

CHAPTER SIXTEEN

EMPLOYMENT ARBITRATION

Introduction

Two distinct and separate forms of dispute arise in the context of employment contracts, namely collective disputes between employers and employee representative organisations and disputes between an employer and an individual employee. Employee representative organisations often provide support to individuals involved in disputes with their employers.

Collective disputes concern the terms and conditions of employment of the workforce or a sector of it, though they may be triggered by perceptions of malfeasance to or by an individual, where it is felt that the treatment of the individual may have wider repercussions for the employer or the employees. The balance of power in such relationship disputes depends to a large extent on the extent to which the employer needs the workforce or its cooperation and the measures which are lawfully available to the workforce to withhold or otherwise disrupt the employer's activities. Whilst economic bargaining power is central to private sector wage bargaining, public perceptions and politics also come into play in public sector disputes. The **Advisory, Conciliation and Arbitration Service** ("ACAS")¹ has since its inception been involved in facilitating public sector collective bargaining processes. Founded in 1975, ACAS, whilst largely funded by the Department for Business, Enterprise and Regulatory Reform (BERR), is a non-departmental body, governed by an independent council, "**The ACAS Council**", appointed by the Secretary of State for Business, Enterprise and Regulatory Reform.

It is common for such disputes to be settled through negotiation, conciliation, mediation or arbitration. Litigation is not normally an option for the determination of disputes about the terms and conditions of employment contracts, since in the absence of breach of contract, there is no legal action available to either party.

Employer / employee contract disputes were, in the event of a failure to negotiate settlements, traditionally litigated before the courts prior to the establishment of employment tribunals. Court action continues to be available for breach of contract, whilst a variety of statutory remedies form the bread and butter of employment tribunal work. Whilst there is no legal barrier to the mediated settlement of employment disputes or to submitting such disputes to arbitration, ADR did not make significant inroads into this aspect of dispute resolution, due to the initial successes of the employment tribunal system. In particular ACAS did not provide any services for individual disputes until the advent of the free ACAS Arbitration Scheme established in 2001 for England and Wales. In 2004 the process was extended to cover Scotland. In Northern Ireland since 2002 the scheme has been administered by the *Labour Relations Agency*.

This chapter concentrates on the legislative regime established to support and later to extend this new development. Whilst it continues to be the case that private arbitration is possible, the legislation essentially makes ACAS the preferred arbitration service provider.

There are six schemes in total, namely :-

- **The ACAS Arbitration Scheme (England and Wales) Order 2001**
- **Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2002**
- **The ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003**
- **The ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004**
- **The ACAS Arbitration Scheme (Great Britain) Order 2004**
- **The Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006**

¹ See website at www.acas.org.uk for further details.

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Whilst it took some time thereafter to realise, the primary legislation in relation to these schemes was enacted via the **Employment Rights (Dispute Resolution) Act 1998**, which introduced amendments to the **Trade Union and Labour Relations (Consolidation) Act 1992**.

Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

Arbitration.

- 212(1) Where a trade dispute exists or is apprehended ACAS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of—
- (a) one or more persons appointed by ACAS for that purpose (not being officers or employees of ACAS), or
 - (b) the Central Arbitration Committee.
- 212(2) In exercising its functions under this section ACAS shall consider the likelihood of the dispute being settled by conciliation.
- 212(3) Where there exist appropriate agreed procedures for negotiation or the settlement of disputes, ACAS shall not refer a matter for settlement to arbitration under this section unless—
- (a) those procedures have been used and have failed to result in a settlement, or
 - (b) there is, in ACAS's opinion, a special reason which justifies arbitration under this section as an alternative to those procedures.
- 212(4) Where a matter is referred to arbitration under subsection (1)(a)—
- (a) if more than one arbitrator or arbiter is appointed, ACAS shall appoint one of them to act as chairman; and
 - (b) the award may be published if ACAS so decides and all the parties consent.
- 212(5) Part I of the Arbitration Act 1996 (general provisions as to arbitration) does not apply to an arbitration under this section.

Employment Rights (Dispute Resolution) Act 1998 (c. 8)

PART II: OTHER METHODS OF DISPUTE RESOLUTION

Arbitration

ACAS arbitration scheme.

7. After section 212 of the Trade Union and Labour Relations (Consolidation) Act 1992 insert—
- " Arbitration scheme for unfair dismissal cases etc.*
- 212A.**(1) *ACAS may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal under, or arising out of a contravention or alleged contravention of—*
- (za) section 80G(1) or 80H(1)(b) of the Employment Rights Act 1996 (flexible working),*
 - (a) Part X of the Employment Rights Act 1996 (unfair dismissal), or*
 - (b) any enactment specified in an order made by the Secretary of State.*
- (2) *When ACAS has prepared such a scheme it shall submit a draft of the scheme to the Secretary of State who, if he approves it, shall make an order—*
- (a) setting out the scheme, and*
 - (b) making provision for it to come into effect.*
- (3) *ACAS may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Secretary of State who, if he approves it, shall make an order—*
- (a) setting out the revised scheme, and*
 - (b) making provision for it to come into effect.*

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- (4) *ACAS may take any steps appropriate for promoting awareness of a scheme prepared under this section.*
- (5) *Where the parties to any dispute within subsection (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this section, ACAS shall refer the dispute to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).*
- (6) *Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this section except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.*
- (7) *A scheme set out in an order under this section may, in relation to an arbitration conducted in accordance with the law of Scotland, make provision —*
 - (a) *that a reference on a preliminary point may be made, or*
 - (b) *conferring a right of appeal which shall lie,**to the relevant court on such grounds and in respect of such matters as may be specified in the scheme; and in this subsection “relevant court” means such court, being the Court of Session or the Employment Appeal Tribunal, as may be specified in the scheme, and a different court may be specified as regards different grounds or matters.*
- (8) *Where a scheme set out in an order under this section includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require employment tribunals to enforce such orders—*
 - (a) *in accordance with section 117 of the Employment Rights Act 1996 (enforcement by award of compensation), or*
 - (b) *in accordance with that section as modified by the order.**For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.*
- (9) *An order under this section setting out a scheme may provide that, in the case of disputes within subsection (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the Employment Rights Act 1996 (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).*
- (10) *An order under this section shall be made by statutory instrument.*
- (11) *No order shall be made under subsection (1)(b) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.*
- (12) *A statutory instrument containing an order under this section (other than one of which a draft has been approved by resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”*

Effect of arbitration agreements.

8. (1) In section 77 of the Sex Discrimination Act 1975 (subsection (3) of which prohibits contracting out of the provisions of that Act or the Equal Pay Act 1970, but subject to exceptions specified in subsection (4)), after subsection (4C) insert—
 - “(4D) *An agreement under which the parties agree to submit a dispute to arbitration —*
 - (a) *shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—*
 - (i) *the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and*
 - (ii) *the agreement is to submit it to arbitration in accordance with the scheme, but*
 - (b) *shall be regarded for those purposes as neither being nor including such a contract in any other case.”*

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- 8.(2) In section 72 of the Race Relations Act 1976 (subsection (3) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsection (4)), after subsection (4C) insert—
"(4D) An agreement under which the parties agree to submit a dispute to arbitration —
(a) shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—
(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
(ii) the agreement is to submit it to arbitration in accordance with the scheme, but
(b) shall be regarded for those purposes as neither being nor including such a contract in any other case."
- 8.(3) In section 288 of the Trade Union and Labour Relations (Consolidation) Act 1992 (subsection (1) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsections (2) and (2A)), after subsection (5) insert—
"(6) An agreement under which the parties agree to submit a dispute to arbitration —
(a) shall be regarded for the purposes of subsections (2) and (2A) as being an agreement to refrain from instituting or continuing proceedings if—
(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A, and
(ii) the agreement is to submit it to arbitration in accordance with the scheme, but
(b) shall be regarded for those purposes as neither being nor including such an agreement in any other case."
- 8.(4) In section 9 of the Disability Discrimination Act 1995 (subsection (1) of which prohibits contracting out of the provisions of Part II of that Act, but subject to exceptions specified in subsection (2)), after subsection (5) insert—
"(6) An agreement under which the parties agree to submit a dispute to arbitration —
(a) shall be regarded for the purposes of subsection (2) as being an agreement not to institute, or an agreement not to continue, proceedings if—
(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
(ii) the agreement is to submit it to arbitration in accordance with the scheme, but
(b) shall be regarded as neither being nor including such an agreement in any other case."
- 8.(5) In section 203 of the Employment Rights Act 1996 (subsection (1) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsection (2)), after subsection (4) insert—
"(5) An agreement under which the parties agree to submit a dispute to arbitration —
(a) shall be regarded for the purposes of subsection (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—
(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
(ii) the agreement is to submit it to arbitration in accordance with the scheme, but
(b) shall be regarded as neither being nor including such an agreement in any other case."

s. 15, Sch. 1 para. 7; S.I. 1998/1658, art. 2(1), Sch. 1

Dismissal procedures agreements.

212B. ACAS may, in accordance with any dismissal procedures agreement (within the meaning of the Employment Rights Act 1996), refer any matter to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).

Jurisdiction.

It should be noted that the jurisdictional remit of the ACAS arbitral tribunals is limited to unfair dismissal claims and to disputes arising out of an employee's application for a change in his terms and conditions of employment made under section 80F of the Employment Rights Act 1996.

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The ACAS Arbitration Scheme (England and Wales) Order 2001 (No. 1185)

TERMS AND CONDITIONS OF EMPLOYMENT, ENGLAND AND WALES

Whereas—

- (1) Under section 212A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (*“the 1992 Act”*) the Advisory, Conciliation and Arbitration Service (*“ACAS”*) may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of Part X of the Employment Rights Act 1996 (unfair dismissal);
- (2) in pursuance of section 212A(1) of the 1992 Act, ACAS has prepared an arbitration scheme for unfair dismissal cases;
- (3) in pursuance of section 212A(2) of the 1992 Act, ACAS has submitted a draft of the scheme to the Secretary of State and the Secretary of State approves the scheme;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 212A(2), (6), (8) and (9) of the 1992 Act, hereby makes the following Order:—

Citation, commencement, interpretation and extent

1. (1) This Order may be cited as the ACAS Arbitration Scheme (England and Wales) Order 2001 and shall come into force on 21 May 2001.
- 1.(2) In this Order—
“the 1996 Act” means the Employment Rights Act 1996;
“basic amount” means such part of an award of compensation made by an arbitrator as comprises the basic amount, determined in accordance with paragraphs 118 to 134 of the Scheme;
“the Scheme” means the arbitration scheme set out in the Schedule with the exception of paragraphs 43, 94, 159, 162 to 167, 171, 177 and 178 thereof.
- 1.(3) This Order extends to England and Wales.

Commencement of the Scheme

2. The Scheme shall come into effect on 21 May 2001.

Application of Part I of the Arbitration Act 1996

3. The provisions of Part I of the Arbitration Act 1996 referred to in the Schedule at paragraphs 43, 94, 159, 162 to 167, 171, 177 and 178 and shown in italics shall, as modified in those paragraphs, apply to arbitrations conducted in accordance with the Scheme.
4. (1) Section 46(1)(b) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modification.
- 4.(2) For *“such other considerations as are agreed by them or determined by the tribunal”* in section 46(1)(b) substitute *“the Terms of Reference in paragraph 12 of the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001”*.

Enforcement of re-employment orders

- 5.(1) Employment tribunals shall enforce re-employment orders made in arbitrations conducted in accordance with the Scheme in accordance with section 117 of the 1996 Act (enforcement by award of compensation), modified as follows.
- 5.(2) In subsection (1)(a), subsection (3) and subsection (8), for the words *“section 113”* substitute in each case *“paragraph 102(i) of the Scheme”*.
- 5.(3) In subsection (2) for *“section 124”* substitute *“section 124(1) and (5) and subsections (9) and (10)”*.
- 5.(4) In subsection (3)(a) for the words *“sections 118 to 127A”* substitute the words *“sections 118 to 123, section 124(1) and (5), sections 126 and 127A and subsections (9) and (11)”*.

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5.(5) After subsection (8) insert—

“(9) Section 124(1) shall not apply to compensation awarded, or to a compensatory award made, to a person in a case where the arbitrator finds the reason (or, if more than one, the principal reason) for the dismissal (or, in a redundancy case, for which the employee was selected for dismissal) to be a reason specified in any of the enactments mentioned in section 124(1)A.

(10) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by section 124(1) may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under the arbitrator’s award in accordance with paragraphs 110(i) or 113(iv) of the Scheme.

(11) Where—

(a) a compensatory award is an award under subsection (3)(a) of section 117, and

(b) an additional award falls to be made under subsection (3)(b) of that section,

the limit imposed by section 124(1) on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory award and additional awards fully to reflect the amount specified as payable under the arbitrator’s award in accordance with paragraphs 110(i) or 113(iv) of the Scheme.

(12) In this section “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001.”.

Awards of compensation

6. An award of a basic amount shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the 1996 Act (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).

SCHEDULE

Articles 2 and 3

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I. INTRODUCTION

1. The ACAS Arbitration Scheme ("*the Scheme*") is implemented pursuant to section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("*the 1992 Act*").
2. The Scheme provides a voluntary alternative to the employment tribunal for the resolution of unfair dismissal disputes, in the form of arbitration.
3. Resolution of disputes under the Scheme is intended to be confidential, informal, relatively fast and cost efficient. Procedures under the Scheme are non-legalistic, and far more flexible than the traditional model of the employment tribunal and the courts. For example (as explained in more detail below), the Scheme avoids the use of formal pleadings and formal witness and documentary procedures. Strict rules of evidence will not apply, and, as far as possible, instead of applying strict law or legal precedent, general principles of fairness and good conduct will be taken into account (including, for example, principles referred to in any relevant ACAS "*Disciplinary and Grievance Procedures*" Code of Practice or "*Discipline at Work*" Handbook). Arbitral decisions ("*awards*") will be final, with very limited opportunities for parties to appeal or otherwise challenge the result.
4. The Scheme also caters for requirements imposed as a matter of law (e.g. the Human Rights Act 1998, existing law in the field of arbitration and EC law).

