

**THE APPOINTMENTS COMMISSION**

Appointment of

Employee Panel Members

Employer Panel Members

for the

Employment and Equality Tribunal

(and Health and Safety Tribunal)

**Information Pack**

# **January 2024**

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**N.B.** This information pack covers the roles of all the panel members of the Employment and Equality Tribunal. This is intentional even where the current recruitment is not for the whole Tribunal. This will allow all candidates to better understand the role of the Tribunal and of the other members.



**1*.* Employment Tribunal**

**Employment and Equality Tribunal**

**Vacancies for:**

Employee Panel Members

Employer Panel Members

Term of office: 5 years

**What does the Employment and Equality Tribunal (“the Tribunal”) do?**

The Tribunal is an independent judicial body established in law to hear and determine complaints 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 consider matters outside of employment including all aspects of discrimination within goods and services and education.

The Tribunal is like a court but it is not as formal. However, like a court it must act justly and independently and cannot give legal advice. Almost all hearings are open to the public. Parties appearing before the Tribunal may do so in person or have legal or other representation.

The constitution of the Tribunal is set out in Part 9 of the Equality Act 2017 and part I of Schedule 3 to the Employment Act 2006.

**What is the constitution of the Employment and Equality Tribunal?**

Part I of Schedule 3 to the Employment Act 2006:

*CONSTITUTION OF TRIBUNAL*

*1. (1) There shall be appointed in accordance with the Tribunals Act 2006 -*

*(a) a person to act as chairperson of the Tribunal;*

*(b) a panel of persons to act as deputy chairpersons of the Tribunal;*

*(c) 2 panels of persons to act as members of the Tribunal, one panel consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employers, and the other panel consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employees.*

*2. (1) Subject to sub-paragraphs (2) and (3), the Tribunal shall consist of the chairperson of the Tribunal, and 2 other members, one from each of the panels referred to in paragraph 1(1)(c) chosen by the chairperson.*

*(2) If the chairperson of the Tribunal is absent or unable to act, his or her place shall be taken, and any of his or her functions may be exercised, by a deputy chairperson, chosen by the chairperson.*

*(3) If one of the other members of the Tribunal is absent or unable to act, his or her place shall be taken by another member, chosen by the chairperson of the Tribunal, of the panel from which that member was drawn.*

*(4) Except where the rules otherwise provide, where the Tribunal has begun to hear any complaint or other matter, it may not, without the consent of the parties, continue to do so unless it comprises at least 2 of the members who began to hear the matter.*

**Who provides administrative support for the Tribunal?**

The Tribunal is administered by the Tribunals’ Centralised Administration in the General Registry.

**Term of Office**

The term of office will be for a period of 5 years from date of appointment unless the successful candidate resigns or is removed from office.

**2. Role Profile and Person Specification**

**Role Profile**

**Chair:**

The Chair will be an advocate, barrister or solicitor of not less than 7 years standing.

As the Chair, you will be required to undertake the full range of Chair functions in relation to all cases coming before the Employment Tribunal (although if you are absent or unable to act in a matter then such may be dealt with by one of the Deputy Chairs).

It is important to recognise that complaints before the Employment & Equality Tribunal, and the responses thereto, can be both legally and factually complex in nature. Using your comprehensive knowledge and experience of employment and equality law and the procedural rules applicable to the Tribunal, you will be involved in matters ranging from the determination of any initial or subsequent case management issues/applications, which may need to be considered at a case management hearing or pre-hearing review, through to chairing substantive hearings. Part of this will involve you receiving regular communications from the Tribunals’ Centralised Administration, either by email or telephone, for you to consider and to advise how you wish to progress – it is important that you have both the time availability and the commitment to ensure these matters are dealt with promptly.

On occasion you will sit alone to determine certain matters, although for many substantive hearings you will sit as part of a panel with two lay members to whom you will provide appropriate guidance.

You will have lead responsibility for the timely drafting of any Tribunal Orders and Judgments, and for any matters arising including initial consideration of applications for a review.

Keeping abreast of legal developments in relation to employment and equality law is important and will require a significant amount of reading, at one’s own time and cost, not directly connected with the cases with which you are involved.

To date, the Chair has taken a pro-active approach by identifying and addressing training issues for the Tribunal, either by way of get-togethers and/or by providing guidance notices. In order to ensure all applications and matters continue to be dealt with in an efficient, effective and consistent manner, a similar approach will be expected from any new Chair.

