



Jersey

**EMPLOYMENT AND DISCRIMINATION
TRIBUNAL (PROCEDURE) (JERSEY)
ORDER 2016**

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Jersey

EMPLOYMENT AND DISCRIMINATION TRIBUNAL (PROCEDURE) (JERSEY) ORDER 2016

Arrangement

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Jersey

EMPLOYMENT AND DISCRIMINATION TRIBUNAL (PROCEDURE) (JERSEY) ORDER 2016

THE MINISTER FOR SOCIAL SECURITY, in pursuance of Articles 91(3) and (4) and 104 of the Employment (Jersey) Law 2003¹ and Article 42(3) of the Discrimination (Jersey) Law 2013², orders as follows –

Commencement [[see endnotes](#)]

PART 1

INTRODUCTORY AND GENERAL

1 Interpretation

(1) In this Order –

“Chairman” means a member of the Tribunal described in Regulation 2(1)(a) of the Regulations;

“claim” means any proceedings before the Tribunal making a complaint;

“complainant” means the person bringing the claim;

“complaint” means anything that is referred to as a claim, complaint, reference, application or appeal in any enactment that confers jurisdiction on the Tribunal;

“Deputy Chairman” means a member of the Tribunal described in Regulation 2(1)(b) of the Regulations;

“electronic communication” has the meaning given to it by Article 1(1) of the Electronic Communications (Jersey) Law 2000³;

“full tribunal” means a Tribunal constituted in accordance with Regulation 9(2) of the Regulations;

“member” means the Chairman, a Deputy Chairman or a Lay member of the Tribunal;

“party” means party to the proceedings to be considered by the Tribunal;

“present” means deliver (by any means permitted under Article 42) to the tribunal office;

“Register” means the register of judgments and written reasons kept in accordance with Article 41;

“Regulations” means the Employment and Discrimination Tribunal (Jersey) Regulations 2014⁴;

“respondent” means the person or persons against whom the claim is made;

“response” means a response to a claim;

“single tribunal member” means the Chairman or a Deputy Chairman sitting alone;

“tribunal office” means the office established for the carrying out of administrative functions in support of the Tribunal.

- (2) A reference in this Order to the Tribunal applies to both a full tribunal and to sittings before a single tribunal member.
- (3) A decision of the Tribunal is either –
 - (a) a “case management order”, being a direction or other decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment; or
 - (b) a “judgment”, being an order or other decision, made at any stage of the proceedings (but not including a decision under Article 6 or 10), that finally determines –
 - (i) a claim, or part of a claim, as regards liability or remedy, or
 - (ii) any issue that is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue as to whether or not a claim should be struck out or a jurisdictional issue).

2 Overriding objective

- (1) The overriding objective of this Order is to enable the Tribunal to deal with cases fairly and justly, that is to say so far as practicable –
 - (a) ensuring that the parties are on an equal footing;
 - (b) dealing with cases in ways that are proportionate to the complexity and importance of the issues;
 - (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (d) avoiding delay, so far as compatible with proper consideration of the issues; and
 - (e) saving expense.
- (2) The Tribunal must try to give effect to the overriding objective in interpreting, or exercising any power given to it by this Order.
- (3) The parties and their representatives must assist the Tribunal to further the overriding objective and in particular must co-operate generally with each other and with the Tribunal.

3 Time

- (1) Unless otherwise specified by the Tribunal, an act required by this Order or by a practice direction or order of the Tribunal, to be done on or by a particular day, may be done at any time before midnight on that day and if there is an issue as to whether the act has been done by that time, the onus is on the party claiming to have done it to prove compliance.
- (2) If the time specified by this Order, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.
- (3) Subject to the Employment (Jersey) Law 2003⁵, where any act is required to be, or may be, done –
 - (a) within a certain number of days of or from an event; or
 - (b) not less than a certain number of days before or after an event,the date of that event is not included in the calculation.
- (4) Where the Tribunal imposes a time limit for doing any act, the last date for compliance must, wherever practicable, be expressed as a calendar date.
- (5) Where time is specified by reference to the date when a document is sent to a person by the Tribunal, the date when the document was sent, unless the contrary is proved, is regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document.
- (6) The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in this Order or in any decision, whether or not (in the case of an extension) it has expired.
- (7) In this Article “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or any day appointed as a public holiday or bank holiday under Article 2 of the Public Holidays and Bank Holidays (Jersey) Law 1951⁶.