II. THE ROLE OF ACAS

5. As more fully explained below, cases enter the Scheme by reference to ACAS, which appoints an arbitrator from a panel (see paragraphs 35-37 below) to determine the dispute. ACAS provides administrative assistance during the proceedings, and may scrutinise awards and refer any clerical or

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other similar errors back to the arbitrator. Disputes are determined, however, by arbitrators and not by ACAS.

Routing of communications

6. Unless in the course of a hearing, all communications between either party and the arbitrator shall be sent via the ACAS Arbitration Section.
7. Paragraph 172 below sets out the manner in which any document, notice or communication must be served on, or transmitted to, ACAS or the ACAS Arbitration Section.

III. TERMS AND ABBREVIATIONS

8. The term "Employee" is used to denote the claimant (i.e. the former employee), including any person entitled to pursue a claim arising out of a contravention, or alleged contravention, of Part X of the Employment Rights Act 1996.
9. The term "*Employer*" is used to denote the respondent.
10. The term "*EC law*" means:
 - (i) any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
 - (ii) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment.
11. With the exception of paragraph 21 (i) below ("*Requirements for entry into the Scheme*"), references to anything being written or in writing include its being recorded by any means so as to be usable for subsequent reference.

IV. ARBITRATOR'S TERMS OF REFERENCE

12. Every agreement to refer a dispute to arbitration under this Scheme shall be taken to be an agreement that the arbitrator decide the dispute according to the following Terms of Reference:

In deciding whether the dismissal was fair or unfair, the arbitrator shall:

- (i) have regard to general principles of fairness and good conduct in employment relations (including, for example, principles referred to in any relevant ACAS "*Disciplinary and Grievance Procedures*" Code of Practice or "*Discipline at Work*" Handbook), instead of applying legal tests or rules (e.g. court decisions or legislation);
- (ii) apply EC law.

The arbitrator shall not decide the case by substituting what he or she would have done for the actions taken by the Employer.

If the arbitrator finds the dismissal unfair, he or she shall determine the appropriate remedy under the terms of this Scheme.

Nothing in the Terms of Reference affects the operation of the Human Rights Act 1998 in so far as this is applicable and relevant and (with respect to procedural matters) has not been waived by virtue of the provisions of this Scheme.

V. SCOPE OF THE SCHEME

Cases that are covered by the Scheme

13. This Scheme only applies to cases of alleged unfair dismissal (i.e. disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention, or alleged contravention, of Part X of the Employment Rights Act 1996).
14. The Scheme does not extend to other kinds of claim which are often related to, or raised at the same time as, a claim of unfair dismissal. For example, sex discrimination cases, and claims for unpaid wages are not covered by the Scheme.

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15. If a claim of unfair dismissal has been referred for resolution under the Scheme, any other claim, even if part of the same dispute, must be settled separately, or referred to the employment tribunal, or withdrawn. In the event that different aspects of the same dispute are being heard in the employment tribunal as well as under the Scheme, the arbitrator may decide, if appropriate or convenient, to postpone the arbitration proceedings pending a determination by the employment tribunal.

Waiver of jurisdictional issues

16. Because of its informal nature, the Scheme is not designed for disputes raising jurisdictional issues, such as for example:
 - whether or not the Employee was employed by the Employer;
 - whether or not the Employee had the necessary period of continuous service to bring the claim;
 - whether or not time limits have expired and/or should be extended.
17. Accordingly, when agreeing to refer a dispute to arbitration under the Scheme, both parties will be taken to have accepted as a condition of the Scheme that no jurisdictional issue is in dispute between them. The arbitrator will not therefore deal with such issues during the arbitration process, even if they are raised by the parties, and the parties will be taken to have waived any rights in that regard.
18. In particular, in agreeing to arbitration under the Scheme, the parties will be treated as having agreed that a dismissal has taken place.

Inappropriate cases

19. The Scheme is not intended for disputes involving complex legal issues. Whilst such cases will be accepted for determination (subject to the Terms of Reference), parties are advised, where appropriate, to consider applying to the employment tribunal or settling their dispute by other means.

VI. ACCESS TO THE SCHEME

20. The Scheme is an entirely voluntary system of dispute resolution: it will only apply if parties have so agreed.

Requirements for entry into the Scheme

21. Any agreement to submit a dispute to arbitration under the Scheme must satisfy the following requirements (an "Arbitration Agreement"):
 - (i) the agreement must be in writing;
 - (ii) the agreement must concern an existing dispute;
 - (iii) the agreement must not seek to alter or vary any provision of the Scheme;
 - (iv) the agreement must have been reached either:
 - (a) where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (a "Conciliated Agreement") or
 - (b) through a compromise agreement, where the conditions regulating such agreements under the Employment Rights Act 1996 are satisfied (a "Compromise Agreement");
 - (v) the agreement must be accompanied by a completed Waiver Form for each party, in the form of Appendix A.
22. Where an agreement fails to satisfy any one of these requirements, no valid reference to the Scheme will have been made, and the parties will have to settle their dispute by other means or have recourse to the employment tribunal.
23. Where:
 - (i) a dispute concerning unfair dismissal claims as well as other claims has been referred to the employment tribunal, and
 - (ii) the parties have agreed to settle the other claims and refer the unfair dismissal claim to arbitration under the Scheme,a separate settlement must be reached referring the unfair dismissal claim to arbitration which satisfies all the requirements listed above (although it may form part of one overall settlement document).

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Notification to ACAS of an Arbitration Agreement

24. All Arbitration Agreements must be notified to ACAS within six weeks of their conclusion, by either of the parties or their independent advisers or representatives, or an ACAS conciliator, sending a copy of the agreement and Waiver Forms, together with IT1 and IT3 forms if these have been completed, to the ACAS Arbitration Section.
25. For the purposes of the previous paragraph, an Arbitration Agreement is treated as “concluded” on the date it is signed, or if signed by different people at different times, on the date of the last signature.
26. Where an Arbitration Agreement is not notified to ACAS within six weeks, ACAS will not arrange for the appointment of an arbitrator under the Scheme, unless notification within that time was not reasonably practicable. Any party seeking to notify ACAS of an Arbitration Agreement outside this period must explain in writing to the ACAS Arbitration Section the reason for the delay. ACAS shall appoint an arbitrator, in accordance with the appointment provisions below, to consider the explanation, and that arbitrator may seek the views of the other party, and may call both parties to a hearing to establish the reasons for the delay. The arbitrator shall then rule in an award on whether or not the agreement can be accepted for hearing under the Scheme.
27. Any such hearing and award will be governed by the provisions of this Scheme.

Consolidation of proceedings

28. Where all parties so agree in writing, ACAS may consolidate different arbitral proceedings under the Scheme.

VII. SETTLEMENT AND WITHDRAWAL FROM THE SCHEME

Withdrawal by the Employee

29. At any stage of the arbitration process, once an Arbitration Agreement has been concluded and the reference has been accepted by ACAS, the party bringing the unfair dismissal claim may withdraw from the Scheme, provided that any such withdrawal is in writing. Such a withdrawal shall constitute a dismissal of the claim.

Withdrawal by the Employer

30. Once an Arbitration Agreement has been concluded and the reference has been accepted by ACAS, the party against whom a claim is brought cannot unilaterally withdraw from the Scheme.

Settlement

31. Parties are free to reach an agreement settling the dispute at any stage.
32. If such an agreement is reached:
 - (i) upon the joint written request of the parties to the arbitrator or the ACAS Arbitration Section, the arbitrator (if appointed) or the ACAS Arbitration Section (if no arbitrator has been appointed) shall terminate the arbitration proceedings;
 - (ii) if so requested by the parties, the arbitrator (if appointed) may record the settlement in the form of an agreed award (on a covering proforma).
33. An agreed award shall state that it is an award of the arbitrator by consent and shall have the same status and effect as any other award on the merits of the case.
34. In rendering an agreed award, the arbitrator:
 - (i) may only record the parties’ agreed wording;
 - (ii) may not approve, vary, transcribe, interpret or ratify a settlement in any way;
 - (iii) may not record any settlement beyond the scope of the Scheme, the Arbitration Agreement or the reference to the Scheme as initially accepted by ACAS.

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VIII. APPOINTMENT OF AN ARBITRATOR

The ACAS Arbitration Panel

35. Arbitrators are selected to serve on the ACAS Arbitration Panel on the basis of their practical knowledge and experience of discipline and dismissal issues in the workplace. They are recruited through an open recruitment exercise, and appointed to the Panel on the basis of standard terms of appointment. It is a condition of their appointment that they exercise their duties in accordance with the terms of this Scheme. Each appointment is initially for a period of two years, although it may be renewed by ACAS, at the latter's discretion. Payment is made by ACAS on the basis of time spent in connection with arbitral proceedings.

Appointment to a case

36. Arbitral appointments are made exclusively by ACAS from the ACAS Arbitration Panel. Parties will have no choice of arbitrator.
37. Once ACAS has been notified of a valid Arbitration Agreement, it will select and appoint an arbitrator, and notify all parties of the name of the arbitrator so appointed.

Arbitrator's duty of disclosure

38. Immediately following selection (and before an appointment is confirmed by ACAS), every arbitrator shall disclose in writing to ACAS (to be forwarded to the parties) any circumstances known to him or her likely to give rise to any justifiable doubts as to his or her impartiality, or confirm in writing that there are no such circumstances.
39. Once appointed, and until the arbitration is concluded, every arbitrator shall be under a continuing duty forthwith to disclose to ACAS (to be forwarded to the parties) any such circumstances which may have arisen since appointment.

Removal of arbitrators

40. Arbitrators may only be removed by ACAS or the court (*under the provisions in paragraphs 41 to 43 below*).
41. Applications under the Scheme to remove an arbitrator on any of the grounds set out in sections 24(1)(a) and (c) of the Arbitration Act 1996 shall be made in the first instance to ACAS (addressed to the ACAS Arbitration Section).
42. If ACAS refuses such an application, a party may thereafter apply to the court.
- 43.(1) Sections 24(1)(a) and (c), 24(2), 24(3), 24(5) and 24(6) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 43.(2) In subsection (1) for "*(upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court*" substitute "*(upon notice to the other party, to the arbitrator concerned and to the Advisory, Conciliation and Arbitration Service ("ACAS")) apply to the High Court or Central London County Court*".
- 43.(3) In subsection (2)—
- (a) omit "*If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator,*";
 - (b) for "*that institution or person*" substitute "ACAS".
44. The arbitrator may continue the proceedings and make an award while an application to ACAS (as well as the court) to remove him or her is pending.

Death of an arbitrator

45. The authority of an arbitrator is personal and ceases on his or her death.

Replacement of arbitrators

46. Where an arbitrator ceases to hold office for any reason, he or she shall be replaced by ACAS in accordance with the appointment provisions above.

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47. Once appointed, the replacement arbitrator shall determine whether and, if so, to what extent the previous proceedings should stand.

IX. GENERAL DUTY OF THE ARBITRATOR

48. The arbitrator shall:
- (i) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his or her case and dealing with that of his or her opponent, and
 - (ii) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
49. The arbitrator shall comply with the general duty (see paragraph 48 above) in conducting the arbitral proceedings, in his or her decisions on matters of procedure and evidence and in the exercise of all other powers conferred on him or her.

X. GENERAL DUTY OF THE PARTIES

50. The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings. This includes (without limitation) complying without delay with any determination of the arbitrator as to procedural or evidential matters, or with any order or directions of the arbitrator, and co-operating in the arrangement of any hearing.

XI. CONFIDENTIALITY AND PRIVACY

51. Arbitrations, and all associated procedures under the Scheme, are strictly private and confidential.
52. Hearings may only be attended by the arbitrator, the parties, their representatives, any interpreters, witnesses and a legal adviser if appointed. If the parties so agree, an ACAS official or arbitrator in training may also attend.

XII. ARRANGEMENTS FOR THE HEARING

Initial arrangements

53. A hearing must be held in every case, notwithstanding any agreement between the parties to a purely written procedure.
54. Once an arbitrator has been appointed by ACAS, a hearing shall be arranged as soon as reasonably practicable by him or her, with the administrative assistance of the ACAS Arbitration Section.
55. The arbitrator shall decide the date and venue for the hearing, in so far as an agreement cannot be reached with all parties within two months of the initial notification to ACAS of the Arbitration Agreement.
56. The ACAS Arbitration Section shall contact all parties with details of the date and venue for the hearing.

Expedited hearings

57. If:
- (i) before the parties have agreed to refer a dispute to arbitration under the Scheme, an employment tribunal makes an order under interim relief provisions, or
 - (ii) in the arbitrator's discretion, other relevant circumstances exist,
- the arbitrator may expedite the hearing, on the application of any party.

Venue

58. Hearings may be held in any venue, provided that the hearing will only be held at the Employee's former workplace, or a similarly non-neutral venue, if all parties so agree.
59. Where premises have to be hired for a hearing, ACAS shall meet the reasonable costs of so doing.

Assistance

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60. Where a party needs the services of an interpreter, signer or communicator at the hearing, ACAS should be so informed well in advance of the hearing. Where an arbitrator agrees that such assistance is required, ACAS shall meet the reasonable costs of providing this.

Travelling expenses / loss of earnings

61. Every party shall meet their own travelling expenses and those of their representatives and witnesses.
62. No loss of earnings are payable by ACAS to anyone involved in the arbitration. However, where an arbitrator rules that a dismissal was unfair, he or she may include in the calculation of any compensation a sum to cover reasonable travelling expenses and loss of earnings incurred by the Employee personally in attending the hearing.