You will be required to advise the Appointments Commission of poor performance of any members of the Tribunal.

**Panel of Members: Deputy Chairs:**

You will be an advocate, barrister or solicitor of not less than 7 years standing. Candidates should either be experienced in employment and equality law or have the ability to gain such knowledge, coupled with the availability and commitment to do so. It is essential that you have the time available and the commitment to be able to deal expeditiously with all aspects of Employment and Equality Tribunal work.

As one of the panel of Deputy Chairs, you will be invited to undertake the full range of functions of the Chair in relation to cases, as delegated by the Chair, in which the Chair is unable to act.

From time to time you may also be involved in meetings with your fellow Chairs and also with the delivery of training sessions for the Tribunal members.

**Panel Members: Persons Representative of Employers\*:**

Applicants do not need any formal qualifications. It is, however, desirable that Applicants are able to draw upon significant knowledge and practical experience of current employment practices and have good understanding of equality practices and procedures, from the employer’s perspective. Applicants will be appointed after consultation with organisation(s) representative of employers, as appropriate.

**Panel Members: Persons Representative of Employees\*:**

Applicants do not need any formal qualifications. It is, however, desirable that Applicants are able to draw upon significant knowledge and practical experience of current employment practices and have good understanding of equality practices and procedures, from the employee’s perspective. Applicants will be appointed after consultation with organisation(s) representative of employees, as appropriate.

\* It is important to note that the panel members of the Tribunal are not there in any way to represent the employer or employee appearing before the Tribunal, but rather to sit as independent members drawing upon their knowledge and experience of employment and equality related matters.

**NB** Successful applicants should be aware that by virtue of their membership of the Employment and Equality Tribunal they will automatically assume membership of the Health and Safety Tribunal; however such Tribunal has rarely sat to date.

**Role Requirement for Panels of Representative Members:**

As a member of the Tribunal you will be called upon from time to time to sit for the substantive hearing of an individual case or in some circumstances preliminary hearings too.

You will be provided with a full copy of the papers received from the parties in advance of the hearing, and you must be able to commit the necessary time to carefully consider and gain an understanding of these before the hearing. It is important to recognise that complaints before the Tribunal, and the responses thereto, can be both legally and factually complex in nature.

On the day of the hearing you will sit alongside the legally qualified Chair and the other members of the Tribunal to hear the case; this may include consideration of witness evidence and cross-examination thereon, documentary evidence and submissions that either party may wish to make. A party may represent themselves or be represented by any other person including a legally qualified representative. During the hearing you will ask appropriate questions as necessary, and you will participate in the post-hearing discussion with your Tribunal colleagues to enable the Tribunal to reach its decision on the matter in the light of the Tribunal’s findings of fact and the applicable law.

Thereafter you will be provided with a written draft of the Tribunal’s Judgment prepared by the Chair, and it is important that you can commit the necessary time to carefully consider this, and provide any feedback, without delay. Occasionally it may be necessary for the Tribunal to meet again to agree the Judgment.

In the event that the Tribunal’s Judgment is subject to a review hearing then you will be called to sit again as part of the same Tribunal that conducted the substantive hearing.

**Time Commitment:**

During the last 3 years, the Tribunal convened on 123 occasions***.***

Hearings can involve the full Tribunal or in some circumstances the Chair may sit alone. Hearings will typically be allocated for a full day, although for some cases it may be necessary for the Tribunal to convene over 2 or more days to hear the case and dispose of the Complaint.

Even when matters have been listed for hearing and members have received case papers to allow for prior reading, it is possible that matters will be resolved prior to the hearing taking place.

**Data Protection and Information Security**

The Tribunal Chair and members may have access to sensitive and personal information and are responsible for its safekeeping. Members should be aware of the need to employ appropriate measures to safeguard such information.

Members will be required to uphold the requirements of the Data Protection legislation but should additionally be aware that they are likely to be in possession of sensitive personal data, disclosure or use of which for purposes not connected with the proper business of the body, is absolutely prohibited. Breach of this requirement will be regarded as a breach of the fundamental principles underpinning public service and may result in the withdrawal of the appointment warrant. This obligation survives the termination of the member’s term of office.

**Criminal Offences**

You are required to declare on the application form any criminal convictions which are not considered spent.

Further details can be viewed at:

[https://www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders](https://www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders/)

or phone the Isle of Man Vetting Bureau on (01624) 631409.

