in accordance with the overriding objective.

6.3.3. The Judge who directed the Preliminary Hearing may have permitted the other party or parties to attend the Preliminary Hearing to make oral submissions (see paragraph 6.1.4) in which case they will be able to do so if they wish.

6.3.4. The Preliminary Hearing will usually be listed for **1 hour** unless the other party or parties have been given permission to attend to make submissions, in which case it may be longer. This includes time for the Judge to give a decision. In practical terms, that means that your submissions should usually take no more than 40 minutes. The Judge will be entitled to require you to complete your submissions to ensure that the Preliminary Hearing finishes in time. You should prepare to argue your strongest points first.

6.3.5. Permission to amend may be granted at a Preliminary Hearing. The proposed amendment should be made available in writing before or at the hearing wherever practicable, and will not take effect unless the Judge has approved it.

6.3.6. If an amendment is permitted at a Preliminary Hearing, or a direction is made to submit amended grounds of appeal that are subsequently approved, the other party, or parties, will generally be given the opportunity to apply on notice to vary or discharge the permission to proceed, and for consequential directions, particularly if the appeal might not have been permitted to proceed but for the amendment.

6.3.7. If the Judge is persuaded that there are reasonable grounds for bringing some or all of the grounds of appeal the Judge will direct a Full Hearing (see Section 11) and give directions to prepare for it. This will be set out in an order. The Judge will usually give brief oral reasons and provide very brief written reasons attached to the order that are sufficient for the Judge or panel at the Full Hearing to understand why the ground(s) was permitted to proceed. A listing category will be assigned:

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

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

c B (any other cases)

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

6.3.8. Unless the other party or parties have already had an opportunity to comment on the directions in the order permitting the appeal to proceed they will be given an opportunity to apply on notice to vary or discharge the directions given in the order.

6.3.9. If an order is made dismissing some or all of the grounds of appeal the Judge will usually give oral reasons at the hearing and provide short-form written reasons attached to the order. The Judge can direct that an approved written judgment will be provided if the Judge considers it is appropriate. If the Judge does not do so, you may, within 14 days of the seal date of the order, apply for the oral reasons given at the hearing to be provided to you in writing (on payment of a fee in England and Wales), subject to being granted an exception to the requirement to pay the fee. If this is done, a written judgment will be provided, as approved by the Judge (see Section 11.9). There is, however, no general right to be provided with a written judgment at public expense unless the Judge or the Court of Appeal (or Court of Session in Scotland) directs otherwise. Where short-form reasons are provided, they will usually be sufficient.

6.3.10. If you wish to challenge a decision made at a Preliminary Hearing that there are no reasonable grounds for bringing a ground of appeal and that it should be dismissed you should seek permission to appeal in England and Wales to the Court of Appeal (or Court of Session in Scotland) (see Section 13).

7. **APPLICATIONS, CASE MANAGEMENT AND DIRECTIONS**

7.1. **Introduction**

7.1.1. This Section explains the approach the EAT adopts to case management and how to apply for a direction about the conduct of an appeal. Section 8 applies in addition to this section to specific types of applications and directions.

7.2. **General approach to case management**

7.2.1. The EAT undertakes case management in accordance with the overriding objective (Section 1.6).

7.2.2. You are required to cooperate with the EAT and the other party or parties to the appeal to further the overriding objective when you apply to the EAT for a case management direction.

7.2.3. When you make an application you must set out all of your reasons for applying for the direction and provide any supporting material. You must not provide your grounds and supporting material piecemeal.

7.2.4. Once you have made an application and it has been determined you generally will not be able to make the same or a similar application again unless there has been a material change of circumstances. If you could have advanced an argument or provided supporting material when you made an application you are unlikely to be able to repeat the application based on an argument or material you failed to rely on when you first made the application.

7.2.5. Part of dealing with cases in accordance with the overriding objective is that all parties to the appeal should see any correspondence between another party and the EAT and any materials sent to the EAT. Save in exceptional circumstances the EAT will not accept communications or documents on the basis that they are to be confidential to the EAT and are not to be disclosed to another party. All documents presented by one party are presumed to be disclosable to the other(s) in the absence of a direction by a Judge that the document should not be disclosed to the other party or parties (see Sections 8.7 and 8.8).

7.3. **The Application Form**

7.3.1. You should use the application form at Annex 2 to make any application for a direction about the conduct of your appeal. The form allows you to make a number of specific types of application and other general applications.

7.3.2. When you make an application you must:

a set out all of your reasons for making the application

b provide any material you rely on in support of the application

c if you want to rely on medical evidence provide copies of all medical evidence that is relevant to the application

d if you want to rely on other evidence relevant to the application from a person it should be written as a witness statement; the

witness statement must end with a statement of truth in these terms "**I believe that the facts stated in this statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth**"

7.3.3. You should send the application to the EAT in one of the ways set out in Section 3.14. You should send a copy of the application to anyone who is a party or potential party to the appeal.

7.4. **What will happen if a party fails to use the application form to make an application?**

7.4.1. If you fail to use the application form to make an application the Registrar or a Judge may require you to resubmit the application using the application form or may determine it as submitted if that is considered to be in accordance with the overriding objective. If the application is considered without requiring you to resubmit it using the application form, you may be told that any further applications will only be considered if made using the application form.

7.4.2. If you fail to use the application form the EAT may assume that your correspondence does not include an application, particularly if the correspondence is lengthy. If you meant to make an application in correspondence and it has not been responded to by the EAT you should resubmit the application on the application form. There is no obligation on the EAT to consider an application that is not made on the application form.

7.5. **Responding to an application**

7.5.1. **You should provide any response to an application within 5 working days of having been sent the application (unless the EAT specifies a longer period) or seek additional time to respond. If you fail to respond in time the application may be determined on the basis that you have no objection to it, or you may be given a further period of time in which you should respond to the application.**

7.6. **How will the application be determined?**

7.6.1. Applications for directions will usually be dealt with "on the papers" (without a hearing) by the Registrar (or a person authorised to act on

behalf of the Registrar), with the right of an appeal to a Judge, unless it is of a type that the Registrar cannot consider (see Section 8.7) or the Registrar considers the application should be referred to a Judge. The provisions that apply to interim applications are set out in Rules 19 to 22 of the EAT Rules. If an application is premature it may not be dealt with by the EAT at that stage and you may be required to submit it again at an appropriate time.

7.7. **Appointment for directions**

7.7.1. If it will assist in managing the appeal in accordance with the overriding objective, the EAT may fix an appointment for directions as provided for by Rule 24 of the EAT Rules.

7.7.2. If the EAT fixes an appointment for directions, the parties should make any applications for directions no later than 14 days prior to the appointment for directions (unless a different time limit is fixed by the EAT). You should attend the appointment for directions to pursue, or object to, the directions sought.

7.7.3. Any hearing which takes place solely for the purpose of giving directions, or dealing with any other interim matter that could have been dealt with without an oral hearing, may be held in private.

7.8. **The EAT may decide to give directions itself**

7.8.1. The EAT may give directions for the management of an appeal without any of the parties having made an application (this is provided for by Rule 25 of the EAT Rules).

7.9. **Minor errors**

7.9.1. A clerical mistake in any order arising from an accidental slip or omission can be corrected by, or on the authority of, a Judge at any time.

7.10. **Case management where there is an assertion of bias or procedural impropriety by an Employment Tribunal**

7.10.1. If you assert bias (including apparent bias) or procedural impropriety on the part of an Employment Tribunal in a Notice of Appeal, Respondent's Answer or cross-appeal you must comply with the requirements set out in Section 3.10 to provide full particulars of the allegation and to support it with a statement of truth.

7.10.2. If a Judge considers that the ground merits further consideration the Judge may, at the Sift (see Section 4), a Rule 3(10) Hearing (see Section 5) or a Preliminary Hearing (see Section 6) do any of the following:

a ask you to confirm that you wish to pursue the allegation

b if the Employment Tribunal hearing was recorded by HMCTS, make any appropriate direction in respect of a transcript or part of a transcript you have obtained, are seeking to obtain, or the EAT directs, having regard to Employment Tribunal procedures

c order the other party or parties to comment on your allegation(s) in a document to be sent within a specified time to the EAT and the other party or parties (which may include a requirement that they do so by sending a witness statement supported by a statement of truth - paragraphs 3.10.3 and 3.10.4)

d ask the Employment Judge and/or members to comment on your allegation(s) in a document sent to the EAT within a specified time – any response will be copied to the parties by the EAT

e make any other direction or order the Judge considers appropriate to fairly consider the allegation(s)

f stay (or, in Scotland, sist) the appeal to permit such directions to be carried out

7.10.3. A party who unsuccessfully makes an allegation or allegations of bias or procedural impropriety may be at risk of having a costs (or, in Scotland, expenses) order made against them (see Section 12).

7.11. **What happens if a party fails to comply with a direction of the EAT within time?**

7.11.1. An order making a direction will contain a time for compliance. The time limit must be observed. Failure to comply with an order in time or at all may result in the EAT exercising its power under Rule 26 of the EAT Rules to strike out the appeal, response or cross-appeal; to debar the party in default from taking any further part in the proceedings; or to make any other order it thinks fit, including an award of costs (or, in Scotland, expenses). The power to strike out will not be exercised without the party subject to it being sent notification that the power may be exercised.