PART 2

STARTING A CLAIM

4 Presenting the claim

- (1) A claim is started by presenting a completed claim form supplied by the tribunal office which must be signed by all complainants and dated.
- (2) The claim form must include the name and address of every complainant and every respondent and a brief summary of the facts giving rise to the claim.

5 Rejection of claim

- (1) The Secretary of the Tribunal must reject a claim if –
 - (a) it deviates from the form supplied by the tribunal office to an extent that materially affects the substance or that is likely to mislead; or
 - (b) it does not contain the name and address of every complainant and every respondent.
- (2) The Chairman or a Deputy Chairman must reject a claim (or part of it) if he or she considers that the claim (or part of it) is –
 - (a) one which the Tribunal has no jurisdiction to consider; or
 - (b) in a form that cannot sensibly be responded to or is otherwise an abuse of the process.
- (3) If the claim is rejected, it must be returned to the complainant together with a notice of rejection explaining the reasons for rejecting the claim (or part of it) and explaining how to apply for a reconsideration of the rejection.

6 Reconsideration of rejected claim

- (1) A complainant whose claim has been rejected (in whole or in part) under Article 5 may apply for a reconsideration on the basis that the decision to reject was wrong or the notified defect can be rectified.
- (2) The application must be in writing and presented to the tribunal office within 14 days of the date that the notice of rejection was sent.
- (3) The application must explain why the decision is said to have been wrong or rectify the defect and may, if the complainant so wishes, request a hearing.
- (4) If the complainant does not request a hearing, or the Chairman or a Deputy Chairman decides, on considering the application, that the claim should be accepted in full, the Chairman or Deputy Chairman must determine the application without a hearing; otherwise the application is considered at a hearing attended only by the complainant.
- (5) If the Chairman or Deputy Chairman decides that the original rejection was correct but that the defect has been rectified, the claim is treated as presented on the date that the defect was rectified.
- (6) Where a claim (or part of it) is rejected under Article 5(2) its reconsideration must be by a person other than the person who originally rejected it.

PART 3

RESPONSE TO CLAIM

7 Notification to respondents

Unless a claim is rejected, within 5 working days of the date of receipt of the completed claim form the Secretary of the Tribunal must send a copy of that form, together with a response form, to each respondent together with a notice including information on –

- (a) whether any part of the claim has been rejected; and
- (b) how to submit a response, the time limit for doing so and what will happen if a response is not received by the tribunal office within that time limit.

8 Response

- (1) A response must be on a form supplied by the tribunal office, which must be signed by the respondent and dated and presented to the tribunal office within 21 days of the date that the copy of the claim form was sent by the Tribunal.
- (2) Subject to paragraph (3), where there is more than one respondent or claim a separate response form must be presented by each respondent.
- (3) A response form –
 - (a) may include the response of more than one respondent if they are responding to a single claim and either they do not resist the claim or they resist it on the same grounds;
 - (b) may include the response to more than one claim if the claims are based on the same set of facts and either the respondent does not resist the claims or resists all of them on the same grounds.

9 Rejection of response

- (1) The Secretary of the Tribunal must reject a response if –
 - (a) it deviates from the form supplied by the tribunal office to an extent that materially affects the substance or that is likely to mislead;
 - (b) it does not contain the respondent's full name and address; or
 - (c) it is received outside the time limit in Article 8 (or any extension of that limit granted within the original limit).
- (2) However, if an application for extension has already been made under Article 11 or the response includes or is accompanied by such an application, the response must not be rejected pending the outcome of the application.

