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Claims in the Employment Tribunal

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B. CLAIMS IN THE EMPLOYMENT TRIBUNAL

1. INTRODUCTION

As employers most REC members will only experience an Employment Tribunal where they are on the receiving end of a claim by a permanent employee or temporary worker. This Chapter therefore concentrates on the practice and procedure involved in responding to a claim.

Employment Tribunals used to be known as Industrial Tribunals. The practice and procedure of Employment Tribunals is broadly the same for England, Wales, Northern Ireland and Scotland. Any differences are mainly in terminology but where there are any material differences these will be pointed out in the following notes.

2. JURISDICTION

Employment Tribunals have jurisdiction to deal with a wide range of complaints including the following matters: -

- Applications by the DTI to obtain an order prohibiting an employment bureau from operating for up to 10 years;
- Applications for equal pay;
- Complaints of unlawful discrimination or victimisation on grounds of sex, race, disability, sexual orientation, religion or belief;
- Complaints of unauthorised deductions from wages;
- Complaints in relation to Working Time Regulations for unpaid holiday etc;
- Complaints of unfair dismissal;
- Complaints relating to parental leave and time off for antenatal care;
- Complaints relating to the right to be accompanied at a disciplinary of grievance hearing;
- Complaints of discrimination in obtaining employment due to membership or non-membership of a trade union;
- Complaints of breach of contract.

In addition it is possible to bring a claim for breach of a contract of employment in relation to any unpaid sums outstanding on termination of a contract. This type of claim can either be raised by the employee on its own or in conjunction with any other claim and by the employer in response to a claim by an employee.

3. TIME LIMITS

Although the time limit for presentation of a claim varies according to the type of claim, the majority of the claims listed above must be presented to the Tribunal within three months of the date when the claim arose i.e. from the date the employment ended or when the matter being complained of happened.

Under the new statutory disciplinary, dismissal and grievance procedures (see Chapter 11A) a Tribunal may strike out a claim if an employee has not lodged a formal grievance with their employer and waited for 28 days before presenting their claim. If a grievance has been raised within the original time limit of three months, the Tribunal can extend this time limit by a further three months, so that the grievance procedure can take place.

4. WHAT IS AN EMPLOYMENT TRIBUNAL?

A Tribunal is less formal than a Court and has a panel of three members. The Chairperson is legally qualified but of the two other panel members one will be a representative of an employee's organisation, such as a trade union, and the other will be from an employer's organisation, such as a trade association.

Tribunals are open to the public. During the proceedings, the person bringing the claim is known as the "Claimant" and the employer is known as the "Respondent".

5. COSTS IN AN EMPLOYMENT TRIBUNAL

The cost of bringing proceedings in an Employment Tribunal is very small as there are no fees to pay. However, Legal Aid is not available, so often Claimants will not be legally represented as, rather than pay for their own legal representation, they will represent themselves or may even be represented by a friend or family member. Even so it is sometimes important for an employer to be represented if the claim is one of discrimination or involves a great deal of legal argument as opposed to factual issues.

In the past, costs were not generally awarded to the successful party unless the Tribunal decided that one of the parties had acted "*frivolously, vexatiously or otherwise unreasonably*". Since July 2001, the Employment Tribunal has had the power to award costs against any party on the grounds that his/her representative in the proceedings has acted vexatiously, abusively, disruptively or otherwise unreasonably or in cases where the bringing or conduct of proceedings by a party has been misconceived.

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 were enacted on 16 July 2001 to weed out doomed cases

and to protect Respondents from Claimants who insist on pursuing cases that were unlikely to succeed

Those Regulations included the following:

- o The Tribunal is under a duty to consider awarding costs in circumstances where proceedings have no reasonable prospect of success.
- o The Tribunal has the power to order a party to pay a deposit of £500 in order to be permitted to continue to take part in the proceedings relating to a specific matter.
- o The Tribunal may award costs in circumstances where parties in proceedings have failed to comply with Directions from the Tribunal. For example, if a party consistently fails to provide Further and Better Particulars ordered by the Tribunal, it may face a costs order.
- o The unreasonable behaviour of a party's representative may also be taken into consideration when awarding costs against that party.

