**THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL**

**PRESIDENTIAL DIRECTION ISSUED UNDER REGULATION 14 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL (CONSTITUTION AND RULES OF PROCEDURE) REGULATIONS (NORTHERN IRELAND) 2020 AND PRESIDENTIAL GUIDANCE ISSUED UNDER RULE 8 OF THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020**

Further to the Presidential Guidance dated 20 March 2020, 27 March 2020, 11 June 2020, 7 July 2020, 20 January 2021 and 4 February 2021 and having regard to:-

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

2. the need to maintain the administration of justice and, in particular, the need to address the growing backlog of claims awaiting determination; and

3. 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;

(e) saving expense; and

(f) 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 following background information, makes the following direction and issues the following updated guidance.

**Background Information**

1. The Tribunals’ building was closed from 27 March 2020 until 8 July 2020, when it was reopened, following the completion of a Risk Assessment to manage safely the return to the Tribunals’ building for the purposes of conducting the work of the Industrial and Fair Employment Tribunals. On 19 January 2021, the Secretary to the Tribunals, following the Department for the Economy authorising her to do so, closed the Tribunals’ building until at least the 5February 2021, subject to the completion of a new Risk Assessment. The Secretary had informed the President that the Tribunals’ building was unlikely to be reopened until at least 1 March 2021 and only then if it was safe to do so.
2. Before the most recent closure of the Tribunals’ building by the Department, it was able to facilitate the use of only 3 out of 10 hearing rooms for in person Final Hearings. The number of participants who could be present in those hearing rooms was limited by the Risk Assessment.

**Updated Information**

1. The President and, in her absence, the Vice President of the Industrial Tribunals and Fair Employment Tribunal, is responsible for using the resources available to secure, so far as practicable, the speedy and efficient disposal of proceedings; to determine the allocation of proceedings between tribunals; and determine where and when tribunals shall sit.
2. The President’s aim has been to gradually increase the disposal of business, whilst adhering to Public Health guidelines and the Risk Assessment which had been completed by the Department for the Economy in respect of the Tribunals’ building.
3. The President continues to engage with the Department in relation to her plan for increased disposal of business, subject to the Risk Assessment and the constraints of the resources which are currently available to her.
4. An updated draft Risk Assessment has been prepared, to take account of the revised Public Health Agency advice to the Department. The Secretary informed the President that this is a significant and substantial piece of work and consultation is ongoing. In particular, the arrangements for hearings to take place in the Tribunals’ building, where it is safe to do so, remain subject to ongoing consideration. The President understands that the updated Risk Assessment is likely to impact on the number of persons who can participate in in person hearings in the Tribunals’ building and is likely to lead to more hearings taking place on a hybrid and fully remote basis, whilst Covid-19 restrictions are in place.
5. The President has been informed by the Department that the Tribunals’ building will reopen on Tuesday 2 March 2021 for the following limited purposes:
6. for lodging hard copy paper bundles for hearings by prior arrangement with the Tribunals’ Secretariat; and
7. for staff and the Judiciary to carry out their administrative and judicial functions, which require access to hard copy files and records.

**Members of the public and legal representatives should not attend the Tribunals’ building unless specifically required to do so.**

1. Video conferencing equipment is currently being installed to allow for fully remote and/or hybrid final hearings (where cross examination of witnesses is required) to take place from the Tribunals’ building. The video conferencing system will require to undergo testing to ensure it is fit for purpose before it is commissioned for use in hearings as part of a pilot scheme. If this pilot is successful, further video conferencing equipment will be installed in other hearing rooms and the President has been informed that the commissioning of further equipment will take approximately six weeks from the successful completion of the pilot.
2. In addition, the Department has agreed to seek additional venues to allow fully in person hearings to take place, as soon as possible, where it is safe to do so.
3. Arrangements to facilitate public viewing (including by the press) can be made, if required, by contacting the Secretary to the Tribunals.

**Presidential Direction**

1. In light of the updated information provided at paragraph 11 above, Review Case Management Preliminary Hearings will be arranged in all cases that have been listed for in person hearings up to the 16 April 2021/23 April 2021 approximately, to consider whether:-

1. those hearings can proceed by electronic means; or

1. those hearings should be postponed and relisted;

having due regard to the overriding objective, the views of the parties and the following:-

1. whether the claim is contested; and
2. if the claim is contested:-

(a) the complexity and the number of legal issues to be determined;

(b) whether it can be determined by legal submissions only;

(c) the number and nature of any factual disputes between the parties;

(d) the extent to which oral evidence will be required;

(e) the number of witnesses who will be called;

(f) the circumstances of parties and witnesses, including whether reasonable adjustments/special arrangements are necessary to ensure their effective participation;

(g) the volume of documents to which the Tribunal will be referred; and

(h) the date when the claim was presented.

**Overarching Principles for Remote Hearings**

* 1. Every remote hearing will be planned and conducted in a manner designed to secure every party’s right to a fair hearing.
  2. The planning and conduct of every remote hearing will replicate, in so far as possible and with all modifications deemed appropriate by the tribunal, the conventional form of hearing in the tribunal.
  3. The duties owed to the tribunal by every party, legal representative and other participants will apply fully in the planning and conduct of every remote hearing.
  4. Every remote location attended by the participants in a remote hearing forms part and is an extension of the tribunal. All participants must conduct themselves accordingly.
  5. Scrupulous compliance with all regulatory and procedural requirements, all provisions of this Presidential Guidance, all pre-hearing case management orders and all directions of the tribunal is essential.
  6. The overriding objective in Rule 2 of the Industrial Tribunals and Fair Employment Tribunal Rules of Procedure 2020 applies to the planning and conduct of every remote hearing.

15.7 The ability of the tribunal to give full effect to the overriding objective may sometimes be somewhat impaired having regard to factors, including but not limited to,human, logistical, connectivity, technological support and facilities. This does not detract from the overarching principle 15.1 above.

15.8 The Industrial Tribunals and Fair Employment Tribunal Rules of Procedure 2020 apply to every remote hearing.

**This Guidance will be subject to ongoing review.**

**President: Eileen McBride CBE**

**22 February 2021**