7.11.2. A notice stating that "unless…(a particular step is taken by a certain time)... the appeal, response or cross-appeal (or a specified part of it) will be struck out" is sufficient notification, and if the step is not taken before the time specified has elapsed the strike-out will occur automatically.

7.12. **Can I seek an extension of time to comply with an order or direction?**

7.12.1. If you think you cannot or may not be able to comply with a direction within time you should apply for an extension of time within the time fixed for compliance. The application should be made in accordance with this Section on the form at Annex 2.

7.13. **What do I do if I disagree with a direction given, or refused, by the EAT?**

7.13.1. If you consider that there has been a material change of circumstance you may apply for a direction to be varied or revoked or to be made if previously refused. The application should be made at the earliest opportunity in accordance with this Section on the form at Annex 2.

7.13.2. You must clearly explain in your application form what is the relevant change of circumstances and why you were not able to raise the matter you seek to rely on when you made the original application.

7.13.3. If your original application was determined by the Registrar any appeal must be made to a Judge within 5 working days of the date when the Registrar's decision was sent to the parties. The way you calculate the time limit is set out at paragraph 3.4.4. You should comply with this Section and use the form at Annex 2.

7.13.4. If you disagree with an order or direction made or refused by a Judge of the EAT you are not entitled to seek to have the decision made again by a different Judge. You are not entitled to have the matter referred to the President to be considered again.

7.13.5. If you consider that a Judge has made an error of law in making or refusing an order or direction you may consider seeking permission to appeal to the Court of Appeal (or Court of Session in Scotland) (see Section 13).

7.14. **Appeal from Registrar's Order ("ARO")**

7.14.1. If you appeal from an order made by the Registrar you should do so in accordance with this Section and using the form at Annex 2. The Registrar or a Judge may direct that the appeal be determined on the papers (without a hearing) or at a hearing (referred to as an **ARO Hearing**).

7.14.2. If a hearing is fixed the other party or parties are entitled to attend and make submissions.

7.14.3. You should agree a bundle of documents for the ARO Hearing with the other party or parties. It must include the following documents (but no other documents):

a the judgment, order, direction or other decision you are appealing against and any written reasons for it

b the sealed Notice of Appeal

c the order of the Registrar, any other relevant orders and judgments of the EAT

d all correspondence with the EAT making and responding to the application

e the ET1 claim(s) and any document(s) that were attached

f the ET3 response(s) and any document(s) that were attached

g any other relevant judgment, order, direction or other decision and written reasons of the Employment Tribunal

7.14.4. You should only submit any other documents if they are absolutely necessary for your argument at the ARO Hearing. If you do so the additional documents should be in a supplementary bundle and you must refer in your skeleton argument to each document in the supplementary bundle and clearly explain why it is necessary for the Judge to read it. If you do not do so, the Judge need not read the additional documents. Save in exceptional circumstances a supplementary bundle should not exceed 50 pages of documents. Usually, a supplementary bundle is unnecessary.

7.14.5. The bundle of documents (including any supplementary bundle) must be agreed with the other parties to the appeal and sent to the EAT no later than 28 days prior to the ARO Hearing. The bundle of documents should have the documents in the order set out above and be paginated. You must provide the EAT with one hard copy and an electronic copy in PDF format. The format of the bundle should comply with Section 11.4. Bundles that are sent to the EAT less than 28 days prior to the ARO hearing may not be considered by the Judge.

7.14.6. The parties must send skeleton arguments to the EAT and each other summarising their arguments no later than 14 days prior to the ARO Hearing. The skeleton arguments should comply with Section 11.6. A skeleton argument sent to the EAT or to the other parties less than 14 days prior to the hearing may not be considered by the Judge.

7.14.7. If you wish to rely on any authorities (case law) you must send a bundle of authorities to the EAT and the other parties no later than 7 days prior to the ARO Hearing. You must provide the EAT with one hard copy and an electronic copy in PDF format. The format of the authorities bundle should comply with Section 11.7.

7.14.8. The ARO is a redetermination so the Judge makes the decision afresh. However, the Judge can choose to adopt some or all of the reasoning of the Registrar or to vary or supplement it.

7.14.9. The Judge will usually give oral reasons and provide short-form written reasons attached to the order determining the ARO. The Judge may direct that an approved written judgment will be provided. If the Judge does not do so, you may apply, within 14 days of the seal date of the order, for the oral reasons given at a hearing to be provided to you in writing (on payment of a fee in England and Wales), subject to being granted an exception to the requirement to pay the fee. If this is done, a written judgment will be provided, as approved by the Judge (see Section 11.9). There is, however, no general right to be provided with a written judgment at public expense unless the Judge or the Court of Appeal (or Court of Session in Scotland) directs otherwise. Where short-form reasons are provided, they will usually be sufficient.

7.14.10. If you wish to challenge the decision made at an ARO you can consider seeking permission to appeal from the Court of Appeal (or Court of Session in Scotland) (see Section 13).

8. SPECIFIC TYPES OF APPLICATIONS AND DIRECTIONS

8.1. Introduction

8.1.1. This Section deals with some particular types of applications and directions. You must also comply with the general provisions for making and responding to applications in Section 7.

8.2. Amendment

8.2.1. An application for permission to amend a Notice of Appeal, Respondent's Answer, cross-appeal or Reply should be made as soon as practicable in accordance with Section 7 by completing the application form at Annex 2.

8.2.2. The application must be accompanied by a draft of the amended Notice of Appeal, Respondent's Answer, cross-appeal or Reply. The draft must include the text of the original document with any proposed changes clearly marked, for example:

a with deletions struck through in red and the text of the amendment either written or underlined in red; if permission has already been given to make amendments any further proposed amendments should be in a different colour to distinguish them from earlier amendments

b with deletions struck through, and new wording in italics; if permission has already been given to make amendments any further proposed amendments should be in bold italics or a distinctive and easily readable font to distinguish them from earlier amendments

8.2.3. A document will only be amended once an application for permission to amend is granted by the EAT. The EAT may refuse the application to amend, or grant it only for some of the proposed amendments.

8.3. Urgent hearing or consideration of an application

8.3.1. The EAT usually deals with appeals broadly in the order that they are received. If you consider that an appeal or an application is especially urgent you can apply for it to be expedited (dealt with more quickly than usual). An example of where an appeal might need to be expedited is where a relevant hearing is listed in the Employment Tribunal in the near future.

8.3.2. You should make the application as soon as possible in accordance with Section 7 by completing the application form at Annex 2.

8.3.3. People often consider that their appeals and applications are urgent. The EAT must allocate its resources fairly between appeals in accordance with the overriding objective, so will only expedite an appeal or application if there are strong grounds for doing so.

8.3.4. A decision whether to expedite a Full Hearing will be taken by a Judge. A decision whether to expedite any other type of hearing or application will be taken by a Judge or the Registrar.

8.3.5. A Judge (or the Registrar in the case of a hearing other than a Full Hearing) may decide to expedite an appeal in the absence of an application from any of the parties.

8.3.6. If a hearing is expedited you will be informed of a hearing date. The directions to prepare for the hearing may be shortened, or not applied, to ensure that the appeal will be ready for hearing in time. This may mean that you will not be able to use the same advocate as you did before. The parties will be expected to assist the EAT by complying promptly with any revised directions.

8.4. **Adjustments because of a medical condition or disability**

8.4.1. The EAT will make appropriate adjustments to its procedures to assist those who require them to obtain access to justice where it is reasonable, fair to the other party or parties, and consistent with the overriding objective.

8.4.2. The EAT must have the relevant material to allow proper consideration of whether any adjustments are appropriate.

8.4.3. If you consider that the procedures of the EAT should be adjusted because of a medical condition or disability you should apply in accordance with Section 7 by completing the application form at Annex 2; and should:

a say what disability, or disabilities and/or medical condition, or conditions, you have that you think require an adjustment to the procedures of the EAT

b explain the problems you think the disability, or disabilities and/or medical condition, or conditions, will cause you in complying with the procedures of the EAT

c explain the adjustment or adjustments you are asking for

d explain how the adjustment or adjustments will help you deal with the problems your disability, or disabilities and/or medical condition, or conditions, would cause you in complying with the procedures of the EAT

e attach all evidence you have that is relevant to the above questions (including medical evidence where appropriate)

8.4.4. Medical evidence that has been produced for some other purpose may only show that you have the condition(s) but not provide any evidence that is relevant to the other questions that the EAT will have to consider in deciding whether or not it is appropriate to make an adjustment.

8.4.5. If you will need medical evidence specifically produced for your appeal you should make the arrangements to obtain it as soon as possible because there can be a significant delay between requesting medical evidence and obtaining it from a GP, treating clinicians or an independent medical expert.

8.4.6. If adjustments were made at your workplace and/or the hearing before the Employment Tribunal that does not necessarily mean they will be appropriate in the EAT. For example, the EAT does not generally hear evidence so adjustments that helped you to give evidence before the Employment Tribunal are unlikely to be necessary in the EAT. You must consider with care what problems you would face in bringing or responding to an appeal in the EAT and what specific adjustments to the procedures of the EAT you think would be appropriate.

