To: Sir Keith Lindblom, Senior President of Tribunals

Judge Barry Clarke, President of the Employment Tribunal Service

Shona Simon, President of the Employment Tribunal Service Scotland

Dear Presidents,

We the undersigned doctors, journalists, whistle blowers and members of the public wish to draw your attention to what we believe is a serious shortcoming in the employment tribunal service which we believe prejudices the right of a fair trial guaranteed under Article 6 of the European Convention on Human Rights.

The tribunal service is meant to ensure that all sides are on an equal footing, have equal access to all the information, that the hearing is held in public and the principles of “open justice” are paramount.

The most fundamental shortcoming in the tribunal system is there is no official transcript of the proceedings accessible to all.

Any person attending the hearing who records the proceedings faces criminal charges but nobody can obtain a transcript as none is kept.

The exception is that a well-resourced employer can employ a person, with the Judge's permission, to take a record of the proceedings while the claimant, often being a litigant in person, is unlikely to have the resources to do so – breaking the principle of both sides being on an equal footing.

When a Litigant in Person (LiP) is being cross-examined, it is impossible for a LiP to take notes simultaneously. When skeleton arguments are produced or questions prepared during the course of a hearing, one party (usually the Respondent) has the considerable advantage of being able to refer to notes of the court proceedings.

We understand that in the tribunal system the judges' notes are regarded as the official record

and are made available to the employment appeal tribunal as an official record should the tribunal's findings go to appeal.

However, these same notes are ruled to be private documents covered by data protection laws so the public and press cannot access them. Attempts to get the Judge's notes have been blocked by judges. But they are not complete records unlike a transcript that is provided in many criminal and civil cases.

The issues regarding the lack of an official record are then compounded when a case goes to appeal. The claimant arrives without a transcript of the previous hearing. The employer often arrives with a full transcript provided by his note-taker. The EAT Judge has access to the private notes of the previous judge which may or may not be complete. The fact that the Appellate court exercises this right underlies the significance of a court record.

The result is there is again no equal footing between the parties. One side may have the benefit of a full transcript of the proceedings, the

other side may have to rely on memory and incomplete notes. This imbalance irretrievably denies parties the right to prepare adequately an Appeal and it is manifestly unfair and infringes Article 6, namely that “each party is given all the relevant information/ evidence.”

All employment disputes are of vital significance to all parties and have long-lasting, often life-changing implications. Parties can face cost threats based on comments made in the Judgement. Public bodies use public funds to defend their cases. In addition, whistleblowing cases are of particular importance in serving the public interest; for these three reasons the need for court record is even more compelling.

Given that hearings can be complex and rely on interpretations based on previous cases, this puts one side at a major disadvantage in both preparing and conducting the appeal.

An Employment Tribunal will often criticise a party for not keeping accurate contemporaneous records; therefore, considering the inability or

unwillingness of the ET to mandate an independent court record, the difference in standards required is perplexing.

Providing a transcript in this modern age need not add hugely to the expense of proceedings or staffing at employment tribunals. Modern technology allows transcribers who use voice recognition software to provide affordable and accurate transcripts to the Court and parties at the end of each day of trials. What used to take weeks (and was thus only available for appeals) can now be obtained within two hours of adjournment or even in real time.

An accurate and complete court record is a fundamental prerequisite and basis for a fair trial. Reference to the court record for what unfolded in the courtroom as well as the wider judicial process is the only way to determine whether the decision made was fair and proper, which is critical to trial fairness. The integrity of the court judgment and the guarantee of a fair trial can only be upheld if there is a complete and independent court record.

We look forward to your response to the points raised in this letter. In addition, we would be grateful if you could clarify:

On which lawful basis the ET system chooses not to record proceedings?

Who made this decision and when was it made?

Or is it as the Ministry of Justice advises us no guidance exists for ETs and EATs on this matter leaving it to the Judge's discretion?

Has this issue been challenged before either in the ET system or the Appellate Court?

Yours faithfully,

Signatories including job title in separate file