



**A Guide to  
the Isle of Man Employment Tribunal**  
Department of Economic Development  
October 2009



## Contents

Terms used in this booklet.....	5
1. Introduction .....	6
1.1 Who is the guide for?.....	6
1.2 What is the Employment Tribunal?.....	6
1.3 How is the Tribunal constituted?.....	7
1.4 The Tribunal’s “overriding objective” .....	7
1.5 Further help and advice.....	7
1.6 The Isle of Man Tribunal Service.....	8
1.7 Expenses.....	8
2. Making a claim to the Employment Tribunal .....	9
2.1 Information needed before a claim can be accepted .....	9
2.2 How soon must a claim be made to the Tribunal? .....	9
2.3 What happens when a claim is sent in to the Tribunal? .....	10
3. Responding to a claim to the Employment Tribunal.....	12
3.1 Responding to the claim.....	12
3.2 What happens when the Tribunal receives the response?.....	12
3.3 The position of a respondent who has not responded, or whose response has not been accepted.....	13
4. Conciliation.....	14
5. Hearings: general .....	15
5.1 The three different types of hearing.....	15
5.2 Pre-hearing reviews .....	15
5.3 Full hearings.....	16
5.4 Review hearings .....	16
5.5 Chairman’s powers to manage proceedings, issue orders etc. ....	16
5.6 Applications by the parties for orders to be issued etc. ....	17
5.7 Restricted reporting orders.....	17
6. Preparations for the hearing .....	18
6.1 Obtaining information from the other party etc. ....	18
6.2 Witnesses.....	18
6.3 Witness orders.....	18
6.4 Notice of the hearing .....	19
6.5 Documents that may be needed for the hearing .....	19

6.6	Information about compensation and remedy.....	19
7.	The Hearing .....	21
7.1	The hearing: procedures .....	21
7.2	The judgment.....	22
8.	Costs .....	23
8.1	Costs against claimants or respondents.....	23
8.2	Personal liability of representatives for costs.....	24
9.	Reviews and Appeals .....	25
9.1	Challenging the Tribunal’s judgment .....	25
9.2	Decisions that can be reviewed.....	25
9.3	Grounds for review .....	25
9.4	The review process .....	26
9.5	Appeals.....	26
9.6	Legal advice on appeals .....	27
10.	Enforcement of awards .....	28
10.1	Failure to pay awards.....	28
10.2	Orders for reinstatement, re-engagement and recommendations. 28	
10.3	Redundancy and other payments and insolvent employers.....	28
11.	Commonly asked questions .....	29
	Appendix : Useful sources of information.....	31

## **Terms used in this booklet**

Claimant	the person who brings the Tribunal case.
Employment Tribunal	the court which decides most employment disputes
Parties	the claimant and the respondent
Reinstatement	an order by the Tribunal to the employer for the claimant to be given his or her job back on the same terms and conditions as if the dismissal had not taken place
Re-engagement	an order by the Tribunal to the employer for the claimant to be given a job but not necessarily the same as previously
Remedies	compensation or other award the Tribunal can make
Respondent	the person(s) against whom the case is brought. Note that the DSC can be a respondent in certain cases.

## **1. Introduction**

### **1.1 Who is the guide for?**

This guide is intended for use by:

- persons bringing or considering bringing a case to the Employment Tribunal (known as “**claimants**”);
- persons defending a case at the Tribunal (known as “**respondents**”).

This Guide refers to claimants and respondents as **the parties**.

The Guide has been prepared by the Department in order to assist the parties to understand the basic process of bringing and defending claims. It does not purport to be a complete or definitive statement of the law; nor does it deal with all of the procedural details and complexities.

The relevant law governing the constitution and proceedings of the Employment Tribunal is contained in:

- Part XII of the Employment Act 2006 and Schedule 3 to that Act; and
- the Employment Tribunal Rules 2008 (SD 887/08).

The Department has published a more detailed technical guide to the Rules entitled “*The Employment Tribunal Rules 2008: Rule by Rule*”.

The 2008 Rules apply to all proceedings in the Tribunal which are started on or after 31st January 2009.

Copies of the legislation and guides can be downloaded from the Department of Trade and Industry website at [www.emplaw.gov.im](http://www.emplaw.gov.im) .

### **1.2 What is the Employment Tribunal?**

The Employment Tribunal hears cases and makes decisions on matters to do with statutory employment rights such as unfair dismissal, redundancy payments, sex discrimination and a range of claims relating to wages and other payments.

A full list of the complaints the Employment Tribunal deals with, called a jurisdiction list, can be obtained from the Department of Economic Development website. The Department also publishes a wide range of guidance material on the website; of these the booklet “*Isle of Man Employment Rights: A Guide for Employers, Employees and Workers*” provides a broad overview of Isle of Man employment law.

The Employment Tribunal tries to keep its proceedings as simple and informal as possible. Some claimants and respondents put their own cases to the Tribunal whilst others may choose to have a representative, who may be an advocate, trade union official,

representative of an employer's organisation, or simply a friend or colleague.

