

# The Employment & Equality Tribunal

## Information

Welcome to the website for the Employment & Equality Tribunal in the Isle of Man.

This website is provided by the General Registry to give general guidance only in relation to the Employment & Equality Tribunal and is not, and should not be treated as, a complete and authoritative statement of the law. Advice from legal or other appropriate sources should be sought as necessary.

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## General

### 1 What is The Employment & Equality Tribunal?

The Employment & Equality Tribunal ("the Tribunal") is an independent judicial body established in law. The Tribunal can hear and determine Complaints brought in respect of disputes over statutory employment rights such as, but not limited to, Unfair Dismissal, Sex Discrimination and Unlawful Deduction from Pay. The Tribunal also has jurisdiction with regard to certain other Complaints that can be brought under the provisions of the Equality Act 2017 in regard to matters such as the provision of goods and services, premises, education etc.

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### 2 Who sits on the Tribunal and how are they appointed?

Normally the Tribunal comprises of a Chairperson and two lay members, although in some circumstances the Chairperson sits alone.

The Appointment of the Chairperson, Deputy Chairpersons and the lay members of the Tribunal is the responsibility of the Appointments Commission established under the provisions of the Tribunals Act 2006.

The Chairperson (and Deputy Chairpersons) is required to be a barrister, advocate or solicitor of not less than 7 years' standing.

Lay members of the Tribunal are drawn respectively from panels of persons who are appointed after consultation with organisation(s) who are representative of employers "the employer panel" and of employees "the employee panel". There is also to be appointed "the general panel".

It is important to note that the lay members of the Tribunal are not there in any way to represent the parties appearing before the Tribunal, but rather to sit as independent members drawing upon their knowledge and experience.

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### 3 Who are the current persons appointed to the Tribunal?

The current appointments made by the Appointments Commission are:

Chairperson – Mr D L Stewart

Deputy Chairpersons – Mr P D L Scott, Ms F Kniveton, Mr J Wright & Ms O Austin

Panel of persons appointed after consultation with organisation(s) representative of employers –

Mrs F J Robinson, Mr D M Booth, Mrs S Hammond, Mrs E P Chinn, Mr C P Andrew, Mrs S L Blayden, Mr C K Kerruish, Mrs J Kaye and Ms A M Main Thompson OBE.

Panel of persons appointed after consultation with organisation(s) representative of employees –

Mr C S Barr, Mr A W Bath, Mr A P S Jones, Mr D A Keates, Mrs L M Grady & Mrs R Gale.

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#### **4 Are there rules governing the procedure of the Tribunal?**

The procedure of the Tribunal, in respect of Complaints brought on or after the 1<sup>st</sup> January 2019, is governed by the Employment & Equality Tribunal Rules 2018 which can be accessed at the Government Website –

<https://www.gov.im/media/1368021/consolidated-employment-and-equality-tribunal-rules.pdf>

A rule by rule guide to the Employment & Equality Tribunal Rules 2018, produced by the Department of Economic Development, can be accessed at the Dept. of Economic Development Website –

<https://www.gov.im/media/1364335/employment-and-equality-tribunal-rules-2018-explanatory-notes.pdf>

For Complaints brought prior to the 1<sup>st</sup> January 2019 the Employment Tribunal Rules 2008 continue to apply and can be viewed at;-

<https://www.gov.im/media/623315/employmenttribunalrules2008.pdf>

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#### **5 What is the overriding objective of the Tribunal Rules?**

The overriding objective of the Tribunal Rules is to enable the Tribunal and Chairperson to deal with cases justly.

Dealing with a case justly includes, so far as is practicable:

- ensuring that the parties are on an equal footing;
- dealing with the case in ways which are proportionate to the importance of the case and the complexity of the issues;
- avoiding unnecessary formality and seeking flexibility in the proceedings;
- avoiding delay, so far as compatible with proper consideration of the issues; and
- saving expense.

The Tribunal or Chairperson is required to give effect to the overriding objective when it or he exercises powers under, or interprets, the Tribunal Rules.

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#### **6 Does the overriding objective apply to the parties?**

Yes - the Tribunal Rules require that parties shall assist the Tribunal or Chairperson to further the overriding objective.

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### **Before proceedings in the Tribunal are commenced**

#### **7 Is there any help available to individuals and employers before proceedings are commenced?**

- (a) For **work** related issues the Manx Industrial Relations Service, who provide a free and impartial service, and are available to talk to individuals and employers with regard to matters such as employment rights and employment disputes. They can seek to resolve matters through conciliation either prior to a complaint being made to the Tribunal, or after a Complaint and Response have been submitted.

The Manx Industrial Relations Service can be contacted as follows:

Tel: +44 1624 672942

Email: [iro@mirs.org.im](mailto:iro@mirs.org.im) Website: [www.mirs.org.im](http://www.mirs.org.im)

- (b) For **education** related issues the person appointed by the Department of Education, Sport and Culture to conciliate in proceedings.

The Department can be contacted as follows:

Tel: +44 1624 685820

Email: [admin@doe.gov.im](mailto:admin@doe.gov.im)

Website: [www.gov.im/about-the-government/departments/education-sport-and-culture/information-and-publications/e/equality-in-education/](http://www.gov.im/about-the-government/departments/education-sport-and-culture/information-and-publications/e/equality-in-education/)

- (c) For **any other issue arising under the provisions of the Equality Act 2017** the Office of Fair Trading.

The Office of Fair Trading provide a conciliation service and can be contacted as follows:

Tel: +44 1624 687540

Email: [Equality.OFT@gov.im](mailto:Equality.OFT@gov.im)

Website: [www.gov.im/about-the-government/statutory-boards/isle-of-man-office-of-fair-trading/equality-act-2017-goods-and-services/](http://www.gov.im/about-the-government/statutory-boards/isle-of-man-office-of-fair-trading/equality-act-2017-goods-and-services/)

The Tribunals Office is not responsible for the content of external internet sites.

Help may also be available from other sources such as Trade Unions and Employer's Associations or from persons who are legally qualified.

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## **8 Will discussions with the Manx Industrial Relations Service or other conciliation provider alter the time limits for bringing a Complaint to the Tribunal?**

No – the **strict time limits which apply** with regard to the commencement of proceedings before the Tribunal always apply even if discussions and negotiations with are ongoing with the Manx Industrial Relations Service or other conciliation provider.