Applications for postponements of, or different venues for, initial hearings

63. Any application for a postponement of, or a different venue for, an initial hearing must be made in writing, with reasons, to the arbitrator via the ACAS Arbitration Section within 14 days of the date of the letter notifying the hearing arrangements. Such applications will be determined by the arbitrator without an oral hearing after all parties have received a copy of the application and been given a reasonable opportunity to respond.
64. If the application is rejected, the initial hearing will be held on the original date and/or in the original venue.
65. This provision does not affect the arbitrator's general discretion (set out below) with respect to postponements after an initial hearing has been fixed, or with respect to other aspects of the procedure. In particular, procedural applications may be made to the arbitrator at the hearing itself.

XIII. NON-COMPLIANCE WITH PROCEDURE

66. If a party fails to comply with any aspect of the procedure set out in this Scheme, or any order or direction by the arbitrator, or fails to comply with the general duty in section X above, the arbitrator may (in addition to any other power set out in this Scheme):
- (i) adjourn any hearing, where it would be unfair on any party to proceed; and/or
 - (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify.

XIV. OUTLINE OF PROCEDURE BEFORE THE HEARING

67. Once a hearing has been fixed, the following procedure shall apply, subject to any direction by the arbitrator.

Written materials

68. At least 14 days before the date of the hearing, each party shall send to the ACAS Arbitration Section (for forwarding to the arbitrator and the other party) one copy of a written statement of case, together with:
- (i) any supporting documentation or other material to be relied upon at the hearing; and where appropriate
 - (ii) a list of the names and title/role of all those people who will accompany each party to the hearing or be called as a witness.
69. Written statements of case should briefly set out the main particulars of each party's case, which can then be expanded upon if necessary at the hearing itself. The statement should include an explanation of the events which led up to the dismissal, including an account of the sequence and outcome of any relevant meetings, interviews or discussions. The parties should come to the hearing prepared to address the practicability of reinstatement or re-engagement, in so far as the Employee seeks such remedies.
70. Supporting documentation or other material may include (without limitation) copies of:
- (i) contracts of employment
 - (ii) letters of appointment
 - (iii) written statement of particulars of employment

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- (iv) time sheets and attendance records
 - (v) performance appraisal reports
 - (vi) warning and dismissal letters
 - (vii) written reasons for dismissal, where these have been given
 - (viii) company handbooks, rules and procedures
 - (ix) any information which will help the arbitrator to assess compensation, including (without limitation):
 - (a) pay slips, P60s or wage records
 - (b) details of benefits paid to the Employee such as travelling expenses and free or subsidised accommodation
 - (c) guidance about, and (if available) actuarial assessments of, pension entitlements
 - (d) details of any welfare benefits received
 - (e) evidence of attempts to find other work, or otherwise mitigate the loss arising from the dismissal.
 - (x) signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.
71. The parties must also supply details of any relevant awards of compensation that may have been made by any other tribunal or court in connection with the subject matter of the claim.
72. Legible copies of documents must be supplied to ACAS even if they have already been supplied to an ACAS conciliator before the Arbitration Agreement was concluded.
73. No information on the conciliation process, if any, shall be disclosed by an ACAS conciliator to the arbitrator.

Submissions, evidence and witnesses not previously notified

74. Written statements of case and documentary or other material that have not been provided to the ACAS Arbitration Section prior to the hearing (in accordance with paragraph 68 above) may only be relied upon at the hearing with the arbitrator's permission.
75. All representatives and witnesses who have been listed as accompanying a party at the hearing should be present at the start of the hearing. Witnesses who have not been included in a list submitted to the ACAS Arbitration Section prior to the hearing may only be called with the arbitrator's permission.

Requests for documents

76. Any party may request the other party to produce copies of relevant documents which are not in the requesting party's possession, custody or control. Although the arbitrator has no power to compel a party to comply, the arbitrator may draw an adverse inference from a party's failure to comply with a reasonable request.

Requests for attendance of witnesses

77. Although the arbitrator has no power to compel the attendance of anybody at the hearing, the arbitrator may draw an adverse inference if an employer who is a party to the arbitration fails or refuses to allow current employees or other workers (who have relevant evidence to give) time off from work to attend the hearing, should such an employer be so requested.

Preliminary hearings and directions

78. Where the arbitrator believes that there may be considerable differences between the parties over any issue, including the availability or exchange of documents, or the availability of witnesses, the arbitrator may call the parties to a preliminary hearing to address such issues, or he or she may give procedural directions in correspondence.
79. In the course of a preliminary hearing or in correspondence, the arbitrator may express views on the desirability of information and/or evidence being available at the hearing.

XV. OUTLINE OF PROCEDURE AT THE HEARING

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Arbitrator's overall discretion

80. Subject to the arbitrator's general duty (Section IX above), and subject to the points set out below, the conduct of the hearing and all procedural and evidential matters (including applications for adjournments and changes in venue) shall be for the arbitrator to decide.

Language

81. The language of the proceedings shall be English, unless the Welsh language is applicable by virtue of the Welsh Language Act 1993 (as amended from time to time). Reference should be made to paragraph 60 above if the Welsh language is to be used.

Witnesses

82. No party or witness shall be cross-examined by a party or representative, or examined on oath or affirmation.

Examination by the arbitrator

83. The arbitrator shall have the right to address questions directly to either party or to anybody else attending the hearing, and to take the initiative in ascertaining the facts and (where applicable) the law.

Representatives

84. The parties may be accompanied by any person chosen by them to help them to present their case at the hearing, although no special status will be accorded to legally qualified representatives. Each party is liable for any fees or expenses incurred by any representatives they appoint.

Strict rules of evidence

85. The arbitrator will not apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion.

Interim relief

86. The arbitrator shall have no power to order provisional or interim relief, but may expedite the proceedings where appropriate.

Non-attendance at the hearing

87. If, without showing sufficient cause, a party fails to attend or be represented at a hearing, the arbitrator may:

- (i) continue the hearing in that party's absence, and in such a case shall take into account any written submissions and documents that have already been submitted by that party; or
- (ii) adjourn the hearing.

88. In the case of the non-attendance of the Employee, if the arbitrator decides to adjourn the hearing, he or she may write to the Employee to request an explanation for the non-attendance. If the arbitrator decides that the Employee has not demonstrated sufficient cause for the non-attendance, he or she may rule in an award that the claim be treated as dismissed.

Post-hearing written materials

89. No further submissions or evidence will be accepted after the end of the substantive hearing without the arbitrator's permission, which will only be granted in exceptional circumstances. Where permission is granted, any material is to be sent to the ACAS Arbitration Section, to be forwarded to the arbitrator and all other parties.

XVI. QUESTIONS OF EC LAW AND THE HUMAN RIGHTS ACT 1998

Appointment of legal adviser

90. The arbitrator shall have the power, on the application of any party or of his or her own motion, to require the appointment of a legal adviser to assist with respect to any issue of EC law or the Human Rights Act 1998 that, in the arbitrator's view and subject to paragraph 12 above (Arbitrator's Terms of Reference), might be involved and relevant to the resolution of the dispute.

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91. The legal adviser will be appointed by ACAS, to report to the arbitrator and the parties, and shall be subject to the duty of disclosure set out in paragraphs 38 and 39 above.
92. The arbitrator shall allow the legal adviser to attend the proceedings, and may order an adjournment and/or change in venue to facilitate this.
93. The parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by the legal adviser, following which the arbitrator shall take such information, opinion or advice into account in determining the dispute.

Court determination of preliminary points

94. (1) Section 45 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 94.(2) In subsection (1)—
 - (a) for *“Unless otherwise agreed by the parties, the court”* substitute *“The High Court or Central London County Court”*;
 - (b) for *“any question of law”* substitute *“any question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”*;
 - (c) omit *“An agreement to dispense with reasons for the tribunal’s award shall be considered an agreement to exclude the court’s jurisdiction under this section.”*.
- 94.(3) In subsection (2)(b) omit sub-paragraph (i).
- 94.(4) Omit subsection (4).
- 94.(5) After subsection (6), insert—

“(7) In this section, “EC law” means—

 - (a) any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and*
 - (b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment.”*

XVII. AUTOMATIC UNFAIRNESS

95. In deciding whether the dismissal was fair or unfair, subject to paragraph 12 above (Arbitrator’s Terms of Reference), the arbitrator shall have regard to
 - (i) any provision of Part X of the Employment Rights Act 1996 (as amended from time to time) requiring a dismissal for a particular reason to be regarded as unfair, or
 - (ii) any other legislative provision requiring a dismissal for a particular reason to be regarded as unfair for the purpose of Part X of the Employment Rights Act 1996.

XVIII. AWARDS

Form of the award

96. The award shall be in writing, signed by the arbitrator.
97. The award (unless it is an agreed award) shall:
 - (i) identify the reason (or, if more than one, the principal reason) for the dismissal (or, in a redundancy case, the reason for which the employee was selected for dismissal);
 - (ii) contain the main considerations which were taken into account in reaching the decision that the dismissal was fair or unfair;
 - (iii) state the decision(s) of the arbitrator;
 - (iv) state the remedy awarded, together with an explanation;
 - (v) state the date when it was made.

Awards on different issues

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98. The arbitrator may make more than one award at different times on different aspects of the matters to be determined.
99. The arbitrator may, in particular, make an award relating:
 - (i) to an issue affecting the whole claim, or
 - (ii) to a part only of the claim submitted to him or her for decision.
100. If the arbitrator does so, he or she shall specify in his or her award the issue, or the claim or part of a claim, which is the subject matter of the award.

Remedies

101. In every case, the arbitrator shall:
 - (i) explain to the Employee what orders for reinstatement or re-engagement may be made in an award and under what circumstances these may be granted; and
 - (ii) ask the Employee whether he or she wishes the arbitrator to make such an award.
102. In the event that the arbitrator finds that the dismissal was unfair:
 - (i) if the Employee expresses such a wish, the arbitrator may make, in an award, an order for reinstatement or re-engagement (in accordance with the provisions below); or
 - (ii) if no such order for reinstatement or re-engagement is made, the arbitrator shall make an award of compensation (calculated in accordance with the provisions below) to be paid by the Employer to the Employee.
103. In cases where the arbitrator finds that the dismissal was unfair by reason of the operation of EC law, the arbitrator shall apply the relevant provisions of English law with respect to remedies for unfair dismissal, in so far as these may differ from sections XIX and XX of the Scheme.

XIX. AWARDS OF REINSTATEMENT OR RE-ENGAGEMENT

Definitions

104. An order for reinstatement (which must be in the form of an award) is an order that the Employer shall treat the Employee in all respects as if he or she had not been dismissed.
105. An order for re-engagement (which must be in the form of an award) is an order, on such terms as the arbitrator may decide, that the Employee be engaged by the Employer, or by a successor of the Employer or by an associated Employer, in employment comparable to that from which he or she was dismissed or in other suitable employment.

Choice of remedy

106. In exercising his or her discretion with respect to the remedy to be awarded under paragraph 102 (i) above, the arbitrator shall first consider whether to make an order for reinstatement, and in so doing shall take into account:
 - (i) whether the Employee wishes to be reinstated;
 - (ii) whether it is practicable for the Employer to comply with an order for reinstatement; and
 - (iii) where the Employee caused or contributed to some extent to the dismissal, whether it would be just to order his or her reinstatement.
107. If the arbitrator decides not to make an order for reinstatement, he or she shall then consider whether to make an order for re-engagement and, if so, on what terms. In so doing, the arbitrator shall take into account:
 - (i) any wish expressed by the Employee as to the nature of the order to be made;
 - (ii) whether it is practicable for the Employer (or a successor or an associated employer) to comply with an order for re-engagement, and
 - (iii) where the Employee caused or contributed to some extent to the dismissal, whether it would be just to order his or her re-engagement and (if so) on what terms.

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108. If ordering re-engagement, the arbitrator shall do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement (with the exception of cases where contributory fault has been taken into account under paragraph 107 (iii) above).

Permanent replacements

109. Where in any case an Employer has engaged a permanent replacement for a dismissed Employee, the arbitrator shall not take that fact into account in determining, for the purposes of paragraphs 106 (ii) and 107 (ii) above, whether it is practicable to comply with an order for reinstatement or re-engagement. This does not apply, however, where the Employer shows:

- (i) that it was not practicable for him or her to arrange for the dismissed Employee's work to be done without engaging a permanent replacement, or
- (ii) that:
 - (a) he or she engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed Employee that he or she wished to be reinstated or re-engaged, and
 - (b) when the Employer engaged the replacement it was no longer reasonable for him or her to arrange for the dismissed Employee's work to be done except by a permanent replacement.

Reinstatement

110. On making an order for reinstatement, the arbitrator shall specify:

- (i) any amount payable by the Employer in respect of any benefit which the Employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
- (ii) any rights and privileges (including seniority and pension rights) which must be restored to the Employee, and
- (iii) the date by which the order must be complied with.

111. If the Employee would have benefited from an improvement in his or her terms and conditions of employment had he or she not been dismissed, an order for reinstatement shall require him or her to be treated as if he or she had benefited from that improvement from the date on which he or she would have done so but for being dismissed.

112. In calculating for the purposes of paragraph 110 (i) above any amount payable by the Employer, the arbitrator shall take into account, so as to reduce the Employer's liability, any sums received by the Employee in respect of the period between the date of termination of employment and the date of reinstatement by way of:

- (i) wages in lieu of notice or ex gratia payments paid by the Employer, or
- (ii) remuneration paid in respect of employment with another employer, and such other benefits as the arbitrator thinks appropriate in the circumstances.

Re-engagement

113. On making an order for re-engagement the arbitrator shall specify the terms on which re-engagement is to take place, including:

- (i) the identity of the employer,
- (ii) the nature of the employment,
- (iii) the remuneration for the employment,
- (iv) any amount payable by the employer in respect of any benefit which the Employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
- (v) any rights and privileges (including seniority and pension rights) which must be restored to the Employee, and
- (vi) the date by which the order must be complied with.

