

SCHEDULE 1

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2020

PART 7

RULES COMMON TO ALL KINDS OF HEARING

General conduct of hearings

35.—(1) In accordance with rule 4 (general power to regulate procedure) and the overriding objective, a tribunal shall conduct each hearing in the manner it considers fair. The following rules do not restrict that general power.

(2) The tribunal—

- (a) is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts; and
- (b) may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.

Written representations

36. The tribunal shall consider written representations from a party, including a party who does not propose to attend the hearing. Any such representations must be—

- (a) presented not less than 7 days before the hearing; and
- (b) at the same time, delivered to the other parties in accordance with rule 89.

Witnesses

37.—(1) Where a witness (who may be a party) is called to give oral evidence, any witness statement of that person ordered by the tribunal shall stand as that witness's evidence in chief unless the tribunal orders otherwise.

(2) Witnesses shall be required to give their oral evidence on oath or affirmation.

(3) If it considers it in the interests of justice to do so, the tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence.

Inspection of witness statements

38. Subject to rules 44 (privacy and restrictions on disclosure) and 91 and 92 (national security), any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

Timetabling

39. A tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Electronic communication

40. A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the tribunal hears and see any witness as seen by the tribunal.

Non-attendance

41. If a party fails to attend or to be represented at the hearing, the tribunal may dismiss the claim, proceed with the hearing in the absence of that party or adjourn the hearing to a later date. Before doing so, it shall consider any information which is available to it about the reasons for the party's absence.

Conversion from preliminary hearing to final hearing and vice versa

42. A tribunal conducting a preliminary hearing may order that it be treated as a final hearing, or vice versa, if the tribunal is properly constituted for the purpose and if it is satisfied that neither party shall be materially prejudiced by the change.

Majority decisions

43. Where a tribunal is composed of three persons, any decision may be made by a majority; but where it is composed of two persons, the employment judge has a second or casting vote.

Privacy and restrictions on disclosure

44.—(1) A tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings. Such an order may be made in any of the following circumstances—

- (a) where the tribunal considers it necessary in the interests of justice;
- (b) in order to protect the Convention rights of any person;
- (c) for the purpose of hearing evidence from any person (“P”) which in the opinion of the tribunal is likely to consist of information which, if disclosed—
 - (i) would contravene a prohibition imposed by or by virtue of any statutory provision;
 - (ii) would breach a confidence by virtue of which P has obtained the information;
 - (iii) would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, cause substantial injury to any undertaking of P's or in which P works;
- (d) in relation to proceedings before the Fair Employment Tribunal, where the tribunal considers that—
 - (i) the disclosure of any evidence given would be against the interests of national security, public safety or public order;
 - (ii) the disclosure of evidence given by any person (“P”) would create a substantial risk that P or another individual would be subject to physical attack or sectarian harassment.

(2) In considering whether to make an order under this rule, the tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

- (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
 - (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the register or otherwise forming part of the public record;
 - (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;
 - (d) a restricted reporting order within the terms of Article 13 or 14 of the Industrial Tribunals Order;
 - (e) an order prohibiting the disclosure of specified information in accordance with Article 84(6) of the Fair Employment and Treatment Order.
- (4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.
- (5) Where an order is made under paragraph (3)(d)—
- (a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person’s identification;
 - (b) it shall specify the duration of the order;
 - (c) the tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the tribunal with any list of the proceedings taking place before the tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and
 - (d) the tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.
- (6) “Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998(1).

(1) 1998 c. 42.