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## **9 Can a party be represented in proceedings before the Tribunal?**

Yes - in proceedings before the Tribunal parties may represent themselves or be represented by an advocate, or by a representative of a trade union or an employers' association or by any other person whom they desire to represent them.

Please note that once the details of a representative have been provided, future correspondence will **only** be issued to that representative.

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## **10 Is Legal Aid available for proceedings before the Tribunal?**

No – Legal Aid is not available for proceedings before the Tribunal, although very limited assistance may be available (should your means be such as to comply with the rules) under what is termed the Green Form Scheme. This enables persons to obtain legal advice from an advocate, but this does not include representation at a Tribunal hearing.

Advice on the Green Form Scheme should be sought from an advocate, a list of which is available at the Isle of Man Law Society, 27 Hope Street, Douglas. Their website is [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

The Tribunals Office is not responsible for the content of external internet sites.

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## Withdrawal of Complaints

### 11 If a Complaint is made to the Tribunal, can it be withdrawn?

Yes – a Complainant can at any time give written notice of withdrawal to the Clerk, and must indicate in the notice the Complaint, or parts of it, which are to be withdrawn. Where there is more than one Respondent, the notice of withdrawal must specify against which Respondents the Complaint is being withdrawn.

The Clerk will then inform all other parties of the withdrawal.

The withdrawal does not affect proceedings as to costs, preparation time or a wasted costs order.

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### 12 If a Complaint is withdrawn, can a Respondent ask for the proceedings to be dismissed?

Under the Employment Tribunal Rules 2008 it is necessary for a Respondent to make an application to have the proceedings dismissed. Such application must be made by the Respondent in writing to the Clerk, within 21 days of the notice of the withdrawal being sent to the Respondent.

However under the provisions of the Employment and Equality Tribunal Rules 2018, where a Complaint is withdrawn the Tribunal can issue a judgment dismissing the Complaint without the need for further application by either party, unless the Tribunal is satisfied in certain circumstances that it would not be appropriate to do so.

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## Contacting the Tribunal

### 13 What is the address for the Tribunal?

The **formal address** to which correspondence should be addressed is:

**Clerk to the Employment & Equality Tribunal  
Tribunals Office  
Isle of Man Courts of Justice  
Deemsters Walk  
Bucks Road  
Douglas  
Isle of Man, IM1 3AR**

Office opening hours Monday-Thursday 09.30 to 16.30 (16:00 Friday).

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### 14 How do I contact the Clerk to the Tribunal?

If a person **has already brought a Complaint to the Tribunal** and wishes to contact the Clerk to the Tribunal they can do so during **office opening hours Monday – Thursday 09.30 to 16.30 (16:00 Friday)** on:

**Tel: 685941 Fax: 685573 or Email: [tribunals@gov.im](mailto:tribunals@gov.im)**

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## Making a Complaint to the Tribunal

### 15 Can I contact anyone to discuss making the Complaint?



See the contacts information provided at question 7. above.

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## 16 Do time limits apply with regard to Complaints to the Tribunal?

Yes - it is important to note that **strict time limits apply** with regard to the commencement of proceedings before the Tribunal, and that such time limits always apply even if discussions are held or ongoing with the Manx Industrial Relations Service or other conciliation provider or other sources.

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## 17 Where can I obtain a Complaint form?

Electronic submission of a Complaint form is encouraged where possible, with the online form being available at:

<https://forms.gov.im/default.aspx/RenderForm/?F.Name=ePotJrYRbHd&HideToolbar=1>

together with guidance notes at:

<https://www.courts.im/media/2232/190819-online-complaint-form-guidance-notes.pdf>

Alternatively a downloadable PDF form (and guidance notes), which will require printing and completion before submission can be viewed at:

<https://www.courts.im/media/2243/downloadable-complaint-form.pdf>

**Please note** – the Tribunal Rules provide that where a document sent to the Clerk is delivered at a time when the office is closed, it shall be regarded as delivered at the time when the office is next open for business. **The Office opening hours are Monday-Thursday 09.30 to 16.30 (16:00 Friday).**

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## 18 Do I have to use a Complaint form?

Yes, this is a requirement of the Tribunal Rules.

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## 19 Is there a charge for making a Complaint?

No – there is no charge for submitting a Complaint to the Tribunal.

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## 20 What if my address or that of my representative, changes after my Complaint is submitted?

In the event that you change your address or your chosen representative changes address, or you know the Respondent has changed address, it is vitally important that such is communicated immediately in writing to the Tribunal.

If it is you, or your chosen representative, that has changed address you must also tell the Respondent and the Industrial Relations Officer.

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## How a Complaint is progressed

### 21 If I have made a Complaint, how will I be referred to in the proceedings?

Having made a Complaint to the Tribunal you will now be referred to as "the Complainant."

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### 22 Can the Clerk to the Tribunal challenge my Complaint?

Yes – if the Complaint does not include all of the required information, or is presented beyond the time limit and does not include an application to extend the time (with an explanation why the Complainant could not comply with the time limit), the Clerk will return the Complaint to the Complainant indicating what information or other matters should be included in it. In such circumstances the Complaint will be treated as if it had not been presented.

Also, if it appears to the Clerk that for any reason (other than the expiry of a relevant time limit) the Tribunal does not have power to consider the Complaint, the Clerk may either:

- notify the Complainant in writing of his opinion, stating his reasons for it. The Complaint will then be treated as if it had not been presented unless the Complainant states in writing, within 21 days of the notification that he wishes to proceed with it. If the Complainant confirms in writing that he wishes to proceed, the matter will be referred to the Chairperson; or
- refer the Complaint for the consideration of the Chairperson.

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### 23 If not challenged, how will my Complaint be progressed?

Your Complaint will be given a unique case number and receipt will be acknowledged by the Clerk.

Details of the Complaint will be entered in a public register which is open to the inspection of any person without charge at all reasonable hours. The register includes details of all Complaints, judgments, orders and written reasons in relation to Employment & Equality Tribunal Complaints. The register is currently located at the Tribunals Office. Please see link to our [website](#).

A copy of the Complaint will be forwarded to the person or persons against whom the Complaint is made (referred to as the Respondent(s)). The Respondent(s) will ordinarily have 28 days from the date the copy of the Complaint is sent to them in which to respond.

