

Nature of the Role of Vice President of the Industrial Tribunals and the Fair Employment Tribunal

1. PURPOSE OF OFFICE

- (i) To administer justice in accordance with the law of Northern Ireland, United Kingdom (in certain areas) and Europe, subject to the European Union (Withdrawal) Act 2018 and the Northern Ireland Protocol to the Withdrawal Agreement between the United Kingdom and the European Union in the area of employment and related laws by:
 - (a) hearing cases at first instance;
 - (b) hearing appeals under certain statutory provisions
 - (c) re-hearing cases in which the decision of the tribunal has been revoked by the Court of Appeal on appeal;
 - (d) reconsidering his/her own decisions where it is necessary in the interests of justice to do so;
 - (e) re-hearing cases in which another tribunal has revoked its own decision on review and ordered a re-hearing.

- (ii) To assist the President to improve access to justice for tribunal users by:
 - (a) Providing prompt and fair hearings, in accordance with the overriding objective to do justice between the parties, before independent and impartial tribunals;

 - (b) By ensuring the prompt delivery of just judgements/decisions by the tribunals;

 - (c) By ensuring and maintaining judicial quality and efficiency of tribunals; and

 - (d) By promoting confidence in the tribunal system.

- (iii) To deputise for the President in his absence.

2. JURISDICTION – FACTUAL INFORMATION

- 2.1 The Vice President sits in the Fair Employment Tribunal and the Industrial Tribunals.

The Fair Employment Tribunal is unique to Northern Ireland and hears and determines claims of unlawful discrimination on the grounds of religious belief and political opinion.

- 2.2 The Industrial Tribunals hear and determine disputes between employers and employees, prospective employers and employees and former employers and employees in relation to approximately 80 individual employment rights and related employment issues. A list of the principal legislation involved is set out at **Appendix 1**. The main complaints which the Industrial Tribunals hear and determine are:-

Equal Pay Claims

- (1) Equal Pay claims;

Discrimination Claims

- (2) claims of disability discrimination by way of direct discrimination, disability related discrimination, failure to make reasonable adjustments, harassment and victimisation;
- (3) direct discrimination, indirect discrimination, harassment and victimisation claims in relation to:-
- Age
 - Family status (this claim can only be made directly under European Law)
 - Fixed term work

- Gender (including sex, pregnancy and maternity leave)
- Gender reassignment
- Marital status
- Part-time working
- Race
- Sexual orientation

The Fair Employment Tribunal and the Industrial Tribunals have the power to make:-

- (a) orders for compensation including injury to feelings and personal injuries and pecuniary loss as would be obtainable in the High Court with no upper financial limit;
- (b) orders declaring the rights of the parties in relation to the alleged discrimination;
- (c) recommendations that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect of the unlawful discrimination on the claimant; and
- (d) recommendations (Fair Employment Tribunal) that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect of the unlawful discrimination on a person other than the claimant

Non-discrimination claims

- (5) Unfair dismissal claims:
 - (i) where the reason for dismissal and the fairness of dismissal are in dispute;
 - (ii) for making a public interest disclosure (whistle blowing);

- (iii) for failure to follow the statutory dismissal and disciplinary procedure;
- (iv) on health and safety grounds;
- (v) for reasons connected with pregnancy, childbirth or taking maternity leave, adoption or paternity leave or seeking to take time off for dependents;
- (vi) due to exercising or seeking to exercise rights as a part-time worker;
- (vii) for refusing to do shop work on Sundays;
- (viii) for trade union membership or activities or for non-trade union memberships; and
- (ix) for asserting a number of statutory rights.

The tribunal can order the employer to reinstate the employee into his former position or to re-engage him in another position. Alternatively, the tribunal can award compensation, comprising a basic award calculated in accordance with statute and a compensatory award in respect of financial loss up to a current maximum of £94,063.00.

- (6) Protection of Employment following Transfer of Undertakings (TUPE) and service provision changes.
- (7) Redundancy payments and protective awards.
- (8) Unlawful deduction from wage
There is no upper financial limit on the amount the tribunal can award.
- (9) Complaints under the Working Time (Northern Ireland) Regulations 1998 in relation to statutory annual leave and rest periods.
- (10) Contractual disputes where the amount claimed does not exceed £25,000 and where employment has ended.
- (11) Detriment as a result of a protected interested disclosure.

