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**GUIDE TO REASON
WRITING IN TRIBUNALS**

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Decisions without Reasons are certainly not justice: indeed they are scarcely decisions at all, Lord Neuberger.¹

1. Purpose of this Guide

The purpose of this Guide is to draw together in one document the core principles that collectively define the practice of good Reason Writing in Tribunals. Whilst it is clear that differing practices have developed across jurisdictions over the years, regarding some of the details of Reason Writing, these differences generally only exist at the margins: the core principles are established and a consensus has been reached based upon a body of universally applicable case law. This is particularly important when we consider that more and more Tribunal jurisdictions have now become part of the single First-tier Tribunal. This development itself demands a greater consistency of approach to dispute adjudication. The construction of Reasons along universal principles should be one of the key benefits accruing from this rationalisation process.

It is to be hoped that this Guide will not only be of benefit to individual judges and panels when they construct the Reasons for their decisions, but will also be used as a training blueprint for all judges new to Tribunals.

2. Introduction

2.1. A Tribunal is a body created by statute whose purpose is to determine a person's legal position in respect of a private law dispute or a public law entitlement, whether initially or on appeal.² This process leads to a decision by the Tribunal as to which party wins, and which party loses the case.³ The Tribunal must give Reasons for its decision.

2.2. It is axiomatic to the giving of Reasons by any Tribunal, be it a single judge or a panel that a logical due process has to be followed by the Tribunal,

¹ *No Judgement, No Justice*, Speech delivered by Lord Neuberger, November 20th 2012, the **BAILII** annual lecture, hosted by Freshfields Bruckhaus Deringer LLP.

2. Some Tribunals have an original jurisdiction, others an appellate jurisdiction and some have both.

3. Jacobs E (2013) *Tribunal Practice and Procedure* (2nd Edition) Legal Action Group at 6.

culminating in the formulation of the Reasons for its decision. This process classically follows a standard order as follows:⁴

Process

- Identifying the Issues.
- Examining the Evidence, dealing with any conflicts in the Evidence and if necessary Obtaining further Evidence.
- Making Findings of Facts based upon the Evidence.
- Deciding what further Inferences can be made from the Evidence.
- Identifying and Applying the Law to the Findings and Inferences.
- Reaching a Decision.
- Providing the Reasons for that Decision.

2.3. Lord Justice Sedley has explained in clear terms why giving reasons is the natural and essential culmination in the due process of decision making by any public body, as follows:

A statutory duty imposed on a named decision maker to give Reasons is not simply a bureaucratic chore or an opportunity for lawyers to find fault. It is a fundamental aspect of good public administration, underpinned increasingly by law, because it focuses the decision-maker's mind on exactly what it is that has to be decided, within what legal framework and according to what relevant evidence and material. Experience shows that it will sometimes produce an opposite conclusion to that which was initially in the decision-maker's mind before the rigour of formulating acceptable Reasons was applied. R v Solihull MBC ex parte Simpson (1993) 26 HLR 370 per Sedley J.

3. The Overriding Objective of Tribunal Hearings

3.1. Since 2008 the Overriding Objective of both the First-tier Tribunal and the Upper Tribunal is to deal with cases 'fairly and justly'. The Overriding Objective is set down in the relevant set of Tribunal Rules.⁵ In most First-tier

⁴ The leading case of *Meek v Birmingham City Council* [1987] EWCA Civ. 9 states for example that a Tribunal's written decision must contain an outline of the facts of the case and a summary of the Tribunal's basic factual conclusions together with a statement of the reasons which have led them to reach their conclusions on the facts as found.

⁵ The following First-tier Tribunal Procedure Rules are currently in force: The Tribunal Procedure (First-tier Tribunal) (HESC) Rules 2008 S.I. 2008 No. 2699 (L.16)); The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 S.I. 2008 No. 2683 (L.13)); The Asylum and Immigration (Procedure) Rules 2005 for First-tier Tribunal - The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 S.I. 2009/273; The Tribunal Procedure

jurisdictions,⁶ the relevant secondary legislation expands the definition of the Overriding Objective to state that dealing with cases ‘fairly and justly’ includes the following principles:

- a. Tribunals should conduct their affairs avoiding unnecessary formality.
- b. Tribunals should ensure so far as practicable, that the parties are able to participate fully in the proceedings.⁷

3.2 As the Overriding Objective is enshrined in secondary legislation, it creates a legal requirement. The Objective embraces every stage of the Tribunal process and thus applies to the construction and promulgation of the Reasons

(First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 S.I. 2008/2686; The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 S.I. 2009 No. 1976 (L. 20). The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The following Upper Tribunal Rules also carry the same Overriding Objective: The Tribunal Procedure (Upper Tribunal) rules 2008 S.I. 2008 No. 2698 (L.15)) The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.I. 2010 No. 2600 (L. 15). The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 No 1237. came into effect in July 2013 (Note the Employment Tribunal is not part of the First-tier Tribunal although many of its procedures are similar).

6. The exception being the Immigration and Asylum First-tier Tribunal, which currently retains a more limited Overriding Objective defined as follows: *The overriding objective of these Rules is to secure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible; and, where appropriate, that members of the Tribunal have responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest.* The Tribunal Procedure Committee is however conducting a consultation exercise to seek views on the proposed new Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2013, planned for introduction in the Autumn of 2013. The consultation also seeks views on whether the Tribunal Procedure (Upper Tribunal) Rules 2008 will require any consequential amendments. The consultation ended on 2 July 2013. It seems likely that as a result of this exercise the Rules will adopt the same overriding objective as other first tier Tribunals.

7. In the case of the Employment Tribunal the phrasing is slightly different although the intention is the same, Rule 2 (a) of the 2013 Rules requiring the Employment Tribunal so far as practicable, to ensure that the parties are ‘on an equal footing’.

given by a Tribunal for its decision. For a party cannot be said reasonably to have participated fully in the proceedings, if the Reasons for the outcome are not clear to them.

4. Why Give Reasons?

As made clear by Sir Stephen Sedley, there is a clear and desirable imperative to provide Reasons for any decision, even though in some jurisdictions Reasons only have to be formally provided if a party so requests.⁸ In Tribunal jurisdictions there is also normally an explicit statutory requirement to do so.⁹ And it seems clear that giving Reasons is a function of due process (and therefore of justice) both at common law and under Article 6 of the European Convention on Human Rights.¹⁰

There are, in addition to the public law best practice imperative, a number of further practical purposes that lie behind the giving of Reasons. In particular, Reasons exist to explain to the parties in straightforward language why they won or lost their case.