- (3) The response must be returned to the respondent with a notice of rejection explaining why it has been rejected and the steps needed to be taken by the respondent, including any need to apply for an extension of time, and how to apply for a reconsideration of the rejection.

10 Reconsideration of rejected response

- (1) A respondent whose response has been rejected under Article 9(1) may apply for a reconsideration on the basis that the decision to reject was wrong or, in the case of a rejection under Article 9(1)(a) or (b), can be rectified.
- (2) The application must be in writing and presented to the tribunal office within 14 days of the date on which the notice of rejection was sent.
- (3) The application must explain why the decision is said to have been wrong or rectify the defect and may, if the respondent so wishes, request a hearing.
- (4) If the respondent does not request a hearing, or the Chairman or a Deputy Chairman decides, on considering the application, that the response is accepted in full, the Chairman or Deputy Chairman must determine the application without a hearing; otherwise the application is considered at a hearing attended only by the respondent.
- (5) If the Chairman or Deputy Chairman decides that the original rejection was correct but that the defect has been rectified, the response is treated as presented on the date that the defect was rectified (but the Chairman or Deputy Chairman may extend time under Article 3(6)).
- (6) Where a response is rejected under Article 9(1)(c) its reconsideration must be by the Chairman or a Deputy Chairman.

11 Applications for extension of time for presenting response

- (1) An application for an extension of time for presenting a response must be presented in writing within the 21 days allowed for the response and copied to the complainant, setting out the reason why the extension is sought.
- (2) The complainant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.
- (3) The Chairman or a Deputy Chairman may determine the application without a hearing and may grant an extension of such period as the Tribunal considers appropriate if he or she considers it just and equitable to do so.

12 Effect of non-presentation or rejection of response, or case not contested

- (1) This Article applies if –
 - (a) no response has been presented on the expiry of the time limit in Article 8;

- (b) any response received has been rejected and no application for a reconsideration is outstanding; or
 - (c) the respondent has stated that no part of the claim is contested.
- (2) The Chairman or a Deputy Chairman must decide whether on the available material (which may include further information which the parties are required to provide), a determination can properly be made of the claim, or part of it and if so the Chairman or Deputy Chairman must issue a judgment accordingly; otherwise, a hearing must be fixed before a single tribunal member.
- (3) The respondent is entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, is entitled to participate in any hearing only to the extent permitted by the Chairman or Deputy Chairman.

13 Notification of acceptance

Where the Tribunal accepts the response it must send a copy of it to all other parties.

PART 4

COUNTERCLAIM

14 Making a counterclaim

- (1) Any counterclaim must be made as part of the response, presented in accordance with Article 8.
- (2) A counterclaim may be rejected on the same basis as a complainant's claim may be rejected under Article 5(2), in which case Article 6 applies to the rejected counterclaim as if it were a claim presented under Article 4.

15 Notification of counterclaim

When the Tribunal sends the response to the other parties in accordance with Article 13 it must –

- (a) notify the complainant that the response includes a counterclaim; and
- (b) include information on how to submit a response to the counterclaim, the time limit for doing so, and what will happen if a response is not received by the Tribunal within that time limit.

16 Responding to an employer's counterclaim

A complainant's response to a counterclaim must be presented to the tribunal office within 21 days of the date that the response was sent to the complainant

or Articles 11 and 12 shall apply to the presentation of that response as if it were a response under Article 8.

PART 5

MATTERS PRELIMINARY TO HEARING

17 Initial consideration

- (1) As soon as possible after the acceptance of the response, the Chairman or a Deputy Chairman must consider all of the documents held by the Tribunal in relation to the claim, to confirm whether there are arguable complaints and defences within the jurisdiction of the Tribunal (and for that purpose the Chairman or Deputy Chairman may order a party to provide further information).
- (2) Except in a case where notice is given under Article 18 or 19, the Chairman or Deputy Chairman conducting the initial hearing must make a case management order (unless made already), which may deal with the listing of a preliminary or final hearing, and may propose conciliation or mediation.