- (12) Detriment as a result of trade union membership, activities etc.
- (13) Complaints under the Agency Workers Regulations.

2.3 **Statutory Appeals to the Industrial Tribunal and the Fair Employment Tribunal**

The Industrial Tribunals and the Fair Employment Tribunal and the Chairmen have power to hear and determine the following appeals:-

- under the Fair Employment legislation against a direction made by the Equality Commission against an employer following an investigation by the Commission;
- under the Reserve Forces Appeals legislation;
- under the Gangmasters (Appeals) Regulations 2006;
- against improvement, enforcement and Prohibition Notices issued under the Health & Safety at Work (Northern Ireland) Order 1978;
- against training levies issued under the Industrial Training (Northern Ireland) Order 1984;
- against unjustifiable discipline by a trade union against a worker under the trade union and Labour Relations Agency (Northern Ireland) 1995;
- against non-discrimination Notices served under the Sex Discrimination (Northern Ireland) Order 1976; and

2.4 **Prohibition Orders**

Industrial Tribunals have power to determine applications for Prohibition Orders under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct of Employment Agencies and Employment Business Regulations (Northern Ireland) 2005. The tribunal has power to prohibit a person from carrying on or being concerned with the

carrying on of any employment agency or employment business altogether or for a specified period.

2.5 **Reviews**

The Fair Employment Tribunal and Industrial Tribunals have power to reconsider their decisions on their own initiative or on the application of a party where it is necessary in the interests of justice to do so..

2.6 **Appeals**

There is no Employment Appeal Tribunal in Northern Ireland. Appeals on points of law from the decisions of the Fair Employment Tribunal and Industrial Tribunals go directly to the Court of Appeal which is the highest Court in Northern Ireland on a point of law only. A further appeal can be made to the Supreme Court of the United Kingdom (formerly the House of Lords) on arguable points of law of the greatest public importance.

2.7 **Referral of questions of European Law directly to the European Court**

Within the terms of the NI Protocol, and subject to any changes to that Protocol, questions may be referred to the European Court in certain circumstances by the High Court or by the Court of Appeal.

2.8 **How the jurisdiction of IT and FET is exercised**

Most cases are heard by a panel of three members namely a legally qualified Employment Judge and two lay members, one drawn from an employer's panel and one from an employee's panel. However, once appointed, the lay panel members perform an independent judicial role and do not represent either side. The Employment Judge is appointed to sit in

both the Fair Employment Tribunal and the Industrial Tribunals. At present the Fair Employment Tribunal and the Industrial Tribunals have separate panels of lay members.

2.9 **Regulations and Rules of Procedure**

Regulations and Rules of Procedure governing the Industrial Tribunals and the Fair Employment Tribunal are contained in the Industrial Tribunals and the Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland)2020.

The Industrial Tribunals and the Fair Employment Tribunal also apply the principles of evidence. Reference is made on a regular basis to County Court and High Court practice and the tribunals must comply with Human Rights legislation.

2.10 **Workload**

At the end of March 2022, there were 1,779 freestanding claims in the system. In addition, there were 187 multiples groups as follows:

Type	Groups	No of Claimants	No of Claims
Holiday Pay	112	13,781	131,461
Pension	17	3,492	3,889
Discrimination	21	927	1,377
Non-Discrimination	31	2,336	2,343

The Holiday Pay cases are stayed pending a decision on several liability issues in the Supreme Court which is due to be heard in December 2022. Those cases which do not settle will have to be listed for remedy hearings.

The Pension cases have been stayed pending the implementation of the Miller, O'Brien and Surgent decisions.

2.11 **Full Hearings**

Liability and remedy are usually dealt with at a single hearing, but separate remedy hearings can be held for a specific reason eg where there are complicated actuarial calculations.

Costs hearings are nearly always held separately.

2.12. **Full Hearings of Discrimination Cases**

The majority of discrimination case Hearings on liability last up to 5 days. A few more complicated cases can be listed for longer.

The majority of Hearings on costs take part of a day.

2.13 **Full Hearings of non-discrimination cases which include a complaint of unfair dismissal**

The industrial tribunal will normally determine liability and remedy at the one Hearing which will normally last approximately 2-3 days.

2.14 **Full Hearings of non-discrimination cases which do not include complaints of unfair dismissal**

These cases are usually dealt with within one day.