8.4.7. The fact that you have a medical condition or disability does not necessarily mean that it is reasonable for the EAT to adjust its procedures.

8.5. **Postponing a hearing**

8.5.1. If you want to ask for a postponement of a hearing in the EAT you should apply in accordance with Section 7 by completing the application form at Annex 2; and should:

a explain why you are asking for the postponement

b say how long you want to have the hearing postponed for

c where there has been some delay, explain why the application could not have been made any sooner, or if the application could have been made sooner, why you delayed

d attach all evidence you have that is relevant to the above questions (including medical evidence where appropriate)

e if you seek a postponement because of travel commitments, you should explain why you still need to travel rather than attend the hearing and state what (if any) difficulty there would be in cancelling your travel arrangements; you should provide all relevant evidence, including material that demonstrates when the travel was arranged and the steps you have taken to rearrange it

8.5.2. An application for a postponement should be made at the earliest opportunity. Applications that are made shortly before a hearing are particularly unlikely to be permitted. As it will be necessary to re-list your hearing, that will impact on the listing of other appeals, which will disadvantage other parties who should have their appeals heard within a reasonable time.

8.5.3. If the parties agree that a hearing should be postponed it does not follow that a Judge or the Registrar will decide to do so. You should continue to prepare for the hearing (including complying with directions) unless and until the hearing is postponed.

8.5.4. If you seek a postponement because you are finding it difficult to prepare your appeal or response it is important that you clearly explain how further time will help you deal with the problem.

8.5.5. If you provide medical evidence it should explain why it is difficult for you to attend the listed hearing and when you will be able to pursue the appeal or response and attend a hearing.

8.6. **Review of an order of the EAT**

8.6.1. If you want to apply for a review of an order of the EAT you should apply in accordance with Section 7 by completing the application form at Annex 2. The EAT can review an order because:

a the order was wrongly made as the result of an error on the part of the EAT or its staff

b a party did not receive proper notice of the proceedings leading to the order; or

c the interests of justice require such review

8.6.2. It is unlikely that a review will be granted if it is just an attempt to argue the matter again or you seek to rely on arguments or materials that you could have relied on before the original order of the EAT was made. You should clearly explain any material change of circumstances.

8.6.3. An application for a review should be made within 14 days of the date of the order.

8.6.4. The EAT can review an order without an application from any party to the appeal if it considers it appropriate to do so.

8.7. Restrictions to the open justice principle

8.7.1. The open justice principle is a fundamental part of the administration of justice. The EAT will normally sit in public so that justice is done and can be seen to be done.

8.7.2. Any hearing which takes place solely for the purpose of giving directions, or dealing with any other interim matter that could have been dealt with without an oral hearing, may be held in private.

8.7.3. In limited circumstances, a Judge may direct that a hearing that would otherwise be held in public will be held in private or that there are other restrictions on the open justice principle.

8.7.4. If you consider that there should be a restriction to the open justice principle you should apply in accordance with Section 7 by completing the application form at Annex 2; you should:

a say whether you applied for restriction(s) to the open justice principle in the Employment Tribunal and, if so, what restriction(s) you applied for and the outcome

b provide a copy of any judgment, order, direction or other decision of the Employment Tribunal granting or refusing restriction(s) to the open justice principle

c say what restriction(s) to the open justice principle you consider the EAT should order

d say why you consider it is necessary in the interests of justice or in order to protect rights under the European Convention on Human Rights ("ECHR") that the EAT should make an order restricting the open justice principle

e if you rely on the ECHR Article 8 right to respect for private and family life, say how you consider the right would be adversely affected if the restriction to the open justice principle is not granted

f if you rely on the ECHR Article 6 right to a fair trial, say how you consider the right would be adversely affected if the restriction to the open justice principle is not granted

g say how you have taken account of the open justice principle and the ECHR Article 10 right of others to freedom of expression

h say how the restriction you seek will minimise the adverse effect on the open justice principle

i attach all evidence you have that is relevant to the above questions (including a witness statement and medical evidence where appropriate)

8.7.5. Specific provision is made for restriction of publicity:

a if the appeal involves allegations of sexual misconduct or the commission of sexual offences in relation to any party; Section 31 ETA and Rule 23 of the EAT Rules

b where a party or parties assert that they have been a victim of a sexual offence; Sexual Offences (Amendment) Act 1992

c in disability cases; section 32 ETA and Rule 23A of the EAT Rules

8.7.6. If the provisions referred to in paragraph 8.7.5 apply you should read them to consider how they would affect your appeal.

8.7.7. There may be restrictions to the open justice principle in national security cases that are considered at Section 14.

8.7.8. Save where there is an absolute statutory right to anonymity, the EAT will balance the open justice principle and the interests of justice and any rights under the ECHR. Any order will be designed to minimise the limitation on the open justice principle.

8.7.9. Any order made may be temporary or of unlimited duration subject to the right of any interested person (which may include representatives of the media or other non-parties) to apply for the order to be amended or revoked.

8.7.10. The decision whether to make an order restricting publicity will be made by the President, a Judge or a full panel. A Judge may decide that it is appropriate to make an order restricting publicity without an application from any party to the appeal.

8.8. **Application to view or obtain copies of documents**

8.8.1. Part of the open justice principle is a general right of those who attend a public hearing to see documents that the EAT reads such as the Notice of Appeal, Respondent's Answer, skeleton arguments and any other documents submitted for consideration at a hearing. Bundles and skeleton arguments will generally be made available on request to members of the public at a public hearing. In certain circumstances copies of such documents may be requested after the hearing.

8.8.2. Where practicable a person seeking such documents should make the application in accordance with Section 7 by completing the application form at Annex 2; and state:

a the document(s) you want to see or have a copy of

b the reason why you are requesting to see or have a copy of the document(s)

c if the document(s) were not requested at a hearing, why not

8.9. **Adding or removing a party**

8.9.1. All those who were parties to the proceedings before the Employment Tribunal, other than the appellant, are respondents to the appeal.

8.9.2. Other parties may be joined to the appeal where it is considered appropriate (Rule 18 EAT Rules). If you want to apply to be joined to the

appeal or for another person to be joined you should do so in accordance with Section 7 by completing the application form at Annex 2.

8.9.3. A person may apply to be removed as a party or not to take an active part in the appeal, such as where the person does not have an interest in the outcome. You should make the application in accordance with Section 7 by completing the application form at Annex 2.

8.10. **Application to rely on material that was before the Employment Tribunal**

8.10.1. If you consider that a point of law cannot be argued without reference to evidence given (or not given) at the Employment Tribunal you should make an application in accordance with Section 7 by completing the application form at Annex 2.

8.10.2. Such an application should only be made if the evidence (or lack of it where, for example, it is asserted that a finding of fact was not supported by any evidence) is not sufficiently apparent from the judgment, order, direction or other decision and/or the written reasons of the Employment Tribunal.

8.10.3. You should make the application as soon as possible.

8.10.4. In the application you should:

a state the issue the evidence is relevant to (with a reference to the relevant paragraphs of the Notice of Appeal, Respondent's Answer or cross-appeal)

b give a short summary of the evidence (or lack of evidence)

c explain why the evidence (or lack of evidence) is necessary to argue the point of law

d if the evidence was given by a witness, state the name of the witness

e provide a copy of any document containing the evidence (such as a witness statement or document in the Employment Tribunal bundle)

f where relevant, state the part of the hearing when the evidence was given

g if the hearing was recorded by HMCTS, state whether you have requested and, if so, received a written transcript of the relevant section of the hearing

h if the hearing was not recorded by HMCTS, say whether you are requesting relevant parts of the Employment Judge's notes of evidence

8.10.5. Where proceedings were recorded by HMCTS, directions may be given in respect of a transcript.

8.10.6. Whether or not proceedings were recorded by HMCTS, the parties may be ordered to co-operate to agree a note of the relevant evidence or that there was no such evidence. All parties are required to use their best endeavours to agree such a note. The parties will be given a period of time in which to seek to reach agreement (generally 21 days). If an agreement is not reached in the period given, any party may apply on notice to the other parties to the EAT for further directions (providing copies of the relevant correspondence).

8.10.7. Where proceedings were not recorded by HMCTS, the EAT may direct the Employment Tribunal to provide an extract of the Employment Judge's notes of evidence (usually only if the parties have taken all reasonable steps to agree a note of the evidence but have failed to do so). The EAT will copy any material to the parties after receipt from the Employment Tribunal.

8.10.8. A note of evidence (where proceedings are not recorded) or transcript (where proceedings are recorded by HMCTS) is not to be produced or supplied to the parties to enable them to embark on a "fishing expedition" to establish grounds or additional grounds of appeal or because they have not kept their own notes of evidence. If an application is found by the EAT to have been unreasonably made or if there is unreasonable lack of co-operation in agreeing a note, the party behaving unreasonably is at risk of being ordered to pay costs (or, in Scotland, expenses).