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| **Appointments Commission – Employment and Equality Tribunal**  **Person Specification for Legally Qualified Chair & Deputy Chair** |

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| --- | --- |
| **Criteria for selection** | **Essential**  **or**  **Desirable** |
| * Applicants must be an advocate, barrister or solicitor of not less than 7 years standing * Experienced in dealing with aspects of employment legislation, or an ability, coupled with the availability and commitment, to gain such knowledge and understanding * Experience of drafting orders, decisions and reports * Comprehensive knowledge of employment legislation and the procedural rules applicable to the Tribunal * Sound judgement and decision making * Effective communication skills * Ability to successfully Chair Tribunal hearings and to effectively work with, and provide guidance to, members of the Tribunal * Authority and case management skills * A commitment to ‘The 7 Principles of Public Life’ * Computer literate with computer access (email and word processing) * Able to commit time to reading case papers and decisions, and to attend at hearings * Satisfactory references | E  E  D  E  E  D  E  D  E  E  E  E |

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| **Appointments Commission – Employment and Equality Tribunal**  **Person Specification for Panel Members (Representative of Employers and Employees)** |

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| --- | --- |
| **Criteria for Selection** | **Essential**  **or**  **Desirable** |
| * No formal qualifications required * Significant knowledge and practical experience of current employment and equality practices, and procedures, from the employer’s/employee’s perspective, (as appropriate) * Sound and independent judgement * A recognition of the requirement to act at all times in a manner which maintains public confidence in the Tribunal * Ability to work constructively with others * An understanding of the judicial nature of the Tribunal * Effective communication and interpersonal skills * Able to analyse and review complex issues and weigh up conflicting opinions * A commitment to ‘The 7 Principles of Public Life’ * Computer literate with computer access (email and word processing) * Able to commit time to reading case papers and decisions, and to attend at hearings * Satisfactory references | E  E  E  D  E  D  E  E  E  E  E |

**3. Overview of the Procedure and Function of Tribunals and the Responsibilities of the Chair**

**Overview of IOM Tribunals**

(There may be some variations between Tribunals according to the regulations which govern each one)

* A Tribunal is part of the administrative justice system and a rung on the ladder of the courts system.
* Tribunal judgments may carry a right to a warrant of execution and may be published.
* A Tribunal is run in the same way as a court – although it tries to be less formal.
* The Tribunal room is set up the same way as a court with the Clerk/Secretary acting as ‘court usher’.
* The proceedings are recorded and the recordings may be used in evidence.
* Tribunals are independent of Government and provide protection of certain rights established by the Human Rights Act 2001.

**The Legally Qualified Chair**

Tribunal Chairs are the legally qualified persons who, together with the assistance of other members, make the Tribunal decisions.

The Chair, exercising discretion judicially, and in accordance with the relevant legislation:

* may make directions in advance of an appeal hearing in respect of witnesses, statements of case and supporting documentary evidence;
* may consider applications for adjournments;
* may summon witnesses; and
* has the power to swear in the people giving evidence

**Members**

Members provide balance and add to the informal nature of a Tribunal. Members are not usually required to have specific qualifications but they are chosen for their experience and ability to weigh objectively all matters before them and to judge soundly and free from bias.

**Directions**

Prior to the Hearing, the Chair may issue Directions to both parties. This will cover (for example) the submission of the Statement of Case, supporting evidence, lists of witnesses to be summoned and the dates by which this information is to be submitted.

**The Hearing: Overview of the Responsibilities of the Chair**

**Prior to the Hearing:**

* whether a preliminary point as to the jurisdiction of the Tribunal to hear the matter exists and, if so, how it should be dealt with;
* the manner in which the proceedings are to be conducted;
* the provision of further information by a party;
* the discovery and inspection of documents and the relevance of such documents to the proceedings;
* extension of time-limits;
* stay of proceedings;
* postponing or adjourning any hearing;
* summon witnesses;
* the joining of further parties to the proceedings;
* the use of agreed bundles and written witness statements;
* the submission of case authorities from the Higher Courts;
* the use of interpreters in the proceedings; and
* the timetable for the substantive hearing.

**During the Hearing:**

The Chair’s functions at the hearing are to preside over the proceedings to ensure that all parties receive a fair hearing; to advise the members on the relevant law and its application to the facts of the case and to produce the written decision, including reasons, of the Tribunal.