The Regulations increased the level of costs that may be awarded from £500 to a sum not exceeding £10,000.

New Tribunal Procedure Rules (“the Rules”) came in on 1st October 2004 which revoked the above Regulations and made further changes to the issue of costs mainly:

- The introduction of WASTED COSTS ORDERS which can be made against a party’s representative if they have caused another party to incur costs as a result of any improper, unreasonable or negligent act or omission by them. Orders can also be made in favour of a representative’s own client.
- The introduction of PREPARATION TIME ORDERS. Previously, costs could only be awarded to legally represented parties. Now, costs awards have been extended to those who have not been legally represented at the hearing, on the same basis as current costs awards. Preparation time includes time spent carrying out preparatory work in relation to the case, but does not include time spent at any hearing. If awarded, the Tribunal will make an assessment on the number of hours the successful party has spent preparing their case. The current hourly rate is £25, which will be increased by £1 in April every year. There are provisions for mandatory awards, for example when the postponement of a hearing is due to the Respondent’s actions.

A Tribunal cannot make a preparation time order and a costs order at the same time. The paying party will have the opportunity to make submissions prior to a costs order being made.

6. THE APPLICATION

An application is made on a form known previously as an IT1. The Rules have now amended the name of the form to the ‘Claim Form’ (ET1). This form is available from Job Centres and Citizens Advice Bureaux and online at the Employment Tribunal website (see useful addresses below). These forms will be mandatory from 6th April 2005 and individuals will no longer be able to make a claim by way of a letter.

The employee/temporary worker bringing the claim was previously known as the Applicant however the Rules have renamed the Applicant as the ‘Claimant’. The Claim Form requires a lot more information to be provided up front, including (note that not all this required information is mandatory):

i. The type of complaint e.g. unfair dismissal, equal pay.
ii. Name, address and contact details.
iii. Name of any representative acting for the Claimant.
iv. Whether the Claimant is/was an employee or a worker providing services.
v. Whether the Claimant put their complaint in writing to the Respondent and waited 28 days before sending the Claim Form (it is now a legal requirement that the Claimant raises their complaint with their employer first and if they don’t, claims will now not be accepted without a valid reason for not complying with the statutory dispute resolutions procedures)
vi. The dates of the Claimant’s employment.
vii. The name and address of the employer or other organisation or person against whom the complaint is brought, and workplace, if different.
viii. The job that the Claimant was employed for, or applied for.
ix. The number of hours worked each week.
~~x.~~ Earnings details.
xi. If dismissed, details of any notice period worked/paid for, the remedy being sought by the Claimant e.g. reinstatement, re-engagement, compensation only and whether the Claimant has a new job and if so, how much they are earning.
xii. Details of any other payments the Claimant believes he is entitled to and why.
xiii. Full details of the complaint.

The Claim Form must be submitted within the relevant time limit either online or posted to the any Tribunal office within the correct jurisdiction. In Scotland, all claims are initially processed by the Glasgow tribunal office and so claims should be sent there. It is recommended that applications are sent by recorded delivery.

6.1 PRE ACCEPTANCE PROCEDURE

The Secretary of the Tribunal will first consider whether the claim should be accepted. The Tribunal now has the power to reject a claim in certain circumstances, namely:

- Where a Claimant has failed to give all the required information.
- The Tribunal does not have power to consider the claim.
- The claim is inadmissible because the Claimant has not raised a grievance with their employer or has not waited 28 days since then before bringing a claim. (In these circumstances the Claimant is able to initiate the grievance procedure, take advantage of the extended time limit and then resubmit the claim)
- The Claimant has not used the 'Claim Form' (after 6th April 2005)

If the claim is accepted, the tribunal office will send the Claimant a letter to confirm this together with a booklet explaining the next steps.

The Tribunal does not scrutinise claims in any way so if you as an employer receive an application from the Tribunal you should not assume that it is likely to succeed or is legally correct. You should immediately take legal advice and consider representation.