Whilst the Tribunal is not as formal as a court it nevertheless follows certain procedures and acts independently. Witnesses must take an oath or promise to tell the truth and there are formal rules about the proceedings.

With few exceptions Tribunal hearings are open to members of the public.

### **1.3 How is the Tribunal constituted?**

The Tribunal usually consists of three members: a legally qualified Chairman, a member drawn from a panel nominated by employers' organisations and a member drawn from a panel nominated by employees' organisations. The Chairman and members are neutral when they hear a case. The Tribunal may decide a case by a majority.

The Chairman may sit alone on certain issues (see 5) or with the consent of the claimant and the parties.

### **1.4 The Tribunal's "overriding objective"**

The Tribunal Rules state the "overriding objective" of the Rules, which is to enable the Tribunal and Chairman to deal with cases justly. This is defined as ensuring that, as far as is practicable, parties to cases are on an equal footing; cases should be dealt with expeditiously and fairly, and in ways which are proportionate to the complexity of the issues. Dealing with cases justly also means, as far as possible, saving expense.

The Tribunal or Chairman must give effect to the overriding objective when exercising their powers under the Rules, or when interpreting them. In turn, parties to cases are also expected to assist the Tribunal or Chairman to further the overriding objective of the Rules.

### **1.5 Further help and advice**

The Manx Industrial Relations Service (MIRS), an independent conciliation service, can provide advice as to whether the Tribunal can deal with a particular complaint. Contact details of MIRS can be found in the Appendix.

MIRS Staff can answer general enquiries, give information about employment rights and explain how the Tribunal system works.

MIRS staff can also try to help the claimant and the respondent reach an agreed settlement if that is what the parties want to do. Where a case is settled before the date of the hearing, the Isle of Man Tribunal Service (see 1.6) should be notified as soon as possible.

Persons considering bringing a Tribunal claim may feel it is helpful to take advice before doing so, particularly, for example, if a claim involves discrimination.

Guidance on employment rights can be obtained from various sources including the following:

- the Manx Industrial Service (MIRS);
- the Equality Adviser at the Department of Economic Development (in the case of a discrimination claim or a family rights claim); or
- a trade union, (but the person seeking advice must usually be a member); or
- an advocate.

### **1.6 The Isle of Man Tribunal Service**

The Employment Tribunal is administered by the Isle of Man Tribunal Service, which is part of the General Registry. Contact details are at the Appendix.

One of the functions of the Tribunal Service is to maintain a register of claims, judgments and other information which is open to the public.

It can be useful to watch a hearing at a Tribunal in order to understand the procedure and what happens. This can be done by contacting the Tribunal Service and asking if there is a suitable hearing to observe.

### **1.7 Expenses**

The claimant, respondent and their witnesses and volunteer representatives (for example, unpaid representatives from a citizens advice bureau) may be entitled to travelling costs and other allowances when going to the Tribunal hearing (but no legal costs will be paid).



## **2. Making a claim to the Employment Tribunal**

### **2.1 Information needed before a claim can be accepted**

A claim cannot be accepted unless it meets certain conditions. It must be in writing and contain the following information:

- the claimant's name;
- the claimant's address;
- the name (so far as known to the claimant) of each person against whom the claim is made ("the respondent");
- each respondent's address (so far as is known to the claimant);
- details of the claim (including a brief summary of the facts giving rise to it);
- whether or not the claimant is or was an employee of the respondent.

The Tribunal Service has issued a form for claimants, use of which is optional. A copy of the form, together with guidance notes, can be downloaded from the Employment Tribunal website (see the Appendix for details).

Two or more claimants may not present their claims in the same document. However, the Chairman has powers to consolidate claims later in the proceedings where she considers this to be appropriate.

### **2.2 How soon must a claim be made to the Tribunal?**

Most claims to the Employment Tribunal must be made within very strict time limits. In most cases the Tribunal must receive the claim within 3 months of the date of the infringement of the right. (Exceptions to this general rule are detailed in the guides which deal with the particular rights). This 3-month period begins with the date the employment ended or when the matter that is the subject of the complaint happened. For example, if it happened on 1 March, the Tribunal must receive the claim on or before 31 May. If it happened on 5 March, the Tribunal must receive the claim on or before 4 June.

In certain circumstances, the Tribunal may allow a complaint where there was a good reason for the delay — for example, an employee may have been in hospital for the period when the claim should have been made.

Where a complaint is brought under the Employment (Sex Discrimination) Act 2000 the Tribunal has a greater degree of discretion and may allow a late complaint where it considers it just and equitable to do so.

### 2.3 What happens when a claim is sent in to the Tribunal?

On receipt of a claim the Clerk to the Tribunal is required to consider in the first instance whether or not it should be accepted. He must refuse it: —

- if it does not include all the information required (see 2.1 above);  
or
- if it is presented out of time and does not include an application for an extension of time and state the reasons why it could not have been presented in time.

In either case the Clerk will return the claim to the claimant, indicating what information or other matters should be included in it.

