

**ARBITRATION RULES**  
**of**  
**THE BRITISH POTATO TRADE ASSOCIATION**

The following Arbitration Rules were prescribed on behalf of the Council of The British Potato Trade Association on 1<sup>st</sup> July 2007 and supersede all Arbitration Rules prescribed previously on behalf of The National Association of Seed Potato Merchants and The Scottish Potato Trade Association whether unilaterally or jointly.

Preamble. These are the Arbitration Rules (hereinafter referred to as "Rules") referred to in the Conditions. Subject to these Rules the Arbitration Board shall be the sole judge of the procedures under which Arbitrations shall be conducted.

Interpretation. In these Rules and in the Schedule of Costs

"Conditions" means the Conditions of Sale adopted by BPTA, or Conditions of Purchase adopted by BPTA as is appropriate;

"BPTA" means The British Potato Trade Association;

"Association" means BPTA when the Arbitration arises out of Conditions adopted by BPTA ;

"NFU" means the National Farmers' Union of England and Wales;

"NFUS" means the National Farmers' Union of Scotland;

"President", and "Secretary" means the President, and Secretary, or in his absence his authorised deputy, for the time being of BPTA, NFU or NFUS as the case may be;

"Arbiter" means in an Arbitration arising out of the Conditions adopted by BPTA, Arbitrator;

"Appropriate Office Bearer" means, either solely or jointly as the case may be, the President, Presidents, of the Association, Associations, Union or Unions from whose Panel of Arbiters the two Arbiters were appointed under Rule 2 hereof;

"Arbitration Board" means collectively the Arbiters appointed by or on behalf of the Parties together with the Third Arbiter and, in the case of a single Arbiter, means the single Arbiter;

"Arbitration Secretary" means in an Arbitration (a) arising out of Conditions adopted by BPTA, the Secretary of BPTA ;

"Party" and "Parties" means the Party and Parties in dispute in the Arbitration;

"Schedule of Costs" means the Schedule of Costs for Arbitrations adopted by BPTA and as at the date on which the Arbitration Secretary shall have received the Registration Fee and Arbitration Deposit payable under Rule 1 hereof;

"Relevant Law" means in an Arbitration arising out of Conditions adopted by the British Potato Trade Association (English Law Version) will be governed by English Law and British Potato Trade Association (Scottish Law Version) will be governed by Scottish Law.

The masculine gender shall include the feminine gender and the singular shall include the plural.

## PART A. Reference and appointment.

### Rule 1. Notice to Refer and Time Bar

1.1. A dispute shall be deemed to arise when a claim or assertion made by one party to a contract arising out of Conditions is rejected by the other party to the contract and that rejection is not accepted. Either party may then invoke Arbitration by (a) serving a Notice to Refer on the other party and (b) simultaneously sending a copy of the Notice to Refer to the Arbitration Secretary together with payment, made payable to the Association, of a non-returnable Registration Fee plus VAT, and a Security Deposit of the amounts prescribed in the Schedule of Costs.

1.2. It is an essential requirement of these Rules that the Notice to Refer shall have been issued so as to be received by the other party and by the Arbitration Secretary (together with payment of the Registration Fee and the Security Deposit) by a date which is not more than twelve calendar months after the date on which the existence of the dispute is first recorded in writing between the parties or their agents. After the expiry of said twelve month period prosecution of the dispute shall be Time Barred.

1.3. The Notice to Refer shall list the matters which the issuing party wishes to be referred to Arbitration and shall specify the approximate amount and/or relief claimed.

### Rule 2. Composition and appointment of the Arbitration Board

2.1. Unless a single Arbitrator is agreed to by all the parties to the dispute,

(a) All Arbitrations conducted under these Rules shall be determined by a Board of three Arbitrators.

(b) Each party shall appoint one Arbitrator selected from the Panels of Arbitrators of BPTA, NFU or NFUS.

(c) Simultaneously with the serving of a Notice to Refer under Rule 1 hereof the issuing party shall serve a Notice on the other ("receiving") party intimating the name and designation of the Arbitrator appointed by the issuing party. Within twenty eight days of receipt of the Notice to Refer the receiving party shall intimate to both the issuing party and the Arbitration Secretary the name and designation of the Arbitrator appointed by the receiving party. In the event of the receiving party failing to notify the issuing party with the name of an Arbitrator as aforesaid, the President of BPTA and shall appoint an Arbitrator, from said Panels, on behalf of the receiving party.