7. THE EMPLOYER'S RESPONSE

The Tribunal Office will send a copy of the Claim Form to the employer together with the Response Form (ET3), which was previously know as form IT3 which is for the employer's reply. This can be completed online at www.employmenttribunals.gov.uk which also has comprehensive guidance notes on how to fill out the form. The Rules have changed the time limit within which the employer must return the form to the tribunal. Previously the time limit was within 21 days of receiving the claim. Now the time limit is 28 days from the date the Claim Form was sent to the employer. It is very important to note, particularly if you work in a larger organisation where there could be a delay in the form reaching the right person, that if you do not return the Response Form within this time limit you could have a default judgement entered against you (please see below). If you believe that you need more than the 28 day time limit to compile your defence (e.g. if you need to retrieve documents from storage), you can write to the Tribunal Chairman requesting an extension of time to submit your response. Under the Rules, an application for an extension of time will only be granted if:

- The Respondent applies within the original 28 day time limit
- The Chairman decides it would be 'just and equitable' in the circumstances to do so.

Further advice on this and on compiling your defence is available from your solicitor or the REC Legal Helpline.

The Response Form will ask for the following details: -

1. Employer's (i.e. Respondent's) full name and address.
2. Details of any representative to whom documentation is to be sent.
3. Whether you intend to resist the application.
4. Whether the Claimant was an employee or a worker providing services to you.
5. Whether the Claimant was dismissed and /or whether the claim relates to an action you took on grounds of the Claimant's conduct or capability.
6. Whether the Claimant has raised the matter in writing through a grievance procedure.
7. Confirmation of the dates of employment and job title/description given by the Claimant.
8. Confirmation of details given by the Claimant about notice period and hours worked, wages or salary or bonuses
9. Full particulars of the grounds on which the employer intends to resist the application.

Before responding to the application it is necessary to take legal advice as it is important to know how to respond to the claim. For example, if a temporary worker is claiming unfair dismissal it is necessary for him to prove a) that he was an employee (i.e. with a contract of employment) and b) that he was dismissed. Most temporary workers are not employees as they are engaged under a contract for services and although an assignment may end that may not technically be a dismissal. These are difficult legal points to argue and reference should always be made to REC Legal Reference Guide Chapter 3A: Employment Status of Temporary Workers.

As with the Claim Forms, there is also a Procedure for the acceptance of Response Forms. If it does not contain all the required information and/or it is not presented to the Tribunal within the 28 day time limit, then the Tribunal can decide not to accept the Response Form.

7.1 DEFAULT JUDGEMENT

It is of utmost importance to ensure that you either respond to the claim or apply for an extension of time within the new 28 day time limit, because if you do not, the Tribunal now has the power to issue a default judgement WITHOUT A HEARING which may determine liability only or both liability and remedy, based on the information received from the Claimant.

A Claimant can inform the Tribunal that they do not want a default judgement issued, but this is probably going to be unlikely in most cases.

Whether a default judgement has been issued or not, if you have not presented a response then you will not be entitled to participate in any proceedings except to make an application for review, being called as a witness and receiving limited documentation.

If a default judgement is issued against you, you can apply for it to be reviewed. Your application must be in writing and made within 14 days of the date the default judgement was sent to you. The application must:

- State the reasons why the Response Form was not filed within the time limit.
- State the reasons why an application for an extension of time was not made within the time limit.
- Attach a copy of the proposed Response Form, and
- An application for an extension of time for the presentation of the response.

A Chairman will review the default judgement and has discretion as to whether he revokes the judgement or not, if the Respondent has a reasonable prospect of successfully defending the claim or part of it. The Chairman is obliged to consider whether the Respondent had a good reason as to why they did not lodge their response in time.

NB – A default judgement will be revoked if the claim was settled on or before the date the Response Form was due.

