

Expanded powers for Guernsey Employment and Discrimination Tribunal

Insights - 27/10/2020

Coming into operation on 1 November 2020, the Employment and Tribunal (Guernsey) Order, 2020 enhances the powers of the tribunal to dismiss or strike out complaints without merit.

Previous position

Prior to the new law, the tribunal was only able to refuse to hear a complaint (filed on time and where the parties had jurisdiction) under section 19 of the Employment Protection (Guernsey) Law, 1998, if the complainant failed to provide documentation requested by the tribunal, if the parties had entered into a valid settlement agreement, or if the application appeared frivolous or vexatious.

Dismissal of complaint or response (or part of either)

The new law allows for the tribunal to dismiss a complaint or response at the outset if it considers that there is no reasonable prospect of success. In practice the tribunal will send a notice to the parties, ordering that the complaint or response be dismissed by a specified date (at least one month from the date of the notice) unless the complainant or respondent presents written representations to the tribunal explaining why the complaint or response should not be dismissed.

This will allow both the tribunal and affected parties to save time and costs in relation to applications that were never likely to succeed.

Striking out

The new law further allows the tribunal, either on its own initiative or on application of either party, to strike out a complaint or response, at any stage of the proceedings, on the grounds that:

- a. it is scandalous, vexatious, or has no reasonable prospect of success
- b. the conduct of either party throughout proceedings has been scandalous, unreasonable or

vexatious

- c. non-compliance with any provision of the Order or an Order of the tribunal
- d. the proceedings are not being actively pursued; or
- e. the tribunal considers that it is no longer possible to have a fair hearing

This is fantastic news for both employers and employees with valid defences / claims facing unnecessarily difficult opponents. The tribunal's powers are now significantly increased to be able to dismiss unmeritorious claims at the outset and bring cases to an end at any stage of proceedings where the conduct of either side becomes unacceptable.

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