3. TYPICAL WORKLOAD OF VICE PRESIDENT:

- (1) The Vice President will spend approximately 75% of his/her time hearing, deciding and writing fully reasoned judgments/decisions in the very complex equal pay and discrimination cases and the more complex and high profile non-discrimination cases, together with cases which have been remitted by the Court of Appeal.
- (2) Within that 75% of time, the Vice President will also:
 - (i) Case manage and conduct case management discussions and other interim hearings in the very complex equal pay and discrimination cases, and the very complex non-discrimination cases;
 - (ii) Intensively case manage and conduct case management discussions and other interim hearings in a number of the large scale and complex multiple claims cases;
 - (iii) Case manage sex discrimination claims in which allegations of sexual assault and/or other criminal offences are made; and
 - (iv) Case manage all applications for postponements and conduct interim hearings to ensure consistency in the handling of postponement applications and the effective and efficient implementation of the President's listing policy when the President is on leave or is unavailable.
- (3) The Vice President will spend approximately 75% of his/her time on out of court management and leadership activities as set out at Section 4 below.

4. OUT OF COURT ADMINISTRATION, MANAGEMENT AND LEADERSHIP RESPONSIBILITIES

4.1 Taking primary responsibility for the training of salaried Employment Judges and panel members

- analysing, identifying and prioritising the training needs of the salaried and fee paid Employment Judges and the lay panel members
- the design, organisation, delivery and evaluation of the training provided
- Carrying out the necessary research and then composing the training materials, including papers on the relevant legal principles and case studies
- Writing guidance for the facilitators in delivering the training
- Meeting with the facilitators to prepare them to deliver the training
- The training includes:
 - (a) Induction training for Employment Judges and lay panel members
 - (b) Advanced induction training for Employment Judges and lay panel members
 - (c) Ongoing training for Employment Judges and lay panel members
 - (d) Specialist training for Employment Judges in jurisdictions including Discrimination, Equal Pay, Insolvency, Statutory Grievance Procedures and Litigants in Person
 - (e) Facilitators' training for the salaried Employment Judges and those fee-paid Employment Judges interested in delivering training
 - (f) Training for a number of salaried Employment Judges on Complaints
 - (g) Responding to particular training needs when they arise
 - (h) Providing one-to-one training where necessary as a result of monitoring decisions, and following the outcome of complaints
 - (i) Providing written information and guidance for Employment Judges concerning particular problems and possible solutions

4.2 Responsibility for investigating complaints

The Vice President is responsible for investigating complaints about the conduct of the Employment Judges and lay panel members which fall within the Code of Practice issued by the Lord Chief Justice under section 16 of the Justice (Northern Ireland) Act 2002 and for making a detailed report to the President with a recommendation.

4.3 Data Protection Officer

Dealing with Data Protection and Freedom of Information Queries in so far as they affect the employment judiciary

4.4 Deputising for the President, in his absence, in the management of:

- Employment Judges
- panel members A competition is pending to refresh that panel

4.5 Assisting the President in the development of strategy and policy in relation to the organisation and coordination of the Fair Employment Tribunal and the Industrial Tribunals throughout Northern Ireland in order to improve access to justice for users:

- (a) By ensuring the provision of prompt and fair hearings, in accordance with the overriding objective to do justice between the parties, before independent and impartial tribunals;
- (b) By ensuring the prompt delivery of just judgments/decisions by the tribunals;
- (c) By ensuring and maintaining judicial quality and efficiency of tribunals; and
- (d) By promoting confidence in the tribunal system.

4.6 Responsibility for appraisals

The Vice President will be required to assist the President to carry out appraisals Employment Judges.

4.7 Responsibility for determining whether claims brought to the Industrial Tribunals should be heard by the Fair Employment Tribunal.

4.8 Providing advice, guidance and directions to the Secretary to the Tribunal on the operation of the Tribunal Rules and Procedures

- Providing advice, guidance and direction to the Secretary of the Tribunals on the operation of the early conciliation procedure and the tribunal rules.
- Drafting standard letters and directions for the use of administrative staff in progressing cases to Hearing.
- Liaising with the Secretary to the Tribunal in relation to media enquiries in relation to the work of the tribunal in the President's absence.
- Liaising with the Secretary to the Tribunal on issues such as requests for access to Employment Judge's notes and Freedom of Information requests in the President's absence.