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114. In calculating, for the purposes of paragraph 113 (iv) above, any amount payable by the employer, the arbitrator shall take into account, so as to reduce the Employer's liability, any sums received by the Employee in respect of the period between the date of termination of employment and the date of re-engagement by way of:
- (i) wages in lieu of notice or ex gratia payments paid by the employer, or
 - (ii) remuneration paid in respect of employment with another employer,
- and such other benefits as the arbitrator thinks appropriate in the circumstances.

Continuity of employment

115. The Employee's continuity of employment will be preserved in the same way as it would be under an award of the employment tribunal.

XX. AWARDS OF COMPENSATION

116. When an arbitrator makes an award of compensation, instead of an award for reinstatement or re-engagement, such compensation shall consist of a *basic amount* and a *compensatory amount*.
117. Where paragraph 142 below applies, an award of compensation shall also include a *supplementary amount*.

The basic amount

118. (Subject to the following provisions) the *basic amount* shall be calculated by:
- (i) determining the period, ending with the effective date of termination (see paragraph 119 below), during which the Employee has been continuously employed (see paragraph 120 below),
 - (ii) reckoning backwards from the end of that period the number of years of employment falling within that period, and
 - (iii) allowing the appropriate amount (see paragraph 121 below) for each of those years of employment.
119. As to the "effective date of termination":
- (i) the "effective date of termination" means:
 - (a) in relation to an Employee whose contract of employment is terminated by notice, whether given by his or her Employer or by the Employee, the date on which the notice expires;
 - (b) in relation to an Employee whose contract of employment is terminated without notice, the date on which the termination takes effect; and
 - (c) in relation to an Employee who is employed under a contract for a fixed term which expires without being renewed under the same contract, the date on which the term expires.
 - (ii) Where:
 - (a) the contract of employment is terminated by the Employer, and
 - (b) the notice required by section 86 of the Employment Rights Act 1996 (as amended from time to time) to be given by an Employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined in paragraph 119 (i) above), the later date is the effective date of termination.
 - (iii) In paragraph 119 (ii) (b) above, "the material date" means:
 - (a) the date when notice of termination was given by the Employer, or
 - (b) where no notice was given, the date when the contract of employment was terminated by the Employer.
 - (iv) Where:
 - (a) the contract of employment is terminated by the Employee, and
 - (b) the material date does not fall during a period of notice given by the Employer to terminate that contract, and
 - (c) had the contract been terminated not by the Employee but by notice given on the material date by the Employer, that notice would have been required by section 86 of the

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Employment Rights Act 1996 (as amended from time to time) to expire on a date later than the effective date of termination (as defined in paragraph 119 (i) above), the later date is the effective date of termination.

- (v) In paragraph 119 (iv) above, "the material date" means:
 - (a) the date when notice of termination was given by the Employee, or
 - (b) where no notice was given, the date when the contract of employment was terminated by the Employee.
- 120. In determining "*continuous employment*", the arbitrator shall have regard to Chapter I of Part XIV of the Employment Rights Act 1996 (as amended from time to time).
- 121. The "*appropriate amount*" means:
 - (i) one and a half weeks' pay for a year of employment in which the Employee was not below the age of forty-one,
 - (ii) one week's pay for a year of employment (not within sub-paragraph (i) above) in which he or she was not below the age of twenty-two, and
 - (iii) half a week's pay for a year of employment not within sub-paragraphs (i) or (ii) above.
- 122. In calculating the amount of a week's pay of an Employee, the arbitrator shall have regard to Chapter II of Part XIV of the Employment Rights Act 1996, as amended from time to time, or any other relevant statutory provision applicable to the calculation of a week's pay.
- 123. Where twenty years of employment have been reckoned under paragraph 118 above, no account shall be taken under that paragraph of any year of employment earlier than those twenty years.
- 124. Where the effective date of termination is after the sixty-fourth anniversary of the day of the Employee's birth, the amount arrived at under paragraphs 118, 121 and 123 above shall be reduced by the "*appropriate fraction*" (see paragraph 125 below).
- 125. The "*appropriate fraction*" means the fraction of which:
 - (i) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the Employee's birth in the period beginning with that anniversary and ending with the effective date of termination (see paragraph 119 above), and
 - (ii) the denominator is twelve.

Minimum basic amounts in certain cases

- 126. A "*minimum basic amount*" shall apply where the arbitrator has found that the dismissal was unfair, and where the reason (or, if more than one, the principal reason):
 - in a redundancy case (see paragraph 129 (i) below), for selecting the Employee for dismissal, or
 - otherwise, for the dismissalwas one of the following:

Health and safety cases

- (i) having been designated by the Employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the Employee carried out (or proposed to carry out) any such activities;
- (ii) being a representative of workers on matters of health and safety at work or member of a safety committee:
 - (a) in accordance with arrangements established under or by virtue of any enactment, or
 - (b) by reason of being acknowledged as such by the Employer,the Employee performed (or proposed to perform) any functions as such a representative or a member of such a committee;

Working time cases

- (iii) being:

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- (a) a representative of members of the workforce for the purposes of Schedule 1 to the Working Time Regulations 1998 (as amended from time to time), or
 - (b) a candidate in an election in which any person elected will, on being elected, be such a representative,
- performed (or proposed to perform) any functions or activities as such a representative or candidate;

Trustees of occupational pension schemes

- (iv) being a trustee of a relevant occupational pension scheme which relates to his or her employment, the Employee performed (or proposed to perform) any functions as such a trustee;

Employee representatives

- (v) being:
 - (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time), or
 - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,performed (or proposed to perform) any functions or activities as such an employee representative or candidate;
- (vi) the Employee took part in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time);

Union membership or activities

- (vii) the Employee:
 - (a) was, or proposed to become, a member of an independent trade union, or
 - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
 - (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.
- (viii) For the purposes of paragraphs (vii) above to (xi) below, in defining the terms "*trade union*" and "*independent trade union*", the arbitrator shall have regard to sections 1 and 5 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.
- (ix) For the purposes of paragraph (vii)(b) above, an "*appropriate time*" means:
 - (a) a time outside the employee's working hours, or
 - (b) a time within his or her working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible for him or her to take part in the activities of a trade union;and for this purpose "*working hours*", in relation to an Employee, means any time when, in accordance with his or her contract of employment, he or she is required to be at work.
- (x) Where the reason, or one of the reasons, for the dismissal was:
 - (a) the employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his or her contract of employment or in writing) that, in the event of his or her not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he or she must make one or more payments, or

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(b) his or her objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his or her contract of employment or in writing) under which, in the event mentioned in paragraph (x) (a) above, his or her employer is entitled to deduct one or more sums from the remuneration payable to him or her in respect of his or her employment,

the reason shall be treated as falling within paragraph (vii)(c) above.

(xi) References in paragraphs (vii) to (x) above to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

Other categories

(xii) Where the reason or principal reason for the dismissal of the Employee qualifies under any other applicable legislative provision for a minimum basic award.

127. Before any reductions are taken into account under paragraphs 130-134 below (*"Reductions to the basic amount"*), the *"minimum basic amount"* shall not be less than:

- (i) in cases within paragraph 126 (i), (ii), (iii), (iv), (v) and (vi) above, the amount provided for in section 120(1) of the Employment Rights Act 1996, as amended from time to time;
- (ii) in cases within paragraph 126 (vii) above, the amount provided for in section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time;
- (iii) in cases within paragraph 126 (xii) above, the amount provided for in the relevant legislation.

Basic amount of two weeks' pay in certain cases

128. Where:

- (i) the arbitrator finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the Employee is that he or she was redundant and
- (ii) the Employee:
 - (a) by virtue of section 138 of the Employment Rights Act 1996, as amended from time to time, is not regarded as dismissed for the purposes of Part XI of that Act, or
 - (b) by virtue of section 141 of that Act, as amended from time to time, is not, or (if he or she were otherwise entitled) would not be, entitled to a redundancy payment,the basic amount shall be two weeks' pay (for the definition of "week's pay", see paragraph 122 above).

129. For the purposes of this Scheme:

- (i) for the definition of *"redundancy"*, the arbitrator shall have regard to section 139 of the Employment Rights Act 1996, as amended from time to time;
- (ii) for the definition of *"redundancy payment"*, the arbitrator shall have regard to Part XI of the Employment Rights Act 1996, as amended from time to time.

Reductions to the basic amount

130. Where the arbitrator finds that the Employee has unreasonably refused an offer by the Employer which (if accepted) would have the effect of reinstating the Employee in his or her employment in all respects as if he or she had not been dismissed, the arbitrator shall reduce or further reduce the basic amount to such extent as he or she considers just and equitable having regard to that finding.

131. Where the arbitrator considers that any conduct of the Employee before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the basic amount to any extent, the arbitrator shall reduce or further reduce that amount accordingly. In assessing such conduct, the arbitrator shall disregard (if relevant) those matters set out in section 155 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.

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132. The preceding paragraph does not apply in a redundancy case (see paragraph 129 (i) above) unless the reason for selecting the Employee for dismissal was one of those specified in paragraph 126 above ("*Minimum basic amounts in certain cases*"), and in such a case, the preceding paragraph applies only to so much of the basic amount as is payable because of paragraph 126 above.
133. Where the Employee has been awarded any amount in respect of the dismissal under a dismissal procedures agreement designated under section 110 of the Employment Rights Act 1996 (as amended from time to time), the arbitrator shall reduce or further reduce the amount of the basic award to such extent as he or she considers just and equitable having regard to that award.
134. The basic amount shall be reduced or further reduced by the amount of any payment made by the Employer to the Employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise).

The compensatory amount

135. (Subject to the following provisions) the *compensatory amount* shall be such as the arbitrator considers just and equitable in all the circumstances having regard to the loss sustained by the Employee in consequence of the dismissal —in so far as that loss is attributable to action taken by the Employer.
136. The loss referred to in paragraph 135 above shall be taken to include:
- (i) any expenses reasonably incurred by the Employee in consequence of the dismissal, and
 - (ii) (subject to (iii) below) loss of any benefit which he or she might reasonably be expected to have had but for the dismissal.
 - (iii) in respect of any loss of:
 - any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise) or
 - any expectation of such a paymentonly the loss referable to the amount (if any) by which such a payment would have exceeded the basic amount in respect of the same dismissal (as calculated under the provisions set out above— but excluding any reductions under paragraphs 130-134 above ("*Reductions to the basic amount*")).
137. In ascertaining the loss referred to in paragraph 135 above, the arbitrator shall apply the principle that a person has a duty to mitigate his or her loss.
138. In determining, for the purposes of paragraph 135 above, how far any loss sustained by the Employee was attributable to action taken by the Employer, no account shall be taken of any pressure which by:
- (i) calling, organising, procuring or financing a strike or other industrial action, or
 - (ii) threatening to do so,
- was exercised on the Employer to dismiss the Employee; and that question shall be determined as if no such pressure had been exercised.

Reductions to the compensatory amount

139. Where the arbitrator finds that the dismissal was to any extent caused or contributed to by any conduct of the Employee, he or she shall reduce the compensatory amount by such proportion as he or she considers just and equitable having regard to that finding. In assessing such conduct, the arbitrator shall disregard (if relevant) those matters set out in section 155 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.
140. If :
- (i) any payment was made by the Employer to the Employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise); and

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- (ii) the amount of such a payment exceeds the basic amount that would have been payable (under the provisions set out above—excluding for this purpose reductions on account of redundancy payments (see paragraph 129 above)),
that excess goes to reduce the compensatory amount.

Internal appeal procedures

141. Where an award of compensation is to be made, and the arbitrator finds that:
- (i) the Employer provided a procedure for appealing against dismissal, and
 - (ii) the Employee was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the Employer provided the procedure and including details of it, but
 - (iii) the Employee did not appeal against the dismissal under the procedure (otherwise than because the Employer prevented him or her from doing so),
- the arbitrator shall reduce the compensatory amount included in an award of compensation by such amount (if any) as he or she considers just and equitable.
142. Where an award of compensation is to be made, and the arbitrator finds that:
- (i) the Employer provided a procedure for appealing against dismissal, but
 - (ii) the Employer prevented the Employee from appealing against the dismissal under the procedure,
- the award of compensation shall include a supplementary amount, being such amount (if any) as the arbitrator considers just and equitable.
143. In determining the amount of a reduction under paragraph 141 above or a supplementary amount under paragraph 142 above, the arbitrator shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the Employer would have been successful.
144. The amount of such a reduction or supplementary amount shall not exceed the amount of two weeks' pay (for the definition of "week's pay", see paragraph 122 above).

Limits on the compensatory amount

145. With the exception of:
- (i) cases falling within sections 100 or 105(3), of the Employment Rights Act 1996, as amended from time to time (Health and Safety Cases), and
 - (ii) cases where the reason (or, if more than one, the principal reason):
 - (a) in a redundancy case, for selecting the Employee for dismissal, or
 - (b) otherwise for the dismissal,was that the Employee made a protected disclosure (within the meaning of Part IVA of the Employment Rights Act 1996, as amended from time to time); and
 - (iii) cases falling within any other exception to the statutory limit,
- no compensatory amount awarded by an arbitrator shall exceed the statutory limit provided for in section 124(1) of the Employment Rights Act 1996, as amended from time to time.
146. The limit referred to above applies to the amount which the arbitrator would award (apart from paragraph 145 above) in respect of the subject matter of the complaint, after taking into account:
- (i) any payment made by the Employer to the Employee in respect of that matter, and
 - (ii) any reduction in the amount of the award required by any enactment or rule of law.

Double recovery

147. Where the same acts of the Employer are relied upon by the Employee:
- (i) to ground a claim for unfair dismissal in arbitration as well as
 - (ii) to ground a claim in the employment tribunal for discrimination (under the Sex Discrimination Act 1975 and/or the Race Relations Act 1976 and/or the Disability Discrimination Act 1995, or any other relevant statute),

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the arbitrator shall not award compensation in respect of any loss or other matter which is to be or has been taken into account by the employment tribunal in awarding compensation with respect to the discrimination claim.