⁸ For example in the SCS and the CIC jurisdictions, written Reasons are normally only provided if a party makes a written request within one month of the hearing. Similarly, in the ET, where an oral judgment with oral reasons has been given, a party is entitled to written reasons on request. There has recently been clarification that these written reasons need not exactly replicate what was given orally, even if the reasoning is different, provided the decision remains the same: *The Partners of Haxby Practice v Collen* UKEAT/ 0120/12. If the decision is to be changed from that given orally, then the formal procedural rules of review should be followed, or exceptionally the judgment may be recalled before a written judgment is issued: *CK Heating Limited v Doro* [2010] ICR 1449.

⁹ See **ANNEXE ONE**. As an example, in the Tax Chamber, Rule 35 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that the Tribunal must provide a decision notice which, unless each party agrees that it is unnecessary, contains either a summary of the findings of fact and reasons or full written findings of fact and reasons.

¹⁰ See *Bassano v Battista* [2007] EWCA Civ. 370 at Para. 28. Article 6 only applies where a Tribunal is determining a party's 'civil rights and obligations' but this phrase has been interpreted sufficiently widely to incorporate most Tribunals.

4.1. *Justice will not be done if it is not apparent to the parties why one has won, and the other lost.* English v Emery Reimbold and Strick Ltd (Practice Note) (2002) 1 W.L.R. 2409, per Lord Phillips MR.¹¹

4.2 *The purpose (of Reasons in Tribunals) remains what it has always been, which is to tell the parties in broad terms why they lose or, as the case may be, win.* UCATT v Brain [1981] I.R.L.R. 225, per Donaldson LJ at 227.

Reasons are also necessary for two other purposes **1) to justify the outcome in terms sufficient for an appellate jurisdiction to be able to understand the grounds upon which the decision was reached** (see para. 6 below); and **2) [in some cases] To provide a public record of the process that led to the outcome for a wider audience** (see para. 7 below).

5. Further Judicial Guidance on the Content of Tribunal Reasons.

5.1. Reasons should be clear and avoid unnecessary jargon.

Lord Reid: *We are here to serve the public, the common ordinary reasonable man. He has no great faith in theories and he is quite right. What he wants and will appreciate is an explanation in simple terms which he can understand. Technicalities and jargon are all very well among ourselves – a system of shorthand – but in the end, if you cannot explain your result in simple English there is probably something wrong with it.*¹²

5.2. Reasons should identify the key evidence that led to the Tribunal's decision.

5.3. *The Reasons must enable the parties to understand why it was that the Tribunal reached the conclusion that it did, rather than some other conclusion, so as to show that the conclusion was one to which the Tribunal*

¹¹ A similar point was made by Wyn Williams J in *S v Special Education Needs and Disability Tribunal* (2007) EWHC 1812, when he held that the Reasons must deal with the substantive points that have been raised so that the parties can understand why such a decision has been reached. The aggrieved party should be able to identify the basis of the decision.

¹² Lord Reid made these observations, during a speech at the annual conference in Edinburgh of the Society of Public Teachers of Law. They are cited in Blom-Cooper L, Dickinson B, and Drewry G (eds) (2009) *The Judicial House of Lords 1876-2009* (OUP) at page 226. They are also cited in *12 Journal of the SPTL* (1974) 22 at 25.

was entitled to come on the basis of the evidence before it. Arrowdell Limited and Coniston Court (North) Hove Limited LRA/72/2005.

5.4. As a general rule, when recording the selected relevant evidence in the body of its Reasons, a Tribunal should limit itself to findings of fact, and not narrate what any particular witness said, unless it is to explain a finding of fact.

5.3. Reasons should avoid unnecessary complexity.

3.1. The decision of a Tribunal is not required to be an elaborate formalistic product of a refined legal draftsmanship: Meek v Birmingham City Council [1987] I.R.L.R. 250. per Bingham MR at 8.

5.3.2. (Tribunal Reasons) are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law. UCATT v Brain [1981] I.R.L.R. 225, per Donaldson LJ at 227.

5.3.3. (The Reasons) must be read as a whole, in a commonsense way, not as a legal treatise. R (on the application of Epsom and St Hellier Trust) v MHRT (2001) MHLR 8, per Sullivan J.

5.4. Reasons *may* take account of the fact that the parties were present at the hearing and the decision is therefore presented to an informed audience.

5.4.1. The necessary familiarity of the audience to whom the Reasons are addressed does have a bearing on what needs to be in those Reasons, given that those who receive them will be familiar with the essential documents in the case and familiar with what has been said at the Tribunal by way of oral evidence and what the issues were which had been argued. R v MHRT (ex parte Booth) (1998) COD 203, per Laws J.

Whilst this advice from Laws J (now LJ) stands firm in the context of a Tribunal where legal representation of the applicant is standard practice (as in the Mental Health Tribunal), it may be less relevant in the increasingly common setting where neither party is represented or where the issues are more complex. Of particular assistance on this point are the following dicta of Dyson LJ: *I do not accept that the “informed audience” point can properly be relied on to justify as adequate a standard of reasoning in Tribunals which would not be regarded as adequate in a judgment by a judge. It does not follow that Tribunals are obliged to produce decisions which are as long as judgments by a judge often tend to be. Far from it. A brief judgment is no less likely to be adequately reasoned than a lengthy one.* R v Ashworth Hospital Authority, ex parte H [2002]EWCA Civ 923 at 79.

5.5. Reasons should be no longer than is necessary to fulfil their purpose.¹³

5.5.1. *The extent of the duty, or rather the reach of what is required to fulfil it, depends on the subject-matter. Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say. But where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. This is likely to apply particularly in litigation where as here there is disputed expert evidence; but it is not necessarily limited to such cases.* Flannery v Halifax Estate Agencies Ltd [2000] 1 W.L.R. 377, per Henry LJ.

5.5.2. This citation from Henry LJ should now be treated with some caution and limited to its particular context: ‘a straightforward factual dispute’ in the course of a case. The citation should not be seen as an encouragement to desist from giving Reasons in the round, thus explaining the wider context that led to the final decision. This is particularly important given the observations of Sir Stephen Sedley¹⁴ that ‘*experience shows that [formulating Reasons] will sometimes produce an opposite conclusion to that which was initially in the decision-maker’s mind before the rigour of formulating acceptable Reasons was applied*’.

5.5.3. It is perfectly acceptable to incorporate secondary materials by reference, as a method to reduce the length of a decision. *There can be no objection to the inclusion, by reference...[of the Inspector’s conclusions], provided that those conclusions are in themselves, sufficiently clearly and unambiguously expressed.* Givaudan & Co Ltd v Minister of Housing and Local Government [1967] 1 WLR, per Megaw J at 259.

