

THE NATURE OF THE ROLE OF THE FEE PAID EMPLOYMENT JUDGE IN INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL

1. The Industrial Tribunals and the Fair Employment Tribunal are independent judicial bodies which hear and determine certain complaints within the employment field. At the present time there is the President, the Vice President, six full-time Employment Judges, fourteen part-time Employment Judges and approximately 49 lay panel members. The lay panel members are drawn from a panel currently appointed by the Department for the Economy after consultation with bodies representing employers and employees. In addition there are approximately 59 administrative support staff members.
2. Both tribunals are usually composed of an Employment Judge and two lay panel members. The Employment Judge and the lay panel members have equal votes when deciding the case and the Employment Judge may be outvoted by the lay panel members on both fact and law.
3. The Industrial Tribunals and Fair Employment Tribunal sit in Belfast.
4. The Fair Employment Tribunal determines complaints of discrimination on the grounds of religious belief and political opinion.
5. Industrial tribunals have jurisdiction to hear and determine approximately 80 different complaints in the employment field. The majority of complaints received by industrial tribunals relate to one or more of the following:
 - Unfair dismissal;
 - Unlawful deductions from wages;
 - Breach of contract;
 - Whistleblowing;
 - Breach of the Working Time Regulations;
 - Redundancy Payment;
 - Sex Discrimination;
 - Disability Discrimination;
 - Race Discrimination;
 - Age Discrimination;
 - Equal Pay;
 - Part-time Working;
 - Sexual Orientation Discrimination; and
 - Agency Workers.

6. There is no limit on the amount of compensation that can be awarded in claims of discrimination, unlawful deductions from wages and whistleblowing.

In most cases of unfair dismissal there is a limit of £125,000.00. In breach of contract claims there is a limit of £25,000.00.

7. The Industrial Tribunals and Fair Employment Tribunals are governed by the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020.

The overriding objective of both sets of Regulations is to enable tribunals and Employment Judges to deal with the cases justly.

Dealing with cases justly includes, so far as practicable –

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;
- (c) ensuring that cases are dealt with expeditiously and fairly; and
- (d) saving expense.

Tribunals and Employment Judges are required to give effect to the overriding objective when exercising any power provided by the Regulations or the Rules within the Schedules to the Regulations or when interpreting them and the parties are required to assist the tribunal and the Employment Judge to further the overriding objective.

8. (1) Employment Judges spend the majority of their time conducting full hearings with two lay panel members and pre-hearing reviews sitting alone

The Employment Judge and the two lay panel members or the Employment Judge (if sitting alone) will read the witness statements and related documents during the reading time which has been fixed at the initial Case Management Discussion and confirmed at the Progress/Review Case Management Discussion.

At the outset of the hearing the Employment Judge will check if the parties have agreed a timetable for the cross-examination and re-examination of witnesses and closing submissions to ensure that the hearing is completed within the timeframe. If they have not, the Employment Judge will fix the timetable with them and will ensure

that it is followed throughout the hearing to avoid the hearing having to be reconvened.

The hearing will then commence with the cross-examination of the witnesses, followed by re-examination and closing submissions. The Northern Ireland Court of Appeal has made it clear in a number of cases that the requirement to manage cases in accordance with the overriding objective continues throughout the hearing. The Northern Ireland Court of Appeal has also made it clear that while tribunals must give some latitude to personal litigants who may be struggling in a complex field, the Employment Judge is under the same duty to ensure that the overriding objective is pursued in such cases.

Discrimination and whistleblowing cases normally require and are listed for five days. A limited number of cases may require 10 – 15 days. Unfair dismissal cases normally require and are listed for between two and three days. Other non-discrimination cases normally require between half a day and three days and are listed accordingly. Apart from the first day of hearing which commences after the witness statements and related documents have been read, hearings will take place between 10.00 am and 4.00 pm each day.

8. (2) Making the decision

Depending on the length of hearing and the complexity of the case the Employment Judge and the two lay panel members may reach a decision as soon as the case has been completed, but more frequently a panel meeting will be arranged on a separate day as soon as is practicable after the completion of the hearing. The Employment Judge is required to explain the relevant principles of law to the lay panel members. The Employment Judge and the two lay panel members will then consider the evidence and make findings of relevant facts and reach a decision having applied the relevant legal principles to the facts found by them. Depending on the decision reached they will also decide the appropriate remedy to make.

8. (3) Preparing written reasons for the decision promptly

The Employment Judge is required to draft the tribunal's written reasons for the decision reached in accordance with the Rules which are set out below. This can be a time-consuming process. Writing up time is provided to the Employment Judge to draft the written reasons. The Rules require that:

“Written reasons for a decision shall include the following information -

- (a) the issues which the tribunal or Employment Judge has identified as being relevant to the claim;
- (b) if some identified issues were not determined, what those issues were and why they were determined;
- (c) findings of fact relevant to the issues which have been determined;
- (d) a concise statement of the applicable law;
- (e) how the relevant findings of fact and applicable law have been applied in order to determine the issues;
- (f) where the decision includes an award of compensation or a determination that one party makes a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated;