

SCHEDULE 1

THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE

RULES COMMON TO ALL KINDS OF HEARING

General

41. The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

Written representations

42. The Tribunal shall consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all other parties not less than 7 days before the hearing.

Witnesses

43. Where a witness is called to give oral evidence, any witness statement of that person ordered by the Tribunal shall stand as that witness's evidence in chief unless the Tribunal orders otherwise. Witnesses shall be required to give their oral evidence on oath or affirmation. The Tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence if it considers it in the interests of justice to do so.

Inspection of witness statements

44. Subject to rules 50 and 94, any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

Timetabling

45. A Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted.

Hearings by electronic communication

46. A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal.

Non-attendance

47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any

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information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

Conversion from preliminary hearing to final hearing and vice versa

48. A Tribunal conducting a preliminary hearing may order that it be treated as a final hearing, or vice versa, if the Tribunal is properly constituted for the purpose and if it is satisfied that neither party shall be materially prejudiced by the change.

Majority decisions

49. Where a Tribunal is composed of three persons any decision may be made by a majority and if it is composed of two persons the Employment Judge has a second or casting vote.

Privacy and restrictions on disclosure

50.—(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

- (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
- (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
- (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;
- (d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.

(4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

(5) Where an order is made under paragraph (3)(d) above—

- (a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification;
- (b) it shall specify the duration of the order;
- (c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and
- (d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.

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(6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998⁽¹⁾.

⁽¹⁾ 1998 c. 42.