

EXPLANATORY NOTE TO PARTIES

WHAT IS JUDICIAL ASSESSMENT?

1. Judicial Assessment (JA) is an impartial and confidential assessment by an Employment Judge, at the first Case Management Preliminary Hearing (CMPH), of the strengths, weaknesses and risks of the parties' respective claims, allegations and contentions. It is a formalised process of early case management where the parties have requested an assessment of the case.
2. An early assessment of the case by an Employment Judge may assist the parties in identifying what the case is really about, what is at stake, and may clarify and narrow the issues and encourage settlement. This may lead to resolution of the case by agreement between the parties before positions become entrenched and costs excessive, or may shorten and simplify the scope of hearings.
3. Most cases of any complexity which are listed for a case management hearing on service of proceedings will be suitable for JA. However, the following (non-exclusive) factors may render the case unsuitable for an offer of JA:
 - there are multiple claimants not all of whom request JA
 - a party is insolvent
 - High Court or other proceedings exist or are intimated.

Initial formalities

4. You are encouraged to inform the Tribunal in advance of the case management hearing that you wish to have JA in your case. You have been provided with form JAM 1 and should complete and return this form at the earliest opportunity and in advance of your CMPH.
5. This will enable the Employment Judge to prepare for the process and to make sure that sufficient time is available on the day. However, even if you have not made a request in advance, the Employment Judge, in suitable cases, may offer JA during the case management hearing.
6. JA will almost invariably take place at the initial CMPH. This reflects the need for it to happen at an early stage in the proceedings. It will not generally be offered later in the proceedings.
7. If JA is expected to take place, the CMPH may be listed in person rather than by WebEx if it is envisaged that the necessary in-depth discussion could not

take place in a WebEx. However, the Employment Judge will have the discretion to conduct a JA by WebEx or in person. Sufficient time will be allocated to the CMPH (generally up to one hour, depending always on the nature of the case).

8. It is a requirement for JA that the parties freely consent to it. Whilst the Employment Judge will explain the advantages of JA no pressure will ever be placed on any party to agree to it.
9. JA is strictly confidential. This will be repeated by the Employment Judge before the JA takes place.
10. Although anything said in the JA might be used in subsequent “without prejudice” discussions between the parties, or in a Judicial Mediation, the views expressed by the Employment Judge are non-attributable and must be kept strictly confidential. **They must not be disclosed to third parties**, other than advisers, as having been expressed by the Employment Judge, or attributed or identified as the views of the Employment Judge in subsequent proceedings, including the final hearing. Unless the parties agree to these conditions, JA will not take place.

The conduct of the Judicial Assessment

11. Judicial Assessment involves evaluating the strength of the case. Employment Judges will use their skill and experience in doing this, whilst remaining wholly impartial. Whilst recognising that evidence will not have been heard, Employment Judges may, when appropriate, give indications about the possible outcome of the case.
12. JA is not the same as Judicial Mediation. An outcome of JA may be that a case is listed for Judicial Mediation. JA is indicative in nature and will involve a practical assessment of the case by the Employment Judge. Judicial Mediation is usually facilitative, but can be indicative or evaluative; has the aim of assisting the parties to achieve a resolution of the issues between them without giving any indication of prospects of success; and is usually allocated a full day of the Tribunal’s time.
13. It is possible that the JA process will lead to immediate settlement negotiations between the parties. This is not the primary purpose of JA, but will be encouraged if it occurs, and time will be made available for it.
14. The JA will only be conducted after the issues between the parties have been

fully clarified and case management orders made in the usual way at the CMPH. The JA is not a way of avoiding the discipline of a properly conducted CMPH and indeed is dependent upon the process.

15. If the parties consent, the Employment Judge may then give an assessment of the liability and/or remedy aspects of the case. It will be made clear that the assessment is provisional and that the Tribunal hearing the case may come to a different view. In conducting the assessment, the Employment Judge will make it clear that they are assessing the case on the state of the allegations and not evaluating the evidence, which has not been heard or seen, and assessing provisionally the risks as to liability and, typically, brackets of likely compensation on remedy. The Employment Judge will encourage parties to approach the process with an open mind and to be prepared to enter into the assessment pragmatically and to be receptive and to listen to the Employment Judge's views.
16. The JA will be conducted with a view to assisting eventual settlement of all or part of the claim. If the parties express the wish to enter into immediate settlement negotiations, this may be encouraged, but care will be taken to make sure that unrepresented parties have time to think and to consider any offer, and are advised that if an offer is made, they should take time to reflect upon it.
17. JA of the case will be provisionally and guardedly expressed because no evidence will have been heard. Employment Judges recognise that parties may not fully understand the distinction between a provisional indication and the eventual result of the case.
18. The Employment Judge may make their own notes of the JA. These will not be placed on the case file and will be kept only as the Employment Judge's record and will not be distributed to the parties or to any third parties.
19. The Employment Judge who conducts the JA will normally not then be involved further in any part of the proceedings which may entail final determination of the parties' rights (except that s/he may conduct any subsequent Judicial Mediation). This is to encourage full and frank assessment of the claim and ensure public trust in the confidentiality and impartiality of the evaluation. This does not preclude involvement in day to day case management of the proceedings, including, in particular, CMPHs.