(d) The Third Arbitrator shall be a person who has practical experience in the Agriculture Industry. He shall be appointed by the Arbitrators, not necessarily from said Panels, but in the event of their failing to agree upon the appointment of a Third Arbitrator, the Third Arbitrator shall be appointed by the Appropriate Office Bearer. The Parties shall be informed, forthwith after his appointment, of the name and designation of the Third Arbitrator. The Third Arbitrator shall be the Chairman of the Arbitration Board.

2.2. Should a member of the Arbitration Board die, resign, refuse to act or, in the opinion of the other Arbitrators, provided that their opinion is formally endorsed by the Appropriate Office Bearer, become incapable of performing his functions as a member of the Board, his appointment shall be terminated by the appropriate Office Bearer and the resultant vacancy shall be filled by the same method as that by which he was originally appointed.

## Part B. Powers of the Arbitration Board

### Rule 3. Power to control proceedings

3.1. The Arbitration Secretary will be responsible, on behalf of the Arbitration Board, for the secretarial and administration work in connection with the Arbitration. All correspondence and Notices sent to the Arbitration Board shall be addressed to the Arbitration Secretary. The Arbitration Secretary may, at the discretion of the Arbitration Board, be present at a Hearing.

3.2. The Arbitration Board, or the Association on behalf of the Arbitration Board, may exercise any or all of the powers set out or implied by these Rules on such terms or conditions as it thinks fit. These terms and conditions may include orders as to the payment of expenses, times for compliance and the consequences of non-compliance.

3.3. These Rules shall apply in addition to any other powers which the Arbitration Board may have under the Relevant Law provided always that if any provision of these Rules should conflict with the general law applicable to Arbitration Procedure these Rules shall take precedence unless and to the extent that it is legally incompetent for them to do so.

### Rule 4. Consolidation of arbitrations

4. Where a dispute(s) has arisen under two or more related contracts the Arbitration Board shall, subject to obtaining the agreement of all the parties concerned, have power to consolidate into the one Arbitration all such related disputes.

### Rule 5. Power to order Parties to make a deposit

5. The Arbitration Board shall have power to serve a Notice upon the Parties or any of them calling on them to make payment, at any time before or during the course of the Arbitration, to it of such sum or sums as it may determine as further deposits to cover the costs and expenses relevant to the Arbitration.

### Rule 6. Power to appoint men of skill

6.1 The Arbitration Board shall have power to appoint legal, technical or other skilled advisors to assist them in the conduct of the Arbitration. Such advisors may, at the sole discretion of the Arbitration Board, be present at a Hearing.

6.2. Further and/or alternatively the Arbitration Board shall have power to rely upon its own knowledge and expertise to such extent as it thinks fit.

## PART C. Procedure before the Hearing.

### Rule 7. Pleadings and production of documents.

7.1 Unless otherwise agreed or ordered by the Arbitration Board, each Party shall be required to state his case in writing and the other Party shall be given the opportunity of responding thereto also in writing.

7.2. The Arbitration Board may order any Party at any stage in the Arbitration to lodge any

document in his possession, custody or power which the Arbitration Board, considers relates either generally or specifically to matters raised in the Pleadings.

#### Rule 8. Tender procedure

8. In the event that one of the Parties makes an offer in writing to the other Party to settle the dispute and informs the Arbitration Secretary that such an offer has been made and simultaneously provides the Arbitration Secretary with a sealed envelope containing a copy of the offer, either before during or after a Hearing but before the Arbitration Board finalises its award and said offer equals or exceeds the Award of the Arbitration Board and which offer has not been accepted by the other Party, the Arbitration Board shall be entitled at its sole discretion to Award against the other Party all of the expenses incurred in connection with the Arbitration subsequent to said offer being made. The Arbitration Secretary shall not open said sealed envelope nor shall the Arbitration Board be informed that such an offer has been made until the Arbitration Board has made its decision on the merits of the dispute after having considered the evidence and Submissions laid before it by the Parties.

