

SCHEDULE 1

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020

PART 6

CASE MANAGEMENT ORDERS AND OTHER POWERS

Early case management

24. As soon as possible after the acceptance of the response or the application of rule 19(1), whichever is the earlier, an employment judge shall review the documents held by the tribunal that are relevant to the claim and shall do one or more of the following:

- (a) decide whether a determination can properly be made of the claim, or part of it;
- (b) provide a preliminary assessment of the issues to be determined;
- (c) explore alternative means of resolving the issues in dispute, including the use of conciliation;
- (d) issue any case management order appropriate to furthering the overriding objective including, but not limited to, any order dealing with—
 - (i) the identification of the issues to be determined;
 - (ii) the identification of any preliminary issues and consideration of whether they should be dealt with at a preliminary hearing under rule 47 or a final hearing under rule 51;
 - (iii) the disclosure, exchange and inspection of documents;
 - (iv) the provision of additional documents and information;
 - (v) the numbers of witnesses;
 - (vi) the sequential or simultaneous exchange of witness statements;
 - (vii) the preparation of documents or hearing;
 - (viii) limiting the content, length or format of any document or bundle of documents, including a witness statement;
 - (ix) the timetabling of any orders made; and
 - (x) the listing of the case for hearing.

Case management orders

25.—(1) The tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order.

(2) A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

(3) The particular powers identified in rule 24 or the following rules do not restrict the general power in this rule.

Applications for case management orders

26.—(1) An application by a party for a particular case management order may be made either at a hearing or presented in writing to the tribunal.

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(2) Where a party applies in writing and sends a copy of the application to the other parties in accordance with rule 89, the party shall notify the other parties of their rights under paragraph (3).

(3) The other parties may present any comments on or objections to the application within 7 days of receiving the application. If a hearing is due to take place before the expiry of the 7 day period, any comments or objections should be presented as soon as possible before that hearing.

(4) The tribunal may deal with such an application in writing or order that it be dealt with at a preliminary or final hearing.

Documents and evidence

27.—(1) The tribunal may—

(a) order any person in Northern Ireland—

(i) to grant to a party such disclosure, exchange and inspection (including the taking of copies) of documents as might be granted by a county court;

(ii) to disclose information to a party; or

(iii) to attend a hearing to give evidence, produce documents, or produce information;

(b) apply for an order under section 67 of the Judicature (Northern Ireland) Act 1978 compelling the attendance at a hearing of any witness from another part of the United Kingdom or requiring the production by that witness of any document; or

(c) use the procedures for obtaining evidence prescribed in Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

(2) An order containing a requirement described in paragraph (1)(a) shall include the following information (as the case may require)—

(a) that any person who without reasonable excuse fails to comply with the requirement shall be liable on summary conviction to a fine in accordance with Article 9(4) of the Industrial Tribunals Order or Article 84(9) and (10) of the Fair Employment and Treatment Order;

(b) the amount of the current maximum fine; and

(c) that any person who, having been summarily convicted under Article 84(10) of the Fair Employment and Treatment Order, without reasonable excuse continues to fail to comply with the requirement shall be liable on a second or subsequent summary conviction to a continuing fine.

Addition, substitution and removal of parties

28. The tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.

Other persons

29. The tribunal may permit any person to participate in proceedings, on such terms as may be specified, in respect of any matter in which that person has a legitimate interest.

Lead cases

30.—(1) Where a tribunal considers that two or more claims give rise to common or related issues of fact or law, the tribunal or the President may make an order specifying one or more of those claims as a lead case and staying the other claims (“the related cases”).

(2) When the tribunal makes a decision in respect of the common or related issues the Secretary shall send a copy of that decision to each party in each of the related cases and, subject to paragraph (3), that decision shall be binding on each of those parties.

(3) Within 28 days after the date on which the Secretary sent a copy of the decision to a party under paragraph (2), that party may apply in writing for an order that the decision does not apply to, and is not binding on the parties to, a particular related case.

(4) If a lead case is withdrawn before the tribunal makes a decision in respect of the common or related issues, it shall make an order as to—

- (a) whether another claim is to be specified as a lead case; and
- (b) whether any order affecting the related cases should be set aside or varied.

Consolidation of industrial tribunal and Fair Employment Tribunal proceedings

31. The tribunal may on its own initiative, or on the application of a party, request from the President or the Vice-President a direction under Article 85 of the Fair Employment and Treatment Order that a matter that would otherwise fall to be determined by an industrial tribunal be heard and determined by the Fair Employment Tribunal exercising, for the purposes of that matter, the powers of an industrial tribunal.

Striking out

32.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of any claim or response on any of the following grounds—

- (a) that it is frivolous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been frivolous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the tribunal;
- (d) that it has not been actively pursued;
- (e) that the tribunal considers that it is no longer possible to have a fair hearing of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given the opportunity to make representations, either in writing or, if requested by the party or ordered by the tribunal, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 19.

Unless orders

33.—(1) An order may specify that, if it is not complied with by the date specified, the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the parties shall be given written notice confirming what has occurred.

(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the tribunal in writing, within 14 days of the date that the notice was sent, to

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have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the tribunal may determine it on the basis of written representations.

(3) Where a response is dismissed under this rule, the effect will be as if no response had been presented, as set out in rule 19.

Deposit orders

34.—(1) Where at a preliminary hearing under rule 48 the tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £500 as a condition of being permitted to continue to take part in the proceedings.

(2) The tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The tribunal’s reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified, the claim or response of that party or, as the case may be, the part of it to which the deposit order relates shall be struck out. Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 19.

(5) If the tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

- (a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 73 (tribunal’s consideration as to whether to make a costs or preparation time order), unless the contrary is shown; and
- (b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.