8.11. **Asking an Employment Tribunal questions**

8.11.1. If an Employment Tribunal has failed to deal with an issue at all or in part, and/or has failed to give any or sufficient reasons for a decision the EAT may make an order requesting the Employment Tribunal to answer questions, the answers to which may be able to remedy the defect. If you consider that such questions should be asked of the Employment Tribunal

you should make an application in accordance with Section 7 by completing the application form at Annex 2. The EAT will copy any material to the parties after receipt from the Employment Tribunal.

8.11.2. A Judge may decide that such questions should be asked without an application from any of the parties to the appeal.

8.12. **Application to rely on evidence that was not before the Employment Tribunal**

8.12.1. The EAT generally will not consider evidence that was not before the Employment Tribunal.

8.12.2. Where you seek to rely on evidence that was not before the Employment Tribunal, usually you should apply to the Employment Tribunal for reconsideration of a judgment, or for an order, direction or other decision to be altered because of a material change in circumstances, relying on the new material, before applying to introduce it in the EAT.

8.12.3. Where such an application for reconsideration of a judgment, or for an order, direction or other decision to be altered because of a material change in circumstances, has been or should be made to the Employment Tribunal the appeal may be stayed (or sisted, in Scotland) until the application has been determined. The Employment Tribunal as the fact-finding body, which has heard any witnesses, is the appropriate body to consider "fresh evidence" and in particular the extent to which (if at all) the new evidence would or might have made a difference to its conclusions. It is also generally best placed to determine whether an earlier case management order, direction or decision should be altered because of a change in circumstances.

8.12.4. If you seek to make an application to the EAT to rely on evidence that was not before an Employment Tribunal, you should do so in accordance with Section 7 by completing the application form at Annex 2. You should make the application:

a when you submit the Notice of Appeal

b when you submit a Respondent's Answer and any cross-appeal

c when you reply to a cross-appeal

8.12.5. In the application you should:

a state the issue the evidence is relevant to (with a reference to the relevant paragraphs of the Notice of Appeal, Respondent's Answer or cross-appeal)

b give a brief summary of the evidence (or lack of it)

c explain why the evidence is necessary to argue the point of law

d provide a copy of any document containing the evidence

e say when and how you became aware of the evidence

f explain why the evidence was not presented to the Employment Tribunal

g say if you have applied to the Employment Tribunal for reconsideration on the basis of the new evidence and, if so, what (if any) decision has been made on that application

h if you have not applied to the Employment Tribunal for reconsideration on the basis of the new evidence, explain why not

8.12.6. In considering an application to admit evidence in the EAT that was not before an Employment Tribunal the EAT will apply the overriding objective and consider relevant factors including whether the evidence:

a could have been obtained with reasonable diligence for use in the Employment Tribunal

b is relevant and would probably have had an important influence on the decision of the Employment Tribunal

c is apparently credible

8.12.7. You should deal with the questions in paragraph 8.12.6 in your application or response.

8.13. **Applications to rely on an argument that was not raised before an Employment Tribunal**

8.13.1. The EAT generally will not consider an argument that was not advanced before an Employment Tribunal.

8.13.2. You should make an application to raise a new argument in accordance with Section 7 by completing the application form at Annex 2. You should make the application:

a when you submit the Notice of Appeal

b when you submit a Respondent's Answer and any cross-appeal

c when you reply to a cross-appeal

8.13.3. In the application you should:

a state the relevant paragraphs of the Notice of Appeal, Respondent's Answer or cross-appeal in which the new argument is set out

b state why it is necessary to rely on the new argument

c explain why you did not raise the new argument in the Employment Tribunal

8.13.4. If you contend that an argument in a Notice of Appeal was not raised in the Employment Tribunal you should say so when, as the EAT may permit or require, you provide written comments for consideration at a Preliminary Hearing or in your Respondent's Answer.

8.13.5. If you contend that an argument in a Respondent's Answer or cross-appeal was not raised in the Employment Tribunal say so in a letter to the EAT within 28 days of the seal date of the Respondent's Answer or in your Reply to any cross-appeal.

8.13.6. If there is an unresolved dispute about whether an argument was raised in the Employment Tribunal the EAT may ask the Employment Tribunal to comment.

8.14. **Application by a party for a remote hearing**

8.14.1. The EAT generally conducts hearings in person, although a direction may be made for a video or telephone hearing.

8.14.2. If you wish to apply for a hearing to be conducted wholly or partly by video or telephone you should make an application in accordance with Section 7 by completing the application form at Annex 2.

8.14.3. You should make the application at the earliest opportunity. If you delay in making the application and then, for example, contend that you will be put to excessive expense in attending a hearing, the EAT may conclude that the expense results from your failure to make arrangements to travel to the hearing in good time.

8.14.4. In the application you should:

a explain why you are asking for a video or telephone hearing

b state the location from which you would attend if the application is granted

c attach any evidence you have that is relevant to the application (including medical evidence where appropriate)

8.14.5. If the application for a video or telephone hearing is granted you must read and comply with the Remote Hearings Protocol. It is your responsibility to ensure that you have the necessary means to participate in the hearing remotely. If you fail to do so, the hearing may proceed in your absence.

8.14.6. Only in exceptional circumstances will a person be permitted to attend remotely from outside the jurisdiction because the EAT maintains control of its proceedings, including dealing with abuse of its procedures, and that can be more difficult if a person attends a hearing remotely from outside the jurisdiction.

8.15. **Application to observe a hearing remotely**

8.15.1. The EAT has specific power to allow representatives of the media and other members of the public to observe hearings remotely.

8.15.2. If you wish to observe remotely you should make an application in accordance with Section 7 by completing the application form at Annex 2.

8.15.3. You should read and comply with the Guidance regarding remote observation of hearings at the EAT. It is the responsibility of those observing remotely to ensure that they have the necessary means to do so.

8.15.4. Only in exceptional circumstances will a person be permitted to observe remotely from outside the jurisdiction because the EAT maintains control of its proceedings, including dealing with abuse of its procedures, and

that can be more difficult if a person observes a hearing remotely from outside the jurisdiction.

8.16. **Disposal of appeals and cross-appeals by consent**

8.16.1. If you wish to withdraw an appeal and/or cross-appeal before permission has been granted for the appeal and/or cross-appeal to proceed to a Full Hearing or a Preliminary Hearing you should write to the EAT and say that is what you want to do. A Judge or the Registrar may make an order dismissing the appeal or cross-appeal on withdrawal or may seek submissions from the other party or parties before deciding whether to make such an order, or to make some other form of order.

8.16.2. If you wish to withdraw an appeal and/or cross-appeal after permission has been granted for the appeal and/or cross-appeal to proceed to a Full Hearing or a Preliminary Hearing you should agree the terms on which you request the EAT to permit the appeal and/or cross-appeal to be withdrawn with the other parties. You should send a letter to the EAT signed by all parties agreeing to the withdrawal of the appeal and/or cross-appeal. You must attach a draft order for the dismissal of the appeal and/or cross-appeal on withdrawal by consent and with any agreed consequential orders.

8.16.3. If any party does not agree to the proposed withdrawal of the appeal or cross-appeal or to any consequential orders, the same process should be adopted save that the party who disagrees with the proposal should write to the EAT and other party or parties as soon as possible explaining their reasons and making any alternative proposal.

8.16.4. The Registrar or a Judge will consider the proposed order and decide whether to make it as drafted or in an amended version, or to fix a hearing to resolve any remaining disputes or issues.

8.16.5. If an application for permission to withdraw an appeal or cross-appeal is made close to the hearing date the EAT may require a party and/or a representative to attend to explain the reason for the delay.

8.16.6. If the parties reach an agreement that the appeal should be allowed by consent, and that an order made by the Employment Tribunal should be reversed or varied or the matter remitted to the Employment Tribunal on the basis that the decision contains an error of law, it is usually necessary for the appeal to be heard by the EAT to determine whether there is a good reason for making the proposed order. The EAT will decide whether the appeal can be dealt with on the papers or at a hearing at which one

or more parties or their representatives should attend to argue the case for allowing the appeal, and making the order that the parties wish the EAT to make.

9. RESPONDING TO AN APPEAL AND SUBMITTING A CROSS-APPEAL

9.1. How should parties respond to an appeal?

9.1.1. The EAT will send the Notice of Appeal, with any amendments which have been permitted, and any submissions or skeleton argument lodged by the Appellant, to all parties who are Respondents to the appeal.

9.1.2. You must send a Respondent's Answer to the EAT and the other party or parties, including any cross-appeal, within 28 days of the seal date of the order allowing the appeal to progress to a Full Hearing (unless otherwise directed). The way time is calculated in the EAT is set out in Section 3.4. You should send the Respondent's Answer to the EAT in one of the ways described at Section 3.14.

9.1.3. Special provisions apply to Respondent's Answers and cross-appeals in national security appeals: see Rule 6 EAT Rules and Section 14.

9.1.4. Your Respondent's Answer should respond to the grounds of appeal. You are not obliged to respond to any additional contentions made in any text in the Notice of Appeal which accompanies the grounds of appeal.

9.1.5. You can rely solely, or partly, on the reasons of the Employment Tribunal to answer the appeal and you do not need to repeat them. You should however state any additional grounds you wish to rely on to answer the appeal.