18 Dismissal of claim (or part of claim)

- (1) If the Chairman or a Deputy Chairman considers –
 - (a) that the Tribunal has no jurisdiction to consider the claim, or part of it, or;
 - (b) on the application of the respondent, that the claim, or part of it, has no reasonable prospect of success,the Tribunal must send a notice to the parties in accordance with paragraph (2).
- (2) The notice must –
 - (a) set out the Chairman or Deputy Chairman’s view and the reasons for it; and
 - (b) order the claim, or the part in question, to be dismissed on such date as is specified in the notice unless before that date the complainant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed.
- (3) If no such representations are received, the claim must be dismissed from the date specified without further order (although the Tribunal must write to the parties to confirm what has occurred).
- (4) If representations are received within the specified time they must be considered by the Chairman or Deputy Chairman, who must either permit the claim (or part) to proceed or fix a hearing for the purpose of deciding whether it should be permitted to do so.
- (5) The respondent may, but need not, attend and participate in the hearing.

- (6) If any part of the claim is permitted to proceed the Chairman or Deputy Chairman must make a case management order.
- (7) This Article applies to a counterclaim as it does a claim.

19 Dismissal of response (or part of response)

- (1) If the Chairman or a Deputy Chairman, on the application of the complainant, considers that the response, or part of it, has no reasonable prospect of success the Tribunal must send a notice to the parties –
 - (a) setting out the Chairman or Deputy Chairman’s view and the reasons for it;
 - (b) ordering that the response, or the part in question, is dismissed on such date as is specified in the notice unless before that date the respondent has presented written representations to the Tribunal explaining why the response (or part) should not be dismissed; and
 - (c) specifying the consequences of the dismissal of the response, in accordance with paragraph (6).
- (2) If no such representations are received, the response must be dismissed from the date specified without further order (although the Tribunal must write to the parties to confirm what has occurred).
- (3) If representations are received within the specified time they must be considered by the Chairman or Deputy Chairman who must either permit the response (or part) to stand or fix a hearing for the purpose of deciding whether it should be permitted to do so.
- (4) The complainant may, but need not, attend and participate in the hearing.
- (5) If any part of the response is permitted to stand the Chairman or Deputy Chairman must make a case management order.
- (6) Where a response is dismissed, the effect is as if no response had been presented, as set out in Article 12.
- (7) This Article applies to a response to a counterclaim as it does a response to a claim.

20 Case management orders

- (1) The Chairman or a Deputy Chairman may at any stage of the proceedings, on his or her own initiative or on the application of any party, convene a meeting and at the meeting make such directions as to the management of any case (a “case management order”) as he or she thinks fit.
- (2) A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

21 Applications for case management orders

- (1) An application by a party for a particular case management order may be made either at a hearing or presented in writing to the Tribunal.
- (2) Where a party makes the application in writing, he or she must notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible.
- (3) The Chairman or a Deputy Chairman may deal with the application in writing or order that it be dealt with at a preliminary or final hearing.

22 Addition, substitution and removal of parties

The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party –

- (a) add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and
- (b) remove any party apparently wrongly included.

23 Lead cases

- (1) Where a Tribunal considers that 2 or more claims give rise to common or related issues of fact or law, the Tribunal may make an order specifying one or more of those claims as a lead case and staying the other claims (“the related cases”).
- (2) When the Tribunal makes a decision in respect of the common or related issues it must send a copy of that decision to each party in each of the related cases and, subject to paragraph (3), that decision is binding on each of those parties.
- (3) Within 21 days of the date on which the Tribunal sent a copy of the decision to a party under paragraph (2), that party may apply in writing for an order that the decision does not apply to, and is not binding on the parties to, a particular related case.
- (4) If a lead case is withdrawn before the Tribunal makes a decision in respect of the common or related issues, it must make an order as to –
 - (a) whether another claim is to be specified as a lead case; and
 - (b) whether any order affecting the related cases should be set aside or varied.