5.6. Reasons should accurately mirror the complexity or otherwise of the case (see 5.5.1. above per Henry LJ).

5.6.1. *The Reasons must be adequate and intelligible and must grapple with the important issues raised.* R v MHRT ex parte. Pickering [1986] 1 All. E.R. 99 at 102, per Forbes J.

12. For an interesting perspective on this issue see Arden, Lady Justice (2012) ‘Judgment Writing: Are shorter Judgments Achievable?’ *L.Q.R* 128 (Oct) 515-520.

¹⁴ See Para 2.3.

5.6.2. *A coherent reasoned opinion expressed by a suitably qualified expert should be the subject of a coherent reasoned rebuttal.* Eckersley v Binney [1988] 18 Con LR1, per Bingham LJ.

5.7 Where there is any conflict of evidence and a judgement has been made as to which party the Tribunal believes, the Reasons should expressly state this to have been the Tribunal's preference, and Why?

5.7.1. *It is frequently difficult to explain wholly satisfactorily why one rejects or accepts one particular piece of evidence given by one particular witness, sometimes there is no real alternative but to decide which is inherently more believable.* James David Allport v Timothy Wilbraham [2004] EWCA Civ. 1668, per Neuberger LJ.

5.7.2. *In assessing the adequacy of a fact-finding exercise, an Appellate Tribunal expects findings to be adequately reasoned. By its reasoning, the fact finding Tribunal not only tells the losing party why (s)he has lost, but may also be able to demonstrate that it has adequately and conscientiously addressed the issue of fact which has arisen. That is particularly important when it is the credibility of an applicant which is in issue. A lack of reasoning may demonstrate a failure adequately to address the fundamental question: Is the appellant telling the truth?.* Malaba v SSHD [2006] EWCA Civ. 820 Para. 29, per Pill LJ.

5.8 When preferring the evidence of one expert witness over another, the Reasons must clearly explain the basis for this preference.

5.8.1. *The fact that an expert has given an opinion is not in itself an adequate reason for a Tribunal to adopt that opinion unless the opinion is unchallenged. In the event of a conflict of opinions, it is necessary for a Tribunal to give a reason for preferring one opinion rather than the other. Where an opinion is fully reasoned, a Tribunal accepting the opinion may be taken to have adopted the reasoning and in those cases merely referring to the opinion may be sufficient provided that the expert has given adequate reasons for disagreeing with any opposing views.* Hampshire County Council v JP [2009] UKUT 239 (AAC) Para. 37 (see also Para 5.6.2. above).

5.8.2 *The Tribunal was required to resolve a difference of opinion between experts..... In such cases, it is important that the Tribunal should state which expert evidence (if any) it accepts and which it rejects, giving reasons.It is not enough for the Tribunal simply to state that they prefer the evidence of A and B to that of C and D. They must give reasons.....these may be brief, but in some cases something more elaborate is required. They must at least indicate the reasoning process by which they have decided to accept some and reject other evidence.* R (on the application of) v Ashworth Hospital Authority & Ors [2002] EWCA Civ 923 (28 June 2002) per Dyson LJ at Para. 80.

5.8.3. If the 'expert witness' gives evidence or expresses an opinion outside his or her sphere of expertise this is no longer expert evidence and the Reasons should make it clear the weight given to that evidence, if relied upon at all.

5.9. If a Tribunal prefers the evidence of a minority of witnesses as compared to a majority, it must provide a clear explanation for this preference in the body of its Reasons.

5.9.1. Particular care is needed when a Tribunal decides to reject most of the expert evidence and prefer a minority view. In these circumstances the Tribunal is obliged to enter into an intellectual exchange and provide clear reasons for its preferences. The arguments are well rehearsed by Dyson LJ at paras. 79-81 of R (on the application of) v Ashworth Hospital Authority & Ors [2002] EWCA Civ 923 (28 June 2002).

5.10. Tribunals as specialist bodies are entitled to draw upon their wider experience when making a determination of fact, so long as this is disclosed to the parties before any decision is reached to enable the parties to comment and/or lead evidence to the contrary.

5.10.1. The Tribunal of fact need not necessarily accept an appellant's account simply because it is not contradicted at the relevant hearing. The Tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole. While a decision on credibility must be reached rationally, in doing so the decision-maker is entitled to draw on his (or her) common sense and his ability, as a practical and informed person, to identify what is or is not plausible. Awala v SSHD (2005) CSOH 73, Para. 24, per Lord Brodie.

5.10.2. A Tribunal judge is entitled to rely on matters within his or her own knowledge, provided such matters were disclosed to the parties so as to afford them a fair opportunity to deal with them. MA and TD v SSHD [2010] CSH 28.

5.10.3. Where a Tribunal decides to proceed on the basis of some point which has not been put before it and which on the face of the matter is not in dispute, it is in the highest degree desirable that the person whose case is being considered by the Tribunal should be alerted to the possibility. Were it to be the case that this Tribunal proceeded on some basis unknown to others but known to themselves, then I would have regarded that decision as flawed by reference to the principle of natural justice, which requires that the party should know the case against him (or her). R v MHRT (ex parte Clatworthy) (1985) 3 All ER 699, per Mann J.

5.10.4. In carrying out its function, the Tribunal must of necessity be concerned that it has before it all relevant information, which will enable it to

reach the correct decision in the circumstances of the individual case. The Tribunal will normally rely upon the material that is put before it by the responsible bodies (and the applicant)... but the Tribunal must clearly have to consider in every case whether there is a gap in the evidence which requires to be filled, in order to enable it to reach the right decision. Having said that, it is equally important that there is no unnecessary delay. R (X) v MHRT (2003 MHLR 299, per Scott Baker J.

5.11. Special considerations may apply when giving Reasons in the case of a majority decision.

A Tribunal consisting of more than one member is allowed to reach a decision by a majority.¹⁵ With the exception of the Employment Tribunal,¹⁶ there is no obligation on the Tribunal to give any indication to the parties that this was a majority decision and a panel should therefore exercise appropriate caution before deciding to indicate that the decision was not unanimous. If a Tribunal chooses however to state that the decision was that of a majority (i.e. it was not unanimous), the statement of Reasons for the decision should provide *‘at least a brief statement of reasons for the dissent of the minority member’*: Secretary of State for Work and Pensions v SS [2010] UKHT 384 (AAC), Para. 10.