Where a claim is made outside the relevant time limit but contains an application for an extension of time, it will be referred to the Chairman.

If it appears to the Clerk that for any reason other than the expiry of a time limit the Tribunal does not have the power to consider the claim (e.g. because it is outside the Tribunal's jurisdiction), the Clerk will either advise the claimant, giving him or her the option to confirm within 21 days that he or she wishes to proceed with the claim, or refer it to the Chairman. If the claimant subsequently confirms that he or she wishes to proceed with the claim, the Clerk will refer it to the Chairman.

Where a claim is referred to the Chairman, she will either decide without a hearing whether or not it can be accepted, or else order that the decision be made at a **pre-hearing review**. Such a hearing is held in order to decide any question of entitlement to bring or defend a claim and whether the claim or response should be struck out (see further at 5.2). Whatever she decides, the Chairman will notify the Clerk of her decision, in writing, with reasons.

Once the claim has been accepted or where there is to be a pre-hearing review to determine that matter, the Clerk will:

- send a copy of the claim to the respondent(s);
- inform the parties of the case number and the address to which all related correspondence should be sent;
- inform the respondent how to respond to the claim, the deadline for doing so, and the consequences of not responding;
- advise the respondent of his or her right to receive a copy of any judgment of the case;
- where relevant, make the parties aware of the availability of the services of an industrial relations officer from the Manx Industrial Relations Service (see 1.5 above).

Where the Chairman decides that a claim should not be accepted the Clerk will then inform the claimant in writing both of the decision and

of the reasons for the claim not being accepted. The claimant will also be advised as to how the decision can be reviewed or appealed.

A decision to accept a claim at this stage does not bind the Chairman or Tribunal where any of the issues fall to be determined later in the proceedings.

### **3. Responding to a claim to the Employment Tribunal**

#### **3.1 Responding to the claim**

Where a claim has been accepted by the Tribunal, the respondent must ensure that any response to it reaches the Clerk within 28 days of the date on which a copy of the claim was sent out. For example, if the Tribunal Service sends out a copy of the claim to the respondent on 1 January, the respondent must ensure that the response reaches the Tribunal Service by 29 January.

The Tribunal Service has issued a form for respondents, with accompanying guidance notes, use of which is optional. Whether or not the form is used, the response must be in writing and contain the following information:

- the respondent's name;
- the respondent's address;
- whether or not the respondent wishes to resist the claim in whole or in part; and
- if so, on what grounds.

There is scope for a respondent to seek an extension of the 28-day time limit for the submission of the response. The Chairman may extend the time, on an application by the respondent before or at the same time as a response is lodged. The application must state the full reasons why the response cannot or could not be presented in time. For example, the respondent may need more time because an important witness (such as the person who took the decision to dismiss the claimant) is abroad on holiday and information is needed from that person.

#### **3.2 What happens when the Tribunal receives the response?**

On receipt of a response to a claim the Clerk to the Tribunal will consider whether or not it should be accepted. He must refuse it —

- if it does not include all the information required (see 3.1 above); or
- if it is presented out of time and no application for an extension of time has been received stating the reasons why it could not be presented in time.

In either case the Clerk will return the response to the respondent, indicating what information or other matters should be included in it.

Where a response is made outside the relevant time limit but contains an application for an extension of time, it will be referred to the Chairman. The Chairman will either decide without a hearing whether or not it can be accepted, or else order that the decision be made at a pre-hearing review (see 5.2).

Where the response is accepted or there is to be a pre-hearing review to determine that matter, the Clerk will send a copy of the response to all other parties.

Where the Chairman decides not to accept the response the Clerk will then inform the respondent in writing both of the decision and of the reasons for it. The respondent will also be advised as to how the decision can be reviewed or appealed.

### **3.3 The position of a respondent who has not responded, or whose response has not been accepted**

A respondent who has not responded, or whose response has not been accepted, will not be allowed to take any part in the case. The only exceptions to this will be where:

- the respondent is seeking to have a decision reviewed on the grounds that:
  - the decision was wrongly made as a result of an administrative error (including an error by a party);
  - the decision was based on a mistaken view of the applicable law; or
  - the interests of justice require such a review; or
- the respondent is called as a witness by somebody else; or
- the Tribunal is sending the respondent a copy of a decision or judgment, or corrected entry in the Tribunal register (see 1.6).

#### **4. Conciliation**

The Manx Industrial Relations Service (MIRS) has power to promote a conciliated settlement, which is an alternative way of settling the dispute. An Industrial Relations Officer (IRO) may seek to promote such a settlement without the need for a hearing even if the officer has not been requested to do so by either of the parties. The IRO will act in an independent and impartial manner. Nothing communicated to the IRO whilst he or she is seeking to bring about a conciliated settlement can be given in evidence at the Employment Tribunal except with the consent of the person who communicated it.

In order to facilitate the conciliation process the Tribunal Service will send MIRS a copy of the claim, a copy of any response to it, and except where the Clerk and the IRO have agreed otherwise, copies of all relevant documentation. It is the practice of the Employment Tribunal to await hearing from MIRS 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.