8. DIRECTIONS OF THE TRIBUNAL

The Tribunal may of its own accord or on the application of either party make directions as to the presentation of documentation and evidence. Under the Rules, there is now more emphasis on the Chairman to be proactive about managing cases. The following are common directions ordered by the Tribunal: -

a. Further particulars

The Tribunal may require more details to be given of either the claim or the response if the nature of the complaint or the response is unclear from the Claim Form or Response Form.

b. Discovery and inspection of documents

The Tribunal may require the parties to list any documentation relevant to the claim or the response e.g. medical reports, payslips, timesheets, terms and conditions. They will also require facilities to be made available for inspection of those documents by the other party or for copies to be taken.

c. Attendance of Witnesses

The Tribunal may make an order requiring the attendance of any person as a witness wherever they may be within Great Britain.

d. Written Answers

The Tribunal may order a party to provide a written answer to any question if it considers the answer may clarify any issue and assist the proceedings if it were available before the hearing.

e. **Striking out**
The Tribunal now has the power to strike out ill-founded claims or defences without a hearing on the grounds that they have "*no real prospect of success*". Previously a claim could only be struck out if it were shown to be scandalous, frivolous or vexatious in either its substance or the manner in which it is prosecuted.

f. **Costs**
The Tribunal now has the power to consider making an order of costs (see paragraph 5 above).

Parties that do not carry out Tribunal orders could be subject to a costs order or a strike out. There is also the possibility of criminal sanctions.

9. QUESTIONNAIRES AND REPLIES IN DISCRIMINATION/EQUAL PAY CASES

In cases alleging sex, race or disability discrimination or in an equal pay dispute, it is common for a Claimant to ask questions of the employer about the way he treated the Claimant before making a claim to the Tribunal. This is done by means of a questionnaire, which is available from Job Centres and Citizens Advice Bureaux.

The intention is to help the Claimant decide whether there has been discrimination and to the see the strengths or weaknesses of the claim. The questionnaire must be sent to the Respondent within three months of the alleged discriminatory act or within 21 days of filing the application with the Tribunal.

The employer Respondent is not obliged to provide answers to the questionnaire but if it chooses not to do so, or answers in an evasive or equivocal fashion, then the Tribunal may infer that the Respondent has something to hide. It is always important to take legal advice if you receive a questionnaire of this sort. The deadline for replies is usually 8 weeks from the request being made.

10. CASE MANAGEMENT DISCUSSION AND PRE-HEARING REVIEW

Under the Rules, Directions Hearings will no longer take place, matters dealt with at Directions Hearings can now be dealt with at a Case Management Discussion or a Pre-Hearing Review.

A Case Management Discussion will deal with matters of procedure and management of the case and can be conducted by electronic communications

if the Tribunal allows. Otherwise it will be heard in private and conducted by the Chairman.

The Tribunal may order a pre-hearing review either of its own accord or on the application of either party. Again, this can be conducted by electronic communications if the Tribunal allows. The basic purpose is to eliminate hopeless cases at an early stage. At a Pre-Hearing Review, a Chairman may:

- Determine an interim or preliminary matter
- Issue directions
- Order payment of a deposit
- Consider any oral or written representations or evidence of the parties

A Chairman will deal with Pre-Hearing Reviews sitting alone unless the parties specifically request a full Tribunal and the Chairman agrees. A Chairman can strike out a claim at a Pre-Hearing Review (on the same grounds as in 8(e) above). He can also give judgement on preliminary issues of substances relating to the proceedings and issues such as time points or whether a Claimant is disabled.

If the Tribunal considers either party's arguments have no reasonable prospect of success they may order the party to pay a deposit of £500 before being allowed to continue. If you receive advice that the Claimant has no reasonable prospect of success you should apply for a pre-hearing review of the case. In this way hopeless cases can be weeded out before incurring costs of a full hearing. Alternatively the Tribunal should be requested to deal with the matter as a preliminary issue at the beginning of the full hearing.

11. ACAS

As soon as a Notice of Appearance has been filed with the Tribunal indicating an intention to contest the claim, ACAS (Arbitration, Conciliation and Advisory Service) are notified. A conciliation officer will contact both parties with a view to try to negotiate a settlement without the case going to a Tribunal hearing. The role of the conciliation officer is to help the parties to reach an agreement not to act as arbitrator on the merits of the case nor to impose or recommend a particular settlement, as this is the responsibility of the parties.

Therefore the fact that the Claimant is putting forward a settlement figure of say £5,000 when you have received advice that the claim is only worth £500 does not mean that the advice is wrong or that the conciliation officer is recommending payment of this sum.