#### PART D. Hearing.

#### Rule 9. Hearing

9.1. Unless the Parties, with the approval of the Arbitration Board, agree to dispense with one, the Arbitration Board shall convene a Hearing of the Parties, their representatives and/or witnesses at such time and place as it shall determine and, if it so decides, may adjourn the Hearing for any period on the application of any Party or as the Arbitration Board may think fit. The Hearing shall be held in private.

9.2. It shall not be competent for facts, which have not been previously stated or referred to in the Pleadings, to be stated or founded upon at a Hearing unless the Parties agree to such new facts being introduced.

9.3. Subject to the provisions of Rule 9.2 hereof, the conduct of and the proceedings at the Hearing shall be determined at the sole discretion of the Arbitration Board.

9.4. No Party shall be permitted, unless with the prior approval of the Arbitration Board, to be legally represented at a Hearing, other than by such a legally qualified person who is and has been for not less than twelve months a partner, director or employee of said Party. Any Party intending to be represented at a Hearing by a partner, director or employee so legally qualified shall serve a Notice to that effect on both the Arbitration Board and the other Party, said Notices to be received by not later than twenty-eight days before the date fixed for the Hearing. In that event the other Party may be, at the absolute discretion of the Arbitration Board, entitled to be legally represented at a Hearing in a comparable manner acceptable to the Arbitration Board. Subject to the foregoing, the Parties may however be represented at a Hearing by an agent engaged or previously engaged in the Agricultural Industry always provided that such agent is not a practising lawyer.

9.5. The Arbitration Board may require witnesses to be examined on oath or affirmation and is empowered to administer oaths and to take affirmations.

9.6. If a Party fails to appear or be represented at the Hearing and provided that the absent Party has had Notice of the Hearing or the Arbitration Board is satisfied that all reasonable steps have been taken to notify him of the Hearing, the Arbitration Board may adjourn the Hearing or proceed as it thinks fit.

9.7. Without prejudice to its general powers under the Relevant Law the Arbitration Board shall have power to award damages, interest and expenses or at its discretion to order specific performance..

#### PART E. After the Hearing

#### Rule 10. The Award and Reasons

10. Upon the closing of the Hearing (if any) and after having considered all the evidence and submissions the Arbitration Board will prepare and issue in writing its Award giving a statement of its Reasons for the Award. The Award and Reasons are strictly confidential. The Arbitration Board shall have power to issue a Proposed Award prior to its issue of its Award as aforesaid. It shall also have power to alter its Proposed Award if, in its sole opinion, it considers it appropriate so to do.

#### Rule 11. Appeals

11. (a) When the Relevant Law is the Law of England the Award of the Arbitration Board shall be final and binding on the Parties subject only to the right of any Party to Appeal to the High Court on the grounds that the Award is erroneous in a point of law.

(b) When the Relevant Law is the Law of Scotland the Award of the Arbitration Board shall be final and binding on the Parties. However the provisions of Section 3(1) of the Administration of Justice (Scotland) Act 1972 shall apply.

(c) In the event of an Appeal to the High Court or an application to the Arbitration Board to state a case for the opinion of the Court of Sessions under Section 3(1) of the Administration of Justice (Scotland) Act 1972, the Arbitration Board shall have power to order the Parties to deposit with it a sum or sums equal to the sum or sums due by the Parties under the Award or Proposed Award issued by the Arbitration Board. Said sum or sums deposited with the Arbitration Board as aforesaid shall be placed in an account, to be determined by the Arbitration Board, pending the outcome of such an Appeal to the High Court or the issue by the Arbitration Board of its final award.

#### PART F. Notices.

##### Rule 12. Notices

12. All Notices issued in connection with these Rules or an arbitration thereunder shall, unless otherwise determined by the Arbitration Board, be given in writing and be sent by Recorded Delivery Post to, or be left at the principal business location of the addressee. Such posting or delivery shall be deemed to have been received not later than forty-eight hours after the same is so posted or left.

#### PART G. Jurisdiction.

##### Rule 13. Jurisdiction

13. The proceedings under these Rules shall be governed by the Relevant Law. With regard to the enforcement of an Award in an Arbitration hereunder or otherwise when legal proceedings are necessary the Parties shall be deemed to have agreed to submit themselves to the jurisdiction of Relevant Law.