Where the parties reach a conciliated settlement the claimant will not be able to pursue the particular claim any further.

Contact details of the MIRS can be found in the Appendix.

## **5. Hearings: general**

### **5.1 The three different types of hearing**

There are three different types of hearing open to the Chairman or, as the case may be, the full Tribunal (which consists of a Chairman and two other members). These are:

- a pre-hearing review (see 5.2);
- a full hearing (see 5.3); and
- a review hearing (see 5.4).

### **5.2 Pre-hearing reviews**

A pre-hearing review may be held in order to decide:

- any question of entitlement to bring or defend a claim;
- whether either the claim or response is admissible or should be struck out.

The letter sent to the parties advising them of the date of the hearing will state the matters to be decided at the pre-hearing review. These might include:

- whether a claim or response should be accepted;
- whether the claimant has submitted his or her application in time;
- whether the claimant is or was an employee or worker of the respondent;
- (where applicable) if the claimant has sufficient length of service to be able to assert the particular employment right in question;
- whether not the claimant is in an excluded class of employment whereby a particular employment right may not apply;
- (where applicable), whether or not the claimant was dismissed.

It may well be necessary for evidence to be given at such a hearing. The parties may need to decide which witnesses (if any) and evidence to bring, bearing in mind the specific matters which the Tribunal will be considering at this stage.

Usually, a pre-hearing review will be conducted by the Chairman sitting alone. However, the Chairman has a discretion to order that the full Tribunal conduct the pre-hearing review, either on her own initiative or on a party's application, in certain circumstances.

Although the main purpose of a pre-hearing review is to determine matters of a preliminary nature, the Chairman can nevertheless, at this review stage, make judgments or rulings that may result in the proceedings being struck out or dismissed, with the result that a full hearing then becomes unnecessary.

A pre-hearing review may be held in public or in private as the Chairman considers appropriate except in certain cases where a judgment is given or certain orders are made in which case the review must be held in public.

### **5.3 Full hearings**

A full hearing determines any matter not already disposed of in earlier hearings or disposes of the proceedings altogether. In particular, the full hearing is the hearing that:

- decides whether the claim succeeds or fails; and,
- if it succeeds, what remedy is appropriate.

There may be more than one hearing in any particular proceedings, and there may be different types of hearing (e.g. on liability, remedies, or costs).

A full hearing will be usually be conducted by the full Tribunal but may be conducted by the Chairman in the following circumstances:

- where the claim is a complaint:
  - that the employer has made an unlawful deduction from wages; or
  - that the DHSS has failed to pay certain debts owing to employees whose employer has become insolvent or else ceased trading on the Isle of Man;
- where the parties consent; or
- where it appears to the Chairman that the claimant does not intend to pursue the claim, the respondent does not intend to contest the claim, or, in the case where there are 2 or more respondents, none of them intends to contest the claim.

Except in some prescribed circumstances, any full hearing of a claim must take place in public.

### **5.4 Review hearings**

A review hearing may take place where a party to a case applies to have certain Tribunal decisions reviewed. For further information see 9 below.

### **5.5 Chairman's powers to manage proceedings, issue orders etc.**

The Chairman has wide powers to manage the Tribunal proceedings, and to give directions to the parties, either on the application of one of the parties or on her own initiative, with a view to ensuring the smooth and efficient conduct of the case. In particular she may make an order on any matter she thinks fit, having considered the relevant papers, either in the absence of the parties or at a hearing.



An order can impose conditions on the parties and must inform them of the possible consequences of non-compliance. These include the issuing of costs orders, or the striking out of a claim or response as appropriate. A person who is subject to a requirement may apply for the order to be varied or revoked.

Orders must be recorded in writing and signed by the Chairman. Where an order is made the Clerk to the Tribunal will inform the parties of it as soon as reasonably practicable.

## **5.6 Applications by the parties for orders to be issued etc.**

During a case, parties can make written applications to the Clerk for particular orders to be issued by the Chairman or for a pre-hearing review (see 5.2) to be held. Such requests can also be made orally at a hearing. Reasons for making the application must be provided. Parties can also apply for orders to be varied or revoked.

## **5.7 Restricted reporting orders**

The Tribunal can make an order restricting the reporting in the media of Tribunal proceedings (a "restricted reporting order" or RRO). These are in any case:

- where there is an allegation which involves sexual misconduct;
- to which a child or young person is a party; or
- in which a child or young person gives evidence.

A RRO can be made by the Chairman or Tribunal on her or its own initiative, or where a written application has been made to the Clerk. An application can also be made orally at a hearing.

## **6. Preparations for the hearing**

### **6.1 Obtaining information from the other party etc.**

There may be some issues which need to be dealt with before the claim can be decided.

For example, either the claimant or the respondent may need to get more information from each other. As has been discussed at 5.5 above the Tribunal may make an order on this or other matters relating to the case, which the parties must follow.