5.12. Reasons should be clearly set out in a logical sequence in short numbered paragraphs.

5.12.1 A comment is also needed on the format of the judge’s Reasons. While they have been written with obvious care, some of the paragraphs are of unmanageable length. The findings (in Para 16 alone) run on for almost three pages of single spaced type, making reference to any particular passage unnecessarily difficult. It is important that Reasons should be set out in manageable paragraphs and sub-paragraphs, with cross headings as appropriate. Jasim v Secretary of State (2006) EWCA Civ (342), per Sedley LJ.

5.12.2. In addition to the general principle summarised above, the Senior President of Tribunals has now formally determined that Written Reasons

¹⁵ See Art. 8 of the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008.

¹⁶ If there is a majority decision in the ET, the minority decision and reasons must be included in the judgment, drafted by the judge (even if the judge is not in the minority) with the minority member being given the opportunity to comment. Where there is a full Tribunal, the members should be given an opportunity to review the judgment before it is issued unless they have indicated that this is not required.

must contain numbered paragraphs: *Practice Statement on Form of Decisions and Neutral Citation, October 31st 2008*.

5.12.3. Extensive numbering in roman numerals should be discouraged.¹⁷

5.12.4. As a general principle each paragraph should deal with only a single topic or idea.

5.13. Reasons should always be carefully checked, rechecked and proof read before delivery to the parties.

By way of general comment, it seems clear that the simple addition of a few well-crafted sentences or the removal of a few unnecessary words would have avoided the considerable expense and upset created by many of these decisions. R (ex parte H) v Ashworth (2002) MHLR 314, per Henry LJ.

5.14. Reasons should contain headings and sub-headings, and should wherever possible avoid technical language and terminology, and the use of Latin. Acronyms should always be explained at the time of their first usage.

In addition to the above fairly obvious points, words and phrases such as 'statutory criteria', 'my submissions', 'bundles', 'the instant case', 'being minded to', 'not being minded to', 'reminding myself', 'the said party' etc. should be avoided in reason writing, and preferably consigned generally to the judicial waste bin!

5.15. Reasons' writers should play careful attention to the house style of the jurisdiction in which they are delivered to ensure clarity and consistency.

The Tax Tribunal issues the following advice to its Judges on the question of house style and consistency. It should hold good as sensible advice for most Tribunal jurisdictions, especially as more and more jurisdictions are exclusively using electronic means of communication, storage and transfer of decisions.

- i. It is preferable for all the decisions issued by the Tribunal to be consistent in style and approach.*
- ii. It is much easier to cite other Tribunal decision by reference to numbered paragraphs by line numbers on individual pages. Page numbers (when decisions are accessed electronically) do not help in finding a particular paragraph.*

¹⁷ Williams v J Walter Thompson Group Ltd [2005] IRLR 376.

- iii. *Unless precise words or expressions are used (and properly spelt) this can cause problems for computer users in searching for them.*
- iv. *Decisions need to be in a form suited to our own (and other) publication (s) and consistent with the style and layout of those already published.*

5.16. Reasons should be issued as soon as possible after the hearing.

Some jurisdictions lay down specific timetables for the delivery of written Reasons, or are governed by statutory provisions, whereas others do not.¹⁸ Nevertheless, the standard First-tier Tribunal Overriding Objective¹⁹ specifically refers to the need for Tribunals ‘to avoid delay, so far as compatible with proper consideration of the issues’. This objective clearly applies to the issuing of Reasons, following a hearing. It must therefore be good practice to indicate to the parties an approximate date by which they can expect to receive the decision with Reasons.²⁰

5.17. Reasons can be amended once delivered, but in very limited circumstances.

5.17.1. Lady Hale has recently offered the following observations in the Supreme Court: *It takes courage and intellectual honesty to admit one’s mistakes. The best safeguard against having to do so is a fully and properly reasoned judgment in the first place:* In the matter of L and B (Children) [2013] UKSC 8. at para. 46.

5.17.2. Mistakes do nevertheless occur from time to time. Correcting mistakes is different from changing one’s mind. The latter is clearly not possible once a decision has been made and delivered.²¹ But why should a judge not admit on mature reflection that he or she has made a mistake in their decision, has got something wrong and then seek to minimise the

¹⁸ See **ANNEXE ONE** for Full Details.

¹⁹ See also section on Overriding Objective Para. 3 above.

²⁰ It is interesting to note that when a time for the completion of activity is announced publicly it is generally far more likely to be achieved, than if it is not made public!

²¹ In the matter of L and B (Children) [2013] UKSC 8.

consequences of the error by correcting it at the earliest opportunity?²² Writing in 2007, Lord Justice Neuberger (now Lord Neuberger, President of the Supreme Court) offered the following comforting advice: *Listen (within limits) to any post-judgement corrections of fact, law or understanding, and amend appropriately. Better to get it right and risk looking a little silly to the parties at the time than to get it wrong, force an appeal and risk looking sillier to the public later on. It is a sign of self-confidence, lack of arrogance, and concern to get it right, if you listen to, and take account of, corrections.*²³

5.17.3. Procedurally, each Chamber has its own Rules, including a 'slip Rule' that allows a Tribunal at any time to correct any clerical mistake or other accidental slip or omission in a decision or other document it has produced. This is an uncontroversial procedure. The problems arise when a Tribunal Judge or Panel decides that on further reflection, they wish to amend or add to their substantive Reasons.

5.17.4. The Tribunals, Courts and Enforcement Act 2007 gives a First-tier Tribunal the power to review any of its decisions, following application by one of the parties: s. (9) (2) (b), (unless the decision is an excluded decision);²⁴ or on its own initiative. s. (9) (2) (a).²⁵ The power of review in the Employment Tribunal is wider.²⁶

²² But see Warren. N (2012) 'Second Thoughts are Not Always Better', *Tribunals*, Winter 2012 5-7.

²³ *First Instance Documents: Some Suggestions*, by Neuberger LJ, 2007.

²⁴ i.e. those determinations, mainly of an interlocutory nature, that are not capable of review.

²⁵ This power to review is limited by secondary legislation (see.f.n. 5) to review on 'errors or law'.

²⁶ In the ET the review procedure (now renamed *reconsideration* in the new Rules: see f.n. 5 above) is not restricted to 'errors of law'. Review can be on the application of a party or on the judge's own initiative. The employment judge can refuse the application on preliminary consideration if there are no grounds for review identified, or there is no reasonable prospect of the decision being varied or revoked. The grounds for review under the old Rules were administrative error, the party did not receive notice of the proceedings, the decision was made in the absence of a party, new evidence, and the interests of justice. In the new Rules, the only ground for reconsideration is that it is 'necessary in the interests of justice'.