4.9 Attendance at meetings

As part of strategic planning the Vice President attends regular meetings between the President, the Department and other relevant groups such as the Labour Relations Agency and the Employment Lawyers Working Group as directed by the President.

4.10 Responsibility for Library

Responsibility for the maintenance of the judicial library and for the ordering of books and all other materials.

4.11 Panel Members' conflicts

- Liaising with and providing panel members with guidance and advice on conflict in the President's absence

4.12 Responsibility for listing cases in the President's absence

- Listing cases in the President's absence in accordance with the President's listing policy.

- **Postponement applications**
To maintain effective implementation of the listing policy and to ensure that cases proceed as listed, all applications for postponements are considered and determined by the President and Vice President at a case management discussion (in the majority of applications) at which the case will be re-timetabled and re-listed if the postponement is granted.
- **Multiple claims cases**
At the end of April 2012, there were groups of multiple claims cases totalling 139,140 . These multiple claims cases are divided among the President, the Vice President and the full-time Employment Judges for intensive case management.

4.13 Responsibility for deployment of salaried Employment Judges, fee-paid Employment Judges and lay panel members to hear cases, conduct interim hearings including case management discussions and other judicial work in the President's absence

The Vice President is responsible in the President's absence for allocating cases to the salaried Employment Judges, fee-paid Employment Judges and lay panel members for all types of Hearings and other judicial work. The Vice President will identify an Employment Judge to deal with a particular case or list of cases in the President's absence. The Vice President is also responsible for ensuring that the salaried Employment Judges are given time to write decisions to ensure their prompt delivery in the President's absence.

4.14 Responsibility for assisting the President to ensure the quality of judicial work and performance

- Monitoring decisions which have been issued by salaried and fee-paid Employment Judges to ensure high quality in the President's absence.
- Planning and co-ordinating monthly meetings with the salaried Employment Judges to keep them up to date with developments both judicial and administrative in the President's absence.

- Assisting the President to provide guidance and directions to the salaried and fee-paid Employment Judges and panel members on all aspects of work whilst ensuring judicial independence.
- Providing e-mail and telephone academic support and case management support to salaried and fee-paid Employment Judges.
- Providing advice and guidance on conflict issues arising in cases in the President's absence.

4.15 Responsibility for authorising the payment of fees in the President's absence

The Vice President is responsible for authorising the payment of fees for claims from fee-paid Employment Judges for fees in respect of decision preparation and decision writing in complex cases, and for drafting cases stated in the President's absence.

4.16 Responsibility for conduct issues

The Vice President is responsible for dealing with conduct issues in respect of the chairmen in the President's absence.

4.17 Responsibility for complaints other than judicial conduct in the President's absence

- Responding to complaints about judicial directions, orders and decisions and informing complainants of the appropriate procedures, for example – review, judicial review or appeal in the President's absence.
- Dealing with and responding to correspondence from MPs, MLAs and councillors with regard to cases and the tribunal processes in the President's absence.
- Dealing with and responding to complaints from parties with regard to tribunal processes in the President's absence.
- Dealing with and responding to queries and complaints about the application of the rules of procedure in relation to the progress of cases in the President's absence.
- Dealing with complaints from lay panel members in the President's absence.

4.18 Assisting the President in the administration of justice and the development of the law

- Attending meetings between the President and the Department in relation to:
 - (i) the provision of feedback to the Department on the operation of the legislation and the Rules;
 - (ii) potential and proposed changes to the legislation and Rules and their operational implications;
 - (iii) the Review and reform of the Fair Employment Tribunal and industrial tribunals in Northern Ireland.

4.19 Co-operation and consultation with the Presidents of England, Wales and Scotland

The Vice President attends Regional Chairmen's Conferences to ensure as much co-operation as possible across the United Kingdom in terms of tribunal judicial practice

4.20 Extra judicial activities undertaken

- The Vice President attends conferences in his/her own time organised by the Council of Employment Judges of Great Britain and Chairmen of Northern Ireland in representative role

Lecturing to the following:

- The Institute of Professional Legal Studies
- The Bar Trainees
- Professional training organisations
- Attending conferences of the Administrative Justice and Tribunals Council for Great Britain in a representative role
- Attending Conferences on Human Rights in Northern Ireland
- Tutoring solicitor and bar trainees and the Institute of Professional Legal Studies on presenting cases to the Industrial and Fair Employment Tribunal.