If either party considers that the other should provide more information or documents, this should be requested in writing, giving a reasonable time limit for replying. Where a party does not provide the information or documents requested, the other party should write to the Tribunal as soon as possible enclosing a copy of the written request and ask the Tribunal to issue an order.

The Tribunal can also decide that more information is needed from either the claimant or the respondent to clear up a particular matter.

Where a party does not carry out or comply with any order made by the Tribunal the claim or response may be struck out and a party may be ordered to pay all or some of the other's costs.

### **6.2 Witnesses**

The parties can bring witnesses to the hearing to give relevant evidence. A party should let the Tribunal know beforehand how many witnesses it is planned to bring. A party may have been ordered by the Tribunal to produce a written statement of his or her own evidence and a statement for witnesses. But even if this is not the case it may be useful to consider doing so.

Where a party believes that a witness may have something of value to contribute to the evidence that person should attend the hearing, rather than relying just on the contents of signed statements. This is especially important where a party believes that the other side might challenge what the witness has to say. It is the responsibility of the parties to make sure that their witnesses come to the hearing.

### **6.3 Witness orders**

If witnesses are vital to the case but will not come to the hearing freely, either party can ask the Tribunal to issue a witness order to require their attendance, even if they do not want to be there. A party seeking such an order should apply in writing well before the hearing and should tell the Tribunal:

- the name and address of the witness;
- what the witness will say and how it will help the case; and

- why the witness is not willing to come to the hearing voluntarily.

#### **6.4 Notice of the hearing**

The claimant and the respondent will be notified of the date and start time of the hearing. The Clerk to the Tribunal will write to the parties at least 14 days before the day of the hearing to inform each party when it will take place.

It is usual for only one case per day to be listed for hearing unless it is very clear that matters can be concluded within a morning or afternoon.

Where it has been identified that more than one day is required then the dates for the hearing will be identified in the notice.

#### **6.5 Documents that may be needed for the hearing**

As discussed at 6.1 above, a party may have been ordered by the Tribunal to disclose documents to the other side. But even where no such order has been made, each party must make sure that the other has reasonable notice (at least 7 days) of any documents which the party intends to use at the hearing to support their case.

When it gives notice of the date and time of the hearing, the Tribunal will request that each party provide the Tribunal with 5 copies of any further papers that it intends to rely on at the hearing not later than 14 days (or such other period as may be notified) before the hearing. Each party should provide the other side with a further copy.

The Tribunal encourages papers being presented as a "hearing bundle" (e.g. in one or more lever arch files) including an index of the papers corresponding to the tab labels used in the bundle. For example, tab A1 — letter of dismissal; tab A2 — letter of appeal; tab B1 — statement of terms of employment; and so on. Organising the papers clearly and accurately in this way helps both the Tribunal and the parties to refer to particular documents quickly during the hearing.

The parties are free 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.

#### **6.6 Information about compensation and remedy**

In certain cases the claimant will have been asked in advance of the hearing to provide to the Tribunal, and to the respondent, a breakdown of those financial losses for which compensation is sought. The claimant will need to ensure that any documentary evidence available to support such losses has been submitted for the hearing (see 6.5), for example:

- evidence of the steps taken to find employment;

- details of subsequent employment;
- the rate of earnings in the previous and any new employment.

In addition, the claimant will be expected to deal with losses as part of the sworn evidence at the hearing. If this evidence is not provided he or she may recover less than might otherwise be the case, and in addition the matter may have to be adjourned to a subsequent hearing to deal with this aspect of the claim.

The respondent should produce any evidence and submissions which relate to what the claimant is seeking.

If the claimant succeeds in a complaint of unfair dismissal (or failing to allow a woman to return to work after pregnancy) the Tribunal may consider ordering reinstatement or re-engagement. As a result the respondent should be prepared to give evidence at the hearing as to:

- the availability of the job which the claimant held, or similar jobs;
- whether the respondent would take the claimant back either in the old job or in a similar one; and
- the reasons, if any, as to why it may not be practical or possible to re-employ the claimant.

The respondent should also be prepared to give evidence at the hearing as to what he or she would consider to be appropriate compensation and how the assessment was arrived at.

If the claimant was a member of a pension scheme, the respondent should bring to the Tribunal the following information:

- whether the scheme was a money-purchase or a final-salary scheme;
- if it was a final-salary scheme, the value of the deferred pension;
- the retirement age under the scheme; and
- the amount of the employer's contribution to the scheme.

As in the case of the claimant's failure to provide information, if the respondent does not give the Tribunal this information a further hearing may be needed.

## **7. The Hearing**

### **7.1 The hearing: procedures**

It can be difficult to gauge the length of the hearing but, where the case can be heard within a day, the Tribunal will sit for as long as is reasonable to determine the matter.

The parties should check the date, time and place of the hearing and ensure they arrive no later than 15 minutes before the hearing is due to start.

On arrival at the hearing venue parties will be shown to their respective waiting areas and 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. The Clerk should be told at this stage if a party or any witnesses have any special needs or concerns, if these have not been previously notified.