5.17.5. The Court of Appeal has determined that if an application to appeal on the ground of lack of Reasons is made to a trial judge, 'the judge should consider whether his judgment is defective for lack of reasons'.²⁷ If s(he) concludes that it is defective, 's(he) should set out to remedy the defect by the provision of additional reasons', and refuse permission to appeal. Crucial to this ruling is the assertion that the trial judge, rather than altering the original decision, is simply 'supplying what is missing'.²⁸ The Upper Tribunal, in considering the relevance of *Brewer v Mann* to the First-tier Tribunal's 'power to amend' its decision,²⁹ has suggested that if a first-Tier Tribunal, having reviewed a decision, determines that the decision is potentially unlawful because the Reasons for the decision appear inadequate, the judge or Panel that made the original decision can be invited on a discretionary basis to amend the Reasons, although this power must be strictly limited to showing 'how the Panel made its decision': *JS v Secretary of State for Work and Pensions* [2013] UKUT 100 AAC at para. 40. This is neither a process of rationalization nor a process of justification, it is a process of clarification. The purpose of the power to amend is to avoid the need to set the decision aside, or the need for an appeal to the Upper Tribunal: *The advantage to a superior court or Tribunal of having this kind of procedure is that it gives the judge whose decision is being challenged, who will have the relevant issues in mind, an opportunity to comment on the grounds of appeal and indicate whether he or she thinks there is anything in them.* *AA v Cheshire and Wirral Partnership NHS Foundation Trust* [2009] UKUT 195 (AAC) at Para. 27 per Judge Rowland. It should be noted that the Upper Tribunal has provided some helpful examples of the types of amendment to reasons that might be permissible, and those which would not.³⁰

5.17.6. The Upper Tribunal has provided the following guidance on what may constitute an 'error of law': *The essence of the legal requirement for a Tribunal's decision is that: (i) the Tribunal asked itself the correct legal questions; (ii) it made findings of fact that were rationally based in the evidence; (iii) it answered the legal questions appropriately, given its findings of fact. Additionally the Tribunal must (iv) give the parties a fair hearing; and (v) provide adequate Reasons. In simple terms, the issue is whether the Tribunal did its job properly.* *JLG v Managers of Llanarth Court* [2011] UKUT 62 (AAC).

²⁷ *Brewer v Mann* [2012] EWCA Civ 246 at 27.

²⁸ *Brewer v Mann* [2012] EWCA Civ 246 at 28.

²⁹ The Tribunals, Courts and Enforcement Act 2007 S 9 (4) (b).

³⁰ *JS v Secretary of State for Work and Pensions* [2013] UKUT 100 AAC. Paras. 45-51.

5.17.7. Finally the question arises, what happens when fully reasoned written reasons appear to diverge from the oral reasons for the decision delivered at the end of the hearing? Underhill J (now LJ) provided a clear exposition of the right approach in *The Partners of Haxby Practice v Collen* UKEAT/ 0120/12 at 17. *Where written Reasons are supplied they constitute the sole authoritative statement of the Tribunal's Reasons and the oral reasons are superseded. It would be unfortunate if the Tribunal were irrevocably committed to its first thoughts as to the route by which the result is most appropriately reached; and I can see no reason in law why that should be so. What ultimately matters is not to have an accurate reflection of the processes by which, as a matter of history, the Tribunal reached its conclusion but that in the definitive Reasons provided for by the Rules the parties and others... should have the benefit of its most considered justification for the decision which it has reached.*

5.18 Distinguishing Full Reasons from Summary Reasons

5.18.1. Some jurisdictions make a distinction between Full Reasons (sometimes described as Statements of Reasons)³¹ and Summary Reasons.³² Some thought needs to be given as to the distinction between the two requirements. In essence the maxim 'Reasons are Reasons' should apply, whether they are oral, summary or full written Reasons. Having said that, there is clearly a substantive distinction between the three forms of Reasons, and it is a largely pragmatic purpose (work load and speed of delivery) that no doubt allows for the provision of Reasons in the first two categories. It is submitted however that any Reasons which are not full written Reasons should nevertheless contain sufficient information at least to fulfil the requirements of paras. 4.1, 4.2, 5.4 and 5.6 above. If the parties have a right to apply for full written Reasons, following the delivery of oral or summary written Reasons, this should reduce the risks of a Reasons challenge in connection with the oral or summary reasons.³³

³¹ In the SSCSA and CIC for example, any party may request a Statement of Reasons at any time up to one month from the hearing date.

³² For example in the Tax Chamber, the decision notice with summary or full findings and reasons must be provided within 28 days after making a decision (note: not within 28 days of the hearing, if no decision was made at the hearing) or as soon as practicable thereafter. Rule 39 of the Tax Chamber Rules provides that there must be full written reasons before a party to apply for permission to appeal.

³³ It is worth noting that Lord Carnwath made reference to this process commonly adopted in the CIC in a recent Supreme Court decision, without adverse comment, see *Jones (by Caldwell) (Respondent) v First Tier Tribunal (Respondent) and Criminal Injuries Compensation Authority* 2013 UKSC 19.

5.18.2. Where an oral judgment has been given, and a party is entitled to written Reasons on request, the written reasons need not exactly replicate what was given orally, even if the reasoning is different, provided the decision remains the same.³⁴ If the decision is to be changed from that given orally, then the formal procedural rules of review should be followed or exceptionally the judgment may be recalled before a written judgment is issued.³⁵

5.18.3. SSCSA: a Practical Example

In the SSCSA a short decision notice is issued usually on the day of the hearing. This is by its nature very brief usually containing a simple statement that the appeal has been allowed or refused. Tribunal judges are encouraged to provide a sentence or two explaining the decision. The Chamber President has also recently introduced a 'drop down menu' to assist judges, whereby a sentence can be added to a decision by way of explanation which is intended more for the Respondent than the appellant. For example, the Tribunal might select from the menu, "Cogent oral evidence was heard relating to mental health issues". For a longer and more detailed explanation, an application has to be made by a party to the appeal no later than one month from the delivery of the decision. If such an application is made, the Tribunal (or more accurately the Tribunal judge albeit from the notes collected from all the members of the panel) should provide a written statement within one month of the date on which the application was received, or as soon as practicable after the end of that period. The amount of time taken to provide the written Reasons (Statement) appears to vary quite significantly and depends to a large extent upon when the request is actioned following receipt by the administrative office for the particular Region.