The Rules have made changes to ACAS' obligation to conciliate disputes between parties. Previously, ACAS had an ongoing duty to seek a conciliated settlement in all cases. The Rules now look to encourage early settlement and have introduced fixed conciliation periods, as follows. These begin on the date when the Respondent is sent a copy of the Claim Form:

1. A ‘short’ conciliation period of 7 WEEKS applies to the more straightforward employment cases, for example unlawful deduction of wages, statutory redundancy payment claims and other similar ‘money’ claims. The Tribunal have the power to extend it to a ‘standard’ conciliation period (see below) if they consider the case to be complex.

2. A ‘standard’ conciliation period of 13 WEEKS will apply to all other type of cases, e.g. unfair dismissal claims.

The fixed periods can be extended by 2 weeks, if the parties and ACAS agree that it would be useful and there is a real prospect of settling the case.

If there is more than one Respondent involved, there will be a conciliation period in relation to each Respondent.

Full Hearings will not be listed during these periods. The Tribunals will aim to fix the hearing for the week after the conciliation period is due to end.

NB: These fixed periods of conciliation will NOT apply to any case which ‘includes’ a claim of discrimination, equal pay or under the Public Interest Disclosure Act. In these cases, the duty of conciliation is ongoing as before.

12. ACAS ARBITRATION SCHEME

The ACAS Arbitration Scheme came into effect on 21 May 2001. The scheme is only available for the resolution of **unfair dismissal claims** and is intended for claims that do not achieve a settlement and so would otherwise proceed to a full tribunal hearing. The scheme is designed to provide a private, less formal and speedier resolution to the claim for both parties.

In order to participate in the scheme, both parties have to agree to it and each party must sign an arbitration agreement and a waiver of certain rights. It is important to note that the decision is irreversible and so once the agreement is signed, the claim can no longer be heard in an Employment Tribunal.

The main difference between the Employment Tribunal and the Arbitration Scheme is that the arbitrator’s decision is final and binding and enforceable in the Courts. The arbitration will be held in private at an agreed venue unlike an Employment Tribunal and the outcome will be kept confidential. The case will be heard by a single arbitrator rather than a panel of three members and will normally be completed in half a day. The arbitrator will be experienced in employment law and industrial relations and will ask questions informally rather than have witnesses being cross-examined under oath.

The remedies available will be the same as in an Employment Tribunal but it is intended that the savings to both parties as regards costs and time will be considerable. Both parties may also appreciate the fact that the arbitration will be less formal than the Employment Tribunal. However, the Arbitration

Scheme will not be suitable for unfair dismissal claims which are legally complex and will not be available for any claims which have associated discrimination or breach of contract aspects.

Further information on the Arbitration Scheme is available from the ACAS website www.acas.org.uk.

13. THE HEARING

The Secretary of the Tribunal will usually send out a notice of the date, time and place of the hearing after consultation with the parties. Notice is given at least 14 days before the date fixed and will include information and guidance as to attendance, witnesses and documentation. In a case where there is a fixed conciliation period, the Tribunals will list the hearings, as far as is possible, for the week following the end of ACAS' fixed conciliation period.

The case will be listed for hearing on one day only, unless a longer estimate is agreed between the parties. If it does not finish on that day it will be adjourned and re-listed to the next date convenient to all concerned.

13.1. PREPARATION

As soon as notice of the hearing is received witnesses should be notified. The Tribunal witnesses' availability should be ascertained before agreeing a hearing date as the Tribunal is reluctant to change a date once it is fixed.

Any documents which either party seeks to rely on must be copied and arranged in six bundles: 3 for the Tribunal members, 1 for the witnesses, 1 for the other party and 1 for yourself.

Either party has the right to appear and be represented by counsel, solicitor, a representative of a trade union or employers association or by any other person whom he desires to represent him. The Tribunal has no right or power to dismiss a representative though they may exercise control over him or her. Employment Tribunals go to considerable lengths to ensure that a party is not prejudiced by any lack of representation explaining points of law and procedure and assisting in the presentation.

13.2. PROCEDURE

In England and Wales an opening statement may be made by both parties to outline the claim and the response. Generally this does not occur in Scotland. In England and Wales witnesses may be present during the hearing before they have given their evidence however this is not allowed in Scotland and all witnesses will be excluded until they have given their evidence. The Rules have given Tribunals in England

the power to order witnesses to remain outside pending their evidence, if they consider that it is in the interests of justice to do so.