The Tribunal can exclude witnesses from a hearing until they are required to give evidence, if it considers this to be in the interests of justice.

The Chairman will manage the proceedings in a calm and measured way. However, she may have to be firm in moving the case on to make sure that it proceeds at a pace which allows it to be dealt with within the time set aside.

Generally in an unfair dismissal case the respondent will present its case first, while in a discrimination case the claimant will normally be first to present its case. However, there is no absolute rule as to which side starts, and this will be discussed with the parties before the hearing begins.

The parties and their witnesses will have to give evidence on oath or affirmation. Should a person lie after swearing an oath or affirmation he or she could be convicted of perjury.

Evidence may be given by reading a prepared written statement if desired. The party that has given evidence or its witnesses can be asked questions by the other side ('cross-examination') and the Chairman and members may ask some additional questions. The party or its witnesses can then give further evidence to clarify matters which came up when being asked questions by the other side ('re-examination').

The same procedure is then usually followed for the other side. Once all the evidence has been heard, both sides can sum up before the Tribunal retires to consider its judgment.

Where a party or representative fails to attend the hearing, subject to certain procedures, the Tribunal has the power to dismiss the proceedings in the absence of the party, or to adjourn the hearing.

## **7.2 The judgment**

Unless the Tribunal 'reserves' its judgment, the Chairman will announce the judgment and the reasons for it at the end of the hearing. If the judgment is reserved, it will be sent out at a later date, together with the reasons for it, in writing. This may happen in complicated cases or if there is not enough time on the day of the hearing to come to and announce the judgment.

The Tribunal will always send a written judgment and the reasons for it to the claimant and the respondent or, if appropriate, to a party's representative.

## **8. Costs**

### **8.1 Costs against claimants or respondents**

The Tribunal or the Chairman can make a "costs order", that is, an order requiring a claimant or respondent to make a payment in respect of costs incurred by another party. The general principle is that a costs order will not normally be made in any proceedings. However, an order can be made in certain circumstances:

- where a party has, in opinion of the Tribunal or the Chairman acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or (either personally or through a representative) conducting the proceedings;
- where costs have been incurred as a result of a full hearing or a pre-hearing review being postponed;
- where a party has not complied with an order.

Where consideration is given to making a costs order, the Tribunal or Chairman must take into account a party's ability to pay when determining whether or not to make the order and, if so, the amount of the order.

An application for a costs order can be made at any time during proceedings. It can be made orally at the end of a hearing, or in writing to the Clerk. If the application is received later than 21 days from the judgment, it will be considered only if the Tribunal or the Chairman considers that it is in the interests of justice to do so. (The date of the judgment is either the date of the relevant hearing, if the judgment was issued orally, or the date on which the written judgment was sent to the parties, if it was reserved).

A costs order cannot be made unless the party against whom it is to be made is sent notice by the Clerk, giving him or her the opportunity to make representations as to why it should not be made, unless the party has already been given the opportunity to respond orally to the Chairman or Tribunal.

There are three ways in which a costs order against a party can be determined:

- the Tribunal may specify the sum payable, where that sum is no greater than £500 inclusive of VAT and disbursements;
- the parties may agree the sum payable between themselves;
- the Tribunal may order the costs to be determined by way of detailed assessment in the High Court in accordance with the procedure set out in the rules of court. (This may be appropriate e.g. where misconduct by one party has caused another to incur costs exceeding £500.)

The Tribunal or Chairman must provide written reasons for making a costs order, if requested to do so. A request must normally be made within 14 days after the costs order is made.

## **8.2 Personal liability of representatives for costs**

The Tribunal or the Chairman may make an order (a "wasted costs order") against a party's representative, requiring the representative to pay the costs incurred by any party (including his own client) as a result of the representative's misconduct. The order may prevent the representative recovering the costs from his client, or require him to repay costs already paid by the client, or require him to meet the whole or part of any costs incurred by another party.

A wasted costs order may be made where costs are incurred by a party:

- as a result of any improper, unreasonable or negligent act or omission on the part of any representative; or
- where there has been such an act or omission after the costs were incurred and the Tribunal or Chairman considers it unreasonable for that party to pay them.

But such an order will not be made where the representative is not acting for profit with regard to the proceedings; nor will an order be made against a representative who is the employee of a party.



## **9. Reviews and Appeals**

### **9.1 Challenging the Tribunal's judgment**

The Tribunal's judgments and decisions may be altered only:

- if the Tribunal decides, at the request of either party or on its own initiative, to review the judgment; or
- after an appeal to the High Court by one of the parties involved in the judgment.

A party may apply to the Tribunal to review its judgment and also appeal to the High Court. Where both courses of action are pursued a copy of the application for the review should be lodged with the High Court and, if such an application has been heard and determined, then also a copy of the Tribunal's judgment on the review application. An application for review does not change or extend the time limit for making an appeal.

Where an appeal has been made, the High Court may want to examine documents or other exhibits produced in evidence at the hearing.