A copy of the Complaint will also be issued to the Manx Industrial Relations Service (or alternative conciliation provider) who, if not already doing so, will offer to conciliate on the matter.

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## Responding to a Complaint to the Tribunal

### 24 If a Complaint is made against me, how will I be referred to in the proceedings?

The party against whom a Complaint is made is referred to as "the Respondent".

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### 25 How is a Respondent made aware of a Complaint against him?

A copy of the Complaint will be sent to the Respondent by the Clerk, together with guidance as to how to respond.

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## 26 Will the Respondent be able to discuss the matter with the Manx Industrial Relations Service or other conciliation provider?

Yes - the Manx Industrial Relations Service (or other conciliation provider - see the contacts information provided at question 7. above) can be contacted by any party at any stage:

Tel: (01624) 672942

Fax. (01624) 687050

Email: [iro@gov.im](mailto:iro@gov.im).

Website: [www.mirs.org.im](http://www.mirs.org.im)

The Tribunals Office is not responsible for the content of external internet sites.

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## 27 If a Respondent discusses matters with the Manx Industrial Relations Service or other conciliation provider, will this affect the time limit in which to reply?

No – the time limits still stand. The time limits are imposed by the Tribunal Rules and are not affected by discussions with the Manx Industrial Relations Service (or other conciliation provider) or indeed any other negotiations that are ongoing.

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## 28 How does a Respondent respond to a Complaint?

Electronic submission of a Response form is encouraged where possible, with the online form being available at:

<https://forms.gov.im/default.aspx/RenderForm/?F.Name=XEipTGpb6UJ&HideToolbar=1>

together with guidance notes at:

<https://www.courts.im/media/2233/190819-online-response-form-guidance-notes.pdf>

Alternatively a downloadable PDF form (and guidance notes), which will require printing and completion before submission can be viewed at:

<https://www.courts.im/media/2244/downloadable-response-to-complaint-form.pdf>

**Please note** – the Tribunal Rules provide that where a document sent to the Clerk is delivered at a time when the office is closed, it shall be regarded as delivered at the time when the office is next open for business. **The Office opening hours are Monday-Thursday 09.30 to 16.30 (16:00 Friday).**

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## 29 How long does a Respondent have to respond to a Complaint?

The Respondent has **28 days**, from the date the copy of the Complaint was issued, in which to present a Response to the Clerk.

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## 30 What if a Respondent cannot present his Response to the Complaint within the 28 day time limit?

An application for an extension of the 28 day time limit may be made to the Clerk before or at the same time as a Response is presented, and must explain why the Respondent cannot or could not comply with the time limit.

The Tribunal Chairperson will consider any application for an extension of the 28 day time limit, and may allow the Respondent to present his Response within such further period as the Chairperson considers reasonable provided that the Chairperson is satisfied:

- that it was not reasonably practicable for the Response to be presented within the 28 day time limit; or
- that for any other reason it is just and equitable to extend the time.

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### **31 What if a Respondent doesn't present a Response to the Complaint?**

A Respondent who has not presented a Response shall not be entitled to take any part in the proceedings, except for certain limited exceptions which **do not** include defending the Complaint.

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### **32 What if my address, or that of my representative, changes after my Response is submitted?**

In the event that there is a change in the address for the service of documents on a party, it is vitally important that such is communicated immediately in writing to the Clerk, the other party or parties and the Industrial Relations Officer.

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## **How the Respondent's Response to the Complaint is progressed**

### **33 Can the Clerk challenge the Response?**

Yes – if the Response does not include all of the required information, or is presented later than the time limit and no application is or has been made to extend the time limit, the Clerk will return the Response to the Respondent indicating what information or other matters should be included in it. In such circumstances the Response will be treated as if it had not been presented.

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### **34 If not challenged by the Clerk, how will the Response be progressed?**

The Response will be acknowledged by the Clerk and a copy will be issued to the Complainant.

A copy of the Response will also be issued to the Manx Industrial Relations Service (or other conciliation provider).

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## **Conciliation**

### **35 Who provides the Conciliation Service?**

Please see the information provided at question 7. above.

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### **36 Will the Tribunal be told of what is discussed during the conciliation process?**

No - matters discussed, and written communications with, the Industrial Relations Officer (or other conciliation provider) are **not** communicated to the Tribunal. This enables conciliation to proceed without prejudicing either party's case. So, for example, if a former employer offers a sum of money to the

Complainant to settle the matter, that offer will not be made known to the Tribunal, and nor will the Tribunal wish to be made aware of such if the case isn't settled at conciliation and goes on to be heard before the Tribunal.

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### **37 Will the date for the hearing before the Tribunal be progressed straight away?**

No - it is the practice of the Tribunal in the Isle of Man to await hearing from the Manx Industrial Relations Service (or other conciliation provider) as to whether or not the matter can be resolved through conciliation **before** arrangements are progressed to list the matter for hearing before the Tribunal.

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### **38 How long will conciliation take?**

The length of time necessary for each case to progress through conciliation varies enormously, depending on factors such as the complexity of the case and of course the willingness of the parties to participate in that process. However, as soon as the Industrial Relations Officer (or other conciliation provider) perceives that it is unlikely that the matter will be resolved through conciliation the Tribunal will be notified of this. The Clerk to the Tribunal will then progress the case by notifying parties of the date the matter is to be heard.

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### **39 Will the Tribunal be told of the terms of any settlement agreed between the parties in conciliation?**

No - the terms of any settlement agreed at conciliation remain a confidential matter between the parties.

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### **40 How will the Tribunal know if the matter is resolved in the conciliation process?**

If the matter is resolved through private agreement between the parties, the Industrial Relations Officer (or other conciliation provider) will notify the Tribunal that the matter has been "settled at conciliation" and the Clerk will confirm to the parties that the Tribunal will not progress the matter any further.

In some cases, either as a matter of choice, or in line with the terms of an agreement reached through conciliation, the Complainant may apply at any time to the Tribunal to formally withdraw his application. In such cases the Industrial Relations Officer (or other conciliation provider) can assist the Complainant to submit an appropriately worded notice of withdrawal to the Clerk.

