

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 and 27 March 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 following background information, makes the following direction and issues the following updated guidance.

BACKGROUND INFORMATION

The Tribunals' building has been closed with effect from 27 March 2020 and remains closed, pending the completion and implementation of a Risk Assessment which is necessary for the reopening of the Tribunals' building. The Judiciary and administrative staff have been working remotely since the Tribunals' building was closed and some may have to continue to do so when the Tribunals' building reopens, while government advice on social distancing and working from home, where possible, is still applicable. As part of measures to mitigate risks to health during the current pandemic, the tribunal administration is currently making arrangements to facilitate the conduct of hearings in person, where it is safe to do so, hybrid hearings (where some of the parties are present in the Tribunals' building and others take part remotely),

where it is safe to do so, and fully remote hearings (where all parties take part remotely).

DIRECTION TO POSTPONE FURTHER HEARINGS

As the Tribunals' building remains closed and pending the completion of preparations for remote hearings, **all Final Hearings and Preliminary Hearings** to determine matters such as jurisdictional issues or whether a deposit order should be made, which are currently listed **from 1 July 2020 to 30 October 2020, are now postponed with immediate effect** on foot of this Presidential Direction.

GUIDANCE ON THE WAY FORWARD

The aim of this guidance is to gradually increase the disposal of business while adhering to public health guidance.

Pending the reopening of the Tribunals' building and subject to the implementation of arrangements to facilitate remote hearings, Preliminary Hearings (hereinafter referred to as "Review Case Management Preliminary Hearings") will be arranged in respect of all cases to determine:

1. whether the case could be resolved by conciliation or by means other than a hearing;
2. if not, whether the case is fully ready for hearing;
3. if so, whether the case is suitable for a remote hearing, a hybrid hearing or a fully in person hearing in the Tribunals' building, where it is safe to do so, once it has reopened; and
4. whether case management orders and directions should be made if the case is not fully ready for hearing.

Review Case Management Preliminary Hearings will be listed in the following order:

- (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 from 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 30 June 2020 and which had been postponed following the issue of the updated Presidential Guidance dated 27 March 2020;
- (iv) All Hearings which have been listed from **1 July 2020 to 30 October 2020** and which are now postponed with immediate effect on foot of this Presidential Guidance;
- (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.

The decision as to whether a hearing shall be conducted in person, as a hybrid hearing or remotely 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.

Parties or their representatives will be provided with instructions of how to participate in a remote Review Case Management Preliminary Hearing with the listing email.

Until the Tribunals' building is reopened and the arrangements to facilitate the conduct of hearings in person, where it is safe to do so, hybrid hearings, where it is safe to do so, and fully remote hearings are in place, the Employment Judge can only give provisional dates for hearings, which may subject to further postponement.

This Guidance will be subject to ongoing review.

A handwritten signature in cursive script that reads "Eileen McBride".

President: Eileen McBride CBE

11 June 2020