- Providing references for Employment Judges and legal representatives applying for judicial office.
- Attending Conferences Organised by Queens University Belfast and the Bar Council in representative role
- Attending dinners organised by the Institute of Professional and Legal Studies, the Law Society and the Bar Council in a representative role.
- Tutoring on the Law Society Advanced Advocacy course to improve the standard of legal representation in tribunals and training the tutors.

Some of these extra judicial activities are carried out in the Vice-President's own time.

4.21 Continuous development

Employment and discrimination law is a fast moving area of the law. The Vice President is expected to keep up to date by reading decisions in appellate courts, reading regular updates from specialist server providers, reading journals and by attending specialist conferences.

5. WHEN CONDUCTING HEARINGS

Preparing for trial

- 5.1 The Vice President is required to read the case papers in advance of hearings often at short notice. This can involve a considerable degree of preparatory work, involving the assimilation of large quantities of legal and factual materials.
- 5.2 In cases which involve a full panel, the Vice President will meet with the other panel members to conduct a preliminary discussion of the case. The Vice President will identify relevant legal principles often after detailed preparation, as outlined above, explain the issues in the case and summarise the main legal and factual issues to focus on. The Vice President will ensure that panel members have a sufficient understanding of the relevant law and will specifically refer to any issues he/she anticipates from preparation, such as potential applications to be made by the parties or issues which will need to be dealt with at the outset of the hearing.

5.3 **Case Management** **Case Management Discussion**

The parties must be in a position to discuss at the CMD the steps which they have taken to try to resolve the dispute between them. In GB judicial mediation was introduced in 2006. In Northern Ireland judicial mediation is not currently part of the process. However, the current President intends to introduce judicial mediation at the earliest opportunity. The parties are encouraged to avail of the assistance of the LRA as independent conciliators and a member of the LRA is always in attendance in the tribunal building.

5.4 **Case Management Discussion Hearing**

If the parties are unable to resolve their dispute the Vice President will proceed to identify the legal issues and the main factual issues in the case with the parties and their representatives. This is particularly challenging in the large group of cases which fall into the following categories: when one or both parties is unrepresented; if a claimant suffers from a disability affecting their ability to communicate; if the claimant does not have English as his first language; or if the claimant cannot speak English and requires the services of an interpreter.

- 5.5 The Vice President is required to determine the outstanding interlocutory matters and makes any necessary Orders to ensure that the case progresses promptly to Hearing. The Vice President discusses the way evidence should be given, that is either orally or by way of witness statements and imposes deadlines for the production and exchange of witness statements so that the case is prepared well before the hearing.
- 5.6 The Vice President will direct the claimant to produce a schedule of loss setting out the claim for financial loss. The Vice President will explain the categories of documents required for the trial bundle and will set deadlines for the bundles being prepared and lodged with the tribunal in advance of the hearing.
- 5.7 The Vice President will impose a timetable within which the various steps must be completed. The Vice President fixes the date for hearing after ensuring that the parties identify the number of witnesses and the type of evidence they are going to give and the parties give an estimate of the length of time the direct and cross examination of witnesses. A date for hearing is fixed.

5.8 The Vice President warns the parties in appropriate cases, in line with Court of Appeal guidance, that if they introduce irrelevant issues or evidence during the hearing or act unreasonably this could lead to an Order for costs.

5.9 **Case Management Discussion record and directions**

The Vice President is required to prepare a detailed CMD record including any decisions on disputed interlocutory matters and provides the full timetable in writing for the parties to follow to ensure that the case is ready for hearing.

5.10 The Vice President will then give detailed directions to the tribunal staff to ensure that the directions and the timetable are fully policed and that the file is referred back to the Vice President in the event of slippage. If the file is referred back, the Vice President will arrange and conduct further policing CMDs, usually at short notice and before or after his/her other hearings or work. If any issues arise in correspondence on the file the case file will be referred to the Vice President who is case managing it thus ensuring efficient use of time as the Vice President will be familiar with the background.

Presiding

5.11 The Vice President is responsible for the conduct of the Hearing. At the outset of the Hearing the Issues will be confirmed Unlike the majority of other tribunals which are administrative (party –v- state) the Fair Employment and Industrial Tribunals are adversarial (party –v- party) as in the Courts and follow the pattern of court cases with an opening address, evidence given by witnesses through witness statements and cross-examination and closing submissions. All panel members may ask

questions of the witnesses. From the outset the Vice President will uphold the authority and dignity of the tribunal. The Vice President will ensure all parties are treated with respect and courtesy. The Vice President will show empathy whilst remaining impartial and objective.