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## **Costs**

### **41 Can a party be liable for costs in proceedings before the Tribunal?**

Yes - although the Tribunal Rules provide that the Tribunal or Chairperson shall not normally make a costs order or preparation time order in any proceedings.

However, the Tribunal or Chairperson may make a costs order or preparation time order, and must consider whether to do so where:

- (i) the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably;
- (ii) the paying party's Complaint or Response had no real prospect of success;

- (iii) the paying party has made a false or exaggerated allegation in his or her Complaint or Response or in evidence in support of it;
- (iv) the paying party has been in breach of any order;
- (v) hearing has been postponed or adjourned on the application of the paying party; and
- (vi) the Chairperson has decided that the paying party's Complaint or Response should not be accepted and the decision has been confirmed on review.

Costs can also be ordered in respect of witness expenses.

Costs can be ordered to be paid in instalments.

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#### **42 If costs are being considered, is the ability of a party to pay taken into account?**

The Tribunal or Chairperson may have regard to the paying party's ability to pay when considering whether it should make a costs order or preparation time order or how much that order should be.

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#### **43 How is the amount of a costs order calculated?**

The amount of a costs order can be determined in any of the following ways:

- the Tribunal may specify the sum payable - the amount of a costs order under this provision may not exceed £2,000.00;
- the parties may agree the sum to be paid;
- by way of detailed assessment in the High Court in accordance with the rules of court, or by the Chairperson applying the same principles.

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#### **44 When can an application for costs be made?**

Applications for costs may be made at any time during the proceedings, and may be made at the end of a hearing or in writing to the Clerk. Applications received later than 21 days after the issuing of the judgment determining the Complaint shall not be considered, unless the Tribunal or Chairperson considers that it is in the interests of justice to do so.

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#### **45 Can a representative be liable for costs?**

In what is called a "wasted costs order" the Tribunal or Chairperson may disallow, or order the representative of a party to meet the whole or part of any wasted costs of any party, including an order that the representative repay to his client any costs which have already been paid.

Wasted costs are defined as any costs incurred by a party:

- as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
- which, in the light of any such act or omission occurring after they were incurred, the Tribunal or Chairperson considers it unreasonable to expect that party to pay.

Representative in this context means a party's advocate or other representative or any employee of the representative, but it does not include a representative who is not acting in pursuit of profit with regard to those proceedings.

A wasted costs order may not be made against a representative where that representative is an employee of a party.

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## Case Management Issues

### 46 What provision is made in the Tribunal Rules for case management?

The Tribunal Rules make provision for the Tribunal Chairperson at any time, either on the application of a party or of his own initiative, to make an order in relation to any matter which appears to him to be appropriate.

Subject to the Tribunal Rules, orders may be issued as a result of the Chairperson considering the papers before him in the absence of the parties, or at a hearing.

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### 47 What sort of issues might be covered by a case management order?

Examples of orders that may be made are as follows:

- as to the manner in which the proceedings are to be conducted, including any time limit to be observed;
- that a party provide additional information;
- requiring the attendance of any person in the Island either to give evidence or to produce documents or information;
- requiring any person in the Island to disclose documents or information to a party, and to allow a party to inspect such material as might be ordered by the High Court;
- extending any time limit (subject to certain rules);
- requiring the provision of written answers to questions put by the Chairperson or Tribunal;
- adjourning the proceedings so that the parties may seek to resolve the dispute by conciliation;
- striking out or amending all or part of a complaint or response on the grounds that it is scandalous or vexatious or has no real prospect of success;
- staying the whole or part of any proceedings;
- that part of the proceedings be dealt with separately;
- that different Complaints be considered together;
- that any person who the Chairperson or Tribunal considers may be liable for the remedy claimed should be made a Respondent in the proceedings;
- dismissing the Complaint against a Respondent who is no longer directly involved in the Complaint;
- postponing or adjourning any hearing;
- varying or revoking other orders;
- giving notice to the parties of a pre-hearing review or the full hearing;
- giving permission to amend a Complaint or Response;
- that any person who the Chairperson or Tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;
- that a witness statement be prepared or exchanged;
- that a party provide copies of documents for use of the Chairperson or Tribunal;
- as to the use of experts or interpreters in the proceedings.

In addition, certain further orders or judgements may be made as detailed below. However, if one of the parties has so requested, such further orders or judgements may not be made except at a pre-hearing review or a full hearing (see subsequent sections). Orders in this respect include:

- as to the entitlement of any party to bring or contest particular proceedings;
- striking out or amending all or part of any Complaint or Response on the grounds that it is scandalous or vexatious or has no reasonable prospect of success;
- striking out any Complaint or Response (or part of one) on the grounds that the manner in which the proceedings have been conducted by or on behalf of the Complainant or Respondent (as the case may be) has been scandalous, unreasonable or vexatious;

- striking out a Complaint which has not been actively pursued;
- striking out a Complaint or Response (or part of one) for non-compliance with an order;
- striking out a Complaint where the Chairperson or Tribunal considers that it is no longer possible to have a fair full hearing in those proceedings; and
- making a restricted reporting order.

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#### **48 How and when can an application by a party in relation to a case management order be made?**

At any stage of the proceedings a party may apply for an order to be issued, varied or revoked or for a pre-hearing review (see later section) to be held. Such an application must be made in writing to the Clerk, and include the case number for the proceedings and the reasons for the request.

Applications for orders must be made not less than 10 days before the hearing date set (if any, at which the matter will be considered) unless;

- it is not reasonably practicable to do so; or
- the Chairperson or Tribunal considers that shorter notice should be allowed in the interests of justice.

If the application is for a pre-hearing review to be held, it must identify any orders sought.

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#### **49 What if I need further details and particulars of the grounds upon which a party relies and/or of any facts and contentions detailed?**

The Tribunal Rules enable the Tribunal to order a party to provide further particulars. However, before applying to the Tribunal for such an order a party should request the other side to provide these voluntarily within a reasonable period of time.

A copy of the request and of any Response received should be provided to the Tribunal at the same time as applying to the Tribunal for an order.

The application should set out in precise detail what further details and particulars are required.

If necessary, the Chairperson sitting alone may hear from the parties to decide what to do in relation to such an application.

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#### **50 What if I require discovery or inspection (including the taking of copies) of documents?**

Discovery is a process whereby a party must disclose to the other party documents that are or have been in his possession or within his power to obtain that are relevant to the matters before the Tribunal. Sometimes a party will compile a "Discovery List" which will detail all of the discoverable documents. Not all of these may actually be required for the hearing.