The Chair must be able to direct the hearing and sequence of events. For example:

* in which order the parties may give evidence;
* the cross examinations;
* whether late evidence may be submitted;
* the accepted style of questioning;
* who may be present during the hearing;
* when a witness can be released;
* if adjourning during an appeal, provision must be made for any witness still on the stand.

One or both parties may have representation, often a lawyer; the Chair must be able to follow the legal arguments presented and guide the members. On some Tribunals, in certain circumstances, the Chair can sit alone.

**Written Decisions/Judgments:**

Written Decisions may be made public (sometimes in a redacted version), and published online.

**Sections include** (but are not limited to):

* details of legal representation for each party;
* the Complaint (summary of Complainants’ grounds of Complaint and Respondent’s Grounds of Resistance to the case);
* documentary and verbal evidence produced;
* the law\*; and
* the Decision\*.

\*The determination of facts based on the balance of probability, and the application of relevant law, in the light of these facts to reach a decision.

Appeals from Tribunal decisions are via the High Court’s system. A decision can only be challenged on a point of law.

**4**. **Conflicts of Interest Guidance Note**

**CONFLICTS OF INTEREST**

**A GUIDE FOR APPLICANTS FOR MEMBERSHIP OF TRIBUNALS/BODIES**

**The Seven Principles Underpinning Public Life**

Holders of Public Office should at all times exercise the highest standards of behaviour in line with the seven principles of public life. The principles of public life are as follows**:**

**Selflessness:**

Holders of Public Office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.

**Integrity:**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity:**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability:**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness:**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands or statute requires it.

**Honesty:**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership:**

Holders of public office should promote and support these principles by leadership and example.

All candidates who put themselves forward for public appointment must be able to demonstrate their commitment to the principles and values of public service.

**What is a conflict of interest?**

Public appointments require the highest standards of propriety, involving impartiality, integrity and objectivity, in relation to the stewardship of public funds and the oversight and management of all related activities. This means that any private, voluntary, charitable or political interest which might be material and relevant to the work of the body concerned should be declared.

There is always the possibility for real or perceived conflicts of interest to arise. Both are a problem, as the perceived inference of a conflict may, on occasions, be as damaging as the existence of a real conflict.

The test which should be applied in relation to a potential case of perceived bias is:

*“whether the ascertained relevant circumstances would lead a fair-minded and informed observer to conclude that there is a real possibility that the decision-maker was biased”.*

*Judgment delivered by His Honour Deemster Kerruish on 12 February 2007.*

**Surely a perceived conflict is not a problem, as long as I act impartially at all times?**

The integrity of the individual is not in question here. However, it is necessary for the standing of the individual and the Tribunal that members of the public have confidence in their independence and impartiality. Even a perceived conflict of interest on the part of a member can be extremely damaging to the Tribunal’s reputation and it is therefore essential that these are declared and explored in the same way as an actual conflict would be. The fact that a member acted impartially may be no defence against accusations of potential bias.

**What should I do if I think I have a conflict of interest?**

The Tribunals Act 2006 covers situations where a conflict of interest or duty occurs.

(a)      Section 6(1) provides that if a Tribunal member becomes aware of a conflict he should declare that a conflict exists and should withdraw from taking any further part in the proceedings of the Tribunal.

(b) Section 6(2) provides that if a member has made such a declaration, he may nonetheless continue to take part in the proceedings of the Tribunal if both parties consent thereto.

(c)      Section 7(1) provides that a party to a Tribunal may object to a member of a Tribunal on the ground that there is a material conflict of interest or duty.

**5. Remuneration for Members of the Tribunal**

The Members are remunerated in accordance with the provisions of the Payment of Members’ Expenses Act 1989.

The Attendance Allowances Order 2008 specifies a rate of £89.50 per hour for the legally qualified Chair (with a minimum of £156.00 per meeting) and £78.00 for other Members per morning or afternoon session. These expenses must be declared for income tax purposes, but are not taxable.

‘Session’ means any of the following periods:

1. 9.00 a.m. to 1.30 p.m.;
2. 2.00 p.m. to 6.30 p.m.;
3. 6.00 p.m. to 12 midnight.

An additional payment shall be made to the legally qualified Chair in respect of the time taken in preparing for a meeting or hearing and report writing in relation to a meeting or hearing at the rate of £89.50 per hour. These payments are taxable.

