

**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, 4 February 2021, 24 February 2021, 2 April 2021, 22 June 2021 and 6 May 2022 having regard to:-

1. The continuing need to minimise the risk of transmission of Coronavirus;
2. The current Public Health advice;
3. The need to maintain the administration of justice; and
4. The need to secure full compliance with both Article 6 of the European Convention on Human Rights, namely that everyone is entitled to a fair and public hearing within a reasonable time, 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;
 - (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

5. The 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.

Updated Information and Presidential Direction

The tribunals' building - Killymeal House

6. All ten hearing rooms are now open in Killymeal House to enable in-person, hybrid and remote hearings to take place. The public should only attend on prior arrangement with the Secretary or at the direction of an Employment Judge.
7. Video conferencing equipment has been installed in Killymeal House to facilitate hybrid and remote hearings in circumstances where such hearings are appropriate. Most Case Management Preliminary Hearings will be conducted remotely. Final Hearings will usually be conducted in person with medical and other professional witnesses usually attending remotely. Remote attendance of other witnesses and of parties will be considered if required on a case-by-case basis on medical or other grounds.
8. Claimants or respondents may participate in hearings either from remote locations using their own equipment or in Killymeal House, subject to the current occupancy and safety. Currently the maximum occupancy of the rooms is as follows: Hearing rooms 1, 4 and 8 – 19; Hearing rooms 3, 6, 7 and 10 – 13. Hearing rooms 2, 5 and 9 - 14 but may be used to facilitate greater numbers for individual hearings where required using the video conferencing technology.
9. The appropriate format for a hearing and the listing of it remains a judicial decision, taken in the light of Article 6 and the tribunal's overriding objective.

Case Management Preliminary Hearings

10. Case Management Preliminary Hearings will continue to be conducted to prepare and list cases for hearing, having due regard to the overriding objective, by WebEx/telephone. However, there may be occasions when they will be conducted in person, for example, where there is a requirement for reasonable adjustments/special arrangements or where complex interlocutory applications involving multiple documents need to be considered and/or determined.
11. The appropriate format for any such hearing remains a judicial decision, taken in the light of the tribunal's overriding objective.

Open Justice

12. The Coronavirus Act 2020 has made provision to enable the public to see and hear proceedings which are conducted wholly as video hearings and wholly as audio proceedings, where directed by a tribunal.
13. Rules 38 states:

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.*

Rule 40 states:

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.*

Rule 38 provides for inspection of a witness statement. However, it does not provide for copies to be taken.

14. The weekly hearing schedule is published on the tribunals' website. Subject to any orders made under Rule 44 (Privacy) or Rules 91 and 92 (National Security Proceedings), arrangements to facilitate public viewing (including by the press) of any hearing listed on the weekly hearing schedule can be made by contacting the Secretary to the Tribunals.

Overarching Principles for Remote/Hybrid Hearings by Electronic Means

15. (a) Every remote/hybrid hearing will be planned and conducted in a manner designed to secure every party's right to a fair hearing.
- (b) The planning and conduct of every remote/hybrid 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.
- (c) 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/hybrid hearing.
- (d) 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.
- (e) 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.
- (f) 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/hybrid hearing.
- (g) 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 at (a) above.
- (h) The tribunal will take reasonable steps to ensure that the hearing is of an open and public character, by publishing the weekly schedule of hearings on

the tribunals' website and providing the option of personal or, where appropriate, remote attendance.

- (i) The Industrial Tribunals and Fair Employment Tribunal Rules of Procedure 2020 apply to every remote hearing.

Important Notice

- 16. In the tribunal the only permanent recording of the proceedings will be that made by the tribunal. Subject to any order made by the tribunal on an application by a party, no one is permitted to make any video or audio or other recording or image whatsoever of any part of the proceedings. This prohibition includes a 'screenshot' or 'screen grab' and all like related mechanisms.
- 17. A hearing must not be recorded, whether it is held fully or partially remotely (i.e. on a hybrid basis) or in person, without the permission of the tribunal. To do so without permission is a criminal offence.¹

Noel Kelly
President

22 March 2023

¹ See section 29 of the Criminal Justice Act (Northern Ireland) 1945 and section 9 of the Contempt of Court Act 1981.