

Employment Tribunals

1.1 Function

1.2 The nature of the work, importance of the area & considering the impact of these cases on the parties.

1.3 Structure

1.4 Legislative framework,

- The relevant regulations applicable to any proceedings in the Office of Industrial Tribunal and Fair Employment Tribunal (OITFET) are **The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005** and **The Fair Employment Tribunals (Rules of Procedure) Regulations (Northern Ireland) 2005**.
- As Tribunals are created by statute and have no powers other than those given to them by Parliament these rules provide the OITFET with such statutory powers and it is important that anyone practising in the OITFET has a copy of these rules to hand.
- Furthermore the OITFET can only consider cases over which it has a jurisdiction and if a case falls outside of this jurisdiction then the Tribunal is not permitted to consider it (**Secretary of State v Mann [2001] ICR 1005**)
- In particular any party or representative coming before the OITFET should be aware of the Overriding Objective, which is contained in Regulation 3 of 2005 Regulations. (appended)

1.5 TEXTBOOKS

IDS Employment Law Handbook

Harvey on Industrial Relations and Employment Law

1.6 Websites:

www.Bailii.org: British and Irish Legal Information Institute: British and Irish case law & legislation, European Union case

law, Law Commission reports, and other law-related British and Irish material

www.legislation.gov.uk: does what it says.

www.lexisnexis.com: Harvey, All England & Or reports, etc.

1.7 Assistance

Insurance

Equality Commission

Your Role

2.1 Preparation, Responsibilities & Risks:

FAST TRACK SYSTEM – (UNFAIR DISMISSAL)

- Due to the recession the Office of Industrial Tribunal and Fair Employment Tribunal (OITFET) have faced a great increase in claims being presented. This increase in claims is largely on the basis of redundancy type claims such as unfair dismissal and failure to make a redundancy payment.
- As a result of this increase the OITFET introduced a “fast track” system in order to try and progress claims more quickly.
- Essentially this fast track system comes into operation as soon as the OITFET receives a claim for Unfair Dismissal. So long as the Claim satisfies all of the requirements (at least on the face of it) e.g. the Claimant has shown 12 months service, the Listing Officer will then proceed to allocate a listing date. This occurs sometimes even before the Respondent has had a chance to put in its Response to the proceedings.
- Once a listing date is allocated, then if the parties expect that the matter will take longer than has been allocated by the OITFET it is advisable to contact the Tribunals, as soon as possible, to inform them in advance and request a longer hearing. This should hopefully avoid cases becoming part-heard and avoid any criticism of either party in relation to their conduct in the case.

2.2 Taking Instructions & framing a case.

- The “Overriding Objective”
Rogan v South Eastern Health And Social Care Trust [2009] NICA 47
Peifer v Castlederg High School and Western Education & Library Board [2008] NICA 49
Veitch v Red Sky Ltd (2010) NICA 31
 - Detail:
 - What is the complaint?
 - Is there more?
 - Drafting
 - Time limits
- 2.3 Value: Calculating the loss
- Basic award
 - Specified minimum
 - Compensatory award
 - Pension
 - Future loss
 - Injury to feelings, VENTO
- 2.4 Merit/risk

Preparing for Hearing

3.1 Consultation

- Essential
- Detail
- Review the claim
- Prepare to amend
- Schedule of Loss: Basic, compensatory, future, injury to feelings, pension, company car, VENTO

3.2 Case management

Industrial Tribunals (Constitution and Rules of Procedure) Regulations (NI) 2005: Rules 10, 11, 12, 13, 17, 18(7)

***“17 (1) Case management discussions are interim hearings and may deal with matters of procedure and management of the proceedings and they may be held in private. Case management discussions shall be conducted by a chairman.*”**

(2) Any determination of a person's civil rights or obligations shall not be dealt with in a case management discussion...

“Discrimination” CMDs – all cases involving allegations of discrimination on any of the statutorily prohibited grounds, including Equal Pay and allegations of whistleblowing contrary to the Public Interest Disclosure (Northern Ireland) Order 1998

“Orders” CMDs – applications on notice by a party e.g., for an order to compel replies to a request: see Rule 10 for a non-exhaustive list of matters which can be covered in a CMD

- Preparation
- Issues – detail – Legal and factual
- Timetabling
- Witness statements

3.3 Pre Hearing Reviews :

Rule 18 of Schedule One : **SCA Packaging v Boyle [2009] UKHL 37**
a succinct, knockout point which is capable of being decided after only a relatively short hearing

3.4 **Costs & Deposit Hearings:** Rule 20 of sched. 1 of the 2005 IT regs

3.3 **Self-represented & non-legally qualified parties, particular risks to be borne in mind.**

- Sensitivity,
- Appearance
- Professional ethics
- The LRA, negotiation
- Case management
- At Hearing, fairness

4.1 The Hearing

- Pfeifer, Rogan et al.
- Time lines
- Agreed facts
- Reading days
- cross-examination

5.1 **Settlements**

- risks
- LRA
- Terms
- Negotiation
- Clauses.
 - o Confidentiality,
 - o admission,
 - o references,
 - o time to pay.
 - o Other causes of action

Industrial Tribunals (Constitutional Rules of Procedure) Regulations (Northern Ireland) 2005

Overriding objective

3.—(1) The overriding objective of these Regulations and the rules in Schedules 1, 2, 3, 4, 5 and 6 is to enable tribunals and chairmen to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable –

(a) ensuring that the parties are on an equal footing;

(b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;

(c) ensuring that it is dealt with expeditiously and fairly; and

(d) saving expense.

(3) A tribunal or chairman shall seek to give effect to the overriding objective when it or he –

(a) exercises any power given to it or him by these Regulations or the rules in Schedules 1, 2, 3, 4, 5 and 6; or

(b) interprets these Regulations or any rule in Schedules 1, 2, 3, 4, 5 and 6.

(4) The parties shall assist the tribunal or the chairman to further the overriding objective.