At the outset any preliminary matters may be dealt with such as requests for adjournment or private hearing or, as previously stated, any preliminary issue.

In discrimination cases the burden of showing discrimination lies with the Claimant so it is he who goes first in presenting his case. However once a Claimant has established a prima facie case of unlawful discrimination, then the burden of proof moves to the Respondent to show that there was a non discriminatory reason for the act complained of.

In unfair dismissal and redundancy cases the order of presentation will depend on whether the dismissal is admitted by the Respondent or not. If the Respondent agreed that there was a dismissal then they will go first to put their arguments forward in response to the claim. However if they do not agree that there was a dismissal the Claimant must first prove that there was a dismissal.

Evidence is presented in much the same way as in a Court. It is for the party presenting evidence to take the Tribunal through any relevant documentation and to ask questions of and cross-examine witnesses. Unlike a Court, hearsay evidence may be admitted by the Tribunal unless it adversely affects the reaching of a proper decision. Hearsay evidence is evidence of a fact which has been heard second hand.

13.3. TRIBUNAL JUDGEMENT

The Tribunal's decision is reached by a simple majority. If there are only two members of the Tribunal then the Chairman will have a casting vote. Under the Rules, a Tribunal will no longer issue a Decision with summary or extended reasons, it is now called a Judgement. Judgements must be in writing and reasons for the Judgement will be given orally at the hearing or in writing to the parties, if judgement is reserved. The Rules state that the Judgement must include various information, including a statement of any payment or compensation plus any calculation as to how it was arrived at. Parties can request written reasons of the judgement at the conclusion of the hearing when judgement was given or within 14 days from the date judgement is sent to the parties.

13.4. REVIEW HEARINGS

A party can make an application for the review of a Tribunal judgement on specific grounds, for example to correct procedural errors of the Tribunal. This process is unlike appeals which deals with applications

that the judgement was wrong on a point of law. An application for review can be made either orally at the hearing when the decision is made or in writing within 14 days of the date when the decision was sent to the parties. This time limit will only be extended by the Chairman if he considers it is just and equitable to do so. The following can be subject to a review:

1) a decision not to accept a claim, response or counterclaim;
2) a judgement;
3) a default judgement.

If it is accepted that there are grounds for a review, the same Tribunal or Chairman that made the decision will usually conduct the review. They may confirm, vary or revoke the decision. If the decision is revoked, then it will need to be considered afresh.

13.5. COMPENSATION LIMITS

There are no limits on compensation for discrimination claims.

For unfair dismissal claims, there is a maximum compensation award of £55,000 (rising to £56,800 on 1st February 2005). The maximum weekly pay for the calculation of the basic award is £270 (rising to £280 on 1st February 2005). The minimum basic award for defined dismissals e.g. for Trade Union or Health and Safety reasons is currently £3,600 (rising to £3,800 in 1st February 2005).

If a Respondent is found to have been in breach of the Statutory Disciplinary, Dismissal and Grievance Procedures, the Tribunal has the power to increase compensation by 10% to 50%.

14. EMPLOYMENT APPEAL TRIBUNAL

14.1. INTRODUCTION

Most appeals from the decisions of Employment Tribunals are sent to the Employment Appeal Tribunal (EAT). The person who appeals is called the “Appellant” and the Respondent is the ‘defending party’. It is a basic requirement of any appeal that the Appellant is seeking to set aside the judgement or order of the Employment Tribunal. You can only appeal a judgement on a point of law, not on a finding of facts. The EAT will not consider an appeal if the judgement is accepted but the reasons are disputed.

Appeals are heard by a Judge and two or four appointed members who are persons with special knowledge or experience of industrial relations as representatives of workers or employers.

The EAT has two central offices in London and in Edinburgh with six courts in London and one in Edinburgh, the Scottish Division. The addresses of the EAT offices are given at paragraph 16.