6. Explaining the Outcome in Terms Sufficient for an Appellate Jurisdiction to be able to Understand the Grounds upon which the Decision was Reached.

6.1. It has been clearly stated in the House of Lords (now the Supreme Court) that Tribunals are specialist bodies, and as such the courts should be slow to challenge their decisions.

6.2. The ordinary courts should approach appeals from (specialist Tribunals) with an appropriate degree of caution; it is probable that in understanding

³⁴ The Partners of Haxby Practice v Collen UKEAT/ 0120/12.

³⁵ CK Heating Limited v Doro [2010] ICR 1449.

and applying the law in their specialised field the Tribunal will have got it right. AH (Sudan) v SSHD [2007] 3 W.L.R. 832, per Lady Hale.

6.3. The starting point should therefore always be that properly argued Reasons should rarely lead to an appellate challenge as to their adequacy. This leads to a circular argument as to what level of ‘inadequacy’ should trigger the intervention of an appellate jurisdiction and to the further question, Is what was deemed adequate in 1980 still adequate in 2013? At an appellate hearing in 1981 Lord Justice Donaldson used the following language:

6.3.1. (Tribunal Reasons) are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law... I think it would be a thousand pities if these Reasons began to be subjected to a detailed analysis and appeals were to be brought upon any such analysis. This to my mind is to misuse the purpose for which the Reasons are given. UCATT v Brain [1981] I.R.L.R. 225, per Donaldson LJ at 227.

The dicta were cited with approval by the Court of Appeal in the leading case employment Tribunal appeal case, Meek v Birmingham City Council in 1987.³⁶ Whether they would withstand scrutiny in the forensic goldfish bowl of Reasons Writing in 2013 is less certain. Perhaps more solid in contemporary terms are the following observations:

6.3.2. The essential requirement is that the terms of the judgement should enable the parties and any appellate Tribunal readily to analyse the reasoning that was essential to the judge’s decision. English v Emery Reimbold and Strick Ltd (Practice Note) (2002) 1 W.L.R. 2409, per Lord Phillips MR.³⁷

6.3.3. It is impossible for us to lay down any precise guidelines. The overriding test must always be: Is the Tribunal providing both parties with the materials which will enable them to know that the Tribunal has made no error in law in reaching its finding or fact? Alexander Machinery Ltd v Crabtree (1974) ICR 120, per Donaldson J.

6.3.4. The most comprehensive statement to date on this general issue was made in 2010 in the following terms:

It was regrettable that the Commissioners did not identify the factors which had caused them to decide the appeal to them in [Mr K’s] favour. I would draw to the attention of the Commissioners what was said by Lord Phillips of

³⁶ [1987] EWCA Civ. 9.

³⁷ See also The Upper Tribunal decision in JP (Upper Tribunal Case No HM/535/2010) at Paras 19-20.

Worth Matravers MR giving the judgment of this court in *English v Emery Reimbold Strick* [2002] 1 WLR 2409:

'A judge cannot be said to have done his (or her) duty if it is only after permission to appeal has been given and the appeal has run its course that the court is able to conclude that the Reasons for the decision are sufficiently apparent to enable the appeal court to uphold the judgment. An appeal is an expensive step in the judicial process and one that makes an exacting claim on judicial resources. For these reasons permission to appeal is now a nearly universal prerequisite to bringing an appeal. Permission to appeal will not normally be given unless the applicant can make out an arguable case that the judge was wrong. If the judgment does not make it clear why the judge has reached his (or her) decision, it may well be impossible within the summary procedure of an application for permission to appeal to form any view as to whether the judge was right or wrong. In that event permission to appeal may be given simply because justice requires that the decision be subjected to the full scrutiny of an appeal.'

That passage applies to the decisions of Commissioners as it does to other judges. It does not impose an onerous duty. Reasons need not be lengthy. It will often be sufficient for them to be briefly stated. *HMRC v Kearney* [2010] EWCA Civ. 288 at [20]-[21], per Arden LJ.

7. Providing a Public Record of the Logical Process that led to the Outcome, for a Wider Audience.

When delivering the JSB Annual Lecture in 2005 Lord Hope made the following observations: *First our audience. Who do we think we are speaking to when we write opinions?*³⁸ *If we are unclear about this, how can we be sure that we are framing them in the right way?*

For Lord Hope the answer to his question is (i) *the parties*; (ii) *the appellate jurisdiction*; (iii) *the legal profession*; (iv) *other members of the judiciary who may be seeking about what to do in similar cases*; (v) *the academics, who have a legitimate interest in commenting upon and teaching about decisions*; (vi) *members of the public, whom we wish to inform about any significant rulings with wider impact.*³⁹

Although Lord Hope was speaking as a Judge of the House of Lords (now Supreme Court), and therefore he clearly had in mind a different level of

³⁸ Identical arguments apply in the writing of Reasons, the more common term amongst the judiciary.

³⁹ *Writing Judgments*, the JSB Annual Lecture, delivered by Lord Hope of Craighead in 2005, at p. 2.

impact than that of a typical Tribunal hearing, there are nevertheless from time to time Tribunal decisions across a range of subjects that will have a significant jurisprudential or even political impact.⁴⁰ If a judge or panel is delivering such a decision, Lord Hope’s words are helpful to consider. When preparing Reasons the judge and/or panel must ask the question: Who in addition to the parties, their representative (if any) and possibly an appellate jurisdiction, might read these Reasons? In some jurisdictions strict privacy rules make it highly unlikely that anybody else will ever in fact read the decision.⁴¹ In others, especially those with access to public websites, publication of the decision to the world at large with its reasons (appropriately anonymized), is common place. Judges should always bear in mind what effect, if any, this should have upon the way they draft their Reasons.

<u>Annexe One</u>
Guide to Reason Writing in Tribunals
1. Are there any time limits for the delivery of written decisions in your jurisdiction set down in primary or secondary legislation?
2. Is there primary or secondary legislation that prescribes any of the content of the written decisions in your jurisdiction?
3. Are the decisions in your jurisdiction published, if so where, and are they anonymised?

⁴⁰ This will depend in turn upon the extent to which the decisions of a particular jurisdiction can be made available to the public.

⁴¹ For example Rule 32 (6) of the Tax Rules provide for anonymity in published reports of decisions of the Tax Chamber of the First-tier Tribunal. No decisions in mental health cases can normally be published. See **ANNEXE ONE** for full list.