24 Striking out

- (1) At any stage of the proceedings, either on its own initiative or on the application of a party, the Tribunal may strike out all or part of a claim or response on any of the following grounds –
 - (a) that it is scandalous or vexatious or has no reasonable prospect of success;

- (b) that the manner in which the proceedings have been conducted by or on behalf of the complainant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
 - (c) for non-compliance with any provision of this Order or with an order of the Tribunal;
 - (d) that it has not been actively pursued;
 - (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
- (2) A claim or response (or part of it) may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
 - (3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in Article 12.

25 Unless orders

- (1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, must be dismissed without further order and if such a dismissal occurs the Tribunal must give written notice of the fact to the parties.
- (2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so and unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.
- (3) Where a response is dismissed under this Article, the effect shall be as if no response had been presented, as set out in Article 12.

PART 6

HEARINGS

26 General

- (1) The Tribunal may regulate its own procedure.
- (2) However, the Tribunal must conduct the hearing in a manner that it considers fair, having regard to the principles contained in the overriding objective set out in Article 2 and nothing in this Part limits this paragraph.
- (3) The Tribunal must as far as practicable seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.

- (4) The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

27 Written representations

The Tribunal must consider any written representations from a party, including a party who does not propose to attend the hearing, if they are delivered to the Tribunal and to all other parties not less than 7 days before the hearing.

28 Witnesses

- (1) Witnesses may be called to a hearing only with the permission of the Chairman or Deputy Chairman presiding and all parties must be made aware of the identity of every witness called.
- (2) The evidence of witnesses is to be taken, whether by means of admitting a witness statement or orally, as the Chairman or Deputy Chairman thinks fit.
- (3) Witnesses must give their oral evidence on oath or affirmation.
- (4) The Chairman or Deputy Chairman may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence if it considers it in the interests of justice to do so.

29 Timetabling

The Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted.

30 Hearings by electronic communication

A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that –

- (a) the Tribunal considers that it would be just and equitable to do so; and
- (b) the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness seen by the Tribunal.

31 Non-attendance

- (1) If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party.
- (2) However, before doing so, it must consider any information available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

32 Privacy and restrictions on disclosure

- (1) The Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or where the evidence of any person is, in the opinion of the Tribunal likely to consist of –
 - (a) information that the person could not disclose without contravening a prohibition imposed by or by virtue of any enactment;
 - (b) information that has been communicated to the person in confidence or which the person has otherwise obtained in consequence of the confidence reposed in him or her by another person;
 - (c) information the disclosure of which would cause substantial injury to any undertaking of the person's or in which the person works or, if he or she is a States' employee (within the meaning of Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005⁷), the interests of Jersey;
 - (d) information relating to children below a certain age; or
 - (e) information of a sexual nature.
- (2) In considering whether to make an order under this Article, the Tribunal must give full weight to the principle of open justice and to the Convention right of freedom of expression.
- (3) An order under this Article may include –
 - (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
 - (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymized details or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record; or
 - (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public.
- (4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this Article is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.
- (5) In this Article "Convention rights" has the meaning given to it in Article 1(1) of the Human Rights (Jersey) Law 2000⁸.

33 Withdrawal of claim

- (1) Where a complainant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end and the Tribunal must formally record the withdrawal.
- (2) Where a claim, or part of it, has been withdrawn, the claimant may not commence a further claim raising the same or substantially the same complaint unless at the time of withdrawal the complainant reserved the right to bring a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so.

34 Interim hearings

- (1) An interim hearing is a hearing at which the Tribunal may do one or more of the following –
 - (a) conduct a preliminary consideration of the claim with the parties and make a case management order (including an order relating to the conduct of the final hearing);
 - (b) determine any preliminary issue;
 - (c) consider whether a claim or response, or any part, should be struck out under Article 24;
 - (d) explore the possibility of settlement or alternative dispute resolution.
- (2) There may be more than one interim hearing in any case.
- (3) An interim hearing may be directed by the Tribunal on its own initiative following its initial consideration (under Article 17) or at any time thereafter or as the result of an application by a party.
- (4) The Tribunal must give the parties reasonable notice of the date of the hearing and in the case of a hearing involving any preliminary issues at least 14 days' notice must be given.
- (5) However, the Chairman or a Deputy Chairman presiding may override the notice requirements in paragraph (4) if it is in the interests of justice to do so.
- (6) The notice must specify the preliminary issues that are to be, or may be, decided at the hearing.
- (7) Interim hearings must be conducted in private, except that where the hearing involves a determination under paragraph (1)(b) or (c), any part of the hearing relating to such a determination must be in public (subject to Article 32) and the Tribunal may direct that the entirety of the hearing be in public.
- (8) In this Article “preliminary issue” means, as regards any complaint, any substantive issue which may determine liability (for example, an issue as to jurisdiction or as to whether an employee was dismissed).