Certain documents that are considered "privileged" are not discoverable such as correspondence between a party and his Advocate, or, in certain circumstances, documents clearly issued on a "without prejudice" basis.

"Inspection" enables a party to view relevant documents and to take copies of such, although they will usually be responsible for any photocopying charges incurred.

Before applying to the Tribunal for an order for discovery or inspection, a party should request the other side to provide discovery or inspection voluntarily within a reasonable period of time.

A copy of the request and of any Response received should be provided to the Tribunal at the same time as



applying to the Tribunal for an order. The application should set out clearly what it is that is required.

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## **51 What if I need a witness to be compelled to attend at the hearing?**

The Tribunal Rules enable the Tribunal to issue a witness attendance order requiring the attendance of a witness at the hearing, and to require the witness to produce any document relating to the matter to be determined.

A witness order will not be issued in respect of persons outside of the Isle of Man as the Tribunal would have no power to enforce such.

Before issuing a witness attendance order the Tribunal will normally require the party applying for the order to seek the attendance of the witness on a voluntary basis.

In making the application the party should provide details of:

- what has been done to seek the voluntary attendance of the witness;
- the reasons why the witness is refusing to attend on a voluntary basis;
- the full name and address of the witness; and
- an indication of the nature of the evidence that the witness may be able to give.

Please note that if you require the attendance of a witness they will then be considered to be your witness, and you will only be able to ask questions of that witness to establish their evidence in chief (see later section "**84 How do witnesses give their evidence?**") and you will **not** be able to cross-examine that witness. Nor will you be able to ask them leading questions (i.e. attempting to put words in their mouth - for example you could not say "Isn't it true you heard the boss shouting at me on Saturday", but you could ask "What happened on Saturday when you saw the boss").

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## **52 What if a further Respondent needs to be added to the proceedings or an existing Respondent needs to be dismissed?**

The Tribunal Rules enable the Chairperson, either upon the application of a party or on his own initiative, to order:

- that any person who the Chairperson or Tribunal considers may be liable for the remedy claimed should be made a Respondent in the proceedings;
- that the Complaint against a Respondent who is no longer directly interested in the Complaint be dismissed.

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## **53 Can two or more Complaints be considered together?**

Yes – the Tribunal Rules enable the Chairperson, either upon the application of a party or on his own initiative, to order:

- that different Complaints be considered together, provided that such an order may be made only if all relevant parties have been given notice that such an order may be made and in doing so have been given the opportunity to make representation as to why such an order should or should not be made.

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## **Tribunal Hearings**

## **54 Are there different types of hearings?**

Yes - the Tribunal Rules make provision for three different types of hearings which a Chairperson or (as the case may be) the Tribunal may hold, namely a pre-hearing review, a full hearing or a review hearing.

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## **55 What do the Tribunal Rules say about how hearings should be conducted?**

The Tribunal Rules provide that so far as it appears appropriate to do so, the Chairperson or Tribunal shall seek to avoid formality in his or its proceedings and shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts.

In addition, the Tribunal Rules provide that the Chairperson or Tribunal (as the case may be) shall make such enquiries of persons appearing before him or it and of witnesses as he or it considers appropriate and shall otherwise conduct the hearing in such manner as he or it considers most appropriate for the clarification of the issues and generally for the just handling of the proceedings.

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## **56 Are Tribunal hearings open to the public?**

Full hearings and review hearings are open to the public unless the Chairperson or Tribunal decides that such hearings should be held in private. Circumstances giving rise to a private hearing, as provided for in the Tribunal Rules, are:

- where evidence or representations are to be heard which would contravene a statutory prohibition;
- where the information contained in the evidence or representations was communicated in confidence;
- where the disclosure of the evidence or representations would cause substantial damage to any business of the person or any business in which he works.

Pre-hearing reviews may be held in public or in private as the Chairperson or Tribunal considers appropriate in the interest of justice, except that where a judgment is given or a certain type of order is made it shall take place in public.

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## **57 Can restrictions be placed on the reporting of a hearing?**

Yes - the Chairperson or Tribunal may make a restricted reporting order (either temporary or full) in any case:

- which involves allegations of sexual misconduct;
- to which a child or young person is a party; or
- in which a child or young person gives evidence.

Such an order would prohibit the publication (including by electronic means), either for a set period (temporary) or until the date on which the judgement disposing of the Complaint was sent to the parties (full), of any matter likely to lead members of the public to identify any person accused, or an alleged victim, of such misconduct or that child or young person, as the case may be.

If appropriate, the Chairperson or Tribunal can order that the restricted reporting order applies also to other related proceedings.

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## **Pre-Hearing Review**

### **58 What is a pre-hearing review?**

A pre-hearing review is an interim hearing and may be conducted by the Chairperson, or by the Tribunal in certain circumstances.

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## **59 What may be considered at a pre-hearing review?**

The Chairperson, or Tribunal, may carry out a preliminary consideration of the proceedings, and may:

- determine any interim or preliminary matters relating to the proceedings (for example whether or not the Complainant was an employee of the Respondent as alleged);
- make any case management order;
- consider any oral or written representations or evidence.

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## **60 When will the Tribunal, rather than the Chairperson, conduct a pre-hearing review?**

If the Chairperson considers:

- that one or more substantive issues of fact are likely to be determined at the pre-hearing review, and
- that it would be desirable for a pre-hearing review to be conducted by the Tribunal

the Chairperson may order, either on his own initiative, or on a party's request in writing made not less than 7 days before the date on which the pre-hearing review is due to take place, that the Tribunal will conduct the pre-hearing review.

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## **61 Can a pre-hearing review bring the matter to an end?**

Yes - at a pre-hearing review judgment may be given on any preliminary issue of substance relating to the proceedings, which may result in the proceedings being struck out or dismissed or otherwise determined with the result that a full hearing is no longer necessary.

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## **Full Hearing**

### **62 What is a Full Hearing?**

A full hearing is held for the purpose of determining outstanding procedural or substantive issues and for disposing of the proceedings.

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### **63 When will arrangements for a Full Hearing be progressed?**

Once the Tribunal has received notification from the Industrial Relations Officer (or other conciliation provider) that it does not appear likely that the matter can be resolved at conciliation, arrangements will be progressed for the full hearing of the matter before the Tribunal.