#### PART H. Time limits.

##### Rule 14. Time limits

14. For the purposes of any time limit in these Rules, if the last day falls on a day other than a Working Day the limit shall be extended until the first Working Day following and a "Working Day" shall exclude Saturdays, Sundays, Statutory and Bank Holidays and holidays by Royal Proclamation.

#### PART I. Liability

Rule 15. Liability

15. Neither BPTA nor nor any member of the Arbitration Board nor any servant of either Association or of any member of the Arbitration Board shall be liable to any party for any act or omission in any respect connected with any Arbitration under these Rules, save that the Arbiters or any of them (but not either Association) may be liable for the consequences of their or his act or omission which is shown to have been in bad faith.

Amended 01/05/2007

**GUIDANCE NOTES**  
for  
**ARBITRATION RULES**  
adopted by  
**THE BRITISH POTATO TRADE ASSOCIATION**

**Reference to Rule 1. Notice to refer**

The Registration Fee is to cover initial administration costs and is therefore not refundable. Security Deposits payable by the parties are to be retained by the Arbitration Board to be utilised towards implementing their Award. In the event of a Security Deposit of a party exceeding his liability under the Award the surplus is to be refunded. In terms of Rule 5. the Arbitration Board has power to order the parties or any of them to make further Deposits.

**Reference to Rule 2. Composition and appointment of the Arbitration Board**

Before accepting an appointment it is essential that the Appointee considers if there are any circumstances which are liable to give rise to justifiable doubts as to his impartiality or independence. If there are any such circumstances he should not accept the appointment. If any such circumstances arise after the appointment has been accepted such circumstances must be disclosed firstly to the other members of the Arbitration Board and secondly, if considered appropriate, to the parties to the Arbitration.

It is competent, but only with the agreement of the parties to the Arbitration, for the Arbitration to be determined by a single Arbiter.

The names of those included in the Panels of Arbiters of BPTA, NFU and NFUS can be obtained by contacting the Secretary of the respective Bodies.

The Third Arbiter does not require to be appointed from said Panels.

**Reference to Rule 3. Power to control proceedings**

The Arbitration Board should endeavour to conclude the Arbitration in as short a time as is reasonably possible. To achieve this it is recommended that the Arbitration Board prescribes suitable time limits, where appropriate, within which the various stages of the Arbitration are to be completed.

**Reference to Rule 4. Consolidation of Arbitrations**

For the purpose of minimising expenses and in order to expedite settlement of disputes it may be desirable to endeavour to consolidate a number of disputes involving seed potatoes from the same origin into a single Arbitration rather than there being a series of similar Arbitrations between the individual contracting parties. This can, however, only be achieved if the parties involved agree to having their disputes consolidated into a single Arbitration and to accept the Award(s) of the Arbitration Board. It is recommended that if that agreement is not obtained reasonably expeditiously the Arbitration Board should not delay matters further and should proceed with the initial arbitration.

**Reference to Rule 5. Power to order Parties to make a deposit**

It is recommended that the Arbitration Board advises the parties involved in the Arbitration at as early a date as possible of their estimate of the likely costs which the Arbitration will involve and to keep the parties advised of any substantial alterations to its previous estimate of costs.

**Reference to Rule 6. Power to appoint men of skill**

The Arbitration Board can obtain from the Secretary of BPTA or the names of individual Solicitors who have experience of disputes or with Arbitrations involving seed potatoes.

### **Reference to Rule 7. Pleadings and production of documents**

The Arbitration Board are required to prescribe the form which the pleadings are to take in the Arbitration. It is likely that they will call upon the parties to submit to the Arbitration Secretary within a prescribed period a Statement of Claim clearly stating their claims and the facts and circumstances on which their claims are based, supported by relevant documents. Once the Arbitration Secretary has received Statements of Claim from all the parties he is likely to be instructed by the Arbitration Board to provide the parties with copies of the other party's Statement of Claim and to give the parties the opportunity of responding thereto by submitting their Answers and Counter Claims to the Arbitration Secretary also within a prescribed period. This procedure should be continued until the Arbitration Board is satisfied that the parties have been given the opportunity of stating their case and responding to allegations. It is suggested that the parties be ordered to supply a sufficient number of duplicate copies of each document to enable a copy of each document to be issued to the individual members of the Arbitration Board, the Arbitration Secretary and the other parties to the Arbitration.