In this regard, the arbitrator shall have regard to any information supplied by the parties under paragraph 71 above.

XXI. ISSUE OF AWARDS AND CONFIDENTIALITY

148. The arbitrator's award shall be sent by ACAS to both parties.
149. The award shall be confidential, and shall only be issued to the parties or to their nominated advisers or representatives. Awards will not be published by ACAS, or lodged with the employment tribunal by ACAS, although awards may be retained by ACAS for monitoring and evaluation purposes, and, from time to time, ACAS may publish general summary information concerning cases heard under the Scheme, without identifying any individual cases.

XXII. CORRECTION OF AWARDS

Scrutiny of awards by ACAS

150. Before being sent to the parties, awards may be scrutinised by ACAS to check for clerical or computational mistakes, errors arising from accidental slips or omissions, ambiguities, or errors of form. Without affecting the arbitrator's liberty of decision, ACAS may refer the award back to the arbitrator (under the provisions below) in order to draw his or her attention to any such point.

Correction by the arbitrator

151. The arbitrator may, on his or her own initiative or on the application of a party or ACAS:
 - (i) correct the award so as to remove any clerical or computational mistake, or error arising from an accidental slip or omission, or to clarify or remove any ambiguity in the award, or
 - (ii) make an additional award in respect of any part of the claim which was presented to the arbitrator but was not dealt with in the award.
152. In so far as any such correction or additional award involves a new issue that was not previously before the parties, this power shall not be exercised without first affording the parties a reasonable opportunity to make written representations to the arbitrator.
153. Any application by a party for the exercise of this power must be made via the ACAS Arbitration Section within 28 days of the date the award was despatched to the applying party by ACAS.
154. Any correction of the award shall be made within 28 days of the date the application was received by the arbitrator or, where the correction is made by the arbitrator on his or her own initiative, within 28 days of the date of the award.
155. Any additional award shall be made within 56 days of the date of the original award.
156. Any correction of the award shall form part of the award.

XXIII. EFFECT OF AWARDS, ENFORCEMENT AND INTEREST

Effect of awards

157. Awards made by arbitrators under this Scheme are final and binding both on the parties and on any persons claiming through or under them.
158. This does not affect the right of a person to challenge an award under the provisions of the Arbitration Act 1996 as applied to this Scheme.

Enforcement

- 159(1) Section 66 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 159(2) In subsection(1) for "*tribunal pursuant to an arbitration agreement*" substitute "*arbitrator pursuant to the Scheme (except for an award of reinstatement or re-engagement)*".
- 159(3) In subsection (3) for "*(see section 73)*" substitute "*(see section XXV of the Scheme)*".

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159(4) After subsection (4) insert—

"(5) In this section—

"the court" means the High Court or a county court; and

"the Scheme" means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001."

160. Awards of reinstatement or re-engagement will be enforced by the employment tribunal in accordance with section 117 of the Employment Rights Act 1996 (enforcement by award of compensation).

Interest

161. Awards of compensation that are not paid within 42 days of the date on which the award was dispatched by ACAS to the Employer will attract interest on the same basis as for employment tribunal awards.

XXIV. CHALLENGING THE AWARD

Challenges on grounds of substantive jurisdiction

162(1) Section 67 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

162(2) In subsection (1)—

(a) for *"(upon notice to the other parties and to the tribunal) apply to the court"* substitute *"(upon notice to the other party, to the arbitrator and to ACAS) apply to the High Court or the Central London County Court"*;

(b) for *"(see section 73)"* substitute *"(see section XXV of the Scheme)"*;

(c) after *"section 70(2) and (3)"* insert *"as modified for the purposes of the Scheme"*.

162(3) After subsection (1) insert—

"(1A) In this section—

"Arbitration Agreement" means an agreement to refer a dispute to arbitration in accordance with, and satisfying the requirements of, the Scheme;

"the Scheme" means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001; and "substantive jurisdiction" means any issue as to—

(a) *the validity of the Arbitration Agreement and the application of the Scheme to the dispute or difference in question;*

(b) *the constitution of the arbitral tribunal; or*

(c) *the matters which have been submitted to arbitration in accordance with the Arbitration Agreement."*

Challenges for serious irregularity

163(1) Section 68 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

163(2) In subsection (1)—

(a) for *"(upon notice to the other parties and to the tribunal) apply to the court"* substitute *"(upon notice to the other party, to the arbitrator and to ACAS) apply to the High Court or Central London County Court"*;

(b) for *"(see section 73)"* substitute *"(see Part XXV of the Scheme)"*;

(c) after *"section 70(2) and (3)"* insert *"as modified for the purposes of the Scheme"*.

163(3) In subsection (2)—

(a) in paragraph (a) for *"section 33 (general duty of tribunal)"* substitute *"Part IX of the Scheme (General Duty of the Arbitrator)"*;

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- (b) in paragraph (b) after “see section 67” insert “as modified for the purposes of the Scheme”;
- (c) in paragraph (c) for “agreed by the parties” substitute “as set out in the Scheme”;
- (d) in paragraph (e) for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “ACAS”;
- (e) omit paragraph (h);
- (f) in paragraph (i) for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “ACAS”.

163(4) In subsection (3) —

- (a) in paragraph (b) insert “vary the award or “ before” set the award aside”;
- (b) omit “The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.”.

163(5) After subsection (4) insert —

“(5) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001.”

Appeals on questions of EC law and the Human Rights Act 1998

164(1) Section 69 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

164(2) In subsection (1) —

- (a) omit “Unless otherwise agreed by the parties”;
- (b) for “(upon notice to the other parties and to the tribunal) appeal to the court” substitute “(upon notice to the other party, to the arbitrator and to ACAS) appeal to the High Court or Central London County Court”;
- (c) for “a question of law” substitute “a question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”;
- (d) omit “An agreement to dispense with reasons for the tribunal’s award shall be considered an agreement to exclude the court’s jurisdiction under this section.”.

164(3) In subsection (2) after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.

164(4) In subsection (3) —

- (a) omit paragraph (b);
- (b) in paragraph (c) after the words “on the basis of the findings of fact in the award” insert “, in so far as the question for appeal raises a point of EC law, the point is capable of serious argument, and in so far as the question for appeal does not raise a point of EC law”.

164(5) In subsection (7) omit “The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.”.

164(6) After subsection (8) insert —

“(9) In this section —

“EC law” means —

- (a) any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
- (b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment; and

“the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001.”

Time limits and other procedural restrictions on challenges to awards

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165(1) Section 70 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

165(2) In subsection (1) after “*section 67, 68 or 69*” insert “(as modified for the purposes of the Scheme)”.

165(3) In subsection (2)—

- (a) omit paragraph (a);
- (b) in paragraph (b) for “*section 57 (correction of award or additional award)*” substitute “*section XXII of the Scheme (Correction of Awards)*”.

165(4) In subsection (3) for “*of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process*” substitute “*the award was despatched to the applicant or appellant by ACAS*”.

165(5) Omit subsection (5).

165(6) After subsection (8) insert—

“(9) *In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001.*”

Common law challenges and saving

166. Sections 81(1)(c) and 81(2) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme.

Challenge or appeal: effect of order of the court

167(1) Section 71 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications .

167(2) In subsection (1) after “*section 67, 68 and 69*” insert “(as modified for the purposes of the Scheme)”.

167(3) After subsection (3) insert—

“(3A) *In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001.*”

167(4) Omit subsection (4).

XXV. LOSS OF RIGHT TO OBJECT

168. If a party to arbitral proceedings under this Scheme takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitrator or by any provision in this Scheme, any objection:

- (i) that the arbitrator lacks substantive jurisdiction (as defined in paragraph 162 above), aside from any jurisdictional objection with respect to the circumstances of the dismissal, which will be waived in any event, as set out in paragraphs 16-18 above,
- (ii) that the proceedings have been improperly conducted,
- (iii) that there has been a failure to comply with the Arbitration Agreement or any provision of this Scheme, or
- (iv) that there has been any other irregularity affecting the arbitrator or the proceedings,

he or she may not raise that objection later, before the arbitrator or the court, unless he or she shows that, at the time he or she took part or continued to take part in the proceedings, he or she did not know and could not with reasonable diligence have discovered the grounds for the objection.

XXVI. IMMUNITY

169. An arbitrator under this Scheme is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith. This applies to a legal adviser appointed by ACAS as it applies to the arbitrator himself or herself.

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170. ACAS, by reason of having appointed an arbitrator or nominated a legal adviser, is not liable for anything done or omitted by the arbitrator or legal adviser in the discharge or purported discharge of his or her functions.

XXVII. MISCELLANEOUS PROVISIONS

Requirements in connection with legal proceedings

- 171(1) Sections 80(1), (2), (4), (5), (6) and (7) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modification.
- 171(2) In subsection (1) for *"to the other parties to the arbitral proceedings, or to the tribunal"* substitute *"to the other party to the arbitral proceedings, or to the arbitrator, or to ACAS"*.

Service of documents and notices on ACAS or the ACAS Arbitration Section

172. Any notice or other document required or authorised to be given or served on ACAS or the ACAS Arbitration Section for the purposes of the arbitral proceedings shall be sent by pre-paid post to the following address:

ACAS Arbitration Section
ACAS Head Office
Brandon House
180 Borough High Street
London SE1 1LW

or transmitted by facsimile, addressed to the ACAS Arbitration Section, at the number stipulated in the ACAS Guide to the Scheme,

or by electronic mail, at the address stipulated in the ACAS Guide to the Scheme.

173. Paragraph 172 (above) does not apply to the service of documents on the ACAS Arbitration Section for the purposes of legal proceedings.

Service of documents or notices on any other person or entity (other than ACAS or the ACAS Arbitration Section)

174. Any notice or other document required or authorised to be given or served on any person or entity (other than ACAS or the ACAS Arbitration Section) for the purposes of the arbitral proceedings may be served by any effective means.
175. If such a notice or other document is addressed, pre-paid and delivered by post:
- (i) to the addressee's last known principal residence or, if he or she is or has been carrying on a trade, profession or business, his or her last known principal business address, or
 - (ii) where the address is a body corporate, to the body's registered or principal office,
- it shall be treated as effectively served.
176. Paragraphs 174 and 175 (above) do not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.

Powers of court in relation to service of documents

- 177(1) Section 77 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 177(2) In subsection (1) omit *"in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement,"*.
- 177(3) In subsection (2) for *"Unless otherwise agreed by the parties, the court"* substitute *"The High Court or Central London County Court"*.
- 177(4) In subsection (3) for *"Any party to the arbitration agreement may apply"* substitute *"ACAS or any party to the arbitration agreement may apply"*.

Reckoning periods of time

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178(1) Sections 78(2), (3), (4) and (5) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modification.

178(2) In subsection (2)–

- (a) omit "*If or to the extent that there is no such agreement,*";
- (b) after "*periods of time*" insert "provided for in any provision of this Part".

XXVIII TERRITORIAL OPERATION OF THE SCHEME

179. The Scheme applies to disputes involving an Employer who resides or carries on business in England and Wales.

APPENDIX A

WAIVER OF RIGHTS

The ACAS Arbitration Scheme ("the Scheme") is entirely voluntary. In agreeing to refer a dispute to arbitration under the Scheme, both parties agree to waive rights that they would otherwise have if, for example, they had referred their dispute to the employment tribunal. This follows from the informal nature of the Scheme, which is designed to be a confidential, relatively fast, cost-efficient and non-legalistic process.

As required by section VI of the Scheme, as a confirmation of the parties' agreement to waive their rights, this form must be completed by each party and submitted to ACAS together with the agreement to arbitration.

A detailed description of the informal nature of arbitration under the Scheme, and the important differences between this and the employment tribunal, is contained in the ACAS Guide to the Scheme ("the ACAS Guide"), which should be read by each party before completing this form.

The Scheme is not intended for disputes involving complex legal issues, or questions of EC law. Parties to such disputes are strongly advised to consider applying to the employment tribunal, or settling their dispute by other means.

This form does not list all the differences between the Scheme and the employment tribunal, or all of the features of the Scheme to which each party agrees in referring their dispute to arbitration.

I,..... **the Applicant / Respondent / Respondent's duly authorised representative** [delete as appropriate]**confirm my agreement to each of the following points:**

1. Unlike proceedings in the employment tribunal, all proceedings under the Scheme, including all hearings, are conducted in **private**. There are no public hearings, and the final award will be confidential.
2. All arbitrators under the Scheme are appointed by ACAS from the ACAS Arbitration Panel (which is a panel of impartial, mainly non-lawyer, arbitrators appointed by ACAS on fixed, but renewable, terms). The appointment process and the ACAS Arbitration Panel is described in the Scheme and the ACAS Guide. Neither party will have any choice of arbitrator.
3. Proceedings under the Scheme are conducted differently from the employment tribunal. In particular:
 - arbitrators will conduct proceedings in an **informal** manner in all cases;
 - the attendance of witnesses and the production of documents cannot be compelled (although failure to co-operate may be taken into account by the arbitrator);
 - there will be no oaths or affirmations, and no cross-examination of witnesses by parties or their representatives;
 - the arbitrator will take the initiative in asking questions and ascertaining the facts (with the aim of ensuring that all relevant issues are considered), as well as hearing each side's arguments;
 - the arbitrator's decision will only contain the main considerations that have led to the result; it will not contain full or detailed reasons;
 - the arbitrator has no power to order interim relief.

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4. Once parties have agreed to refer their dispute to arbitration in accordance with the Scheme, the parties cannot then return to the employment tribunal.
5. In deciding whether or not the dismissal was fair or unfair, the arbitrator shall have regard to general principles of fairness and good conduct in employment relations (including, for example, principles referred to in any relevant ACAS “*Disciplinary and Grievance Procedures*” Code of Practice or “*Discipline at Work*” Handbook). Unlike the employment tribunal, the arbitrator will not apply strict legal tests or rules (e.g. court decisions or legislation), with certain limited exceptions set out in the Scheme (see e.g. paragraph 12).

