

GUERNSEY STATUTORY INSTRUMENT

2020 No.

**The Employment and Discrimination Tribunal  
(Guernsey) Order, 2020**

<i>Made</i>	<i>15<sup>th</sup> September, 2020</i>
<i>Coming into operation</i>	<i>1<sup>st</sup> November, 2020</i>
<i>Laid before the States</i>	<i>, 2020</i>

THE COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY, in exercise of the powers conferred on it by sections 5 and 8 of, and paragraph 3 of the Schedule to, the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005<sup>a</sup>, and all other powers enabling it in that behalf, hereby orders:-

**Dismissal of complaint or response (or part).**

1. (1) If the Tribunal considers, after considering the papers before it in the absence of the parties, or at a hearing -

- (a) that it has no jurisdiction to consider a complaint, or part of it,
- (b) on the application of the respondent, that a complaint or part of it has no reasonable prospect of success, or

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<sup>a</sup> No. XXX of 2005 (Recueil d'Ordonnances Tome XXX, p. 606); as amended by No. IX of 2016 and No. LIV of 2018.

- (c) on the application of the complainant, that a response to a complaint (a "response"), or part of it, has no reasonable prospect of success

the Tribunal shall send a notice to the parties in accordance with paragraph (2).

(2) A notice sent under paragraph (1) must -

- (a) set out the Tribunal's view and the reasons for it,
- (b) order that the complaint or response, or the part in question, be dismissed on such date as is specified in the notice, which date shall be at least one month from the date of the notice (the "**specified date**"), unless before the specified date the complainant or respondent (as the case may be) has presented written representations to the Tribunal explaining why the complaint or response (or part) should not be dismissed, and
- (c) specify the consequences of the dismissal of the complaint, the response or the part of the complaint or response.

(3) If no such representations are received before the specified date, the complaint or response (or part of either) shall be dismissed from the specified date without further order (although the Tribunal shall write to the parties to confirm what has occurred).

(4) If representations are received before the specified date they shall be considered by the Chairman, who shall either permit the complaint or response (or part) to proceed, or fix a hearing for the purpose of deciding whether it should be permitted to do so.

(5) If the respondent has made an application under paragraph (1)(b) they may, but need not, attend and participate in the hearing and if the complainant has made an application under paragraph (1)(c) they may, but need not, attend and participate in the hearing.

(6) If a response is dismissed, the Tribunal 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 complaint, or part of it, and if so the Tribunal must issue a judgment accordingly; otherwise a hearing must be fixed before the Tribunal.

**Striking out.**

2. (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 complaint 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 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 complaint or response (or the part to be struck out).

(2) A complaint or response (or part of either) 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 the Tribunal makes an order that all of a complaint or response is struck out, any other party may apply for judgment without a hearing.

### **Review of decisions.**

3. (1) The Tribunal may, either on its own initiative or on the application of a party, review any decision made under articles 1 or 2 where it is necessary in the interests of justice to do so, and on review the decision may be confirmed, varied or revoked, and if revoked must be taken again.

(2) An application to have a decision reviewed must be made -

- (a) within one month of the date on which the decision was sent to the parties,
- (b) in writing and must set out why review of the decision is necessary,

but if the decision to be reviewed was made at a hearing, an application may be made orally at that hearing.

(3) The Tribunal must refuse the application if it considers that there is no reasonable prospect of the decision being varied or revoked, and if an application is refused the Tribunal shall inform the parties of the refusal.

(4) Where the Tribunal proposes to review a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reviewed, and the decision shall be reviewed as if an application had been made and not refused under paragraph (3).

(5) If the application has not been refused under paragraph (3) the decision shall be reviewed at a hearing, unless the Chairman considers that a hearing is not necessary in the interests of justice, in which case the parties shall be given a reasonable opportunity to make further written representations.

(6) Where practicable, any review under this article shall be made by the Chairman if the Chairman made the decision or, as the case may be, the Tribunal consisting of the same persons which made the decision.

#### **Powers of Chairman when sitting alone.**

4. Where the Chairman of the Tribunal has been appointed before the other members of the Tribunal, the Chairman may, sitting alone, exercise all the powers of the Tribunal to -

- (a) dismiss all or part of a complaint or response under article 1,

- (b) strike out all or part of a complaint or response under article 2, and
- (c) review decisions under article 3

until the two other members of the Tribunal are appointed.

**Amendment of Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.**

5. For section 2(3) of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005, substitute –

"(3) The Convenor of the Panel or, if the Convenor is unavailable, the deputy Convenor shall, from the membership of the Panel, appoint -

- (a) a person to chair the Tribunal, who may be appointed before the other members of the Tribunal, and
- (b) two other members of the Tribunal,

and for the avoidance of doubt the Convenor or deputy Convenor may so appoint himself or herself."

**Interpretation.**

6. In this Order, "**Tribunal**" means an employment and discrimination tribunal established under section 2 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.



**Application, citation and commencement.**

7. (1) For the avoidance of doubt, this Order shall apply to proceedings in respect of a complaint instituted before the Order comes into force and ongoing at the time of commencement, and shall be construed accordingly.

(2) This Order may be cited as the Employment and Discrimination Tribunal (Guernsey) Order, 2020 and shall come into force on the 1<sup>st</sup> November, 2020.

Dated this 15th day of September, 2020



M. LE CLERC

President of the Employment & Social Security Committee

For and on behalf of the Committee

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EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order sets out the powers of the Employment and Discrimination Tribunal to dismiss or strike out a complaint or response.

Article 1 makes provision for the Tribunal to be able to dismiss a complaint or response, or part of either, where the complaint or response has no reasonable prospect of success. The Tribunal is also able to dismiss a complaint that it has no jurisdiction to consider.

Article 2 makes provision for the Tribunal to be able to strike out all or part of a

complaint or response for, among other reasons, that the complaint or response is scandalous or vexatious or has no reasonable prospect of success.

Article 3 provides for the review of decisions to dismiss or strike out, and article 4 provides for the Chairman to be able to exercise powers to dismiss or strike out when sitting alone.

Article 5 amends the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 to provide that the Chairman of the Tribunal may be appointed before the other members.

Article 7 is the application, citation and commencement provision. It makes clear that from 1<sup>st</sup> November 2020, the Order applies to all ongoing proceedings before the Tribunal, as well as new proceedings brought after that date.

This Order comes into force on the 1st day of November, 2020.