9.1.6. A cross-appeal may be appropriate if you seek to challenge a determination that went against you in the judgment of the Employment Tribunal. If you wish to rely on alternative grounds for upholding a determination that was in your favour, you can do so in your Respondent's Answer without cross-appealing.

9.1.7. If you cross-appeal you should do so in a manner that complies with the requirements for a Notice of Appeal set out in Section 3.8.

9.1.8. If you assert perversity in your response or a cross-appeal you should comply with the requirements for a Notice of Appeal set out in Section 3.9.

9.1.9. If you assert bias or procedural impropriety in your response or a cross-appeal you should comply with the requirements for a Notice of Appeal set out in Section 3.10.

9.1.10. If you wish to make any applications for orders concerning the management of the appeal and any cross-appeal you should comply with the provisions of Section 7 (and Section 8 where appropriate) and use the form at Annex 2.

9.1.11. You should say what order you want the EAT to make if the response and any cross-appeal succeeds.

9.1.12. If you submit a cross-appeal it will be subject to the Sift and equivalent procedures will be applied as set out at Sections 4, 5 and 6: see Rule 6 of the EAT Rules.

9.1.13. To manage the appeal in accordance with the overriding objective the Registrar or a Judge may:

a invite applications from the parties in writing, on notice to all other parties, for directions

b give any appropriate directions in writing

c fix an Appointment for Directions as provided for at Section 7.7.

9.2. **What happens if a party does not serve a Respondent's Answer within time?**

9.2.1. If you fail to serve a Respondent's Answer within time you will not be able to participate in the appeal unless you are granted permission to submit a Respondent's Answer out of time. To do so you should submit an application in accordance with Section 7 by completing the application form at Annex 2and attach your draft Respondent's Answer and a witness statement (supported by a statement of truth – see paragraph 7.3.2.d):

a setting out a full and honest explanation of why you did not submit your Respondent's Answer in time

b attaching a draft Respondent's Answer and any proposed cross-appeal

10. **REPLYING TO A CROSS-APPEAL**

10.1. If the Respondent's Answer contains a cross-appeal that is permitted to proceed after going through the Sift you must send a Reply within 28 days of the seal date of the order permitting the cross-appeal to proceed (unless otherwise directed).

10.2. The Reply to the cross-appeal should comply with the provisions for submitting a Reply to a Notice of Appeal set out in Section 9. The way time is calculated in the EAT is set out in Section 3.4. You should send the Reply to the EAT in one of the ways described at Section 3.14.

10.3. If you do not serve a reply to a cross-appeal you will not be able to participate in the cross-appeal unless you are granted permission to submit a reply to the cross-appeal out of time or the EAT dispenses with that requirement.

11. **FULL HEARINGS**

11.1. **Who will conduct a Full Hearing?**

11.1.1. The appeal, and any cross-appeal, will be listed before, either:

a a Judge of the EAT; or

b a panel made up of a Judge and two members; one employer-representative member (drawn from a panel of members whose knowledge or experience of industrial relations is as representatives of employers) and one worker-representative member (drawn from a panel of members whose knowledge or experience of industrial relations is as representatives of workers).

11.1.2. With the agreement of the parties a Judge may direct that proceedings are to be heard by a Judge and one member. If you agree to a Judge and one member hearing the appeal and any cross-appeal you, or your representative, will be required to confirm your agreement in writing in a document that will state whether the single member is an employer-representative member or a worker-representative member.

11.2. **How long will the Full Hearing last?**

11.2.1. The EAT will usually list Full Hearings depending on their complexity:

a appeals involving one or a few relatively straightforward issues may be listed for half a day, but that is rare

b most appeals will be listed for 1 day

c complex appeals may be listed for 1.5 to 2 days

d only exceptionally complex appeals will be listed for more than 2 days

11.2.2. The Judge or panel will usually give an oral judgment at the end of the hearing, although in more complex appeals the Judge or panel may "reserve" the judgment to be given in writing at a later date. The hearing will be listed to allow time for the parties to make their oral submissions, to answer questions from the Judge or panel and to allow time for the Judge or panel to consider the arguments and give judgment. The Judge (and members if the appeal is to be heard by a panel) will have read the core bundle of documents (see Section 11.3) before the hearing.

11.2.3. If the Full Hearing is listed at a Rule 3(10) Hearing or a Preliminary Hearing you attend you will have an opportunity to give your time estimate for the Full Hearing.

11.2.4. If the Full Hearing is not listed at a hearing that you attended you will not have had an opportunity to give a time estimate before the Full Hearing is listed. The time for which the Full Hearing is listed will be stated in the order listing the Full Hearing. If you disagree with the time estimate, taking into account the points set out above, you should seek to agree an amended time estimate with the other party or parties and then apply to the EAT to change the time estimate as soon as possible.

11.2.5. **In giving your time estimate, you <u>must</u> take into account the time that will be needed by the Judge or panel to:**

a listen to your oral submissions

b listen to the other oral submissions

c ask questions and listen to the answers

d consider the arguments that you and the other parties have made

e give an oral judgment (even if you think judgment may be reserved)

11.2.6. It is in your interest that the Judge or panel has sufficient time to consider the arguments and to reach its judgment. Failing to allow sufficient time for the Judge or panel to reach its judgment is also likely to lead to a delay in the determination of your appeal.

11.2.7. **You must expect that your submissions may be time limited so that the appeal can be completed in the time listed. You should take this into account when giving or agreeing a time estimate. You should prepare to argue your best points first.**

11.2.8. Although the EAT will take into account representations made by the parties, the length of time given for the hearing will ultimately be a matter for the EAT.

11.3. Documents for a Full Hearing

11.3.1. In the order listing the Full Hearing a time will be fixed for the parties to compile and agree a **Core Bundle** and, where **necessary**, a **Supplementary Bundle**.

11.3.2. The **Core Bundle** must include the following documents (but no other documents):

a the judgment, order, direction or other decision you are appealing and any written reasons for it

b the sealed Notice of Appeal

c the Respondent's Answer and any cross-appeal

d any Reply to a cross-appeal

e any opinion expressed on the Sift

f the Order permitting the appeal to progress to a Full Hearing

g any other relevant orders and judgments of the EAT

h the ET1 claim(s) and any document(s) that were attached

i the ET3 response(s) and any document(s) that were attached

j any other relevant judgment, order, direction or other decision and written reasons of the Employment Tribunal

k if questions have been asked of an Employment Tribunal (see Section 8.11), the questions and any answers

l in an appeal asserting bias or procedural impropriety any transcript or part of a transcript of an Employment Tribunal hearing that was recorded by HMCTS, witness statements, responses from an Employment Tribunal (including any note of evidence or part of one that has been ordered if the proceedings were not recorded) and any other responses from any other party that were provided in response to an order or request from the EAT

11.3.3. Any **Supplementary Bundle** should only contain material that is necessary fairly to consider the appeal and that you are likely to refer to at the Full Hearing, namely:

a evidence that was before the Employment Tribunal and you have been given permission by the EAT to rely on (see Section 8.10) or have agreed with the other parties should be in the Supplementary Bundle

b new evidence that you have been granted permission to rely on (see Section 8.12)

11.3.4. If any Supplementary Bundle is more than 50 pages long you must seek permission from the EAT to rely on it and provide an essential reading list.

11.4. **Format of Bundles**

11.4.1. A bundle of documents must:

a start with a table of contents that gives a description of each document and the page number on which it starts

b contain documents that are legible and unmarked

c use the best available copy of the document rather than one that, for example, has been copied multiple times

d be paginated with the first page(s) being the table of contents – page 1 will be the start of the table of contents

For a Full Hearing, the documents must be in the order set out at Section 11.3 (or paragraph 5.2.3 for a Rule 3(10) hearing, paragraph 6.1.6 for a Preliminary Hearing and paragraph 7.14.3 for a ARO Hearing).

11.4.2. You will usually be directed to provide a number of hard copies of the bundle of documents (usually 1 or 3).

11.4.3. You must also provide an electronic copy of the bundle unless it is not possible for you to do so. If you cannot produce an electronic bundle you must apply to the EAT for directions. If the other party is represented they may be prepared, or be directed by the EAT, to prepare the electronic bundle.

11.4.4. The electronic bundle should be the same as any hard copy (complying with paragraph 11.3.2), and in addition must:

a be in PDF format

b be the smallest practicable file size (compressed if necessary)

c be machine readable so that it can be searched (it should not be made up of images of the documents that cannot be searched)

d have electronic bookmarks for each section referred to at paragraph 11.3.2 and/or the table of contents should have hyperlinks to the documents

e be editable (so additional documents may be added if necessary)

f be paginated with page 1 being the start of the table of contents **(this is particularly important);**

g be repaginated (where possible) if documents are added, so that the electronic PDF page number is the same as the number on the page in the hard copy bundle

11.4.5. You must comply with the overriding objective and co-operate with the other party or parties to agree the bundle. You should not seek to insert large amounts of material from the Employment Tribunal bundle into a supplementary bundle. The EAT will not generally consider any facts again. A party that fails properly to cooperate in producing a bundle will

be at risk of an order of costs (or, in Scotland, expenses). If after you have taken all reasonable steps to agree the bundle you are unable to do so you must apply to the EAT for directions.