The EAT is only bound to follow decisions of the Court of Appeal and the House of Lords on matters of English law or the Court of session Inner House and the House of Lords on matters of the law of Scotland. In practice decisions of the higher Courts in other jurisdictions are taken into account. Oddly, it is not bound by its own previous decisions but unless there are inconsistencies then it will only depart from these in exceptional circumstances. All Employment Tribunals are bound by decisions of the EAT.

14.2. TIME LIMIT

The time limit for appealing against an Employment Tribunal judgement is 42 days from the date written reasons for the judgment are sent to the parties. If there are no written reasons, the 42 day time limit starts from the date that the written record of the judgment is sent to the parties. If appealing against an order, parties must appeal within 42 days of the date when the order is made.
These time limits must be strictly observed. It is not enough to send a letter to say that you intend to appeal, you must state the grounds on which you are appealing.

14.3. PROCEDURE

An appeal is commenced by the Appellant serving on the Central Office of the EAT a Notice of Appeal, together with a copy of the judgement or order that is being appealed and any written reasons given by the Employment Tribunal. To successfully lodge an appeal at the EAT, the Appellant must also provide a copy of the Claim Form, Response Form and any application for a review hearing for the Notice of Appeal. The Notice of Appeal must clearly identify the point of law on which the appeal is based. It is necessary to show that the decision was wrong in law and not simply on grounds of fact. The form of Notice of Appeal is available from the EAT. Once received, Notice of Appeals are ‘sifted’ by the EAT and they will decide that one of the following will happen:

1. Appeal refused - the EAT can decide to take no further action in certain cases where there are no reasonable grounds for bringing an appeal or there is an abuse of the appeal process. If they decide that the appeal cannot be heard, it is possible to appeal against this decision within 5 days of that order being made by the Registrar.
2. Preliminary Hearing (see 15.4 below).
3. Full Hearing (see 15.9 below).
4. Fast Track Full Hearing – this is for more simple appeals that can be dealt with more quickly, or appeals that need to be heard quickly, and so will be heard as soon as they can be fitted into the EAT hearing list.

14.4. PRELIMINARY HEARING/DIRECTIONS

The purpose of the preliminary hearing is to ensure that only appeals with merit go to a full hearing and to enable appropriate directions to be given to refine the issues and obtain realistic time estimates from the parties. If the EAT permits the appeal, it will go forward to a full hearing. If they are not satisfied that an appeal should go forward, the EAT will dismiss the appeal at the preliminary hearing.

Following registration of the appeal, a date for the preliminary hearing will be set and notified to the parties. The Respondent will be sent a copy of the Notice of Appeal and they will have the opportunity to serve written submissions in response to the Notice of Appeal to show that there is no reasonable prospect of success on all or any grounds of any appeal. This must be done within 14 days of receipt of the Notice of Appeal, together with their cross-appeal (see 15.5 below) if the Respondent intends to bring one.

On the question of whether the appeal has any merit it is only the party appealing who may make representations at the preliminary hearing. The Respondent may attend but can only comment on the directions that may be given. However any written submissions that have been lodged with the EAT regarding the prospect of success of the appeal will be considered.

The Appellant must prepare and lodge 4 copies of the bundle as soon as possible after service of the Notice of Appeal and no later than 21 days from the seal date of the relevant order, unless otherwise directed.

14.5. RESPONDENT'S ANSWER AND CROSS APPEAL

Once an appeal has been permitted to go forward to a full hearing, the Notice of Appeal, together with any other relevant papers will be sent to the Respondent. They will then have 14 days from the seal date of the order to submit their Answer to the EAT and the other parties. If it contains a cross-appeal, the Appellant then has 14 days from service of the Respondent's Answer to submit their Reply.

15.6 CONCILIATION

The EAT have, for the first time introduced conciliation into the process of appealing. In cases involving allegations of bias or pure money appeals, the EAT will now have the option of referring the case to ACAS for settlement. This is to run as a pilot project for 4 months from 1st January 2005.

Under this new protocol, the EAT can at any time, upon consideration of the papers or at a hearing, make an order requiring or recommending consideration by the parties of compromise, conciliation, mediation or, in particular, reference to ACAS.

