

GUIDANCE TO APPLYING FOR A STAY OF PROCEEDINGS

The Tribunal has a general power to regulate its own procedure, and this includes issuing orders to postpone or adjourn proceedings or specific hearings. Such postponements are often referred to as a 'stay' of proceedings.

HOW TO APPLY FOR A POSTONEMENT

An application should ordinarily be made in writing to the Tribunal's offices (although in some circumstances an application may also be made during the course of a hearing). The Tribunal would prefer that the application is sent by email and it must be copied to all other parties. The Tribunal will seek the views of the other parties before reaching a decision on the application.

REQUIRED INFORMATION FOR AN APPLICATION

An application for a postponement must state:

- the reason why it is made; and
- why the applicant believes that it would be in accordance with the Tribunal's overriding objective to deal with cases fairly and justly to grant the postponement.

The Tribunal will not consider an application which does not provide the above information unless there are exceptional circumstances. If it is not possible for the applicant to provide the above information, the applicant must explain why this is the case.

COMMUNICATION WITH OTHER PARTIES

Wherever possible the party wishing to make the application for postponement should try to discuss the proposal either directly with the other parties or through their representatives. If such a discussion has taken place then the details should also be provided to the Tribunal. If the other parties are in agreement, that should also be indicated in the application. However parties and their representatives should note that agreement between the parties does not mean that the Tribunal will agree to the application. The decision remains entirely at the discretion of the Tribunal.

APPLICATION ON MEDICAL GROUNDS

If the reason for the application is for medical reasons the applicant must provide:

- a medical certificate (usually from a consultant); and
- a letter from the medical practitioner (usually a consultant) which includes:
 - a statement that, in their opinion, the applicant is unfit to attend the hearing;
 - the nature of the applicant's illness;
 - the date on which the medical practitioner last examined the applicant;
 - why the applicant is not medically fit to participate in the Tribunal process or hearing;
and
 - when the applicant is likely to be able to participate in the Tribunal process or hearing.

Parties should not assume that the Tribunal will automatically agree to an application simply because they have provided the above medical evidence.

APPLICATION ON GROUNDS OF WITNESS NON-AVAILABILITY

The Tribunal always liaises with parties when fixing the date for a hearing. The Tribunal will therefore only agree to a stay due to party or witness non-availability in exceptional circumstances.

Where parties or witnesses are not available this should be notified to the Tribunal as soon as possible stating:

- the details of the witness or party concerned;
- what attempts have been made to make alternative arrangements;
- the reason for non-availability; and
- in the case of a witness, the relevance of their evidence.

Relevant documentary evidence should also be provided.

APPLICATION ON GROUNDS OF REPRESENTATIVE NON-AVAILABILITY

Where a representative is unavailable or a newly appointed representative is unavailable, that unavailability should be notified to the Tribunal as soon as possible together with the following details:

- the name of the representative and (if appropriate) the organisation for which they work;
- the date on which the representative was instructed;
- the reason for the unavailability;
- details of the attempts which have been made to make alternative arrangements;
- an explanation of why the representative's alternative commitment should take precedence.

Any supporting documentation should also be provided and, if a representative has withdrawn from acting, details should be given as to when this happened and whether alternative representation has been or is being sought.

Representatives should note that:

- the Tribunal is unlikely to grant an application for a postponement if the representative has accepted instructions from their client knowing that they will be unable to attend the listed hearing because of another commitment; and
- the Tribunal will take into account the size of the Representative's organisation and whether another member of that organisation could replace the unavailable representative.

APPLICATION ON GROUNDS OF OTHER COURT PROCEEDINGS

If the application is made on the grounds that there are other court proceedings (civil or criminal), details should be given as to:

- when those proceedings were commenced and in which court;
- what they entail; and
- how it is that they will affect the Tribunal case or how the Tribunal case will be said to affect those other proceedings.

APPLICATION ON GROUNDS OF LATE SHARING (DISCLOSURE) OF DOCUMENTS

At the Case Management Hearing, the Chair will discuss with the parties which documents are relevant to the case and whether the parties require an order for the sharing (disclosure) of such documents. The Chair will then issue an appropriate disclosure order.

If the basis for the application is the late sharing (or failure to share) of information or documents, then the applicant should provide the following information:

- the details of the documents or information concerned;
- how such documents are relevant to the issues in the case;
- the terms of any Orders that have already been issued by the Tribunal or requests made by the parties to such informational documents; and
- the response of the other party concerned.

HOW THE TRIBUNAL WILL DEAL WITH THE APPLICATION

Where the appropriate information has been supplied, a Chair will deal with the matter as soon as possible.

If the applicant has not supplied all of the relevant information, the Chair may request further information which will have the effect of delaying the Chair's consideration of the application.

Once the relevant information is available, the Chair will take into account all matters and information and consider whether to grant or refuse the postponement. **The decision remains at the discretion of the Chair.**

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