Action following the Judicial Assessment

20. In some cases, a settlement may be reached at the JA. Any settlement will be recorded by one of the following means:
 - LRA CO3;
 - Formal settlement agreement between the parties (often called a Compromise Agreement);
 - Consent judgment by the Tribunal; or
 - Conditional withdrawal and dismissal of the claim upon payment within an agreed period.

21. More usually, the parties will wish to consider their positions following the JA. If the parties agree, a Judicial Mediation may be considered. Otherwise the Employment Judge will remind the parties of the availability of the conciliation services of the Labour Relations Agency.

WHAT IS JUDICIAL MEDIATION?

1. Judicial Mediation (JM) is a process for resolving claims in which a judicial mediator helps those in dispute to find an acceptable solution without having to go to a full hearing.
2. Judicial Mediators are Employment Judges who have had training in order to help parties reach agreement on their disputes.
3. JM is a voluntary and confidential process and any party to the mediation may withdraw from the process prior to reaching a formal settlement agreement (either prepared by the parties and agreed via the Labour Relations Agency or prepared by the parties' legal representatives if both sides are represented) at the mediation session.
4. **For JM to be successful all parties must be willing to compromise and move away from their preferred solution if need be.**
5. Where both parties have indicated that they wish to avail of JM on their JAM1 form or at the CMPH, the Employment Judge will refer the case to the Vice President for consideration of suitability for JM.
6. If the Vice President decides that JM is not appropriate in the case, both parties will be informed in writing and the case will proceed to full hearing.
7. If the Vice President decides that JM is appropriate, both parties will receive written notification of when the JM will take place and will be asked to provide certain information under a Judicial Mediation Order (JMO).
8. The JMO may include an order requiring the parties to set out in writing how each party thinks the claim(s) should be resolved through judicial mediation. They may include the valuation of the claim(s) in financial terms and/or setting out alternative or additional methods of achieving a mediated solution e.g. adjustments, an apology, relocation etc..

Ground Rules for the mediation

6. Each party will be responsible for any costs that it incurs during the mediation process.
7. The parties will attend a mediation session to be held at the Tribunal's offices at Killymeal House, 2 Cromac Street, Ormeau Road, Belfast BT7 2JD which will last no more than 1 day.
8. **All parties will be required to give an undertaking that discussions at the mediation will remain confidential, and will not be referred to afterwards, whether agreement is reached or not.**
9. **Each party must be able to decide on the mediation day whether to make or accept any offer or not** (or have a decision maker available to do so).
10. The Tribunal will fix a date on which the judicial mediation will take place. It is anticipated that such mediation will last for no more than one day.
11. The judicial mediator will have a copy of the claim, response(s) and any correspondence with or orders made by the Tribunal (see the JMO made by the Tribunal for details of who has to provide the documents, and which documents to provide). The parties are discouraged from submitting additional written material that has not been ordered by the Tribunal. If, however, there are a small number of crucial documents, the party relying on them should bring 2 spare copies for use if necessary (or send them electronically in advance if the hearing is to be held remotely).

The mediation session

12. The mediation sessions are quite informal and there is no need for parties to engage legal or other representatives. However, parties can choose to be represented by a relative or friend, a volunteer from an advisory body, or a professional advisor such as a lawyer or consultant. They can also bring a friend or relative for support. It is important to advise the Tribunal of who will be in attendance in advance of the Mediation day.

13. The judicial mediator will not offer legal advice or act as a legal advisor to any of the parties to the mediation. The judicial mediator will assist the parties to reach an agreement, but will encourage the parties to be realistic.
14. The parties will abide by any reasonable ground rules for the mediation session communicated by the judicial mediator at the start of the session.
15. The judicial mediator may hold private meetings with one party at a time on the mediation day. Such sessions are designed to improve the judicial mediator's understanding of that party's position and to assist the judicial mediator in communicating that party's viewpoint to the other parties.
16. The judicial mediator will attempt to resolve the dispute by exploring the issues, interests, needs and the concerns of the parties.
17. If the parties are unable to agree during the mediation session the judicial mediator may consider expressing a view or assessment of the prospects of success of either party, but only if all parties agree to this. Such an expression is not a legal opinion and will not influence a tribunal if the dispute proceeds to a hearing. It is a view or assessment based upon the information available to the judicial mediator at the time and the particular experience/expertise of the judicial mediator. It is not binding.
18. **If the parties do reach an agreement which complies with employment law (or where the Labour Relations Agency has been involved to conclude it e.g. conciliation has been reached) that is the end of the proceedings – the agreement is binding.**
19. Any party including the judicial mediator may terminate the mediation session at any time without giving any reasons.
20. Another Judge may observe the mediation session for training purposes. The Judge will keep what s/he hears and sees confidential. If you object to a Judge observing the mediation session you must inform the judicial mediator as soon as possible.

Confidentiality

21. The parties attend the JM session for the purpose of reaching a binding settlement. Everything said by any party at the JM session or by the judicial mediator shall be in confidence and shall not be repeated or referred to by any other party once the JM session has ended. Such statements shall not be referred to in any continuing or later litigation.
22. Any documents prepared specifically for the JM session and any notes taken at the JM session shall be entirely confidential and shall not be admissible in any continuing or subsequent litigation.
23. **It is an offence to record JM discussions without the judicial mediator's permission.**

Future hearings

24. If the dispute is not resolved by JM, the parties right to a fair hearing before a tribunal remains unaffected. If the dispute proceeds to a hearing before a tribunal the judicial mediator shall not be involved in it.