### **9.2 Decisions that can be reviewed**

A party can apply to the Tribunal to ask it to review any of the following decisions:

- a decision not to accept a claim or response;
- a judgment (including an order for costs or wasted costs);
- certain orders which are in the nature of a final judgment.

### **9.3 Grounds for review**

Decisions can be reviewed for the following reasons:

- administrative error;
- the decision was based on a mistaken view of the applicable law;
- a party did not receive notice of the proceedings;
- a decision was made in the absence of a party;
- new evidence has emerged since the end of the hearing which could not have been reasonably known or foreseen at that time;
- the interests of justice require a review.

The Tribunal or Chairman can decide to institute a review of a decision on its or her own initiative on any of these grounds.

A decision not to accept a claim or response may only be reviewed if it was wrongly made as a result of an administrative mistake, it was based on a mistaken view of the applicable law or if it is in the interests of justice.

“The interests of justice” do not mean that a judgment or decision will be reviewed just because a party disagrees with it. Something must have gone wrong at or in connection with the hearing or something has happened since the hearing which makes the decision unjust.

If a party applies for a review based on new evidence it must explain why the evidence was not available before and include a full statement of the evidence which it is proposed to introduce.

#### **9.4 The review process**

An application for a review must be made in writing within 14 days of the date the decision was sent by the Tribunal Service and must state the grounds as to why the review is requested. Alternatively, if the decision was made at a hearing, a review application can be made orally at that hearing. (The Chairman may extend the time limit for reviewing a judgment but only if she thinks it is just and equitable to do so).

Reviews are normally undertaken by the Chairman or Tribunal that made the original decision. This will always be the case where the review is undertaken on the Chairman's or Tribunal's own initiative, and a notice must be sent to the parties no more than 21 days after the original decision explaining why the review is to take place, and giving an opportunity for reasons to be provided as to why there should be no review.

The review application will be rejected if it is considered that there are no grounds for a review, or where there is no reasonable prospect of the decision being varied or revoked. In the case of a rejection, the Clerk will inform the party of the Chairman's decision in writing, providing reasons.

The Tribunal has the power to confirm, change or revoke the decision. If revoked, the Tribunal or Chairman must order the decision to be taken again. If the original decision was made at a hearing, the new one must be made at a hearing as well. If the original decision was taken by the Chairman without a hearing, the new decision can also be made by the Chairman in the absence of the parties.

#### **9.5 Appeals**

An appeal from a decision of the Employment Tribunal may be made to the High Court, in accordance with the Rules of the High Court. An appeal can only be made on a point of law,. The appeal must be made within 42 days of the final judgment or order.

A notice of appeal should set out the full particulars of the points relied on in support of the grounds of appeal and contain a copy of the claim and response, the Tribunal judgment and the written reasons for the judgment together with the notice of appeal.

For contact details of the High Court see the Appendix.

## **9.6 Legal aid or legal advice and assistance on appeals**

A party intending to make an appeal may, depending on his or her financial situation, be able to get legal aid for an appeal to the High Court, or legal advice and assistance relating to an appeal, free or at reduced cost. To obtain legal aid the party will need to show not only that, according to a means test, he or she cannot afford to pay for representation, but also that the case is strong enough to make it worthwhile for the party to be represented at the public expense.

Contact details as to the availability of legal aid are to be found at Appendix 1 under "Registry".

## **10. Enforcement of awards**

### **10.1 Failure to pay awards**

Where a party does not receive the money which the Tribunal has awarded that party may make a written request to the Tribunal to grant 'execution', that is, an order to the Coroner to enforce payment against the other party's assets. If the Tribunal makes such an order, it will be given to the party to present to the relevant Coroner.

### **10.2 Orders for reinstatement, re-engagement and recommendations**

Where the Tribunal has ordered the employer either to reinstate or re-engage an employee or, in a discrimination case, made a recommendation, and the order or recommendation has not been carried out or complied with, the employee should write to the Tribunal Service as soon as the date by which the employer should have acted has passed. The Tribunal will then arrange a further hearing and may order the employer to pay additional compensation.

### **10.3 Redundancy and other payments and insolvent employers**

Where the Tribunal has decided that the employee is entitled to a redundancy payment but the employee has difficulty in getting his or her former employer to pay, or where the Tribunal has made an award for unpaid wages, holiday pay, or notice pay and the employer is insolvent, the employee should contact the DSC Redundancy Payments Unit, contact details of which can be found at the Appendix.

## **11. Commonly asked questions**

### **11.1 Is legal aid available?**

No, legal aid is not available for proceedings before the Employment Tribunal, although legal advice and assistance may be available (subject to a means test) under 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; lists of advocates are available from the Isle of Man Law Society (see the Appendix for contact details).

Legal aid may be available for an appeal to the High Court (see 9.6).

### **11.2 Can I withdraw my claim?**

You have the right to withdraw all or part of a claim at any time. This can be done either orally at a hearing, or by informing the Clerk in writing through a notice of withdrawal. The notice must make clear whether the whole claim or just part of it is being withdrawn, and also, where there is more than one respondent, against which respondent(s) the case is being withdrawn. The Clerk will then inform all the other parties of the withdrawal.