### **Reference to Rule 8. Tender procedure**

The purpose of this procedure is to encourage the parties in dispute to agree a settlement between themselves and to avoid further arbitration procedures and thereby minimise the costs. The procedure involves one party making an offer in writing to the other party to settle the dispute. The offer will require to include, in addition to an offer to settle the dispute, a proposed apportionment between the parties of the costs. These costs will include the costs incurred by the parties themselves and also the costs of the Arbitration Board. If the offer equals or exceeds the Award proposed by the Arbitration Board, and has not been accepted by the other party, the Arbitration Board is encouraged to award against the other party all of the expenses of the Arbitration incurred subsequent to the date on which the offer was made. It is strongly recommended that any agreed settlement reached be fully and unambiguously recorded in writing by the parties.

### **Reference to Rule 9. Hearing**

A Hearing must be convened unless all the parties to the Arbitration and the Arbitration Board agree that a Hearing is to be dispensed with. It is likely that the most expensive part of an Arbitration will be the Hearing and accordingly it is recommended that unless a Hearing is likely to assist the parties, or any of them, to pursue their case, the parties should be invited to dispense with the holding of a Hearing.

The Hearing must be held in private. In the interests of providing experience to and training for new Arbiters it may be decided by the Arbitration Board that a trainee should sit in at a Hearing as an observer. This can only be achieved if the parties to the Arbitration consent to such an observer being present. The observer should take no part in the Arbitration.

All the facts and circumstances which are founded on or put forward at a Hearing must have been narrated previously in the pleadings.

In normal circumstances the party who issued the Notice to Refer will be called upon by the Arbitration Board to present his case at the Hearing first and the other party to respond thereto thereafter. Both parties should be given the opportunity of cross examining the other party's witnesses.

The parties are not entitled to be legally represented at the Hearing, other than by a partner, director or employee, unless with the prior approval of the Arbitration Board. The Arbitration Board should not refuse an application for legal representation at the Hearing if it considers that to do so could lead to an injustice. If one party is to be legally represented either with the approval of the Arbitration Board or by a legally qualified person who is a partner, director or employee of the party, the Arbitration board is recommended to give to the other party the opportunity of also being represented at the Hearing by a similarly qualified legal person. If a Hearing is adjourned for the reasons that one of the parties fails to appear or to be represented at a Hearing, the Arbitration Board may decide that the additional costs resulting from the adjournment are, irrespective of its other findings, to be awarded against the party who failed to so appear or be represented.

“Specific implement” is the ordering of a party to a contract to fulfil his obligations under the contract.



### **Reference to Rule 10. The Award and Reasons**

The Award and Reasons of the Arbitration Board should be stated in writing and be signed by all the members of the Board, including any dissenting Arbitrer. Any such dissenting Arbitrer must not express his dissent in any manner whatsoever to any person. The Award and Reasons should state clearly all of the facts and circumstances on which the Arbitration Board based its Award. The Award and Reasons should be capable of constituting the Stated Case to be submitted to High Court/Court of Session in the event of an Appeal being pursued on the grounds that the Award is erroneous in a point of law. The Award should also state clearly whether any sums carry interest thereon and a final date for compliance of the Award, if appropriate. The Award and Reasons are confidential and their contents should not be divulged by any Arbitrer to any third party, other than any trainee arbitrer who has sat in at the Hearing, nor discussed with any party including the parties to the Arbitration.

### **Reference to Rule 11. Appeals**

The only appeal against an Award is an Appeal to the High Court, under the Law of England, or to the Court of Session in Edinburgh under the Law of Scotland on the grounds that the Award is erroneous in a point of law. The prosecution of an Appeal is not the duty nor responsibility of either the Arbitration Board or the Association. A party wishing to proceed with an Appeal is likely to require to consult a solicitor.

### **Reference to Rule 12. Notices**

Notices and other documents issued in connection with an Arbitration can, at the discretion of the Arbitration Board, be sent by Facsimile Transmission but must be followed up with a hard copy being sent by Recorded Delivery post to or being left at the premises of the addressee within any prescribed period of time.

### **Reference to Rule 13. Jurisdiction**

In an Arbitration arising out of the BPTA Conditions the Relevant Law is the Law of England and arising out of the Conditions the Relevant Law is the Law of Scotland.

