



Employment Tribunal Guide: Attending a Tribunal Hearing

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Advisory Officers, at the Employment Relations Service, can offer confidential and free advice on all aspects of employment law and employment relations.

The Tribunal will be in the public domain and any decisions made by the Chair will be published on the States of Guernsey website. This will also include if you do not actively stay engaged with the process.

Overview

Introduction

This information gives details of the process followed at an Employment & Discrimination Tribunal hearing.

Notice of Hearing

You will receive a Notice of Hearing by post confirming the date, time and place for the hearing; it will give the names of the Tribunal Members who will hear the complaint. A Notice will also be displayed in the Royal Court building, as this is a requirement of the Law.

Hearing Venue

The Employment & Discrimination Tribunal does not have its own premises and rooms will be hired for the hearing. Most hearings are held at Les Cotils Centre in St Peter Port but occasionally a hearing may need to be arranged elsewhere.

Waiting Areas

There will usually be separate waiting areas for each party where they can wait before the hearing or during any breaks in the hearing process. On some occasions there may be just one 'shared' waiting area. You will be asked to wait here until the hearing starts. The witnesses for each party should wait in these areas too.

Hearings in Public

Hearings are held in public unless there are exceptional circumstances, in which case the hearing (or part of the hearing) may be held in private. (Exceptional circumstances may be, for example, where children or vulnerable individuals are included in the evidence, and could be identified even if their names were not mentioned).

Tribunal Members

It is usual to call Tribunal Members 'Sir' or 'Madam' or address them as Mr or Mrs. The hearing is less formal than, for example, the Magistrates Court and it is not necessary to stand when you want to speak to the Tribunal during the hearing, unless you prefer to.

You should not try to speak to a Tribunal Member before the hearing, during breaks in the hearing nor after the hearing has finished. This may be seen as trying to influence the Tribunal and could lead to a complaint about the process.

Oaths and Affirmations

Witnesses will be asked to take the Oath or Affirmation before giving evidence. The Oath is the religious form and the Affirmation the non-religious form of swearing in - or giving an assurance to tell the truth. You will be given a card to read from. If you think you will have difficulty reading from the card, you should let the Secretary know before the hearing.

Record of the Hearing

The hearing is recorded electronically by the Secretary, and the Tribunal Members will make their own notes during the process. The parties may make notes too but are **not** allowed to record the hearing electronically or take photographs.

Mobile Phones/Wi-Fi

Mobile phones must be switched to silent during the hearing and all electronic equipment and personal items must be taken out of the hearing room during adjournments.

The hearing venues used by the Tribunal usually have free Wi-Fi access.

Conciliation

The parties can ask for time during the hearing to discuss settling the complaint and the assistance of a Conciliation Officer can be arranged. Conciliation is not possible once the hearing has closed.

Opening the Hearing

Once both sides are seated and have arranged their documents the Chair will open the hearing by introducing the Tribunal Members and asking who has attended for each party. The Chair will then describe the process for the hearing and ask if the parties have any questions before the hearing starts.

It is usual for the Tribunal to then exclude the witnesses from the hearing room, they will be asked to go to the waiting areas until they are required. This is so that they are not influenced by the evidence of witnesses who are heard before them.

Information and Evidence

The party who is going to begin can make an opening statement to the Tribunal, if they want to. They will then present their evidence and call their witnesses. Witnesses will usually go through the following process:

- Read a statement or answer questions put to them by the representative of the party who called them. (The witness might refer to documents contained within the document bundle)
- Answer questions from the other party (sometimes called 'cross-examination')
- Answer questions from the Tribunal
- Answer further questions, if necessary, from the party who called them (sometimes called 're-examination') to give more information on the issues mentioned, following cross-examination and questions from the Tribunal.

Further information on witness statements can be found in the Tribunal Guide 'Preparing for a Tribunal Hearing'.

The witness is normally then released and can leave, sit in the public gallery or return to the waiting room. They must not discuss the hearing with other witnesses who have not yet given evidence.

Once all the witnesses have been seen, the same process will be followed by the other party.

Costs are rarely awarded by the Tribunal. Any application for costs must be put forward, in writing, at the hearing. A copy of the application should have been sent to the other party, in writing, before the hearing; to allow the other party the opportunity to put forward an argument against the award, to the Tribunal. Information on costs can be found on the Guernsey Legal Resources Website.