Even when the matter has been referred to the Tribunal, the conciliation services provided by the Manx Industrial Relations Service (or other conciliation provider) remain available to assist the parties to resolve the matter should they so wish, even up to and including the day of the hearing.

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## 64 How will the parties be notified?

The Chairperson will fix the date and time of the hearing, and written notice will be issued to the parties confirming the arrangements. The notice must be issued not less than 14 days before the date of the hearing, unless a shorter notice period has been agreed with all parties. In practice, the notice is usually issued several weeks before the hearing date.

The notice of hearing will contain information about attendance at the hearing, witnesses, the bringing of documents, representation by another person and written representations.

The Chairperson or Tribunal members who are to sit to hear the matter will normally be identified in the correspondence issued to the parties at this stage. This allows an opportunity for a party to notify the Tribunal, in writing with full details, if he perceives that there may be a problem with any members of the Tribunal sitting (for example if a Complainant believes a Tribunal member is closely related to the Respondent).

Equally, if the Chairperson or Tribunal members perceive that their sitting to hear a particular case may give rise to a conflict, then they may decline to sit or may ask that the matter be brought to the attention of the parties via the Clerk.

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## Preparation for the Full Hearing

### 65 When should arrangements to attend be progressed?

As soon as the date for the hearing has been notified it is important that each party attend to matters such as arrangements for attendance at the hearing by the party and any representative, and for the attendance of any witnesses who are to be called.

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### 66 What if a party needs to apply for a postponement?

An application for such should be submitted in writing as soon as possible to the Clerk setting out the full reasons for the application. It is likely that the views of the other party will be sought. If necessary a short hearing before the Tribunal Chairperson will be arranged so that both parties may be heard on the matter.

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### 67 What about papers for the hearing?

At the time of providing the notice for hearing the Tribunal will request that **5 copies** (or 3 copies if the Chairperson is to sit alone) of any further papers that each party intend to rely on at the hearing be submitted to the Tribunal not later than 14 days (or such other period as may be notified) before the hearing.

**A further copy must be provided directly by each party to the other side at that time.**

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### 68 How should I present such papers?

It is a matter of choice for the parties. However Tribunals do encourage papers being presented as a "hearing bundle" (for example in lever arch file(s)) within which an index of the papers is provided corresponding to the labelling (tabulation) used on those papers. For example, the Letter of Dismissal at tab. A1, Letter of Appeal at tab. A2, Statement of Terms of Employment at tab. B1 and so on. Such a clear and accurate approach helps both the Tribunal and the parties to quickly refer to particular documents during the hearing.

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## **69 Can the parties agree to compile one bundle of all the papers they all want to refer to?**

Yes – the parties are at liberty to discuss with each other whether it is possible to provide a single agreed hearing bundle containing the documents that both sides intend to rely upon. If this is possible, it is very much welcomed by the Tribunal.

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## **70 What about the evidence to be given by witnesses?**

Witnesses can give their main evidence (known as 'evidence in chief') at the hearing in answer to questions by the party calling that witness. However the Tribunal does welcome the use of written witness statements prepared before the hearing. The witness reads this at the hearing to place their evidence in chief on the record. Witness statements would normally be submitted as part of the hearing bundle.

See above section 51 as to Witness Attendance Orders compelling the attendance of a witness.

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## **Practicalities in relation to the Full Hearing**

### **71 What about travel and parking arrangements?**

Each party will have been notified of the date, time and place of the hearing and will normally be asked to arrive 15 minutes before the hearing is due to commence. It is important that consideration is given to travel arrangements, parking etc so as to ensure that a party arrives on time. If you are not sure as to the location, or indeed any other matters, please contact the Clerk.

Arrangements for car parking should be made, by both parties and witnesses, for sufficient time to avoid parking penalties being incurred whilst the hearing proceeds. Please note parties and witnesses are responsible for their own parking fees, or indeed any parking penalties incurred.

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### **72 How long will the hearing take?**

This question is often asked but is extremely difficult to answer in advance with any accuracy as the length of the hearing will, in the main, be driven by how each party wishes to present its case and the evidence that each party's witnesses may give as well as the questioning of those witnesses.

It is often the practice for the Tribunal to set aside a day for each case to be heard to ensure that the matter can be concluded in that day. If more than one day is known to be required then the parties will have been notified of this in advance.

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### **73 Will there be any breaks in the hearing?**

Yes – "comfort breaks" are likely mid-morning and mid-afternoon, and a lunch break is normally taken at around 1pm, although the precise timing of any break will likely reflect convenient points reached in the hearing of the matter.

Should a party need a comfort break it is quite in order to ask for such at any time.

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## **74 Will each party have their own separate waiting area?**

The majority of hearings are currently held in Murray House, Mount Havelock, Douglas and this provides two separate waiting rooms to which the parties will be shown on arrival, and which the parties will have available for their use throughout the duration of the hearing.

In other venues parties may have to use one shared waiting area.

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## **75 Where do witnesses wait?**

Normally with the party that has called them to give evidence.

Witnesses normally remain out of the hearing room until called to give their evidence so as to avoid their evidence being influenced (and therefore potentially being given less weight by the Tribunal) by what they may have heard if they were present in the hearing room before they give their evidence.

Of course the Complainant would normally be present throughout the duration of the hearing, as would person(s) whose presence is necessary to represent the Respondent or to instruct someone who is undertaking that role such as an Advocate.

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## **76 What happens before the hearing starts?**

Normally the Clerk will speak with each party before the hearing gets underway to check who is present, and to address any final questions or issues a party may have.

It would be appropriate at this stage to tell the Clerk if a party or any witnesses have any special needs or concerns if these haven't been communicated previously. An example of this may be if you are hard of hearing and require a hearing loop during the hearing.

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## **During the Full Hearing**

### **77 What if I feel I may not be able to understand the procedure used for the full hearing?**

It must be remembered that the Tribunal will not seek to be overly formal and although they cannot help a party to present their case, they will be able to help on the procedure as the case progresses. The Tribunal seeks to obtain all the relevant information to enable it to make a decision, and will use its best endeavours to ensure that no party is intimidated or fearful of the procedure.