**These Guidance Notes are for guidance purposes only and they are declared to have no binding legal effect whatsoever.**

Amended 01/05/2007

## **BPTA Schedule of Costs**

This is the Schedule of Costs referred to in the Arbitration Rules prescribed on behalf of The British Potato Trade Association and The Scottish Potato Trade Association and adopted by said Associations to be effective from 05 May 1998 until superseded by any subsequent Schedule of Costs adopted by said Associations.

### **1. Administrative Costs**

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|---|---|-----------------------|
| 1 | Registration Fee for Arbitration payable under Rule 1.1 | <b>£200.00 + VAT.</b> |
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The Registration Fee is **not refundable** and is to cover the time, up to maximum of four hours, spent by the Arbitration Secretary on the initial administration of the Arbitration.

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|-----|---|------------------|
| 1.2 | Security Deposit payable under Rule 1.1 | <b>£1000.00.</b> |
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The Security Deposit will be held on account by BPTA / as security towards the costs incurred by, or on behalf of, the Arbitration Board irrespective of whether the Arbitration proceeds to a conclusion in the normal manner or is terminated prematurely for any reason.

1.3 Time spent by the Arbitration Secretariat in the administration of the Arbitration ( but excluding specific expenses incurred by him such as postage, telephones, stationery, photocopying, travel and the like which will be charged at cost ).

**£60.00 + VAT, per hour.**

## 2. **Costs of Arbitration Board**

- 2.1 The fees and expenses of the Arbitration Board will be determined by the said Board in each case but will be restricted for each Board member to those indicated in this Schedule of Costs.
- 2.2 Cost of meetings and any other time spent on the Arbitration from **£50.00 to £75.00** per hour per Arbitration Board member, up to a maximum of **£800.00** per day per Board member.
- 2.3 Specific expenses incurred by, or on behalf of, the Arbitration Board including fees for technical and professional advice, travel, subsistence, room hire and the like will be charged at cost.

## 3. **Value Added Tax**

Where applicable VAT will be added to the costs of the Arbitration.

### **PROVISIONAL LIST OF BPTA ARBITERS**

Richard Baker	Ron M Reiss	Gerard Croft	J Ron McArthur
Vincent Lumb	Alastair Redpath	Russ Kelsey	John Williams
Archie Pullar	Andrew Skea	David Scott	Robert Doig
Ross Haynes	Graeme Prentice		

### **PROVISIONAL LIST OF THIRD ARBITERS**

I M Douglas	A Lamont	Peter Brown	Philip Noyce	David Fradd
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### **PROVISIONAL LIST OF NFU ARBITERS**

A J Plummer	B N Lock
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# **PRACTICE NOTES FOR PARTICIPANTS IN BPTA ARBITRATIONS.**

## **SUBMISSIONS AND DOCUMENTS**

### **1. General**

A submission from a party should identify all the details and the issues, and the arguments arising out of the transaction and dispute, to explain their position to the Tribunal

When there is not to be an oral hearing full submissions and documentary evidence are required to be exchanged between the parties, and a copy sent to the secretariat.

The basic structure of any submission or statement of case should be as follows:

- A statement of the relevant contract terms
- A statement of the relevant facts
- A summary of the case which lead to the dispute, and details of the award which a party is seeking from the Tribunal
- Documents to support the arguments

### **1. How detailed should a submission be?**

Each party should ensure, whether as claimant or respondent, that sufficient evidence is provided (adduced) to 'prove' their case or 'disprove' that of the other party. In a documents- only arbitration the Tribunal may rely only on the submission and evidence put to it. In an oral hearing the Tribunal will also have the benefit of a presentation made by or on behalf of each party. In such a case a skeleton argument may be sufficient although all relevant documents must be exchanged by the parties, and a copy be lodged with the secretariat, before commencement of the hearing.

### **2. Use of summaries to identify the key issues**

New issues may arise as an arbitration process progresses, and some may fall away. It is often useful to supply a summary of the key issues at the end of each submission, in order that each party may identify issues and events which are of particular relevance to their case.

It may be useful to identify on which items you wish the Tribunal to make a finding.

If there has been a long-running series of exchanges of submissions The Tribunal may find it helpful to have a summary to ensure that all relevant issues identified by each party are considered and answered in their award.