35 Final hearings

- (1) A final hearing is a hearing at which the Tribunal determines the claim or such parts as remain outstanding following the initial consideration (under Article 17) or any interim hearing.
- (2) The Tribunal must give the parties not less than 14 days' notice of the date of a final hearing.
- (3) However, the Chairman or a Deputy Chairman presiding may override the notice requirements in paragraph (2) if it is in the interests of justice to do so.
- (4) Except as required by Article 32 a final hearing must be in public.

36 Conversion from interim hearing to final hearing and vice versa

When conducting an interim hearing the Tribunal may order that it be treated as a final hearing, or vice versa, provided that –

- (a) the Tribunal is properly constituted for the purpose; and
- (b) it is satisfied that neither party is materially prejudiced by the change.

PART 7
JUDGMENTS

37 Orders

- (1) An order may be announced to the parties at the hearing or reserved to a later date.
- (2) Orders must be recorded in writing by the Chairman or Deputy Chairman presiding and a copy sent to each party.
- (3) Any party may request the reasons for an order at the hearing.
- (4) The reasons for making an order may be given verbally at the hearing or reserved and delivered verbally or in writing at a later date.
- (5) The reasons given for making any order must be proportionate to the significance of the issue and may be very short.

38 Decisions and reasons

- (1) The Tribunal's decision regarding the complaints made and the reasons for that decision may be delivered verbally at the end of the hearing or reserved and delivered verbally or in writing at a later date.
- (2) Alternatively just the decision may be delivered verbally at the end of the hearing and the reasons given in writing at a later date.
- (3) If the reasons are delivered verbally they must still be recorded in writing at a later date.

- (4) The decision must be recorded in writing and a copy sent to each of the parties.
- (5) The reasons given for any decision must be proportionate to the significance of the issue.

39 Awards of compensation in discrimination cases

The matters that the Tribunal may take into consideration in determining amounts of compensation for hurt and distress under Article 42(1)(b) of the Discrimination (Jersey) Law 2013⁹ when a complaint of discrimination has been found by the Tribunal to be well-founded include –

- (a) the extent to which there has been a campaign of discrimination or harassment;
- (b) whether the discrimination caused the person to lose his or her job;
- (c) the seriousness of the discrimination; or
- (d) the length of time that the discrimination continued.

40 Matters ancillary to judgments

- (1) If it is impossible or not practicable for the written record or reasons to be signed by the Chairman or Deputy Chairman presiding due to his or her death, incapacity or absence, they must be signed –
 - (a) in the case of a hearing by the full tribunal, by the other member or members;
 - (b) in the case of a hearing by a single tribunal member, by another member qualified to preside.
- (2) If the parties agree in writing or orally at a hearing upon the terms of any judgment the Tribunal may, if it thinks fit, give a judgment expressed to be by consent.
- (3) A judgment takes effect from the day when it is given, or on such later date as specified by the Tribunal.
- (4) A party must comply with a judgment for the payment of an amount of money within 14 days of the date of the judgment, unless –
 - (a) the judgment or any provision of this Order, specifies a different date for compliance; or
 - (b) the Tribunal has stayed the proceedings or judgment.
- (5) Where the proceedings were referred to the Tribunal by a court a copy of any judgment and of any written reasons must be provided to that court.
- (6) The Chairman or Deputy Chairman may at any time correct any clerical mistake or other accidental slip or omission in any judgment or other document produced by a Tribunal at which he or she presided.
- (7) If such a correction is made –
 - (a) any published version of the document must also be corrected; and

- (b) a copy of the corrected version, signed by the Chairman or Deputy Chairman, must be sent to all the parties.