- 5.12 A particular aspect of hearings in the Industrial Tribunals and Fair Employment Tribunal is the increasing prevalence of litigants in person. There is a multiplicity of reasons for this, but it can create particular issues for the Vice President to resolve. The Vice President will ensure that parties properly understand the case they have to make and the case being made against them. The Vice President will also ensure that the proceedings are conducted in a manner which is fair to both parties.
- 5.13 Where there is dispute about the admissibility of evidence between parties, the Vice President must explain the practice and procedure on the admissibility of evidence in tribunals to any unrepresented parties or any parties with lay representatives and must give the party seeking to adduce the evidence the opportunity to explain why the evidence is admissible. The tribunal must then give the party objecting the opportunity to make submissions. The tribunal must then give the party seeking to have the evidence admitted the opportunity to reply. At that stage the tribunal must rise to consider the submissions and to make a ruling on the admissibility of the proposed evidence which it must then provide to the parties before the case can continue.
- 5.14 Many claimants, in particular, may suffer from disabilities or the consequences of workplace stress and illness by the time a case reaches hearing. The Vice President must ensure that their unique needs are dealt with in each case whilst remaining impartial.

- 5.15 The Vice President must take an accurate note of the relevant parts of the evidence, a task which can be particularly arduous in the longer multi-day hearings. Issues often arise about evidence given earlier in the hearing and the Vice President's notes are used to resolve disputes. Hearings are now recorded.
- 5.16 Matters of procedure and law can often arise during hearings. They are wide-ranging and diverse and will include applications for adjournments, to have witnesses excluded from the hearing, to exclude evidence, to consider discovery issues, to consider claims of legal professional privilege, and to consider applications for bias or based on estoppel to name but a few. Many of these rulings are given orally and may require to be included in a fully reasoned written decision. There are occasions when the parties will indicate they intend to challenge a ruling in the High Court by way of judicial review. In these cases a fully reasoned decision will be provided to facilitate the High Court.
- 5.17 The tribunal panel is often referred to as an industrial jury because part of its function is to bring its industrial knowledge to bear on the cases before it. In each case there will be a panel meeting at which the Vice President will guide the analysis of the evidence and explain the relevant law in clear straightforward terms to the lay members to enable the tribunal to find relevant facts, apply the law and reach its decision.
- 5.18 The Vice President is required to ensure the prompt dispatch of business to counter avoidable delay. Case papers are read thoroughly and discussed with panel members before the hearing. Issues are clearly identified at the outset of the hearing to ensure focus on relevant matters. The Vice President will ensure each party is able to present their case. The Vice President will use analytical and communication skills to ensure the parties

are listened to and understood and also feel that they are listened to and understood.

Judgment – Written Decisions

5.19 Most tribunal decisions in Northern Ireland are written due to the complexity of the facts and issues. However oral decisions with reasons are given in some simpler cases. In such cases, a party can ask for written reasons.

5.20 *Rule 57 provides that Judgments should:*

- (a) identify the issues which the tribunal has determined;*
- (b) state the findings of fact made in relation to those issues;*
- (c) concisely identify the relevant law;*
- (d) state how that law has been applied to those findings in order to decide the issues; and*
- (e) where the judgment includes a financial award identify, by means of a table or otherwise, how the amount to be paid has been calculated.*

5.21 Before drafting a decision the tribunal must consider and analyse all the evidence both oral and documentary which is relevant to the issue which have been identified in the case. The Vice President will ensure that the panel weighs up the competing evidence to find facts. The Vice President will ensure that the panel members understand the law by explaining legal concepts in clear everyday language. The tribunal must then find relevant facts by deciding which evidence it prefers and by explaining why. The Vice President must do this in conjunction with the two lay panel members if sitting as a full tribunal. The tribunal must apply the relevant law to the facts which have been found.