UPPER TRIBUNAL ADMINISTRATIVE APPEALS CHAMBER

1. No.
2. Yes. Rule 40 of Tribunal Procedure (UT) Rules 2008.
3. There is no automatic publication of all decisions. Selected decisions are published following a judicial peer review process. A wider range of decisions of interest is published only on the UTAAC decisions website. In both cases decisions are anonymised where dealing with vulnerable categories in e.g. social security, child support, SEN and mental health, but not in jurisdictions where anonymity either not required or positively discouraged e.g. information rights and transport.

UPPER TRIBUNAL LANDS CHAMBER

1. No, but Rule 51 (2) of Tribunal Procedure (UT) (LC) Rules 2010 states that the Tribunal must send a decision notice disposing of a case to the parties ‘.. as soon as is reasonably practicable after making a decision ...’. The Chamber aims to publish decisions within two months of the hearing, but this very much depends upon the nature and complexity of the case.
2. No.
3. Yes. All decisions are published on the Lands Chamber website, except for cases where the Tribunal has acted as an arbitrator, in which case the parties must consent to its publication. Some decisions are published in various law reports. Rating appeals are also published in the Rating and Revenue Reports; appeals from LVTs are reported in the Landlord and Tenant Law Reports; compulsory purchase and compensation decisions, and restrictive covenant decisions are published in the Property and Compensation Reports and the Estates Gazette Law Reports. Sometimes decisions of note have been published in the Weekly Law Reports or the All England Law Reports. The Chamber does not usually anonymise reports, but it is open to a party to apply, under Rule 15, for an order prohibiting disclosure of specified information of documents relating to the proceedings or any matter which is likely to lead members of the public to identify any person whom the Tribunal considers should not be identified. Issues arising from the laws of human rights, data protection, freedom of information or child protection may be raised in such an application.

UPPER TRIBUNAL: IMMIGRATION AND ASYLUM CHAMBER

1. No.
2. No.
3. Reported decisions are publicly available on the web-site. All UT cases are also accessible on the web-site but not currently searchable. Some are anonymised depending on the nature of the case.

IMMIGRATION AND ASYLUM FIRST TIER

1. Yes. Rule 22 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 state that (except in cases to which Rule 23 applies), where the Tribunal determines an appeal it must serve on every party a written determination containing its decision and the reasons for it, (if the appeal is considered at a hearing) not later than 10 days after the hearing finishes; or if the appeal is determined without a hearing, not later than 10 days after it is determined. Special procedures and time limits apply in the case of asylum appeals. Note however the imminence of likely changes to these Rules in the autumn of 2013 (see f.n. 5).

2. No.

3. The decision whether to report a determination is that of the Tribunal and it is not perceived to be an issue in which the parties to the appeal have an interest. A determination is reportable only if it follows a hearing or other consideration where the jurisdiction of the Tribunal was exercised by the Senior President, the Chamber President or an Upper Tribunal judge who is not a Deputy judge (whether or not sitting alone and, in the case of an Upper Tribunal judge, whether sitting as such or as a First-tier judge). A final determination which is not reported will be anonymised (where appropriate), treated as an unreported determination for the purposes of the Tribunal's website and entered as such on that website. The Tribunal's website is the only official source of the determinations of the Tribunal.

TAX FIRST TIER TRIBUNAL (TAX AND MPs EXPENSES) AND UPPER TRIBUNAL (TAX AND CHANCERY)

1. Yes. Rule 35(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that the Tribunal must provide a decision notice to each party within 28 days of making a decision which finally disposes of all issues or as soon as practicable thereafter. The First-tier Tax Chamber aims to issue every decision in default paper and basic category cases to the parties within 28 days. The Chamber aims to issue decisions in cases categorised as standard and complex within two months of the conclusion of the hearing save in special circumstances such as particularly long or complex cases. Rule 40(2) of the Tribunal Procedure (Upper Tribunal) (Tax Chamber) Rules 2008 provides that the Tribunal must provide a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues. The Tax and Chancery Chamber aims to issue all decisions within three months of the hearing.

2. No.

3. Yes on the First-tier Tribunal (Tax) and Upper Tribunal (Tax and Chancery) websites. Decisions are only anonymised in exceptional cases.

GENERAL REGULATORY CHAMBER

1. No.

2. No.

3. Some decisions are published on the Chamber website.

HEALTH EDUCATION AND SOCIAL CARE CHAMBER (HESC) (A) CARE STANDARDS (CS), SPECIAL EDUCATION NEEDS AND DISABILITY (SEND), PRIMARY HEALTH LISTS E AND W (PHL)

1. No, but all jurisdictions aim for 10 working days.

2. No

3. SEND/DD- no. CS and PHL - yes - website - anonymised under Rules if necessary to protect child/ vulnerable adult. In the 2001 Regulations, Regulation 36 provided that the decision 'shall also contain ... a statement of the reasons (in summary form) for the Tribunal's decision. This is the basis for the summary reasons which are still used in SEND with the emphasis on a short pithy decision. Similarly, in its previous incarnation SENDIST published anonymised summaries of interesting decisions in the Education Law Reports about once a year.

HEALTH EDUCATION AND SOCIAL CARE CHAMBER(HESC) (B) MENTAL HEALTH

1. Yes. 3 days (s.2 case) all other cases 7 days.

2. No.

3. a) UT decisions: yes, on the UT website;

b) otherwise, adopting a broad interpretation of 'published', no save for public hearings where some aspects of a decision have been published, and Restricted Cases, where some aspects of a decision may be sent to a victim.

EMPLOYMENT APPEAL TRIBUNAL

1. No.

2. No.

3. The decisions are published (if they are reached after a full hearing inter partes) on the EAT Website, and may be published if they are decisions made to dismiss a case reached at a hearing under r.3(10) EAT Rules 1994, or at a preliminary hearing, both of which are likely to be attended by one party only. They are always picked up by BAIIII from that website. And a selection of them is published in a series of reports - principally the Industrial cases reports (part of ICLR); the Industrial relations Law Reports; and the Equality Law Reports, They are anonymised only if they are subject to reporting restrictions, either because of national security (in which case there will be both a closed and an open judgment, the former of which is not published) or because the case relates to serious sexual misconduct or to a child. The identity of the judge who made the decision appealed from is usually stated in the judgment.

EMPLOYMENT TRIBUNAL (ENGLAND AND WALES)

1. There are no time limits in primary or secondary legislation, but we apply a 28 day rule and a maximum 90 day rule which comes out of various appellant decisions. The KPI is 28 days from the final day of the hearing.

2. Yes, The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contain a number of Rules relating to decisions and the giving of Reasons in the Employment Tribunal.

3. Yes there is a public register provided for under the Rules. Reference should be made to Rule 50 in relation to privacy and restrictions on disclosure and to sub rule (3) (b) and (d) in particular.

EMPLOYMENT TRIBUNAL (SCOTLAND)

1. No.

2. See Employment Tribunal (England and Wales).

3. There is a Register of Judgments available to the public. They are not anonymised unless the proceedings involve allegations of a sexual offence (Rule 49) or there is otherwise an order by the Tribunal/Employment Judge. This is a complex issue that is not restricted to the specific provisions in the Rules themselves but also requires consideration of European Law (effective remedy) and Convention rights. The Tribunal also has the power to make restricted reporting orders and to hold a hearing in private in certain circumstances. Again the power is not restricted to the specific provisions in the Rules. The most recent discussion of the Tribunal's powers is in a decision of the Employment Appeal Tribunal F v G.

SOCIAL ENTITLEMENT CHAMBER A: ASYLUM SUPPORT

1. Yes. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 Rule 34 provide that in asylum support cases the Tribunal must send a written statement of reasons for a decision which disposes of proceedings (except a decision under Part 4) to each party (if the case is decided at a hearing) , within 3 days after the hearing; and (if the case is decided without a hearing), on the day that the decision is made.

2. No.

3. The decisions used to be published on our website but it is current being revised and the information on the website is not up to date. Our decisions are all anonymised.

SOCIAL ENTITLEMENT CHAMBER B: CRIMINAL INJURIES COMPENSATION E/W/S

1. Yes. The Tribunal Procedure (First Tier Tribunal) (Social Entitlement Chamber) Rules 2008 Rule 33 (2) requires the Tribunal to provide a decision notice at the hearing. Under Rule 34 (4) if a party applies for written reasons of a decision which finally disposes of the hearing that application must be made within one month of the date that the decision notice was sent or otherwise provided to the party.
2. No

SOCIAL ENTITLEMENT CHAMBER C: SSCSA

1. Yes. The right of appeal in Social Security and Child Support cases is to be found in Section 12 Social Security Act 1998. The Tribunals Courts and Enforcement Act 2007 Section 3 made provision for the First –tier Tribunal and Section 22 for Tribunal Procedure Rules. The relevant rules for the Social Entitlement Chamber are The Tribunal Procedure (First-tier) (Social Entitlement Chamber) Rules 2008. Rule 34 is the relevant rule concerning the provision of reasons for a decision see text at 5.18.1 In addition, there is a President’s Protocol Number 8 which expresses that it is good practice for statements to be returned to the administration within 10 days of receipt. This is an old Protocol by a former chamber president and is being reviewed by the present President. There are now also provisions for Tribunal Judges to receive payment for statements of reasons but this is subject to strict conditions which include the timeliness of completion and return to the administration.
2. No. however a large body of guidance has built up over the years. There are also a number of training papers which are available on the Social Entitlement Chamber Judicial Website.
3. Only those appealed to the UT will be anonymised.

ADJUDICATOR TO HM LAND REGISTRY

1. No. There is a self-imposed target of delivering the judgment within 28 days of the hearing, but this is subject to extension in appropriate circumstances (e.g. if the parties make further written representations after the hearing).

2. Yes. Rule 39(2) Adjudicator to H M Land Registry (Practice and Procedure) Rules 2003 as amended by the Adjudicator to H M Land Registry (Practice and Procedure) (Amendment) Rules 2008 ('the Amended Rules') provides that a substantive decision must be recorded in a substantive order. 'Substantive order' is defined in rule 2(1) of the Amended Rules as 'an order or direction that records and gives effect to a substantive decision'. Rule 40(1) of the Amended Rules further provides that a substantive order must:-(a) be in writing; (b) be dated; (c) be sealed and state the name of the person making it; (d) state the substantive decision that has been reached; (e) take any steps that must be taken to give effect to that substantive decision; and (f) where appropriate state the possible consequences of a party's failure to comply with the substantive order within any specified time limits. Rule 40(6) of the Amended Rules provides that the Adjudicator must give in writing to all parties his reasons for (a) his substantive decision; and (b) any steps that must be taken to give effect to that substantive decision. Rule 40(7), however, expressly provides that those reasons need not be in the substantive order itself.

In addition, if an order is made under rule 8(4) or 9(4) of the amended rules (orders to implement the decision of a court following a direction made under section 110 Land Registration Act 2002 to issue court proceedings), it must, under rule 41A of the Amended Rules (a) comply with the requirement of rule 40(1)(a), (b) (c) and (f), (2), (3), (4) and (5) as if it were a substantive order (b) identify the decision of the court which the order implements; and (c) state the reasons why the order complies with rule 8(4)(a) or 9 (4)(a) as applicable. In short, reasons must be given in all substantive decisions, and it is advisable to do so where costs decisions are made even those such decisions do not fall within the definition of "substantive decisions".

3. All substantive decisions of the Adjudicator are public documents (rule 46(1) (c) of the Amended Rules). A selection are uploaded onto the 'Justice' website at <http://www.ahmlr.gov.uk/Public/Search30May.aspx>.

Many if not all of these provisions will change as from 1 July 2013 when ALR enters the new Property Chamber of the First-tier Tribunal. We have not yet seen the version of the draft rules for that Chamber signed off by the Tribunal Procedure Committee at their meeting on 28 February and are therefore unable assist further on that aspect at present.

RESIDENTIAL PROPERTY TRIBUNALS SERVICE

1. No.

2. No.

3. Published on the RPTS website. Only anonymised if requested by a party and the request is deemed reasonable, as our proceedings are public.

WAR PENSIONS AND ARMED FORCES COMPENSATION E AND W

1. No time limits in primary legislation. The position in secondary legislation is set out in Rule 32 of The WPAFCC Tribunal Procedure Rules 2008 (SI 2008/2686). If no written statement of reasons is given following a hearing a party may make a written application to the Tribunal for such statement following a decision which finally disposes of all issues in the proceedings. The application must be received within 42 days of the date in which the decision notice was sent out. The Tribunal must then send a written statement of reasons to each party within 28 days of the date the application is received or as soon as reasonably practicable after the end of that period. The phrase "which finally disposes of all issues in the proceedings" is important. It thus excludes interlocutory decisions. Consent Orders are also excluded (See Rule 30).

2. No, but there is of course considerable case law on adequacy of reasons etc. We provide pro-forma reasons for decisions forms for different types of appeals which effectively steer what should be included. There is considerable emphasis on making findings of fact. There is increasing focus on giving reasons for having a hearing in absence.

3. No, but could be reported although this is very rare.