Similarly, in cases that do not involve EC law, the arbitrator will calculate compensation or award any other remedy in accordance with the terms of the Scheme, instead of applying strict legal tests or rules.

6. Unlike the employment tribunal, there is no right of appeal from awards of arbitrators under the Scheme (except for a limited right to appeal questions of EC law and, aside from procedural matters set out in the Scheme, questions concerning the Human Rights Act 1998).
7. Unlike the employment tribunal, in agreeing to arbitration under the Scheme, parties agree that there is no jurisdictional argument, i.e. no reason why the claim cannot be heard and determined by the arbitrator. In particular, the arbitrator will assume that a dismissal has taken place, and will only consider whether or not this was unfair. This is explained further in the Scheme and in the ACAS Guide.

SIGNED:.....

DATED:.....

IN THE PRESENCE OF

Signature:.....

Full Name:.....

Position:.....

Address:.....

.....

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out a scheme, submitted to the Secretary of State by ACAS pursuant to section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of Part X of the Employment Rights Act 1996 (unfair dismissal). The Order extends to England and Wales only. The Order provides for the Scheme to come into effect on 21 May 2001. The Scheme will provide from that date a voluntary alternative to the employment tribunal for the resolution of unfair dismissal disputes by arbitration where both parties agree.

The Order also provides—

- (a) for certain provisions of the Arbitration Act 1996, as modified by the Order, to apply to arbitrations conducted in accordance with the Scheme;
- (b) for employment tribunals to enforce re-employment orders made in such arbitrations; and
- (c) for the award of a basic amount in such an arbitration to be treated as a basic award of compensation for unfair dismissal for the purposes of debts which the Secretary of State must satisfy if the employer has become insolvent.

CHAPTER SIXTEEN

The ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 (No. 694) **TERMS AND CONDITIONS OF EMPLOYMENT, ENGLAND AND WALES**

Whereas—

- (1) Under section 212A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) the Advisory, Conciliation and Arbitration Service (“ACAS”) may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of section 80G(1) or section 80H(1)(b) of the Employment Rights Act 1996 (flexible working);
- (2) in pursuance of section 212A(1) of the 1992 Act, ACAS has prepared an arbitration scheme for flexible working cases;
- (3) in pursuance of section 212A(2) of the 1992 Act, ACAS has submitted a draft of the scheme to the Secretary of State and the Secretary of State approves the scheme:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 212A(2) and (6) of the 1992 Act, hereby makes the following Order:

Citation, commencement, interpretation and extent

1. (1) This Order may be cited as the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 and shall come into force on 6th April 2003.
- 1.(2) In this Order—
“the 1996 Act” means the Employment Rights Act 1996;
“the Scheme” means the arbitration scheme set out in the Schedule to this Order, with the exception of paragraphs 43, 93, 111, 113 to 118, 122, 128 and 129 thereof.
- 1.(3) This Order extends to England and Wales.

Commencement of the Scheme

2. The Scheme shall come into effect on 6th April 2003.

Application of Part I of the Arbitration Act 1996

3. The provisions of Part I of the Arbitration Act 1996 referred to in paragraphs 43, 93, 111, 113 to 118, 122, 128 and 129 of the Schedule and shown in italics shall, as modified in those paragraphs, apply to arbitrations conducted in accordance with the Scheme.
4. (1) Section 46(1)(b) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modification.
- 4.(2) For “such other considerations as are agreed by them or determined by the tribunal” in section 46(1)(b) substitute “the Terms of Reference in paragraph 13 of the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003”.

SCHEDULE

Articles 2 and 3

ACAS ARBITRATION SCHEME

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I. INTRODUCTION

1. The ACAS (Flexible Working) Arbitration Scheme (“*the Scheme*”) is implemented pursuant to section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“*the 1992 Act*”).
2. The Scheme provides a voluntary alternative, in the form of arbitration, to the employment tribunal for the resolution of disputes arising out of an employee’s application for a change in his terms and conditions of employment made under section 80F of the Employment Rights Act 1996 (“*the 1996 Act*”).
3. Resolution of disputes under the Scheme is intended to be confidential, informal, relatively fast and cost efficient. Procedures under the Scheme are non-legalistic, and far more flexible than the traditional model of the employment tribunal and the courts. For example (as explained in more detail below), the Scheme avoids the use of formal pleadings and formal witness and documentary procedures; strict rules of evidence will not apply. Arbitral decisions (“*awards*”) will be final, with very limited opportunities for parties to appeal or otherwise challenge the result.
4. The Scheme also caters for requirements imposed as a matter of law (eg. the Human Rights Act 1998, and existing law in the field of arbitration and EC law).

II. THE ROLE OF ACAS

5. As more fully explained below, cases enter the Scheme by reference to ACAS, which appoints an arbitrator from a panel (*see paragraphs 35–37 below*) to determine the dispute. ACAS provides administrative assistance during the proceedings, and may scrutinise awards and refer any clerical or other similar errors back to the arbitrator. Disputes are determined, however, by arbitrators and not by ACAS.

Routing of communications

6. Unless in the course of a hearing, all communications between either party and the arbitrator shall be sent via the ACAS Arbitration Section.
7. Paragraph 123 below sets out the manner in which any document, notice or communication must be served on, or transmitted to, ACAS or the ACAS Arbitration Section.

III. TERMS AND ABBREVIATIONS

8. The term “*Employee*” is used to denote the claimant, including any person entitled to pursue a claim arising out of a contravention, or alleged contravention, of section 80G(1) or 80H(1)(b) of the 1996 Act (flexible working).
9. The term “*Employer*” is used to denote the respondent.
10. The term “*EC law*” means:
 - (i) any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
 - (ii) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment.

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11. The term “*Flexible Working Claim*” means a claim by the Employee that his Employer has failed to deal with an application made under section 80F of the 1996 Act in accordance with section 80G(1) of that Act or that a decision by his Employer to reject the application was based on incorrect facts.
12. With the exception of paragraph 21(i) below (“*Requirements for entry into the Scheme*”), references to anything being written or in writing include its being recorded by any means so as to be usable for subsequent reference.

IV. ARBITRATOR'S TERMS OF REFERENCE

13. Every agreement to refer a dispute to arbitration under this Scheme shall be taken to be an agreement that the arbitrator decide the dispute according to the following Terms of Reference:—

In deciding whether to uphold the Flexible Working Claim the arbitrator shall:—

- (i) have regard to relevant provisions of the Flexible Working (Procedural Requirements) Regulations 2002 and to any relevant ACAS Guidance;
- (ii) apply EC law.

The arbitrator shall not decide the case by substituting what he or she would have done for the actions taken by the Employer.

If the arbitrator upholds the Flexible Working Claim, he or she shall determine the appropriate remedy under the terms of this Scheme.

Nothing in the Terms of Reference affects the operation of the Human Rights Act 1998 in so far as this is applicable and relevant and (with respect to procedural matters) has not been waived by virtue of the provisions of this Scheme.

V. SCOPE OF THE SCHEME

Cases that are covered by the Scheme

14. This Scheme only applies to disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention, or alleged contravention, of section 80G(1) or section 80H(1)(b) of the 1996 Act.
15. The Scheme does not extend to other kinds of claim which may be related to, or raised at the same time as, a Flexible Working Claim. For example, sex discrimination cases are not covered by the Scheme.
16. If a Flexible Working Claim has been referred for resolution under the Scheme, any other claim, even if part of the same dispute, must be settled separately, or referred to the employment tribunal, or withdrawn. In the event that different aspects of the same dispute are being heard in the employment tribunal as well as under the Scheme, the arbitrator may decide, if appropriate or convenient, to postpone the arbitration proceedings pending a determination by the employment tribunal.

Waiver of jurisdictional issues

17. Because of its informal nature, the Scheme is not designed for disputes raising jurisdictional issues, such as for example:
 - whether or not the claimant is an employee of the Employer;
 - whether or not the Employee had the necessary period of continuous service to bring the claim;
 - whether or not time limits have expired and/or should be extended.
18. Accordingly, when agreeing to refer a dispute to arbitration under the Scheme, both parties will be taken to have accepted as a condition of the Scheme that no jurisdictional issue is in dispute between them. The arbitrator will not therefore deal with such issues during the arbitration process, even if they are raised by the parties, and the parties will be taken to have waived any rights in that regard.
19. The Scheme is not intended for disputes involving complex legal issues. Whilst such cases will be accepted for determination (subject to the Terms of Reference), parties are advised, where appropriate, to consider applying to the employment tribunal or settling their dispute by other means.

VI. ACCESS TO THE SCHEME

SUBSTANTIVE & PROCEDURAL LAW OF ARBITRATION

20. The Scheme is an entirely voluntary system of dispute resolution: it will only apply if parties have so agreed. Requirements for entry into the Scheme
21. Any agreement to submit a dispute to arbitration under the Scheme must satisfy the following requirements (an "*Arbitration Agreement*"):
 - (i) the agreement must be in writing;
 - (ii) the agreement must concern an existing dispute;
 - (iii) the agreement must not seek to alter or vary any provision of the Scheme;
 - (iv) the agreement must have been reached either:
 - (a) where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (a "*Conciliated Agreement*") or
 - (b) through a compromise agreement, where the conditions regulating such agreements under the 1996 Act are satisfied (a "*Compromise Agreement*");
 - (v) the agreement must be accompanied by a completed Waiver Form for each party, in the form of Appendix A.
22. Where an agreement fails to satisfy any one of these requirements, no valid reference to the Scheme will have been made, and the parties will have to settle their dispute by other means or have recourse to the employment tribunal.
23. Where:
 - (i) a dispute concerning a Flexible Working Claim as well as other claims has been referred to the employment tribunal, and
 - (ii) the parties have agreed to settle the other claims and refer the Flexible Working Claim to arbitration under the Scheme,a separate settlement must be reached referring the Flexible Working Claim to arbitration which satisfies all the requirements listed above (although it may form part of one overall settlement document).

Notification to ACAS of an Arbitration Agreement

24. All Arbitration Agreements must be notified to ACAS within two weeks of their conclusion, by either of the parties or their independent advisers or representatives, or an ACAS conciliator, sending a copy of the agreement and Waiver Forms, together with IT1 and IT3 forms if these have been completed, to the ACAS Arbitration Section.
25. For the purposes of the previous paragraph, an Arbitration Agreement is treated as "*concluded*" on the date it is signed, or if signed by different people at different times, on the date of the last signature.
26. Where an Arbitration Agreement is not notified to ACAS within two weeks, ACAS will not arrange for the appointment of an arbitrator under the Scheme, unless notification within that time was not reasonably practicable. Any party seeking to notify ACAS of an Arbitration Agreement outside this period must explain in writing to the ACAS Arbitration Section the reason for the delay. ACAS shall appoint an arbitrator, in accordance with the appointment provisions below, to consider the explanation, and that arbitrator may seek the views of the other party, and may call both parties to a hearing to establish the reasons for the delay. The arbitrator shall then rule in an award on whether or not the agreement can be accepted for hearing under the Scheme.
27. Any such hearing and award will be governed by the provisions of this Scheme.
28. Where all parties so agree in writing, ACAS may consolidate different arbitral proceedings under the Scheme.

VII. SETTLEMENT AND WITHDRAWAL FROM THE SCHEME

29. At any stage of the arbitration process, once an Arbitration Agreement has been concluded and the reference has been accepted by ACAS, the party bringing the Flexible Working Claim may withdraw from the Scheme, provided that any such withdrawal is in writing. Such a withdrawal shall constitute a dismissal of the claim.

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30. Once an Arbitration Agreement has been concluded and the reference has been accepted by ACAS, the party against whom a claim is brought cannot unilaterally withdraw from the Scheme.

Settlement

31. Parties are free to reach an agreement settling the dispute at any stage.
32. If such an agreement is reached:
- (i) upon the joint written request of the parties to the arbitrator or the ACAS Arbitration Section, the arbitrator (if appointed) or the ACAS Arbitration Section (if no arbitrator has been appointed) shall terminate the arbitration proceedings;
 - (ii) if so requested by the parties, the arbitrator (if appointed) may record the settlement in the form of an agreed award (on a covering pro-forma).
33. An agreed award shall state that it is an award of the arbitrator by consent and shall have the same status and effect as any other award on the merits of the case.
34. In rendering an agreed award, the arbitrator:
- (i) may only record the parties' agreed wording;
 - (ii) may not approve, vary, transcribe, interpret or ratify a settlement in any way;
 - (iii) may not record any settlement beyond the scope of the Scheme, the Arbitration Agreement or the reference to the Scheme as initially accepted by ACAS.

VIII. APPOINTMENT OF AN ARBITRATOR

35. Arbitrators are selected to serve on the ACAS Arbitration Panel on the basis of their practical knowledge and experience of employment issues in the workplace. They are recruited through an open recruitment exercise, and appointed to the Panel on the basis of standard terms of appointment. It is a condition of their appointment that they exercise their duties in accordance with the terms of this Scheme. Each appointment is initially for a period of two years, although it may be renewed by ACAS, at the latter's discretion. Payment is made by ACAS on the basis of time spent in connection with arbitral proceedings.

Appointment to a case

36. Arbitral appointments are made exclusively by ACAS from the ACAS Arbitration Panel. Parties will have no choice of arbitrator.
37. Once ACAS has been notified of a valid Arbitration Agreement, it will select and appoint an arbitrator, and notify all parties of the name of the arbitrator so appointed.

Arbitrator's duty of disclosure

38. Immediately following selection (and before an appointment is confirmed by ACAS), every arbitrator shall disclose in writing to ACAS (to be forwarded to the parties) any circumstances known to him or her likely to give rise to any justifiable doubts as to his or her impartiality, or confirm in writing that there are no such circumstances.
39. Once appointed, and until the arbitration is concluded, every arbitrator shall be under a continuing duty forthwith to disclose to ACAS (to be forwarded to the parties) any such circumstances which may have arisen since appointment.