The following travel allowance is also paid, in accordance with the “Travelling Allowances Order 2014” –

Motor Vehicle 57p per mile

Motorcycle 30p per mile

**6. The Appointments Commission**

The Appointments Commission was established by the Council of Ministers under the auspices of the Tribunals Act 2006 as an independent body. Its principal function is to make appointments to various appeal tribunals and other bodies covered by the statutory provisions.

**7. Recruitment Policy**

**Recruitment Policy Statement**

It is the Appointment Commission’s policy to promote equal opportunities. Procedures in relation to recruitments form part of this commitment. The Commission seeks to select the most suitable person for the post. The selection process is undertaken without discrimination and regardless of race, gender, age or any other personal circumstances.

**Appointments Commission Recruitment Procedure**

The Appointments Commission will prepare a shortlist of suitable candidates using the information provided on the application form for the relevant post. It is important that your answers on this form demonstrate how you meet the requirements of the post applied for. Interviews will be conducted in accordance with the policy of the Commission, but please be aware that the Commission may appoint to a Tribunal without interviews if it is satisfied by the written application and references in appropriate circumstances.

The opportunity exists for all candidates to speak to the Clerk of the Tribunal for further information about the function and procedures of the Tribunal.

Where formal qualifications are a requirement of appointment the Commission will require original certificates to be produced. Applicants may be required to provide verification of identity and address in a form and manner acceptable to the Commission.

Further information and downloadable documents are available at the Appointments Commission’s website: <https://www.gov.im/about-the-government/offices/general-registry-isle-of-man-courts-and-tribunals/the-appointments-commission/>

**8. Further information**

An overview of the Tribunal/Body can be found by following this link: <https://www.gov.im/about-the-government/offices/general-registry-isle-of-man-courts-and-tribunals/tribunals-service/>

Isle of Man Primary and secondary legislation is available at: [www.legislation.gov.im/cms/en](http://www.legislation.gov.im/cms/en)

Previous (since November 2006) decisions of the Tribunal can be viewed at: <https://www.judgments.im/content/@54.htm>

For persons who do not have access to the internet, copies of legislation are available from the Tynwald Library at The Ground Floor, Legislative Buildings, Finch Road, Douglas, or telephone 01624 685522.

**How do I apply?**

An application form and the information pack are available on the Appointments Commission’s website: <https://www.gov.im/about-the-government/offices/general-registry-isle-of-man-courts-and-tribunals/the-appointments-commission/>

or from the Executive Assistant to the Appointments Commission. Tel: 687562

Email: [appointments.commission@gov.im](mailto:appointments.commission@gov.im)

**Applications should reach the Executive Assistant no later than 5pm on 16 February 2024.**

The application form you submit must set out how you meet the essential requirements of the role.

If, after reading through the information pack, you have any queries about the duties and responsibilities of the post, or the Tribunal, please contact Mr Ray Quinn, Tribunal Service Manager on Tel: 682382 or Mr Thomas Whitelegg, Tribunal Clerk on Tel: 685941

**9. The Isle of Man Health and Safety Tribunal: Brief Overview**

**What does the Isle of Man Health and Safety Tribunal do?**

The principal function of the Tribunal is to hear and determine appeals brought under the following sections of the Health and Safety at Work, Etc., Act 1974 (of Parliament) (“the 1974 Act”) as applied to the Island:

* Section 24 – appeal by a person on whom an improvement notice or a prohibition notice has been served by an Inspector;
* Section 44 – appeal by a person who is aggrieved by a decision of an Authority or Inspector having power to issue certain licences under any of the “relevant statutory provisions” as defined in the 1974 Act.

The 1974 Act is applied to the Isle of Man by virtue of the Health and Safety at Work Order 1998 (as amended) made under the Health and Safety at Work, Etc., Act 1977.

**What is the constitution of the Tribunal?**

The Health and Safety Tribunal (“The Tribunal”) is constituted under section 10 of the Health & Safety at Work, Etc., Act 1974 and consists of –

* A legally qualified Chair (i.e. a barrister, advocate or solicitor of not less than 7 years standing) appointed by the Appointments Commission; and
* 2 other members, one being selected from the panel of members appointed by the Appointments Commission to the Employment & Equality Tribunal who are representative of employers, and the other from the panel of members appointed by the Appointments Commission to the Employment & Equality Tribunal who are representative of employees. The Secretary selects the members from each panel under the provisions of the Tribunal Regulations 2010.