5 Bringing a Complaint

This chapter looks at the mechanics for bringing a claim for equal pay for work of equal value.

ORIGINATING APPLICATION AND NOTICE OF APPEARANCE

In order to institute a claim for equal pay for work of equal value, an applicant must present an originating application to the Industrial Tribunals, setting out her name and address, the name and address of the employer and the grounds, with particulars thereof, on which the applicant seeks relief.

Claims under the Equal Pay Act, including equal value claims, can be brought by existing employees and by former employees, provided in the latter case that the applicant was employed in the employment in question within a six month period preceding the date of the application – s.2(4).

Where an applicant wishes to make multiple comparisons – e.g. she is a clerical supervisor and she wants to compare the value of her work to a range of more highly paid men, each performing different work, say shop-floor foremen, lorry drivers, lab technicians and computer programmers – it may be advisable to file a separate originating application in respect of each comparison.

There is nothing in the Rules of Procedure requiring the applicant to designate her comparator or comparators by name in the originating application. As a matter of practice, however, some information, such as the job title of the male comparators, ought to be provided in the originating application since, unless this is done, the Secretary of the Tribunals is likely to ask for further particulars of the complaint to be furnished. At some point in the proceedings, the comparator
must be identified by name, as this must be included in the requirement given to the independent expert. If the claim gets that far, the name of the comparator can be ascertained through the normal interlocutory proceedings.

The Secretary of the Tribunals will send a copy of the originating application to the employer, who has fourteen days to enter an appearance by presenting a written ‘notice of appearance’ to the Secretary. If the employer intends to resist the claim, the notice of appearance should set out sufficient particulars to show the grounds upon which he proposes to do so. In most cases, the employer will wish to plead in the alternative – he will deny that the applicant is employed on work of equal value with her comparator, but will wish to argue that if she is employed on work of equal value, the variation in pay is not sex-based.

CONCILIATION

As with other types of complaints to an Industrial Tribunal, a copy of a complaint relating to equal pay for work of equal value will be sent to an ACAS conciliation officer.

In keeping with the overall intention of minimising the number of complaints to be referred to an independent expert, Rule 12(2A) of the amended Rules of Procedure introduces a further and novel conciliation provision – the invitation for an adjournment. According to the Rule, ‘in a case involving an equal value claim the tribunal shall, before proceeding to hear the parties on the claim, invite them to apply for an adjournment for the purpose of seeking to reach a settlement of the claim and shall, if both or all the parties agree to such a course, grant an adjournment for that purpose’.

PREPARATIONS

If conciliation fails, the Industrial Tribunal must conduct a preliminary hearing on whether the complaint should be dismissed without further investigation by reason of there