

## THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

### PRESIDENTIAL GUIDANCE ISSUED UNDER RULE 8 OF SCHEDULE 1 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL (CONSTITUTION AND RULES OF PROCEDURE) REGULATIONS (NORTHERN IRELAND) 2020

1. Further to the Presidential Guidance dated 20 March 2020, 27 March 2020 and the Presidential Direction and Guidance dated 11 June 2020, and having regard to:

the Coronavirus Northern Ireland Executive Approach to Decision-Making;

Public Health Guidance and the continued need to limit the scope of any risks to health during the Coronavirus (Covid-19) pandemic;

the need to maintain the administration of justice; and

the overriding objective to deal with cases fairly and justly, which includes so far as practicable—

- a. ensuring that the parties are on an equal footing;
- b. dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- c. avoiding unnecessary formality and seeking flexibility in the proceedings;
- d. avoiding delay, so far as compatible with proper consideration of the issues; and
- e. saving expense; and

the requirement for parties and their representatives to assist the tribunal to further the overriding objective and in particular to co-operate generally with each other and with the tribunal;

the President provides the updated information and issues the following updated guidance.

#### UPDATED INFORMATION

2. The **Tribunals' building will reopen on Wednesday 8 July 2020** following the completion of the Risk Assessment to safely manage the return to the Tribunals' building for the purposes of conducting the work of the Industrial and Fair Employment Tribunals. The Risk Assessment will be available to view on the Tribunals' website on or before 10 July 2020. It is important that participants should read its contents and, where applicable, be aware of the measures which have been introduced for their safety and the safety of all tribunal users, staff, panel members and the Judiciary. Parties and their representatives, where possible, should continue to correspond with and present claims and responses to the tribunal by electronic means, pending a further update. If parties have an email address, they should provide it to the Office, where they have not already done so. No person should attend the Tribunals' building unless directed to do so by the tribunal or upon prior arrangement with the Secretary to the Tribunals.

## UPDATED GUIDANCE ON THE WAY FORWARD

3. As set out in the Presidential Direction and Guidance dated 11 June 2020, in the section headed **GUIDANCE ON THE WAY FORWARD**, the President's aim is to gradually increase the disposal of business, whilst adhering to Public Health guidelines and the Risk Assessment which has now been completed in respect of the Tribunals' building.
4. Review Case Management Preliminary Hearings will be arranged in all cases, and will take place by telephone or by WebEx, for the purpose of relisting/listing, in the order which was set out in the Presidential Direction and Guidance dated 11 June 2020 and which is repeated below:
  - (i) Urgent Cases, which include:
    - a. applications for interim relief;
    - b. statutory appeals against prohibition notices;
    - c. part heard cases;
    - d. hearings to determine remedy; and
    - e. those cases where a party (or parties) to the case notifies the Tribunals' office by email that he or she (or they) considers an urgent hearing is required, and at the same time provides the reasons for the application, together with the comments of the other party or parties (where the application is being made by just one party), and the Employment Judge is satisfied, having regard to those reasons and the overriding objective, that an urgent hearing is required;
  - (ii) All Hearings which had been listed up to 1 May 2020 and which had been postponed prior to and following the issue of the Presidential Guidance dated 20 March 2020;
  - (iii) All Hearings which had been listed from 4 May 2020 to 1 July 2020 and which had been postponed following the issue of the updated Presidential Guidance dated 27 March 2020;
  - (iv) All Hearings which were listed from 1 July 2020 to 30 October 2020 and which were postponed with immediate effect on foot of the Presidential Guidance dated 11 June 2020;
  - (v) All Hearings which remain listed on dates after 30 October 2020;
  - (vi) All Case Management Preliminary Hearings which had been postponed on foot of the Presidential Guidance dated 27 March 2020; and
  - (vii) All cases which have been received and which have not yet been listed for Case Management Preliminary Hearings.
5. The parties will be given 14 days' notice of the date of their Review Case Management Preliminary Hearing, where possible, by email. Parties will be

informed of the mode of the Review Case Management Preliminary Hearing, whether by telephone or WebEx, in the email.

6. The decision as to when a hearing shall be listed and whether it shall be conducted in person (where all participants are in the Tribunals' building), where it is safe to do so, as a hybrid hearing (where some of the participants are present in the Tribunals' building and others take part from a location other than the Tribunals' building), where it is safe to do so, or a fully remote hearing (where all participants take part from a location other than the Tribunals' building, by WebEx) shall be made by the Employment Judge, having due regard to the overriding objective, the views of the parties and the following:
  - a. whether the claim is not contested;
  - b. whether the claim can be determined by legal submissions only; and
  - c. if the claim is contested:
    - i. the complexity and the number of legal issues to be determined;
    - ii. the number and nature of any factual disputes between the parties;
    - iii. the extent to which oral evidence will be required;
    - iv. the number of witnesses who will be called;
    - v. the circumstances of parties and witnesses, including whether reasonable adjustments/special arrangements are necessary to ensure their effective participation;
    - vi. the volume of documents to which the tribunal will be referred;
    - vii. the arrangements for the provision of bundles of documents; and
    - viii. the date when the claim was presented.
7. In preparation for the Review Case Management Preliminary Hearing and to assist the Employment Judge to determine how and when any future hearing will be scheduled, information will be sought, where necessary, from the parties in advance of the Review Case Management Preliminary Hearing, by way of a Pro Forma. Some cases, for example, those which are part heard, may not require a Pro Forma to be used. The Pro Forma, where applicable, will be sent to the parties by email giving them the date of the Review Case Management Preliminary Hearing.
8. The Pro Forma should, where possible, be completed in collaboration with the other party/parties in the case and must be returned to the Tribunals' Office, by email, no less than 3 days before the date of the Review Case Management Preliminary Hearing, or it may not be able to proceed.
9. If there is an agreed position, only one Pro Forma should be returned to the Tribunals' Office by email, making it clear that it represents the agreed position. If the parties cannot agree the contents of the Pro Forma, each party is required to complete the Pro Forma, setting out his/her/their position and to return it to

the Tribunals' Office by email no less than 3 days before the date of the Review Case Management Preliminary Hearing, or it may not be able to proceed.

10. Parties or their representatives will be provided with instructions on how to participate in a Review Case Management Preliminary Hearing/Full Hearing by WebEx, if applicable, with the listing email.
11. Guidance on Safety within the Tribunals' building and the use of WebEx in respect of remote hearings (where the hearing will take place on a remote or hybrid basis) will be issued with the Notice of the Full Hearing and will also be available to view on the tribunals' website in due course. It is important that participants should read and familiarise themselves with the content of the Guidance on Safety, for their safety and the safety of all tribunal users, staff, panel members and the Judiciary.
12. This Guidance will be subject to ongoing review.



President: Eileen McBride CBE

7 July 2020