5.22 The Vice President must ensure that a reasoned judgement is delivered following the panel deliberations.

5.23 **Remedy.**

A case can require a separate hearing on remedy when the tribunal must consider a claim for compensation using the statutory heads for compensation and must consider the principles applying to compensation outlined in case law. The tribunal is obliged to assess compensation according to the statutory headings and on general tortious principles in relation to injury to feelings, future loss and personal injury compensation. Longer, more complex cases frequently require an assessment of pension loss and may require the tribunal to assimilate and assess actuarial evidence.

5.24 Remedies other than compensation are open, in some cases, to the tribunal and this requires the tribunal to assess and apply the law relating to re-engagement, reinstatement and declarations and recommendations on future conduct by the employer.

5.25 **Costs**

In contrast with other Civil Courts costs do not follow the event (in tribunal cases) in that they are not automatically awarded against the losing party. An application for costs may require a separate hearing and the tribunal is obliged to consider whether the application satisfies the statutory test set out in the Rules. A tribunal may only award costs in limited circumstances such as where a party has behaved vexatiously, abusively or otherwise unreasonably or if bringing or defending the proceedings has been misconceived. The tribunal must consider whether the conduct complained of meets the statutory test and, if so, whether it is appropriate for the tribunal

to exercise its discretion to award costs. The tribunal may also take account of the parties' means. Because there is such a high proportion of unrepresented parties the tribunal may also be required to assess costs in relation to preparation time orders when unrepresented parties ask for costs to cover their time. The tribunal has power to award wasted costs against a legal representative who has acted negligently or unreasonably in the conduct of proceedings.

5.26 **Deposit Order Preliminary Hearings**

Under Rule 34, a Preliminary Hearing may be held to determine whether a claim or response (as part of one) has little reasonable prospect of success and, if so, whether the party should be required to pay a deposit of up to £500 before being permitted to proceed further with that claim or response.

Appendix 1

Principal legislation in the employment field includes provision for Industrial Tribunals to determine claims and appeals:

Claims:

- under provisions of the Sex Discrimination (Northern Ireland) Order 1976 and the Race Relations (Northern Ireland) Order 1997 relating to employment, partnerships, membership or non-membership of trade unions, the granting of trade and professional qualifications, vocational training, employment agencies, and appeals against non-discrimination notices;
- under the Equal Pay Act 1970 (as amended);
- under the employment provisions of the Disability Discrimination Act 1995;
- under the Employment Equality (Sexual Orientation) Regulations 2003;
- under the Employment Equality (Age) Regulations (Northern Ireland) 2006;
- that an employer has failed to consult with a trade union regarding proposed redundancies, for protective awards and payment of protective awards under the Employment Rights (Northern Ireland) Order 1996;
- of unfair dismissal under the Employment Rights (Northern Ireland) Order 1996 as amended by the Employment Relations (Northern Ireland) Order 1999 and the Employment (Northern Ireland) Order 2002 arising from:
 - disputes regarding entitlement to and amounts of redundancy payments under the Employment Rights (Northern Ireland) Order 1996;
 - trade union membership/activities or non-membership of a trade union;
 - an action seeking to assert a statutory employment right;
 - certain specified types of action on health and safety grounds;
 - reasons relating to pregnancy or any reason connected with maternity;
 - taking, or seeking to take, maternity, parental, adoption or paternity leave;
 - taking, or seeking to take, time off for dependants;

- eligibility for the National Minimum Wage (or a higher rate of National Minimum Wage) or seeking to enforce a right to either;
- reasons relating to the Working Time Regulations (Northern Ireland) 1998 or
- reasons relating to part-time working.
- involving other rights arising under the Employment Rights (Northern Ireland) Order 1996;
- that employers have not informed and consulted trade unions about transfers of undertakings under the Employment Rights (Northern Ireland) Order 1996;
- alleging breach of contract under Article 7 of the Industrial Tribunal Extension of Jurisdiction Order (Northern Ireland) 1994;
- under the Employment Act 2002 for ensuring that fixed-term employees are treated no less favourable than their comparable permanent employees.
- under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000
- under the Agency Workers Regulations (Northern Ireland) 2011

Appeals:

- *against improvement, enforcement and prohibition notices issued under the Health & Safety at Work (Northern Ireland) Order 1978;*
- *against determinations under a variety of compensation regulations delegated to the Tribunals;*
- *against unjustifiable discipline by a trade union under the Trade Union & Labour Relations (Northern Ireland) Order 1995;*
- *under the Reserve Forces Appeals Legislation or,*
- *under the Gangmasters (Appeals) Regulations 2006.*