14.6. COSTS (IN SCOTLAND – EXPENSES)

Legal Aid is available for bringing or defending proceedings in the EAT. Costs used to only be awarded in exceptional cases only where the proceedings were considered to be either unnecessary, improper or vexatious or there has been unreasonable delay or unreasonable

conduct on the part of one of the parties. Under the new Employment Appeal Tribunal Rules 2004 ("the EAT Rules") that came into force on 1st October 2004, costs orders have been brought into line with that of the Employment Tribunal (see Point 5 above). This includes awarding wasted costs orders and also preparation time orders.

If a party wishes to make an application for costs, they should make an application at the hearing, or within 14 days of the seal date of the relevant order of the EAT. If a party is making a wasted costs order, this must be made in writing.

14.7. PREPARATION FOR THE HEARING

The preparation of documents for the EAT is undertaken by the staff of the EAT but the parties must ensure that only the documents relevant to the point of law raised in the appeal and likely to be referred to are included in the documentation before the EAT. Ultimately it is the Appellant's responsibility to ensure that an agreed bundle containing any documents which are considered necessary for the full hearing of the appeal is lodged with the EAT at least 35 days from the seal date of the relevant order, unless otherwise directed, together with an index for the bundle. If the case is on a 'warned list' (see below) then the agreed bundle should be lodged as soon as possible, or at least within 7 days after the parties have been notified that the case is on the warned list.

No bundle containing more than 100 pages should be agreed or lodged without permission of the EAT.

14.8. LISTING OF CASES

As soon as possible, but after a preliminary hearing if one has been ordered by the EAT, a date will be fixed for a full hearing. The parties will normally be contacted by the Listing Officer to agree a hearing date. Once a date is agreed it will be "fixed" and set down in a list. The EAT also keeps a monthly "updated warned list" for cases, generally short appeals, that may be slotted into dates where fixed date cases settle or are withdrawn. In these circumstances parties will be notified of the hearing date as soon as possible. If the case is not heard after a month then the EAT will give a fixed date for the hearing.

14.9. HEARING

As a general rule the hearings of appeals to the EAT are conducted in public but restrictive reporting orders may be made in relation to particular cases e.g. where there has been allegations of sexual misconduct.

In England and Wales, when the EAT reserves judgement to a later date, the parties will be notified of the date when it is ready to be given. Copies of the judgement will be available from that date. Unless a party wishes to make an application, i.e. for costs, they do not need to attend. If a judgement is given at the hearing and a party wants a transcript of that judgement, they will have to apply for one within 14 days.

In Scotland, judgements are normally reserved and will be given as soon as practicable after the hearing. Parties will then have a period of 14 days from that judgement being given to make any representations, i.e. for leave for further appeal. If no representations are made, an order will then be issued to confirm the original judgement.

14.10. FURTHER APPEALS

Parties can make an application for review of a judgement or order of the EAT. The EAT will consider an application and either refuse or grant the application, and make any further orders that are necessary.

Any further appeal from the EAT must be made to the Court of Appeal or the Court of Session in Scotland.

In England and Wales, leave to Appeal must first be requested of the EAT either at the hearing or when a reserved judgement is given, as detailed in 15.9 above. If this is refused then a request for Leave to Appeal must be made to the Court of Appeal within 14 days of the sealed order/judgement.

In Scotland, an application for permission to appeal to the Court of Session must be made within 42 days of the date of the hearing where judgement is delivered at that hearing or within 42 days of receipt of the transcript, where judgement is reserved.

15. FURTHER INFORMATION

Further information about the practice and procedure of the Employment Tribunal is available from the Employment Tribunal Enquiry Line by telephoning 08457 959 775 or from their website www.employmenttribunals.gov.uk

Information about the Employment Appeal Tribunal is available on their website www.employmentappeals.gov.uk or:

ENGLAND & WALES

Employment Appeal Tribunal
Audit House

SCOTLAND

Employment Appeal Tribunal
52 Melville Street

58 Victoria Embankment
London
EC4Y 0DS
Tel: 020 7273 1040
Fax: 020 7273 1045

Edinburgh
EH3 7HS
Tel: 0131 225 3963
Fax: 0131 220 6694

Advice in relation to a claim may be sought from ACAS via their telephone enquiry points which are listed in the Yellow Pages and at www.acas.org.uk.