11.5. Full Hearing of allegations of bias or procedural impropriety

11.5.1. You will only be able to advance arguments asserting bias (including apparent bias) or procedural impropriety if you have fully complied with the procedures at Section 3.10.

11.6. Skeleton Arguments

(a) England and Wales

11.6.1. You should submit a skeleton argument for a Full Hearing unless you notify the EAT in writing that the Notice of Appeal or Respondent's Answer contains your complete argument, or the EAT directs that you need not submit a skeleton argument.

11.6.2. The order fixing the Full Hearing will usually include a direction stating when skeleton arguments must be submitted to the EAT and exchanged with the other parties. In the absence of a direction the skeleton arguments should be exchanged and sent to the EAT not less than 14 days before the date fixed for the Full Hearing. If another party fails to exchange a skeleton argument in time you should still submit your skeleton argument to the EAT.

11.6.3. You should send the same number of hard copies of the skeleton argument as you are required to send hard copies of the bundle (unless the EAT agrees to dispense with that requirement). You should also send an electronic copy of the skeleton argument in Word or some other readable format from which text can be copied.

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

11.6.5. The Judge or panel will read the papers in advance of the Full Hearing. A well-structured skeleton argument helps the EAT and parties to focus on the points of law raised in the appeal and makes the oral hearing more effective.

11.6.6. Your skeleton argument should:

a be concise (as short as it reasonably can be) - a skeleton argument should generally be between 5 and 15 pages, depending on the number of grounds of appeal and their complexity – if you submit a skeleton argument of more than 20 pages the Judge may require you to resubmit a shorter version or reduce your time for oral submissions (because some or all of your arguments have already been fully set out in your skeleton argument)

b refer to the parties as they were described in the Employment Tribunal (the claimant and respondent etc.) or by name

c identify the paragraph(s) of the judgment, order, direction or other decision appealed that demonstrates that there was, or was not, an error of law

d make it clear which arguments in the skeleton argument are relied on for each of the numbered grounds of appeal

e identify and summarise for each ground of appeal:

i the point(s) of law

ii the relevant propositions of law – concisely stating the relevant legal principle(s) (including any that are adverse to your case) and where they are derived from. For statutory provisions, state the section number, rule etc. For case law, state the name of the case, citation (neutral citation number and any citation in the official law reports), page number and paragraph number or any letter in the margin if there are no paragraph numbers, and the principle of law it is said the authority establishes. Do not include substantial extracts from provisions or decisions

iii the steps in the legal argument

f be self-contained – you should not seek to incorporate arguments from other documents

g state the order that you want the EAT to make (whether the EAT should remit the whole or part of the case to the same or to a different Employment Tribunal or substitute a different decision for that of the Employment Tribunal)

h be typed rather than hand written (unless you are not able to provide a printed copy)

i be printed on A4 paper in a clear and readable 12 point font

j have sequential paragraph numbers and page numbers

k refer to any document by the correct page number in the agreed core or supplementary bundle

11.6.7. Failure to comply with the requirement to lodge a skeleton argument in time or at all may lead to the postponement of an appeal or dismissal of the appeal for non-compliance with this Practice Direction pursuant to Rule 26 EAT Rules, and/or to an award of costs (in Scotland, expenses). If you fail to submit the skeleton argument within time you should send it as soon as you can, although late submission of the skeleton argument may mean that the Judge or panel is unable to consider its content prior to the commencement of the hearing if the appeal is permitted to proceed.

11.6.8. The Appellant's skeleton argument must (unless otherwise directed) be accompanied by a chronology of events relevant to the appeal which, if possible, should be agreed by all parties. The chronology will normally be taken as an uncontroversial document, unless corrected by another party or the EAT. You should include references to paragraphs in the Employment Tribunal judgment and the pages in the EAT bundle.

11.6.9. The EAT may direct that the parties agree a set of agreed facts relevant to the appeal and any cross-appeal. This will generally only be done if all parties are represented.

(b) Skeleton Arguments in Scotland

11.6.10. Skeleton arguments are considered particularly helpful to the EAT.

11.6.11. Subject to any direction specific to a particular case, parties are at liberty to present a skeleton argument to the EAT.

11.6.12. If a skeleton argument is presented by a party:

a they must serve a copy on every other party at the same time as presenting it to the EAT

b since the purpose is to indicate to the EAT in advance of a hearing how the argument is to be developed it should be

presented at least 7 days prior to the day appointed for the hearing - any skeleton argument presented later than that may not be read, and the party presenting it will lose the advantage of it.

11.6.13. A party is entitled to present a skeleton argument even if the opposing party does not choose to do so.

11.7. **Statutory provisions and relevant authorities**

11.7.1. The parties must co-operate in producing a bundle of statutory provisions and authorities (caselaw) for the Full Hearing.

11.7.2. You must identify statutory provisions and authorities which go against your arguments, just as much as those that support them.

11.7.3. If any statutory provision has been amended you should provide the copy in force at the relevant time, annotated to state it has been amended and giving the date of the amendment(s).

11.7.4. There is a limit of 10 authorities save in exceptionally complex appeals. You should be prepared to justify reliance on more than 10 authorities.

11.7.5. The authorities you rely on should set out legal principles, rather than illustrate the application of the principle, or merely have involved a factual situation that is similar to that in the case being appealed.

11.7.6. If one or more of the parties is represented you should provide copies from the formal reports, such as the ICR or IRLR rather than those available from other on-line sources. The formal reports have head notes and are more useful than other versions.

11.7.7. The statutory provisions and case reports should be in chronological order.

11.7.8. The bundle of statutory provisions and authorities should start with a table of contents giving the name of the provisions and authorities and the page number where they start.

11.7.9. The electronic copy of the bundle of statutory provisions and authorities should be in the same format as the electronic copy of the bundle of documents at paragraph 11.4.4.

11.7.10. The parties should agree who will pay the copying costs of the hard copy bundle of statutory provisions and authorities, with the party who relies on a provision or authority generally being responsible for the cost of copying it.

11.7.11. **The relevant passages on which a party intends to rely must be:**

a **sidelined (putting a line in the margin next to the points on which you rely) and/or highlighted clearly (but not in a way that interferes with copying) and**

b **bookmarked in the electronic version**

11.7.12. Some authorities are referred to so frequently that copies are kept in every court room of the EAT ("the familiar authorities"). A list of the familiar authorities is kept on the EAT website and copies of the familiar authorities will be available at the hearing. The familiar authorities should not be put in the bundle of authorities. The familiar authorities may be referred to by name, stating the relevant paragraph number(s) in the report and the principle relied on, or said to be inapplicable.

11.7.13. You must deliver the hard copy bundles of statutory provisions and authorities and the electronic copy to the EAT no later than 7 days before the Full Hearing. EAT staff will **not** supply copies of statutory provisions and authorities. The order listing the appeal will tell you how many hard copies should be delivered to the EAT.

11.8. What will happen at the Full Hearing?

11.8.1. Unless otherwise directed by the Registrar or a Judge, all hearings will take place by the attendance of all participants in person at the designated hearing venue.

11.8.2. The Judge and members, if the appeal is to be heard by a panel, will usually have read the Core Bundle and the skeleton arguments prior to the start of the hearing.

11.8.3. The Judge or panel will not consider documents in a supplementary bundle unless the party seeking to rely on the document clearly explains in their skeleton argument why and how the document is relevant to the grounds of appeal.

11.8.4. The EAT may, in accordance with the overriding objective, require submissions to take place in whatever order, and with whatever time

limit, it considers appropriate (which may mean different time limits are set for different parties).

11.9. Recording of hearings, transcripts of hearings and written judgments in circumstances in which you are required to pay a fee to cover the cost of transcription, or obtain an exception

11.9.1. Hearings are generally audio recorded by the EAT in England and Wales. No other person may make any audio recording of a hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.

11.9.2. To obtain a transcript of the hearing prior to any oral judgment being given, in England and Wales, you must come to an arrangement with a recognised transcribing company (see table B2 of Guidance Note EX107GN), including an arrangement to pay all costs directly to that company. The EAT will deliver the recording to the transcriber, who must return the recording to the EAT. Guidance Note EX107GN sets out the HMCTS procedure for obtaining a transcript. You will need to complete form EX107 and return it to the EAT.

11.9.3. There are very limited circumstances in which a Judge may direct that the transcript of the hearing prior to any oral judgment being given be provided at public expense. To apply for a transcript of proceedings prior to any oral judgment being given at public expense, you must complete forms EX105 and EX107 and return them to the EAT.

11.9.4. You should follow the same process to obtain a written judgment where an oral judgment was given and you are required to pay a fee, or obtain an exception, to obtain the judgment in writing as may be the case in England and Wales for an oral judgment given after a Rule 3(10) Hearing, Preliminary Hearing, ARO Hearing and a Final Hearing that you did not attend. Where a written judgment is produced under this section it will be approved by the Judge before it is sent to you.