A withdrawal takes place from the date the Clerk or (in the case of oral notification) the Tribunal receives notice of it, and if the whole claim is withdrawn, proceedings against the respondent end on that date. The withdrawal does not, however, affect proceedings as far as the provisions on costs, and wasted costs awards are concerned.

If a claim is withdrawn, this does not necessarily mean that it cannot be "re-activated". A respondent can, where a claim has been withdrawn, also apply to have the proceedings dismissed. The respondent has 21 days to do this from the date the withdrawal notice was sent to him or her, unless given an extension of time by the Chairman. Once dismissed, a claim cannot be re-activated unless the decision to dismiss it is successfully reviewed or appealed.

### **11.3 Can I correspond with the Tribunal by e-mail?**

Yes – the e mail address of the Tribunal can be found at the Appendix.

You should make sure you quote the case number in any correspondence.

Documents sent to the Tribunal must be in a format compatible with MS Word, and documents in other formats will not be accepted. When the Tribunal Office receives an e-mail, an electronic acknowledgement will be sent.

Copies of non-electronic documents and documents which need the Chairman's signature, for example a judgment, will be sent by post.

#### **11.4 Can the Tribunal cater for persons with a disability or special needs?**

If you or anyone coming to a Tribunal with you has a disability or a particular need, you should contact the Tribunal office as soon as possible to discuss what additional help you might require.

#### **11.5 Can I ask for the hearing to be postponed?**

If you have a good reason to ask for the hearing to be postponed, you must make your request in writing as soon as possible giving full reasons for your request. You should also send a copy of your request to the other side so that they are aware of it.

The Chairman will decide whether it is in the interests of justice to grant a postponement, and she may want the views of the other side before reaching a decision. You should not assume that your request has been granted unless this is confirmed by the Clerk.

If you or the other side (or somebody else acting for you or the other side) should fail to appear at a hearing, the Tribunal may decide the case in your or their absence.

#### **11.6 What should I do if my case is settled or I want to withdraw my claim?**

If your case is settled before the hearing, you should let the Clerk know immediately. If your case is settled using the Manx Industrial Relations Service, an Industrial Relations Officer will notify the Clerk.

If you are the claimant and you decide to withdraw your claim, you must do so in writing as soon as possible. You must also tell the respondent that you are withdrawing your claim.

## Appendix : Useful sources of information

### *Contact*

#### **Clerk to the Employment Tribunal**

Tribunals Office  
Isle of Man Courts of Justice  
Deemsters Walk  
Bucks Road  
Douglas  
IM1 3AR

Tel: 685941

Fax: 685976

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

Web [www.gov.im/ded/employmentrights/tribunals.xml](http://www.gov.im/ded/employmentrights/tribunals.xml)

#### **Manx Industrial Relations Service**

5th Floor  
Victory House  
Prospect Hill  
Douglas  
IM1 1EQ

Tel. 672942

Fax 687050

E mail: [iro@ir.gov.im](mailto:iro@ir.gov.im)

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

#### **Equality Adviser (Discrimination Officer)**

Department of Economic Development  
Hamilton House  
Peel Road  
Douglas  
IM1 5EP

Tel 682372

Fax 682355

Email: [equalityadviser@ded.gov.im](mailto:equalityadviser@ded.gov.im)

Web [www.gov.im/ded/employmentRights/equality.xml](http://www.gov.im/ded/employmentRights/equality.xml)

**Redundancy Payments Unit**

Department of Social Care  
Markwell House  
Market Street  
Douglas  
IM1 2RZ

Tel. 685103

Fax 685120

E mail [general.benefits@socialsecurity.dsc/gov.im](mailto:general.benefits@socialsecurity.dsc/gov.im)

Web [www.gov.im/dsc/security/](http://www.gov.im/dsc/security/)

**Isle of Man Law Society**

27 Hope Street  
Douglas  
IM1 1AR

Tel. 662910

Fax 679232

E mail [enquiries@iomlawsociety.co.im](mailto:enquiries@iomlawsociety.co.im)

Web [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

**High Court of Justice of the Isle of Man**

High Court Office  
Isle of Man Courts of Justice  
Deemsters Walk  
Douglas  
IM1 3AR

Tel. 687586

Fax 685236

**Legal aid (High Court only)**

Legal Aid Office  
Isle of Man Courts of Justice  
Deemsters Walk  
Douglas  
IM1 3AR

Tel. 686464

Fax 685367



**Isle of Man Trades Council**

c/ o Angela Moffatt  
Nivison House,  
Hill Street,  
Douglas,  
IM1 1EF

Tel. 621156  
Fax 673115



This guide was published by:  
The Department of Economic Development  
Hamilton House  
Peel Road  
Douglas  
IM1 5EP  
Tel. 01624 682354

[www.emplaw.gov.im](http://www.emplaw.gov.im)