

## PRACTICE STATEMENT

This is a Practice Statement handed down by the President of the Employment Appeal Tribunal on 3 February 2005.

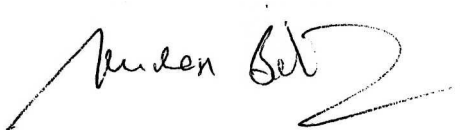
1. The attention of litigants and practitioners in the Employment Appeal Tribunal is expressly drawn to the wording and effect of Rules 3(1)(b) and 3(3) of the Employment Appeal Tribunal Rules (1993) (as amended). As is quite clear from the terms of paragraph 2.1 of the Employment Appeal Tribunal Practice Direction 2004 handed down on 9 December 2004, a Notice of Appeal without the specified documentation will not be validly lodged. The documentation required to accompany the Notice of Appeal in order for it to be valid now includes a copy of the Claim (ET1) and the Response (ET3) in the Employment Tribunal proceedings appealed from, if such be available to the appellant, and in any event if such not be available for whatever reason then a written explanation as to why they are not provided. Paragraph 2.1 of the Practice Direction makes this entirely clear:

*“2.1 ...Copies of the judgment, decision or order appealed against and of the Employment Tribunal’s written reasons, together with a copy of the Claim (ET1) and the Response (ET3) must be attached, or if not, a written explanation must be given. A Notice of Appeal without such documentation will not be validly lodged.”*

2. The reported decision of the Employment Appeal Tribunal in **Kanapathiar v London Borough of Harrow** [2003] IRLR 571 made quite clear that the effect of failure to lodge documents required by the Rules with the Notice of Appeal within the time limit specified for lodging of a Notice of Appeal would mean that the Notice of Appeal had not been validly lodged in time. The same now applies to the additional documents required by the amended Rule, namely the Claim and the Response.
3. It is apparent that both practitioners and litigants in person are not complying with the new Rules and Practice Direction, and not appreciating the consequences of their non-compliance. Between 2 and 26 January 2005, 20 Notices of Appeal were received by the Employment Appeal Tribunal and returned as invalid (compared with 4 during the similar period in 2004). Of those 20 Notices of Appeal, 7 would have been invalid in any event under the old Rules. 13 however were only invalid because they were neither accompanied by the Claim nor the

Response nor by any explanation as to their absence or unavailability. If the Notices of Appeal are relogged well within the very generous 42-day time limit, there may still be time for the missing documents to be supplied and the time limit to be complied with. If however, as is very often the case, such Notices of Appeal are delivered either at, or only immediately before, the expiry of the time limit, the absence of the relevant documents is, even if speedily pointed out by the Employment Appeal Tribunal, likely to lead to the Notice of Appeal being out of time.

4. Of the 20 Notices of Appeal which were invalidly lodged during the period above referred to, only 10 were lodged by litigants in person and 10 by solicitors or other representatives: and it is plain that the latter ought certainly to have known of the requirements, although, given the wide publication both of the Rules and the Practice Direction, together with the guidance given by the Employment Tribunals, both at the Tribunal and sent with their judgments, there can be no excuse for litigants in person either.
5. The reason for this Statement in open court is to re-emphasise these requirements and the consequence of failure to comply with them, namely that an appeal not lodged within the 42 days validly constituted, i.e. accompanied by the required documents, will be out of time, and extensions of time are only exceptionally granted (see paragraph 3.7 of the Practice Direction).
6. From the date of this Practice Statement, ignorance or misunderstanding of the requirements as to service of the documents required to make a Notice of Appeal within the 42 days valid will not be accepted by the Registrar as an excuse.



The Hon Mr Justice Burton  
President of the Employment Appeal Tribunal

3 February 2005