11.9.5. Other circumstances in which a written judgment may be provided are considered at Section 11.14.

11.10. Remote Participation and Wholly Remote Hearings

11.10.1. A Judge or the Registrar may at any time, if it is considered to be in the interests of justice to do so, direct that:

a where a matter is listed to be heard at a designated hearing venue, one or more individuals be permitted to participate in the hearing (in whatever capacity) remotely, instead of by attending the hearing venue in person (this is known as 'a partially remote hearing' or 'hybrid hearing'); or

b a hearing (whether or not it has already been listed) will take place by all participants (including the Judge or panel conducting the hearing) participating remotely, instead of attending in person at a hearing venue (this is known as 'a wholly remote hearing')

11.10.2. Any such direction will state whether the participation of the person or persons concerned, or the conduct of the whole hearing (as the case may be), is to be by telephone, over the internet, by video link, or some other form of electronic or remote communication; and it may deal with any consequential matters.

11.10.3. Where a direction is given for a wholly or partially remote hearing, reasonable arrangements must be made to enable any member of the public wishing to do so to attend the hearing remotely.

11.10.4. Where a direction is given for a wholly remote hearing, members of the public attending must be able to hear and/or see what the Judge or panel can hear and/or see.

11.11. Recording of Partially Remote Hearings

11.11.1. Any partially remote hearing may be audio recorded, in whole or in part, by the EAT.

11.11.2. No other person may make any audio recording of a partially remote hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.

11.11.3. No video, photographic or other visual recording (whether with or without audio) of a partially remote hearing (or part of one) may be made at any time. To do so would amount to a contempt of court.

11.11.4. An application to be permitted, exceptionally, to make an audio recording of a partially remote hearing (or part of one), should ordinarily be made in writing, and at least 7 days before the hearing in accordance with Section 7 and using the form at Annex 2. The application should explain why it is being made; and it should, as appropriate, be accompanied by relevant

supporting evidence. An application made in advance of the hearing may be considered on the papers, or may be considered at the hearing.

11.11.5. Any audio recording of a partially remote hearing (or part of one) so permitted must not be published or broadcast (including by uploading onto the internet) in any form.

11.12. **Recording of Wholly Remote Hearings**

11.12.1. Any wholly remote hearing may be audio recorded, in whole or in part, by the EAT.

11.12.2. No other person may make any audio recording of a wholly remote hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.

11.12.3. No other person may make any video, photographic or other visual recording (whether with or without audio) of a wholly remote hearing (or part of one) without the express permission of a Judge. To do so without such permission would amount to a contempt of court.

11.12.4. An application to be permitted, exceptionally, to make an audio recording of a wholly remote hearing (or part of one), should ordinarily be made in writing, and at least 7 days before the hearing in accordance with Section 7 and using the form at Annex 2. The application should explain why it is being made; and it should, as appropriate, be accompanied by relevant supporting evidence. An application made in advance of the hearing may be considered on the papers, or may be considered at the hearing.

11.12.5. Any recording of a wholly remote hearing (or part of one) so permitted must not be published or broadcast (including by uploading onto the internet) in any form.

11.13. **Law Reporters**

11.13.1. Bundles and skeleton arguments will be made available on request to accredited law reporters and will generally be available on request to members of the public (see Section 8.8 above).

11.13.2. All documents provided to the law reporters (who are all either barristers or solicitors) are subject to professional confidentiality, to be used only for the purpose of writing law reports.

11.14. Judgments and Reasons

(a) England and Wales

11.14.1. The Judge or panel will usually give an oral judgment at the end of a Full Hearing. Where an oral judgment is given the Judge may direct that the judgment will be produced in writing, or you may request the judgment in writing at the hearing or within 14 days of the seal date of the order determining the appeal.

11.14.2. If the appeal and any cross-appeal is dismissed in whole in a judgment given orally at the Final Hearing, a judgment in writing will not generally be provided unless a party or parties make an application for the judgment in writing within 14 days of the hearing.

11.14.3. If the appeal and or any cross-appeal is allowed in whole or in part the Judge will usually direct that a judgment in writing be produced. The Employment Tribunal will generally need to have the judgment in writing if the matter is remitted for rehearing.

11.14.4. If you fail to attend a hearing there is no right to be provided with an approved judgment in writing unless the Judge or Court of Appeal (or Court of Session in Scotland) directs otherwise. The Judge may direct that the judgment in writing will be provided if it is considered appropriate to do so. If the Judge does not do so, you may apply, within 14 days of the seal date of the order, for any oral reasons given at a hearing to be provided to you in writing (on payment of a fee in England and Wales), subject to being granted an exception to the requirement to pay the fee. If this is done, a written judgment will be provided, as approved by the Judge (see Section 11.9).

11.14.5. At the end of a Full Hearing the EAT may reserve judgment to be handed down in writing at a later date.

11.14.6. When the parties are legally represented the written judgment may be provided to legal representatives on embargoed terms to give them an opportunity to point out any typographical or similar errors before the judgment is handed down. The legal representatives must not try to argue the matter again in their response. A breach of the terms of the embargo may be a contempt of court.

11.14.7. The parties will be notified of the date when the judgment is to be handed down. It is not generally necessary for a party or representative to attend. A Judge may direct that the parties provide written submissions

on matters such as the disposal of the appeal (i.e. what should happen to the case if the appeal succeeds in whole or in part) prior to the date fixed for the hand down and can direct that the parties attend to deal with any outstanding applications.

11.14.8. The judgment will be handed down without the reasons being read aloud. Applications for permission to appeal should be made pursuant to Section 13 below. Applications for costs (or, in Scotland, expenses) should be made pursuant to Section 12 below. If an application or applications are made they may be determined on the papers or the Judge may decide that the parties should attend to make submissions when the judgment is handed down or at a later hearing.

(b) Scotland

11.14.9. The same procedures apply in Scotland save that if the judgment is handed down the judgment will be sent to you marked as handed down.

11.15. Remission to the Employment Tribunal

11.15.1. Where the EAT makes an order remitting a case (sending it back), or part of it, to an Employment Tribunal, the parties must immediately raise any uncertainty as to the precise scope of the remission. The order remitting the case defines the jurisdiction of the Employment Tribunal on the remitted issue(s). It is the obligation of each party to ensure that the scope of remission in the order corresponds with their understanding and to raise any question without delay if it does not.

11.15.2. If at a remitted hearing before an Employment Tribunal an issue arises about the scope of remission, the Employment Tribunal may invite the EAT to provide clarification.

11.16. Online publication

11.16.1. Where a written Full Hearing judgment is provided it will be published on one or more of the following websites (or any website that replaces or adds to them):

a EAT decisions section of Gov.UK

b National Archives

c British and Irish Legal Information Institute (BAILII)

d online versions of the law reports

11.16.2. Any other judgment may be published online by a direction of a Judge or the Registrar.

12. **COSTS (EXPENSES IN SCOTLAND)**

12.1. The term "costs" is used in this section to include legal costs, expenses and, where a party is not legally represented, payment in respect of time spent in preparing a case.

12.2. An application for costs may be made:

12.2.1. during a hearing if it arises from the determination of an issue in the course of a hearing (although the Judge may put off consideration of costs to the end of a hearing or otherwise)

12.2.2. at the end of a hearing (usually only where a determination is given)

12.2.3. within 14 days of the seal date of the relevant order of the EAT disposing of the issue in respect of which costs is sought

12.3. Where a party is represented and an oral decision is given it will assist the EAT if the represented party makes any application for costs orally immediately after the decision has been given.

12.4. An application for costs should:

a set out the facts on which the application is based

b explain the legal basis for the application

c set out what costs have been incurred (generally in a detailed schedule, signed by a partner of a firm of solicitors or other legal professional with conduct of the proceedings, where relevant)

d if costs are sought for part of the proceedings show how the costs have been incurred on that part

12.5. A written application for costs should be made in accordance with Section 7 by completing the application form at Annex 2.

12.6. If a party against whom the order is sought wishes the EAT to have regard to their financial means and/or an alleged inability to pay, a witness statement (made in accordance with paragraph 7.3.2.d) giving full particulars of the person's financial means and exhibiting any documents that provide evidence of their financial means (such as bank statements, benefit statements and other evidence of property, income and necessary expenditure) should be sent to the EAT and the other party or parties together with the application.

12.7. A Judge or the Registrar will decide how the application is to be determined and the outcome provided, which may include any of the following:

a an oral decision at a hearing at which the application for costs is made

b a written decision made without a hearing, providing all relevant parties have had an opportunity to provide written representations

c a costs hearing

d reference for detailed assessment

12.8. An application for a wasted costs order (an order against a party's legal representative) should be made in accordance with Section 7 by completing the application form at Annex 2. The application must comply with the above provisions and clearly set out the conduct that is said to make an award of wasted costs appropriate.

12.9. The Registrar or a Judge may give such directions as are considered appropriate for the fair disposal of any application for costs.

12.10. Where the EAT makes a costs order without a hearing it will provide written reasons. If a costs order is made at a hearing, written reasons will be provided if a request is made at the hearing or within 21 days of the seal date of the costs order.

13. APPEALS FROM THE EAT

13.1. Appeals to the Court of Appeal or Court of Session

(a) Appeals Heard in England and Wales

13.1.1. A party seeking permission to appeal to the Court of Appeal must concisely state the point(s) of law to be advanced and the grounds.