Removal of arbitrators

40. Arbitrators may only be removed by ACAS or the court (under the provisions in paragraphs 41 to 43 below).
41. Applications under the Scheme to remove an arbitrator on any of the grounds set out in sections 24(1)(a) and (c) of the Arbitration Act 1996 shall be made in the first instance to ACAS (addressed to the ACAS Arbitration Section).
42. If ACAS refuses such an application, a party may thereafter apply to the court.
- 43.(1) Sections 24(1)(a) and (c), 24(2), 24(3), 24(5) and 24(6) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

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- 43.(2) In subsection (1) for “(upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court” substitute “(upon notice to the other party, to the arbitrator concerned and to the Advisory, Conciliation and Arbitration Service (“ACAS”)) apply to the High Court or Central London County Court”.
- 43.(3) In subsection (2)—
- (a) omit “If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator,”;
 - (b) for “that institution or person” substitute “ACAS”.
44. The arbitrator may continue the proceedings and make an award while an application to ACAS (as well as the court) to remove him or her is pending.
45. The authority of an arbitrator is personal and ceases on his or her death.

Replacement of arbitrators

46. Where an arbitrator ceases to hold office for any reason, he or she shall be replaced by ACAS in accordance with the appointment provisions above.
47. Once appointed, the replacement arbitrator shall determine whether and, if so, to what extent the previous proceedings should stand.

IX. GENERAL DUTY OF THE ARBITRATOR

48. The arbitrator shall:—
- (i) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his or her case and dealing with that of his or her opponent, and
 - (ii) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
49. The arbitrator shall comply with the general duty (see paragraph 48 above) in conducting the arbitral proceedings, in his or her decisions on matters of procedure and evidence and in the exercise of all other powers conferred on him or her.

X. GENERAL DUTY OF THE PARTIES

50. The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings. This includes (without limitation) complying without delay with any determination of the arbitrator as to procedural or evidential matters, or with any order or directions of the arbitrator, and co-operating in the arrangement of any hearing.

XI. CONFIDENTIALITY AND PRIVACY

51. Arbitrations, and all associated procedures under the Scheme, are strictly private and confidential.
52. Hearings may only be attended by the arbitrator, the parties, their representatives, any interpreters, witnesses and a legal adviser if appointed. If the parties so agree, an ACAS official or arbitrator in training may also attend.

XII. ARRANGEMENTS FOR THE HEARING

Initial arrangements

53. A hearing must be held in every case, notwithstanding any agreement between the parties to a purely written procedure.
54. Once an arbitrator has been appointed by ACAS, a hearing shall be arranged as soon as reasonably practicable by him or her, with the administrative assistance of the ACAS Arbitration Section.
55. The arbitrator shall decide the date and venue for the hearing, in so far as an agreement cannot be reached with all parties within 28 days of the initial notification to ACAS of the Arbitration Agreement.
56. The ACAS Arbitration Section shall contact all parties with details of the date and venue for the hearing.
57. On the application of any party, the arbitrator may, in his or her discretion, expedite the hearing.

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Venue

58. Hearings may be held in any venue, provided that the hearing will only be held at the Employee's workplace, or a similarly non-neutral venue, if all parties so agree.
59. Where premises have to be hired for a hearing, ACAS shall meet the reasonable costs of so doing.
60. Where a party needs the services of an interpreter, signer or communicator at the hearing, ACAS should be so informed well in advance of the hearing. Where an arbitrator agrees that such assistance is required, ACAS shall meet the reasonable costs of providing this.

Travelling expenses/loss of earnings

61. Every party shall meet their own travelling expenses and those of their representatives and witnesses.
62. No loss of earnings are payable by ACAS to anyone involved in the arbitration. However, where an arbitrator upholds a Flexible Working Claim, he or she may include in the calculation of any compensation a sum to cover reasonable travelling expenses and loss of earnings incurred by the Employee personally in attending the hearing.

Applications for postponements of, or different venues for, initial hearings

63. Any application for a postponement of, or a different venue for, an initial hearing must be made in writing, with reasons, to the arbitrator via the ACAS Arbitration Section within 14 days of the date of the letter notifying the hearing arrangements or, where this is not practicable, as soon as is reasonably practicable. Such applications will be determined by the arbitrator without an oral hearing after all parties have received a copy of the application and been given a reasonable opportunity to respond.
64. If the application is rejected, the initial hearing will be held on the original date and/or in the original venue.
65. This provision does not affect the arbitrator's general discretion (set out below) with respect to postponements after an initial hearing has been fixed, or with respect to other aspects of the procedure. In particular, procedural applications may be made to the arbitrator at the hearing itself.

XIII. NON-COMPLIANCE WITH PROCEDURE

66. If a party fails to comply with any aspect of the procedure set out in this Scheme, or any order or direction by the arbitrator, or fails to comply with the general duty in section X above, the arbitrator may (in addition to any other power set out in this Scheme):
 - (i) adjourn any hearing, where it would be unfair on any party to proceed; and/or
 - (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify.

XIV. OUTLINE OF PROCEDURE BEFORE THE HEARING

67. Once a hearing has been fixed, the following procedure shall apply, subject to any direction by the arbitrator.

Written materials

68. At least 14 days before the date of the hearing, each party shall send to the ACAS Arbitration Section (for forwarding to the arbitrator and the other party) one copy of a written statement of case, together with:
 - (i) any supporting documentation or other material to be relied upon at the hearing; and where appropriate
 - (ii) a list of the names and title/role of all those people who will accompany each party to the hearing or be called as a witness.
69. Written statements of case should briefly set out the main particulars of each party's case, which can then be expanded upon if necessary at the hearing itself. The statement should include an explanation of the events which led to the Flexible Working Claim being brought, including an account of the outcome of any relevant meetings.
70. Supporting documentation or other material may include (without limitation) copies of:—
 - (i) the Employee's application under section 80F of the 1996 Act
 - (ii) contracts of employment

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- (iii) notes of meetings held between employee and employer to consider application under section 80F
- (iv) letters of appointment
- (v) written statement of particulars of employment
- (vi) time sheets
- (vii) written reasons for refusing the Employee's application under section 80F, where these have been given
- (viii) company handbooks, rules and procedures
- (ix) any other written information which may assist the arbitrator in deciding the Flexible Working claim
- (x) any information which will help the arbitrator to assess compensation, including (without limitation) pay slips, P60s or wage records
- (xi) signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.

- 71. The parties must also supply details of any relevant awards of compensation that may have been made by any other tribunal or court in connection with the subject matter of the claim.
- 72. Legible copies of documents must be supplied to ACAS even if they have already been supplied to an ACAS conciliator before the Arbitration Agreement was concluded.
- 73. No information on the conciliation process, if any, shall be disclosed by an ACAS conciliator to the arbitrator.

Submissions, evidence and witnesses not previously notified

- 74. Written statements of case and documentary or other material that have not been provided to the ACAS Arbitration Section prior to the hearing (in accordance with paragraph 68 above) may only be relied upon at the hearing with the arbitrator's permission.
- 75. All representatives and witnesses who have been listed as accompanying a party at the hearing should be present at the start of the hearing. Witnesses who have not been included in a list submitted to the ACAS Arbitration Section prior to the hearing may only be called with the arbitrator's permission.
- 76. Any party may request the other party to produce copies of relevant documents which are not in the requesting party's possession, custody or control. Although the arbitrator has no power to compel a party to comply, the arbitrator may draw an adverse inference from a party's failure to comply with a reasonable request.
- 77. Although the arbitrator has no power to compel the attendance of anybody at the hearing, the arbitrator may draw an adverse inference if an employer who is a party to the arbitration fails or refuses to allow current employees or other workers (who have relevant evidence to give) time off from work to attend the hearing, should such an employer be so requested.

Preliminary hearings and directions

- 78. Where the arbitrator believes that there may be considerable differences between the parties over any issue, including the availability or exchange of documents, or the availability of witnesses, the arbitrator may call the parties to a preliminary hearing to address such issues, or he or she may give procedural directions in correspondence.
- 79. In the course of a preliminary hearing or in correspondence, the arbitrator may express views on the desirability of information and/or evidence being available at the hearing.

XV. OUTLINE OF PROCEDURE AT THE HEARING

- 80. Subject to the arbitrator's general duty (section IX above), and subject to the points set out below, the conduct of the hearing and all procedural and evidential matters (including applications for adjournments and changes in venue) shall be for the arbitrator to decide.

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81. The language of the proceedings shall be English, unless the Welsh language is applicable by virtue of the Welsh Language Act 1993 (as amended from time to time). Reference should be made to paragraph 60 above if the Welsh language is to be used.
82. No party or witness shall be cross-examined by a party or representative, or examined on oath or affirmation.
83. The arbitrator shall have the right to address questions directly to either party or to anybody else attending the hearing, and to take the initiative in ascertaining the facts and (where applicable) the law.
84. The parties may be accompanied by any person chosen by them to help them to present their case at the hearing, although no special status will be accorded to legally qualified representatives. Each party is liable for any fees or expenses incurred by any representatives they appoint.
85. The arbitrator will not apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion.

Non-attendance at the hearing

86. If, without showing sufficient cause, a party fails to attend or be represented at a hearing, the arbitrator may:
 - (i) continue the hearing in that party's absence, and in such a case shall take into account any written submissions and documents that have already been submitted by that party; or
 - (ii) adjourn the hearing.
87. In the case of the non-attendance of the Employee, if the arbitrator decides to adjourn the hearing, he or she may write to the Employee to request an explanation for the non-attendance. If the arbitrator decides that the Employee has not demonstrated sufficient cause for the non-attendance, he or she may rule in an award that the claim be treated as dismissed.
88. No further submissions or evidence will be accepted after the end of the substantive hearing without the arbitrator's permission, which will only be granted in exceptional circumstances. Where permission is granted, any material is to be sent to the ACAS Arbitration Section, to be forwarded to the arbitrator and all other parties.

XVI. QUESTIONS OF EC LAW AND THE HUMAN RIGHTS ACT 1998

Appointment of legal adviser

89. The arbitrator shall have the power, on the application of any party or of his or her own motion, to require the appointment of a legal adviser to assist with respect to any issue of EC law or the Human Rights Act 1998 that, in the arbitrator's view and subject to paragraph 13 above (Arbitrator's Terms of Reference), might be involved and relevant to the resolution of the dispute.
90. The legal adviser will be appointed by ACAS, to report to the arbitrator and the parties, and shall be subject to the duty of disclosure set out in paragraphs 38 and 39 above.
91. The arbitrator shall allow the legal adviser to attend the proceedings, and may order an adjournment and/or change in venue to facilitate this.
92. The parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by the legal adviser, following which the arbitrator shall take such information, opinion or advice into account in determining the dispute.
- 93.(1) Section 45 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
93. (2) In subsection (1)—
 - (a) for "*Unless otherwise agreed by the parties, the court*" substitute "*The High Court or Central London County Court*";

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- (b) for “any question of law” substitute “any question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”;
- (c) omit “An agreement to dispense with reasons for the tribunal’s award shall be considered an agreement to exclude the court’s jurisdiction under this section.”.

93. (3) In subsection (2)(b) omit sub-paragraph (i).

93. (4) Omit subsection (4).

93. (5) After subsection (6), insert—

“(7) In this section “EC law” means—

- (a) any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
- (b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment.”

XVII. AWARDS

Form of the award

94. The award shall be in writing, signed by the arbitrator.

95. The award (unless it is an agreed award) shall:—

- (i) state the decision(s) of the arbitrator;
- (ii) contain the main considerations which were taken into account in reaching the decision(s);
- (iii) where an award is made, state the remedy awarded, together with an explanation;
- (iv) state the date when it was made.

96. In the event that the arbitrator upholds the Employee’s Flexible Working Claim, the arbitrator may make an award ordering:—

- (i) the reconsideration of the application made under section 80F of the 1996 Act; and/or
- (ii) compensation (subject to the limits provided for below) to be paid by the Employer to the Employee.

XVIII. AWARDS OF COMPENSATION

97. Subject to 98 below, when an arbitrator makes an award of compensation in respect of any contravention of section 80G(1) or 80H(1)(b) of the 1996 Act, whether or not in conjunction with an award for reconsideration, such compensation shall be such an amount, not exceeding 8 weeks’ pay, as the arbitrator considers just and equitable in all the circumstances.

98. When an arbitrator makes an award of compensation in respect of breaches of Regulation 14(2) or (4) of the Flexible Working (Procedural Requirements) Regulations 2002 ^{F9}such compensation shall be such an amount, not exceeding 2 weeks’ pay, as the arbitrator considers just and equitable in all the circumstances.

99. In calculating the amount of a week’s pay of an Employee, the arbitrator shall have regard to Chapter II of Part 14 of the 1996 Act, as amended from time to time, or any other relevant statutory provision applicable to the calculation of a week’s pay.

IXX. ISSUE OF AWARDS AND CONFIDENTIALITY

100. The arbitrator’s award shall be sent by ACAS to both parties.

101. The award shall be confidential, and shall only be issued to the parties or to their nominated advisers or representatives. Awards will not be published by ACAS, or lodged with the employment tribunal by ACAS, although awards may be retained by ACAS for monitoring and evaluation purposes, and, from time to time, ACAS may publish general summary information concerning cases heard under the Scheme, without identifying any individual cases.

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XX. CORRECTION OF AWARDS

102. Before being sent to the parties, awards may be scrutinised by ACAS to check for clerical or computational mistakes, errors arising from accidental slips or omissions, ambiguities, or errors of form. Without affecting the arbitrator's liberty of decision, ACAS may refer the award back to the arbitrator (under the provisions below) in order to draw his or her attention to any such point.