41 Register of judgments

- (1) Subject to Article 32 the Judicial Greffier must maintain a register, either electronically or otherwise, of all Tribunal judgments.
- (2) A judgment must be maintained on the register for a minimum of 10 years from the date of its delivery.

PART 8

DELIVERY OF DOCUMENTS

42 Delivery to the tribunal office

Documents may be delivered to the tribunal office –

- (a) by post;
- (b) by direct delivery to the tribunal office (including delivery by a courier or messenger service); or
- (c) by electronic communication.

43 Delivery to parties

- (1) Documents may be delivered to a party (whether by the Tribunal or by another party) –
- (a) by post;
- (b) by direct delivery to that party's address (including delivery by a courier or messenger service);
- (c) by electronic communication; or
- (d) by being handed personally to –
- (i) that party, if an individual and if no representative has been named in the claim form or response,
- (ii) any individual representative named in the claim form or response,
- (iii) on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.
- (2) For the purposes of paragraph (1)(a) to (c), the document must be delivered to the address given in the claim form or response (which must be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question.

- (3) If a party has given both a postal address and one or more electronic addresses, any of them may be used unless the party has indicated in writing that a particular address should or should not be used.

44 Date of delivery

Where a document has been delivered in accordance with Article 42 or 43, unless the contrary is proved it is taken to have been received by the addressee –

- (a) if sent by post, on the day on which it would be delivered in the ordinary course of post;
- (b) if sent by means of electronic communication, on the day of transmission;
- (c) if delivered directly or personally, on the day of delivery.

45 Irregular service

The Tribunal may treat any document as delivered to a person, despite any non-compliance with Article 43, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.

46 Correspondence with the Tribunal: copying to other parties

Unless the Tribunal orders otherwise in the interests of justice, where a party sends a communication to the Tribunal (other than a request for the Tribunal to issue a summons under Article 89(1)(a) of the Employment (Jersey) Law 2003¹⁰) it must send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise).

PART 9

MISCELLANEOUS

47 Alternative dispute resolution

- (1) The tribunal must wherever practicable and appropriate encourage the use by the parties of the services of JACS or a person qualified in conducting conciliation or mediation.
- (2) Where proceedings concern an enactment that provides for conciliation, the Tribunal must –
 - (a) send a copy of the claim form and the response to a conciliation officer or other person qualified in conducting conciliation or mediation as required by that enactment; and
 - (b) inform the parties that the services of such a person are available to them.

48 Transfer of proceedings from a court

Where proceedings are referred to a Tribunal by a court, this Order applies as if the proceedings had been presented by the complainant.

49 Citation

This Order may be cited as the Employment and Discrimination Tribunal (Procedure) (Jersey) Order 2016.

ENDNOTES

Table of Legislation History

| Legislation | Year and No | Commencement |
|--|-------------|--------------|
| Employment and Discrimination Tribunal (Procedure) (Jersey) Order 2016 | R&O.10/2016 | 1 April 2016 |

Table of Renumbered Provisions

| Original | Current |
|----------|---------|
| None | |

Table of Endnote References

| | |
|-----------|--------------------------|
| <i>1</i> | <i>chapter 05.255</i> |
| <i>2</i> | <i>chapter 15.260</i> |
| <i>3</i> | <i>chapter 04.280</i> |
| <i>4</i> | <i>chapter 05.255.70</i> |
| <i>5</i> | <i>chapter 05.255</i> |
| <i>6</i> | <i>chapter 15.560</i> |
| <i>7</i> | <i>chapter 16.325</i> |
| <i>8</i> | <i>chapter 15.350</i> |
| <i>9</i> | <i>chapter 15.260</i> |
| <i>10</i> | <i>chapter 05.255</i> |