13.1.2. Except in the case of an appeal from a Rule 3(7ZA) (see Section 4.3.5 above) or Rule 3(10) order (see Section 5 above), any application for permission to appeal should be made (unless otherwise directed by the EAT):

a if an oral judgment is given, to the EAT at the hearing, or in writing within 7 days thereafter

b if a written judgment is handed down, to the EAT when it is handed down (if the Judge who heard the appeal is available to sit in the EAT to hand the judgment down and agrees to do so) or in writing within 7 days thereafter

c from any other decision of the EAT from which you can appeal to the Court of Appeal, to the EAT within 7 days of the date of the determination

d if an application is made direct to the Court of Appeal within 21 days of the date the order was sealed or any other decision of the EAT from which you can appeal to the Court of Appeal was made

13.1.3. Where a party is represented and an oral decision is given it will assist the EAT if the represented party is able to make any application for permission to appeal from the EAT orally immediately after the decision has been given.

13.1.4. An application for an extension of time to apply for permission to appeal may be granted by the EAT if a Judge or Registrar considers it is necessary to delay until the judgment has been provided in writing (expedited if appropriate) or for other good reason. However, applications for an extension of time to apply for permission to appeal should normally be made to the Court of Appeal.

13.1.5. If you make an application to the EAT for an extension of time to apply for permission to appeal to the Court of Appeal it should be made in accordance with Section 7 by completing the application form at Annex 2.

(b) Appeals Heard in Scotland

13.1.6. An application to the EAT for permission to appeal to the Court of Session must be in accordance with the provisions of Chapter 41 of the Rules of the Court of Session 1994.

13.1.7. The party seeking permission must state the point(s) of law to be advanced and the grounds.

13.1.8. Any application for leave to appeal should be made, in the first instance, to the Employment Appeal Tribunal within 7 days of the date this Order is intimated to you.

13.1.9. If the Employment Appeal Tribunal refuses your application for leave to appeal, you will then have 42 days from the date that decision (refusing your application for leave to appeal) is intimated to apply to the Court of Session (Inner House) for leave to appeal.

13.2. **Appeals direct to the Supreme Court in England and Wales**

13.2.1. Section 37ZA ETA permits the grant of a certificate by the EAT for an appeal from the EAT directly to the Supreme Court in England and Wales in cases where the appeal involves a point of law of general public importance and satisfies the conditions set out at subsection (4) or (5) and a Judge of the EAT is satisfied that a sufficient case for an appeal to the Supreme Court is made out to justify an application under section 37ZB.

13.2.2. An application to the EAT for permission to pursue an appeal direct to the Supreme Court must be made at the hearing or when a reserved judgment is handed down (if the Judge who heard the appeal is available and agrees) or in writing within 7 days thereafter.

13.2.3. An application for an extension of time to apply for permission to pursue an appeal direct to the Supreme Court may be entertained by the EAT where a Judge or Registrar considers it is necessary to delay until after the judgment in writing is received (expedited where appropriate) or for other good reason.

13.2.4. The party seeking permission must state the point of law to be advanced and the grounds, and must identify how and in what way the conditions for an appeal directly to the Supreme Court are met.

14. **NATIONAL SECURITY**

14.1. Rule 2 EAT Rules defines "national security proceedings" by adopting the definition in Regulation 3 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

14.2. This Practice Direction applies to appeals that raise national security issues subject to the provisions of the EAT Rules that are modified for appeals from a judgment, order, direction or other decision of an Employment Tribunal in relation to national security proceedings and/or where the provisions in the EAT Rules that concern national security apply and require the procedures of the EAT to be modified.

14.3. Provision is made in the EAT Rules for national security proceedings by:

a Rule 3; institution of the appeal

b Rule 6; Respondent's Answer and cross-appeal

14.4. In addition, there are particular provisions in the EAT Rules that may apply in all appeals that concern national security:

a Rule 30 EAT Rules requires the EAT to ensure that information is not disclosed contrary to the interests of national security

b Rule 30A EAT Rules provides a power for a Minister of the Crown and the EAT to take steps in relation to an appeal that are considered expedient in the interests of national security

c Rule 31A EAT Rules concerns the provision of reasons in national security cases to which the rule applies

14.5. Where an appeal raises issues that do, or may, concern national security you must read and comply with the relevant provisions of the EAT Rules and cooperate with the EAT and the other party or parties to ensure the appeal is properly managed in a manner that ensures information is not disclosed contrary to the interests of national security.

14.6. In an appeal that raises issues in relation to national security the EAT will often hold an appointment for directions (see Section 7.7) to ensure

appropriate orders are in place so that information contrary to the interests of national security is not disclosed, but that any limitation on the open justice principle is no more than is reasonably necessary.

15. **OTHER APPEALS TO THE EAT**

15.1. The EAT hears a small number of appeals from bodies other than Employment Tribunals, such as the Central Arbitration Committee and the Certification Officer. Where necessary, the procedures set out in this Practice Direction will be modified when the EAT hears such appeals (including, for example, where an appeal lies on a question arising in proceedings before the Certification Officer, rather than on a question of law). You should use any relevant form in the annexes to the EAT Rules in submitting or responding to such appeals. In such appeals, the EAT may hold an appointment for directions so that orders can be made that are designed specifically for the specific type of appeal. You must also consider the relevant statutory provisions that govern the appeal.

16. **APPLICATIONS THAT ARE MADE DIRECT TO THE EAT**

16.1. There are also a small number of applications that are made direct to the EAT. The procedures set out in this Practice Direction will be modified when the EAT hears such applications. You should use any relevant form in the annexes to the EAT Rules in submitting or responding to such applications. The EAT may hold an appointment for directions so that orders can be made that are designed specifically for the specific type of application (such as making provision for evidence). You must also consider the relevant statutory provisions that govern the application.

This practice direction is made by the President of the Employment Appeal Tribunal with the approval of the Senior President of Tribunals and the Lord Chancellor under section 29A of the Employment Tribunals Act 1996.

The Honourable Mrs Justice Jennifer Eady DBE
President of the Employment Appeal Tribunal
18 October 2024

Annex 1

Employment Appeal Tribunal

Application for a Rule 3(10) or Rule 6(16) Hearing

Name Appeal number Other parties to the appeal	I am • An appellant ☐ • A respondent ☐

You must read and comply with the sections of the EAT Practice Direction relevant to this application. You must also comply with the overriding objective and communicate with the EAT and other party or parties in a respectful and appropriate manner.

You must read and carefully consider the reasons the Judge gave for forming the opinion 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 paragraph numbers of the paragraphs you agree with and grounds of appeal no longer pursued):

I disagree with the following paragraphs of the Judge's reasons (set out the paragraph numbers of the paragraphs of the Judge's reasons in the Rule 3(7) Letter with which you disagree, and state, briefly, the reasons why you disagree):

You should:

(A) Read Sections 3.8 of the EAT Practice Direction and ensure that the grounds of appeal you are pursuing comply or
(B) Attach draft amended grounds of appeal that fully comply with the Practice Direction

Signed Dated

Annex 2

Employment Appeal Tribunal

Application for direction or order

Name Appeal number Other parties to the appeal	I am • An appellant ☐ • A respondent ☐ • Other – please specify ☐

This is an application

- for a general case management order or direction pursuant to Section 7, including any application for an extension of time ☐
- to appeal against an order made by the Registrar (see Section 7.14) ☐
- to amend (see Section 8.2) ☐
- for an urgent hearing or consideration of an application (see Section 8.3) ☐
- for an adjustment or adjustments because of a medical condition or disability (see Section 8.4) ☐
- to postpone a hearing (see Section 8.5) ☐
- to review a previous decision of the EAT (see Section 8.6) ☐
- for restriction(s) to the open justice principle (see Section 8.7) ☐
- to view or obtain copies of documents (see Section 8.8) ☐
- to add or remove a party (see Section 8.9) ☐
- to rely on material before the Employment Tribunal (see Section 8.10) ☐
- to ask the Employment Tribunal questions (see Section 8.11) ☐
- to rely on evidence that was not before the Employment Tribunal (see Section 8.12) ☐
- to rely on an argument that was not raised before an Employment Tribunal (see Section 8.13) ☐
- by a party for a remote hearing (see Section 8.14) ☐
- to observe a hearing remotely (see Section 8.15) ☐
- to dispose of an appeal or cross-appeal by consent (see Section 8.16) ☐
- some other type of application ☐ please state the application you wish to make

I will copy this application to the other party or parties to the appeal

Yes ☐

No – if no, state your reason ☐

Have you made a similar application before

No ☐

Yes – if yes, state what change in circumstances is relied on for making the application again ☐

In making this application you must set out all the grounds on which you rely

The determination of your application will generally be final and you will not be able to make a similar application again unless there has been a material change in circumstances (Note that any challenge to the determination of an appeal against an order made by the Registrar would have to be by appeal to the Court of Appeal (Court of Session in Scotland) - see section 7.14.10)

Applications that rely on medical evidence (e.g. for adjustments or postponement)

I have attached all relevant medical evidence

Yes ☐

No – if no state your reason ☐

Applications that rely on other evidence

I have attached all relevant evidence

Yes ☐

No – if no state your reason ☐

All applications

The grounds for my application are:

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

Signed Dated