



The Tribunals in Northern Ireland

Updated Guidance: 11 June 2020

Overview

The President of the Office of the Industrial and Fair Employment Tribunal ("OITFET") issued a further direction on 11 June 2020 ("Guidance"). The Guidance states that all full and preliminary hearings listed between 1 July and 30 October 2020 are now postponed, and that a 'Review Case Management Preliminary Hearing' will be arranged in relation to all active cases.

The immediate and short term implications

The OITFET building has been closed since 27 March 2020 and although the Employment Judges and administrative staff have been working remotely no hearings (whether via telephone or video conference) have taken place over this period. Earlier Presidential guidance issued on 27 March 2020 indicated that all claims listed between 27 March and 1 July 2020 would be postponed.

The Guidance issued on 11 June 2020 explains that as part of measures to mitigate risks to health during the current pandemic, the OITFET's administration is currently making arrangements to facilitate the conduct of hearings in person, where it is safe to do so, hybrid hearings (where some of the parties are present in the OITFET's building and others take part remotely), where it is safe to do so, and fully remote hearings (where all parties take part remotely).

It also states that, pending the reopening of the OITFET's building and subject to the implementation of arrangements to facilitate remote hearings:

- **all Final Hearings** which are currently listed **from 1 July 2020 to 30 October 2020 are now postponed;**
- **all Preliminary Hearings** (to determine matters such as jurisdictional issues or whether a deposit order should be made) which are currently listed **from 1 July 2020 to 30 October 2020, are now postponed;**
- **Review Case Management Preliminary Hearings** will be arranged in respect of all active cases to determine the following:
 - o whether the case could be resolved by conciliation or by means other than a hearing;
 - o if not, whether the case is fully ready for hearing;
 - o if so, whether the case is suitable for a remote hearing, a hybrid hearing or a fully in person hearing in the OITFET's building, where it is safe to do so, once it has reopened; and
 - o whether case management orders and directions should be made if the case is not fully ready for hearing.

Looking ahead

The aim of the Guidance is stated to be a focus on the gradual increase in the disposal of business while adhering to public health guidance. The new 'Review Case Management Preliminary Hearings' referred to above will be listed in the following order:

1. Urgent Cases, which include:
 - a. applications for interim relief;
 - b. statutory appeals against prohibition notices;

- c. part heard cases;
 - d. hearings to determine remedy; and
 - e. those cases where a party (or parties) to the case notifies the OITFET's office by email that he or she (or they) considers an urgent hearing is required, and at the same time provides the reasons for the application, together with the comments of the other party or parties (where the application is being made by just one party), and the Employment Judge is satisfied, having regard to those reasons and the overriding objective, that an urgent hearing is required;
2. All Hearings which had been listed from (we believe mid- March 2020 although this is not expressly stated) up to 1 May 2020 and which had been postponed prior to and following the issue of the Presidential Guidance dated 20 March 2020;
 3. All Hearings which had been listed from 4 May 2020 to 30 June 2020 and which had been postponed following the issue of the updated Presidential Guidance dated 27 March 2020;
 4. All Hearings which have been listed from 1 July 2020 to 30 October 2020 and which are now postponed with immediate effect on foot of the Guidance.
 5. All Hearings which remain listed on dates after **30 October 2020**;
 6. All Case Management Preliminary Hearings which had been postponed on foot of the Presidential Guidance dated 27 March 2020; and
 7. All cases which have been received and which have not yet been listed for Case Management Preliminary Hearings.

Comment

If you have any hearings listed between now and October 2020 they have now been postponed and removed from the list, and so you should inform your internal client and witnesses that they can also remove the dates from their diaries.

However before putting any cases, or necessary preparations, to the bottom of your task list we would recommend that you reconsider the merits of any cases and ensure all of the relevant stakeholders are in agreement with your proposed strategy. If conciliation is something you might consider perhaps now is the time to explore that option again before the case is listed for a Review Case Management Preliminary Hearing.

If conciliation is not something you wish to explore then we would recommend that you carefully balance the benefit of investing time now to continue your preparations against the cost implications of doing so. Collating discovery documentation and preparing witness statements now will reduce the risk of documents being misplaced and memories fading further. Furthermore perhaps if some of your witnesses are not fully utilised at the moment because of the Covid circumstances taking time to reflect and capture there evidence now will undoubtedly assist with the case preparations at a later, and perhaps busier, time.

There will also inevitably be additional cost implications for those individuals or businesses who instruct external advisors to assist with tribunal litigation, not least for the attendance at the Review Case Management Preliminary Hearings. This said we are hopeful that these will take place at set times (rather than as part of a floating list) and will be via telephone making these hearings effective from both a time and cost perspective.

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