Finally, the parties can make a closing statement if they wish. Only matters that have been referred to during the hearing can be included and no new information can be put forward at this point. The party who gives evidence first in a hearing usually goes last when making a closing statement.

Closing the hearing

After closing statements the Chair will tell the parties the date around which they can expect to receive the Tribunal's decision and the hearing will close. No further information can be heard after this point. The parties and any members of the public who have attended will leave.

Tribunal Decisions

The decision of the Tribunal will be sent, in writing, to both parties at the same time. The Law says it must also be displayed in the Royal Court for seven days. The Tribunal will be in the public domain and any decisions made by the Chair will be published on the States of Guernsey website. This will also include if you do not actively stay engaged with the process.

Appeals

An appeal against the decision (also referred to as the 'judgment') can be made but only on a point of Law. Details on how to make an appeal are included in the 'Appeals and References Order'; a copy of this document is enclosed with the Tribunal's decision. The appeal must be made within **one calendar month** of the date of the decision.

Frequently Asked Questions – FAQ's

What shall I do when I arrive at the hearing venue?

The Secretary to the Tribunal will meet the parties and show them to the waiting area, if you don't see the Secretary you can ask a member of staff from the venue.

How long will the hearing last?

It is difficult to say as it will depend on how each party presents its case, how long it takes to read statements and how many questions are asked. A full day will have been put aside. If more than one day is known to be required then the parties will have been notified of this in advance.

Will there be any breaks in the hearing?

Yes, there will be breaks during the process (also referred to as adjournments) so that people can use the toilet facilities. There will also be a lunch break if it is likely that the hearing will last a full day. The Chair will say when these will be.

Will refreshments be provided?

Drinking water is provided for the parties in the hearing room. Hot drinks and lunches are **not** provided. It may be possible to buy these at the hearing venue.

What if the hearing doesn't finish?

If the hearing doesn't finish in the time set aside another date will be arranged, taking into account the availability of the parties and the witnesses. It is very unlikely that the date

will be the following day as rooms for the hearing are booked in advance and space may not be available.

What does the hearing room look like?

The three Tribunal Members will sit at one table at the end of the room. There will be a table on each side of the room, angled in to face the Tribunal, where the parties will sit and the witness table will be in-between the two. The Secretary will sit at the rear of the room and there will also be seating for the public gallery at the rear.

Who will be in the hearing room?

Both parties will be shown to their tables in the hearing room at the same time along with the witnesses and members of the public, who will sit in the public gallery, often a reporter from the Guernsey Press will attend and sit in this area. The Tribunal will already be in the room when the parties are shown in. The Secretary will be in the room for most of the hearing.

What if I don't understand the procedure?

The Tribunal will try not to make the process too formal and whilst they cannot help a party to present its case they will be able to help with the procedure as the hearing goes along. The Tribunal will want as much relevant information from the parties as possible to help it make a decision and will try to ensure that both parties have a fair chance to put forward their information. You can ask a question about the procedure at any time.

Who goes first?

There is no rule as to which side starts, however, in an unfair dismissal case where the Respondent admits that it dismissed the Applicant, the Respondent will usually present its case first. In a case of constructive dismissal, where the Applicant has resigned, the Applicant will normally go first. The order is generally discussed with the parties beforehand at the case management meeting.

Can I bring extra documents?

Arrangements will have been made to exchange any documents with the other party, on a date before the hearing. This is so that everyone is aware of the information that will be put forward on the day. The Tribunal are not in favour of 'surprise' documents presented on the day of the hearing. It may hear the reasons why a document is being put forward and any comments from the other party before deciding whether or not it can be accepted.

Can I photocopy documents?

There are usually photocopying facilities at the hearing venue but you may have to pay the venue directly if you need to use them.

How will an award be paid?

If the Tribunal makes an award after hearing a complaint the parties can make arrangements between themselves for payment. If the award remains unpaid the Applicant can go to Her Majesty's Sheriff at the Royal Court House, to ask for assistance in enforcing payment of the award.

Feedback

You may want to comment on your experience once you have used the hearing process. Contact the Secretary to the Tribunal; details are listed at the end of this guide.

Other Publications

There are two further Employment Tribunal Guides: ‘Complaints to the Employment and Discrimination Tribunal’ & ‘Preparing for a Tribunal Hearing’.

Publications can be downloaded from the website on a wide range of employment relations subjects, including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email e&dt@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, GY1 3WH
- Telephone number: **01481 220026**