

FUNDAMENTAL REVIEW OF EMPLOYMENT TRIBUNAL RULES

Terms of Reference

The Government asks Mr Justice Underhill to lead a thorough review of employment tribunal rules (as contained in Schedule 1 of the 2004 Regulations); and develop and recommend a revised procedural code in line with the Terms of Reference set out here. Mr Justice Underhill is also invited to recommend any further reform (for example in respect of the other Schedules) following the completion of the Schedule 1 review.

Mr Justice Underhill is asked to conduct his review, and develop his recommended revised procedural code, with a view to ensuring that robust case management powers can be applied flexibly, effectively and (insofar as is practicable) consistently in individual cases. Mr Justice Underhill's attention is also drawn to an overarching policy consideration of Ministers, namely to develop insofar as is practicable a procedural code that facilitates interlocutory powers (as and where appropriate) being exercised by legal officers, as well as by Employment Judges and Tribunals.

The overriding objective of the system remains as set out in Regulation 3 of the 2004 Constitution & Rules Order, in particular, the revised procedural rules for employment tribunals should, insofar as practicable, ensure that:

- a) cases can be managed in a way that is proportionate to the nature of the issues involved, with the importance of saving expense considered throughout.
- b) proceedings can be handled quickly and efficiently, with an emphasis on
 - helping proceedings to resolve themselves otherwise than through judicial determination at hearings, and
 - dealing robustly and, so far as appropriate, consistently with cases where they appear to have little or no reasonable prospect of success, with a view to fairness for all parties and the tribunal and its resources;

Consideration should also be given to the efficiency in the listing of cases for hearing.

c) rules are both simple and simply expressed, in particular given the significant proportion of unrepresented parties using employment tribunals;

d) proceedings have as much certainty as the nature of particular cases allows, and that in particular –

- like cases are treated alike (with as much use made of standardised orders and directions as possible, building on the good work already

developed around Case Management Discussion agendas), and

- the rules are exercised, and orders are made, in a manner that is consistent, so far as appropriate, across Great Britain (backed, where necessary and appropriate by relevant and published practice directions)

In conducting the Review, Ministers invite Mr Justice Underhill to have specific regard for the cost-effectiveness and proportionality of the system, both insofar as taxpayers are concerned, and the parties themselves.

Ministers invite Mr Justice Underhill to recommend a revised procedural code for employment tribunals by the end of April 2012.

To assist Mr Justice Underhill in his work, Ministers invite him to assemble a core 'Working Group' to undertake the detailed review itself, closely supported by a broader 'Expert User Group', the members of which should be consulted regularly on the substance and form of proposed rules, and to which the Working Group should have regard when developing proposed recommendations.

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