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### **78 Who will be present in the hearing room?**

Both parties will be shown into the room and to their respective tables by the Clerk at the same time.

It is normal that the Tribunal Chairperson and members will already be seated in the room when the parties enter, and any members of the public will also be admitted at the same time unless, in the very limited circumstances permitted, the Tribunal has ordered that the matter be heard in private.

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### **79 How do parties address the Tribunal?**

It is customary to address the Tribunal via the Chairperson who should be called either 'Sir' or 'Madam'. If it is necessary to address either of the lay members directly they again may be referred to as 'Sir' or

'Madam' or alternatively by name.

Tribunal hearings are less formal than, for example, in the High Court so there are no wigs and gowns worn. It is not necessary to bow to the Tribunal upon entering and leaving the hearing room and it is not necessary to stand to address the Tribunal, unless of course a party prefers to do so.

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## **80 Is the hearing recorded?**

Yes - the Clerk will ensure that the hearing is recorded and parties will see microphones for this purpose located on each of the tables.

Although copies of the recording may be purchased, on payment of the prescribed fee, following the hearing (it usually takes a few days for this to be made available) it is the responsibility of parties to take their own notes for their use during the proceedings.

It is **not permitted** for parties, or members of the public, to use any form of recording equipment throughout the hearing.

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## **81 How is the hearing opened?**

Once the parties have arranged their papers and taken their seats, and any members of the public are seated, the Chairperson will normally open the hearing by welcoming the parties, introducing the Tribunal and noting who is in attendance for each side.

The Chairperson will then outline the procedure to be followed during the hearing and address any preliminary questions that either party, or indeed the Tribunal, may have.

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## **82 Which party goes first?**

This is likely to be one of the issues addressed by the Chairperson in considering the procedure to be followed.

In some cases the legislation under which the Complaint is brought will dictate. For example, in an Unfair Dismissal Complaint where a Respondent admits that it dismissed the Complainant, then it will be for the Respondent to present their case first to show why the dismissal was fair, as the legislation places the burden on the Respondent in terms of "it is for the employer to show.....".

If the Respondent does not admit that the Complainant was dismissed, for example where "Constructive Dismissal" is claimed then it is likely that the Complainant will have the burden of proof and will present their case first.

Again in Complaints of Unlawful Deduction from Pay the burden normally rests on the Complainant who will present their case first.

If there is any dispute or uncertainty as to who presents their case first then the Tribunal will usually invite the views of the parties at the outset of the hearing, consider such and then direct who is to present their case first.

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## **83 How does the hearing proceed?**

The party who is to begin will firstly have the opportunity to make an opening address to the Tribunal setting out/explaining his case. It is not compulsory for a party to make an opening address, and indeed in

many cases where a party is unrepresented they often choose not to do so.

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## 84 How do witnesses give their evidence?

It is then normal for a party to move on to the presentation of evidence, with the following providing an outline of the procedure applying to each witness, including an unrepresented party who is to give evidence.

After the witness is shown to the Tribunal's witness table:

### (a) Oath or Affirmation

It is usual for witnesses to give their evidence on oath (involving swearing on an appropriate Holy Book) or affirmation (non religious) and the Clerk will provide the appropriate written wording to be read aloud by the witness for this purpose. The Clerk should be advised in advance if any particular procedure will be necessary for a witness who is to take the oath.

If a witness does not give evidence either under oath or affirmation then it will be open to the Tribunal to consider what weight to place on such evidence.

### (b) Evidence in Chief

This is the stage at which the witness will give their evidence in relation to the matter.

After details of the full name, address and current occupation of the witness have been provided, the witness will usually give their evidence either by reading out a written witness statement or by answering questions from the representative of the party calling that witness.

"Leading" questions (i.e. questions that suggest the answer) are not permitted.

If a party is appearing in person and has no representative, they usually choose to give their evidence either through reading a written witness statement or by simply telling the Tribunal their evidence in the matter.

The Tribunal may be referred to specific documents submitted for the hearing and which the witness may comment upon as part of their evidence.

It is possible, following the reading of a written witness statement, for a few further supplementary questions to be asked of the witness.

### (c) Cross-Examination

Once the witness has completed their evidence in chief, it will be for the other party or its representative to ask **questions** of that witness. Such questions may be aimed at discrediting the case of the other party or enhancing the case of the party asking the questions or to clarify certain matters.

Questions during cross-examination can be "leading" questions and those questions, as long as relevant, don't have to be confined to the subjects and issues raised during evidence in chief.

It is important that the cross-examining party puts to the witness **at this stage** their version of any disputed facts so that the witness may have opportunity to comment and indeed deny them if appropriate.

### (d) Questions by the Tribunal

After cross-examination it will be for the Tribunal to ask questions of the witness and this will normally be done firstly by the lay members, and then by the Chairperson.



Such questions will usually focus on areas where the Tribunal felt that questions should have been asked, but weren't, or that questions were asked but were not answered to the satisfaction of the Tribunal.

(e) Re-examination

This is normally the final stage of evidence, when the party calling the witness may question the witness further on matters disclosed by the Tribunal's questions or by the other party's cross-examination.

Questions are limited to these two areas, as any other new area should have been dealt with during evidence in chief.

At this stage a witness is normally released and is therefore free to leave the hearing or may remain in the hearing or waiting room as they wish.

Any further witnesses called by a party will go through the same procedure in relation to their evidence.

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## **85 What happens when the party presenting their case first has completed its evidence?**

The same procedure that applied to the party presenting their case first will now apply to the other party, who again will have opportunity to make an opening address to the Tribunal should they wish, or to move on to calling their witnesses who will follow exactly the same procedure as for witnesses outlined above.

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## **86 After all the evidence has been heard, what happens next?**

Although relatively infrequent, if there are any applications for costs it is often at this point that the Tribunal will hear that application, and the Response to such by the other party.

Otherwise the point has been reached at which the parties can address the Tribunal by making a closing statement, if they wish to do so. The Tribunal will indicate the order in which closing statements are to be given, although generally the party that presented their case first at the start of the hearing will be the last to give its closing statement.

Closing statements provide an opportunity for each party to sum-up their case and to relate the evidence to the applicable law with a view to persuading the Tribunal, on the balance of probabilities, to find in their favour and not to find in favour of the other party.

