

Employment Law - Practice and Procedure

(4) Case Management

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Agenda

- Preliminary hearings
- Determining the issues
- Preliminary issues
- Amending the claim
- Agenda for case management at the preliminary hearing

Case management - an overview

- There is Presidential Guidance which makes a number of important points about various aspects of case management
- <https://www.judiciary.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20180122.pdf>
- Case management applications and decisions can either be made in writing, or at a preliminary hearing
- Attached to the guidance are a number of guides for individual topics eg disclosure, amending the claim
- It also set out a standard agenda which will be sent to the parties prior to a preliminary hearing

Preliminary hearing - the context

- A preliminary hearing (PH) is likely to be ordered if
- the case is a complex one eg many discrimination claims; and/or
- the claim form or response is unclear as to the details of the case or the defence
- The nature of the PH will differ depending on whether it is concerned solely with case management, or if there is a preliminary issue to decide

The preliminary hearing - its scope

Rule 53 sets out the matters which a PH might deal with:

- A. conduct a preliminary consideration of the claim with the parties and make case management orders
- B. decide any preliminary issue eg is the claim in time?
- C. should the claim or response be struck out?
- D. make a deposit order
- E. explore the possibility of a settlement or alternative dispute resolution.
- F. It will also deal with dates for the procedural steps, and for the final hearing

Determining preliminary issues

- The letter notifying the PH should set out any preliminary issues to be considered
- It should give at least 14 days notice of those to be decided
- Typical issues include time limits, whether C is disabled in a disability discrimination case, who is liable in a TUPE case, is C an employee etc
- It may not be sensible to hold a PH on a preliminary issue eg if it will lead to duplication of evidence
- EJ will hear the PH alone unless a written request is made for a full ET, whereupon EJ will decide if full panel is desirable
- It often takes the form of a full hearing, with witnesses and trial bundles but is shorter
- EJs tend to order a PH on a preliminary issue if it is a “killer blow”
- Then if ET has no jurisdiction, the claim (or that part of it) ends there
- If EJ decides there is jurisdiction they will proceed to case management, so be prepared

Case management at the PH

- The need to identify the issues - key legal and factual matters for decision at the final hearing
- Identifying the issues is a crucial task
- It can encompass both legal and factual issues
- Unless amended at a later date (which may be difficult) it will set the agenda for the final hearing
- Determining the issues is usually done before procedural matters such as fixing dates for the hearing, any remaining disclosure, exchange of witness statements, compiling trial bundle
- Can be helpful to agree those dates with the other side prior to hearing, avoiding inconvenient decisions by the EJ!
- If the PH is concerned solely with case management usually done by telephone if parties are represented

Timetabling

- Rule 45 gives the ET the power to set a timetable for the hearing
- This flows from the overriding objective (b) dealing with cases in proportionate ways (hence allowing the chance for other hearings to take place)
- The EJ at the PH may set a timetable for the final hearing
- You should have a view as to how long the case as a whole should take
- And how long your own evidence, cross-examination of the other side and submissions should take
- Remember EJ may impose a guillotine at the final hearing when time expires for a particular witness

After the PH

- You should expect to receive from the tribunal
- The legal and factual issues to be determined at the final hearing
- Any case management orders setting out dates for the procedural steps which parties need to take
- Any judgment on a preliminary issue which the EJ has determined at the PH

Amending the claim (1)

- A claim may be amended at any time, provided the ET agrees
- If done by written application, EJ will consider and decide seeking the views of the other parties if necessary
- Often done at a PH where parties have an opportunity to make submissions
- Minor amends are not a problem eg typos, date which does not affect liability
- More substantial amendments will be the subject of scrutiny and may be rejected or accepted at the ET's discretion
- The Presidential Guidance on Case Management deals with it in Guidance Note 2
- The leading case is *Selkent Bus Co Ltd v Moore* [1996] IRLR 661 EAT

Amending the claim (2)

The factors an ET should consider when deciding whether to allow an application to amend a claim

1. Nature of the amendment sought: does any new claim flow from the facts already stated? (relabelling)
2. Application of time limits
3. Timing and manner of the application - why not made earlier? new facts discovered eg through disclosure?

A new party can be added with ET permission eg in a TUPE case, or an individual discriminator

The usual considerations apply for an amendment adding a new party

Early conciliation as such does not apply, but C would need to explain why no certificate was sought for the added party

Is there any adverse effect on the party to be added?

This can be usually be discounted (no requirement to negotiate)

Science Warehouse v Mills [2016] IRLR 96

The case management agenda

- The standard agenda deals with a number of case management matters
- Don't think that because you are asked about a matter that your answer will open the door to a positive response!
- Let's take a look at a couple of the items on the agenda

Questions

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