Correction by the arbitrator

103. The arbitrator may, on his or her own initiative or on the application of a party or ACAS:
- (i) correct the award so as to remove any clerical or computational mistake, or error arising from an accidental slip or omission, or to clarify or remove any ambiguity in the award, or
 - (ii) make an additional award in respect of any part of the claim which was presented to the arbitrator but was not dealt with in the award.
104. In so far as any such correction or additional award involves a new issue that was not previously before the parties, this power shall not be exercised without first affording the parties a reasonable opportunity to make written representations to the arbitrator.
105. Any application by a party for the exercise of this power must be made via the ACAS Arbitration Section within 28 days of the date the award was dispatched to the applying party by ACAS.
106. Any correction of the award shall be made within 28 days of the date the application was received by the arbitrator or, where the correction is made by the arbitrator on his or her own initiative, within 28 days of the date of the award.
107. Any additional award shall be made within 56 days of the date of the original award.
108. Any correction of the award shall form part of the award.

XXI. EFFECT OF AWARDS, ENFORCEMENT AND INTEREST

Effect of awards

109. Awards made by arbitrators under this Scheme are final and binding both on the parties and on any persons claiming through or under them.
110. This does not affect the right of a person to challenge an award under the provisions of the Arbitration Act 1996 as applied to this Scheme.
- 111(1) Section 66 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 111(2) In subsection (1) for "*tribunal pursuant to an arbitration agreement*" substitute "*arbitrator pursuant to the Scheme*".
- 111(3) In subsection (3) for "*(see section 73)*" substitute "*(see section XXIII of the Scheme)*".
- 111(4) After subsection (4) insert—
- "(5) *In this section—*
- "the court" means the High Court or a county court; and*
- "the Scheme" means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003."*
112. Awards of compensation that are not paid within 42 days of the date on which the award was despatched by ACAS to the Employer will attract interest on the same basis as for employment tribunal awards.

XXII. CHALLENGING THE AWARD

- 113(1) Section 67 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 113(2) In subsection (1)—
- (a) for "*(upon notice to the other parties and to the tribunal) apply to the court*" substitute "*(upon notice to the other party, to the arbitrator and to ACAS) apply to the High Court or the Central London County Court*";

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- (b) for “(see section 73)” substitute “(see section XXIII of the Scheme)”;
- (c) after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.

113 (3) After subsection (1) insert —

“(1A) In this section—

“Arbitration Agreement” means an agreement to refer a dispute to arbitration in accordance with, and satisfying the requirements of, the Scheme;

“the Scheme” means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003; and

“substantive jurisdiction” means any issue as to—

- (a) the validity of the Arbitration Agreement and the application of the Scheme to the dispute or difference in question;
- (b) the constitution of the arbitral tribunal; or
- (c) the matters which have been submitted to arbitration in accordance with the Arbitration Agreement.”

114(1) Section 68 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

114(2) In subsection (1)—

- (a) for “(upon notice to the other parties and to the tribunal) apply to the court” substitute “(upon notice to the other party, to the arbitrator and to ACAS) apply to the High Court or Central London County Court”;
- (b) for “(see section 73)” substitute “(see Part XXIII of the Scheme)”;
- (c) after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.

114(3) In subsection (2)—

- (a) in paragraph (a) for “section 33 (general duty of tribunal)” substitute “Part IX of the Scheme (General Duty of the Arbitrator)”;
- (b) in paragraph (b) after “see section 67” insert “as modified for the purposes of the Scheme”;
- (c) in paragraph (c) for “agreed by the parties” substitute “as set out in the Scheme”;
- (d) in paragraph (e) for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “ACAS”;
- (e) omit paragraph (h);
- (f) in paragraph (i) for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “ACAS”.

114(4) In subsection (3)—

- (a) in paragraph (b) insert “vary the award or” before “set the award aside”;
- (b) omit “The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.”.

114(5) After subsection (4) insert—

“(5) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003.”

115(1) Section 69 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

115(2) In subsection (1)—

- (a) omit “Unless otherwise agreed by the parties”;
- (b) for “(upon notice to the other parties and to the tribunal) appeal to the court” substitute “(upon notice to the other party, to the arbitrator and to ACAS) appeal to the High Court or Central London County Court”;
- (c) for “a question of law” substitute “a question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”;

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- (d) omit *"An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section"*.

115(3) In subsection (2) after *"section 70(2) and (3)"* insert *"as modified for the purposes of the Scheme"*.

115(4) In subsection (3)—

- (a) omit paragraph (b);
- (b) in paragraph (c) after the words *"on the basis of the findings of fact in the award"* insert *", in so far as the question for appeal raises a point of EC law, the point is capable of serious argument, and in so far as the question for appeal does not raise a point of EC law"*.

115 (5) In subsection (7) omit *"The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration"*.

115 (6) After subsection (8) insert—

"(9) In this section—

"EC law" means—

- (a) *any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and*
- (b) *any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment; and*

"the Scheme" means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003."

116(1) Section 70 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

116(2) In subsection (1) after *"section 67, 68 or 69"* insert *"(as modified for the purposes of the Scheme)"*.

116(3) In subsection (2)—

- (a) omit paragraph (a);
- (b) in paragraph (b) for *"section 57 (correction of award or additional award)"* substitute *"section XX of the Scheme (Correction of Awards)"*.

116(4) In subsection (3) for *"of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process"* substitute *"the award was despatched to the applicant or appellant by ACAS"*.

116(5) Omit subsection (5).

116(6) After subsection (8) insert—

"(9) In this section, "the Scheme" means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003."

117. Sections 81(1)(c) and 81(2) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme.

118(1) Section 71 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

118(2) In subsection (1) after *"section 67, 68 and 69"* insert *"(as modified for the purposes of the Scheme)"*.

118(3) After subsection (3) insert—

"(3A) In this section, "the Scheme" means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003."

118(4) Omit subsection (4).

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XXIII. LOSS OF RIGHT TO OBJECT

119. If a party to arbitral proceedings under this Scheme takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitrator or by any provision in this Scheme, any objection:—
- (i) that the arbitrator lacks substantive jurisdiction (as defined in paragraph 113 above),
 - (ii) that the proceedings have been improperly conducted,
 - (iii) that there has been a failure to comply with the Arbitration Agreement or any provision of this Scheme, or
 - (iv) that there has been any other irregularity affecting the arbitrator or the proceedings,
- he or she may not raise that objection later, before the arbitrator or the court, unless he or she shows that, at the time he or she took part or continued to take part in the proceedings, he or she did not know and could not with reasonable diligence have discovered the grounds for the objection.

XXIV. IMMUNITY

120. An arbitrator under this Scheme is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith. This applies to a legal adviser appointed by ACAS as it applies to the arbitrator himself or herself.
121. ACAS, by reason of having appointed an arbitrator or nominated a legal adviser, is not liable for anything done or omitted by the arbitrator or legal adviser in the discharge or purported discharge of his or her functions.

XXV. MISCELLANEOUS PROVISIONS

- 122(1) Sections 80(1), (2), (4), (5), (6) and (7) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modification.
- 122(2) In subsection (1) for “to the other parties to the arbitral proceedings, or to the tribunal” substitute “to the other party to the arbitral proceedings, or to the arbitrator, or to ACAS”.

Service of documents and notices on ACAS or the ACAS Arbitration Section

123. Any notice or other document required or authorised to be given or served on ACAS or the ACAS Arbitration Section for the purposes of the arbitral proceedings shall be sent by pre-paid post to the following address: ACAS Arbitration Section
ACAS Head Office
Brandon House
180 Borough High Street
London SE1 1LW
- or transmitted by facsimile, addressed to the ACAS Arbitration Section, at the number stipulated in the ACAS Guide to the Scheme,
- or by electronic mail, at the address stipulated in the ACAS Guide to the Scheme.
124. Paragraph 123 (above) does not apply to the service of documents on the ACAS Arbitration Section for the purposes of legal proceedings.

Service of documents or notices on any other person or entity (other than ACAS or the ACAS Arbitration Section)

125. Any notice or other document required or authorised to be given or served on any person or entity (other than ACAS or the ACAS Arbitration Section) for the purposes of the arbitral proceedings may be served by any effective means.
126. If such a notice or other document is addressed, pre-paid and delivered by post:—
- (i) to the addressee’s last known principal residence or, if he or she is or has been carrying on a trade, profession or business, his or her last known principal business address, or
 - (ii) where the address is a body corporate, to the body’s registered or principal office,
- it shall be treated as effectively served.

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127. Paragraphs 125 and 126 (above) do not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.
- 128(1) Section 77 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 128(2) In subsection (1) omit "*in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement,*".
- 128(3) In subsection (2) for "*Unless otherwise agreed by the parties, the court*" substitute "*The High Court or Central London County Court*".
- 128(4) In subsection (3) for "*Any party to the arbitration agreement may apply*" substitute "*ACAS or any party to the Arbitration Agreement*".
- 129(1) Section 78(2), (3), (4) and (5) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.
- 129(2) In subsection (2)—
- (a) omit "*If or to the extent there is no such agreement,*";
 - (b) after "*periods of time*" insert "*provided for in any provision of this Part*".

XXVI. TERRITORIAL OPERATION OF THE SCHEME

130. The Scheme applies to disputes involving an Employer who resides or carries on business in England and Wales.

APPENDIX A

WAIVER OF RIGHTS

The ACAS Arbitration Scheme ("the Scheme") is entirely voluntary. In agreeing to refer a dispute to arbitration under the Scheme, both parties agree to waive rights that they would otherwise have if, for example, they had referred their dispute to the employment tribunal. This follows from the informal nature of the Scheme, which is designed to be a confidential, relatively fast, cost-efficient and non-legalistic process. As required by section VI of the Scheme, as a confirmation of the parties' agreement to waive their rights, this form must be completed by each party and submitted to ACAS together with the agreement to arbitration.

A detailed description of the informal nature of arbitration under the Scheme, and the important differences between this and the employment tribunal, is contained in the ACAS Guide to the Flexible Working Arbitration Scheme ("the ACAS (Flexible Working) Guide"), which should be read by each party before completing this form.

The Scheme is not intended for disputes involving complex legal issues, or questions of EC law. Parties to such disputes are strongly advised to consider applying to the employment tribunal, or settling their dispute by other means.

This form does not list all the differences between the Scheme and the employment tribunal, or all of the features of the Scheme to which each party agrees in referring their dispute to arbitration.

I,.....

the Applicant/Respondent/Respondent's duly authorised representative [delete as appropriate] confirm my agreement to each of the following points:—

1. Unlike proceedings in the employment tribunal, all proceedings under the Scheme, including all hearings, are conducted in *private*. There are no public hearings, and the final award will be confidential.
2. All arbitrators under the Scheme are appointed by ACAS from the ACAS Arbitration Panel (which is a panel of impartial, mainly non-lawyer, arbitrators appointed by ACAS on fixed, but renewable, terms). The appointment process and the ACAS Arbitration Panel are described in the Scheme and the ACAS Guide. Neither party will have any choice of arbitrator.

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3. Proceedings under the Scheme are conducted differently from the employment tribunal. In particular:
 - arbitrators will conduct proceedings in an *informal* manner in all cases;
 - the attendance of witnesses and the production of documents cannot be compelled (although failure to co-operate may be taken into account by the arbitrator);
 - there will be no oaths or affirmations, and no cross-examination of witnesses by parties or their representatives;
 - the arbitrator will take the initiative in asking questions and ascertaining the facts (with the aim of ensuring that all relevant issues are considered), as well as hearing each side’s arguments;
 - the arbitrator’s decision will only contain the main considerations that have led to the result; it will not contain full or detailed reasons.
4. Once parties have agreed to refer their dispute to arbitration in accordance with the Scheme, the parties cannot then return to the employment tribunal.
5. In deciding whether the employee’s complaint that his Employer has failed to deal with an application under section 80F of the Employment Rights Act 1996 in accordance with section 80G(1) of that Act or that a decision by his Employer to reject the application was based on incorrect facts, the arbitrator shall have regard to the Flexible Working (Procedural Requirements) Regulations 2002, as well as any relevant ACAS guidance. Unlike the employment tribunal, the arbitrator will not apply strict rules of evidence.
6. Unlike the employment tribunal, there is no right of appeal from awards of arbitrators under the Scheme (except for a limited right to appeal questions of EC law and, aside from procedural matters set out in the Scheme, questions concerning the Human Rights Act 1998).
7. Unlike the employment tribunal, in agreeing to arbitration under the Scheme, parties agree that there is no jurisdictional argument, ie no reason why the claim cannot be heard and determined by the arbitrator.

SIGNED:

DATED:

IN THE PRESENCE OF

Signature:

Full Name:

Position:

Address:

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out a scheme, submitted to the Secretary of State by ACAS pursuant to section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of sections 80G(1) or 80H(1)(b) of the Employment Rights Act 1996 (flexible working). The Order extends to England and Wales only. The Order provides for the Scheme to come into effect on 6th April 2003. The Scheme will provide from that date a voluntary alternative to the employment tribunal for the resolution of claims arising out of an application for flexible working made under section 80F(1) of the 1996 Act by arbitration where both parties agree.

The Order also provides for certain provisions of the Arbitration Act 1996, as modified by the Order, to apply to arbitrations conducted in accordance with the Scheme.

The Acas Arbitration Scheme for the resolution of Flexible Working disputes: A guide to the Scheme [774kb] can be downloaded in pdf at www.acas.org.uk/CHttpHandler.ashx?id=124&p=0

The Acas Arbitration Scheme for the resolution of Unfair Dismissal disputes (England and Wales) [589kb] can be downloaded in pdf at www.acas.org.uk/CHttpHandler.ashx?id=122&p=0

The Acas Arbitration Scheme for the resolution of Unfair Dismissal disputes (Scotland) [294kb] can be downloaded in pdf at www.acas.org.uk/CHttpHandler.ashx?id=123&p=0