It is not appropriate to include matters in the closing address which have not been raised at the hearing.

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## **87 How does the hearing conclude?**

After closing statements the Tribunal is likely to adjourn briefly to consider how long may be needed to reach a judgment.

Although it is possible for a Tribunal in some simple cases to give its judgment immediately, the majority of cases will require more lengthy consideration and the parties will be advised that the Tribunal will reserve its judgment which, with reasons, will follow in writing some weeks later.

This hearing of the matter is now closed and the parties, and any members of the public who have attended, will depart at this time.

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## The Judgment

### 88 Does the Judgment have to be unanimous?

No – under the Tribunal Rules a judgment of the Tribunal may be made or issued by the majority.

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### 89 When will the Judgment be issued?

If not given immediately at the end of the hearing, the written judgment will be issued to the parties usually some weeks later. At the time of issuing the judgment to the parties, a copy will be placed on the public register.

A copy of the judgment will also be placed on the Tribunals' website at [www.judgments.im/content/@54.htm](http://www.judgments.im/content/@54.htm)

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### 90 How can financial awards in the Tribunal's Judgment be enforced?

In the event that the Tribunal's judgment orders a party to pay a sum of money to another party, and such payment is not received within a reasonable period of time, the Tribunal may be requested in writing to grant an Execution Order for the amount awarded.

If the Tribunal issues an Execution Order, this will be given to the party to present to the relevant Coroner who will then seek to enforce payment.

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## Review Hearing

### 91 What is a review?

Generally speaking, a decision (see section 92 below - "Is it only Judgments which can be reviewed?") should not be reopened and re-litigated. However, the review provision in the Tribunal rules provides a limited exception to this to correct a very specific error or mishap in the conduct of a Tribunal hearing, or to deal with relevant new evidence that was genuinely not available at the time of the original hearing.

A review is **not** intended to provide parties with the opportunity of a rehearing at which the same evidence can be reheard with different emphasis, or further evidence adduced which was available before.

Applications for review are dealt with by the same Chairperson or Tribunal who dealt with the case.

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### 92 Is it only Judgments which can be reviewed?

No - under the Tribunal Rules, a decision not to accept a Complaint or Response can also be subject to review (on limited grounds - see below) and the review provisions also apply in respect of certain Tribunal orders which are in the nature of a final judgment.

Collectively the judgments, decisions and orders which can be reviewed are referred to in the Tribunal Rules, and in this section, as a "decision".

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### 93 What are the grounds provided for in the Tribunal rules for a review?

There are six grounds provided for in the Tribunal rules:

- (a) the decision was wrongly made as the result of an administrative error (including an error by a party);
- (b) the decision was based on a mistaken view of the applicable law;
- (c) a party did not receive notice of the proceedings leading to the decision;
- (d) the decision was made in the absence of a party;
- (e) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or
- (f) the interests of justice require such a review.

A decision not to accept a Complaint or Response may only be reviewed on the grounds listed in (a), (b) and (f).

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#### **94 Are there time limits in relation to applying for a review?**

Yes – the Tribunal rules provide for an application for a review to be made either at the hearing, or to the Clerk within 14 days of the date on which a decision was sent to the parties. It must be in writing stating the grounds in full. In some limited circumstances it may be possible for the Tribunal to grant an extension to the time limit.

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#### **95 How is an application for review progressed?**

The application for a review will normally be considered firstly by the Chairperson who may refuse such if, in the Chairperson's opinion, there are no grounds for a decision to be reviewed or there is no reasonable prospect of a decision being varied or revoked.

If the application is not refused, the matter will be set down for a review hearing before either the Chairperson or the Tribunal at which the parties will be entitled to attend and to be heard.

Having heard the matter, the Chairperson or Tribunal may confirm, vary or revoke its judgment and if the Tribunal revokes the judgment it must order the decision to be taken again.

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### **Appeals**

#### **96 What provision is made to appeal from the Tribunal?**

Provision is made within the Employment Act 2006 that a person who is aggrieved by any decision, determination order or award of the Tribunal under specified legislation may, within such time as may be prescribed by Rules of Court, appeal **on a question of law** to the High Court.

It is understood that the time within which an appeal notice must be filed is prescribed at Rule 14.6 (2)(c) of the Rules of the High Court of Justice 2009, which provides that:

“(2) The appellant must file the appeal notice within -

(a) .....

- (b) .....
- (c) where the lower court makes no such direction, the following period after the date of the decision of the lower court that the appellant wishes to appeal -
- (i) 42 days, in the case of a final judgment or order;
  - (ii) 14 days, in any other case."

Legal aid may be available to progress an appeal, however you should seek legal advice at the earliest opportunity if you intend to lodge an appeal.

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## Useful Links

The Tribunals Office is not responsible for the content of external internet sites.

Manx Industrial Relations Service (for **work** related issues) - [www.mirs.org.im](http://www.mirs.org.im)

Dept. of Education, Sport and Culture (for **education** related issues) - [www.gov.im/about-the-government/departments/education-sport-and-culture/information-and-publications/e/equality-in-education/](http://www.gov.im/about-the-government/departments/education-sport-and-culture/information-and-publications/e/equality-in-education/)

Office of Fair Trading (for **any other issue arising under the provisions of the Equality Act 2017**) - [www.gov.im/about-the-government/statutory-boards/isle-of-man-office-of-fair-trading/equality-act-2017-goods-and-services/](http://www.gov.im/about-the-government/statutory-boards/isle-of-man-office-of-fair-trading/equality-act-2017-goods-and-services/)

Dept. of Enterprise, Employment Rights  
[www.gov.im/categories/working-in-the-isle-of-man/employment-rights](http://www.gov.im/categories/working-in-the-isle-of-man/employment-rights)

Dept. of Enterprise, Employment Legislation  
<https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-legislation/>

Dept. of Enterprise, The Employment & Equality Tribunal  
<https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/the-employment-and-equality-tribunal/>

Dept. of Enterprise, Guides to Employment Rights (IOM Employment Rights: a Summary & a Guide)  
<https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/guides-to-employment-rights/>

Isle of Man Law Society - [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

Legal Aid - <https://www.gov.im/categories/benefits-and-financial-support/legal-aid/>

Isle of Man Legislation Website: [www.legislation.gov.im/cms/en](http://www.legislation.gov.im/cms/en)