



Employment Tribunal Guide: Preparing for 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.

Overview

Introduction

This information is provided to people preparing for a hearing following referral of a complaint to the Employment & Discrimination Tribunal (the Tribunal).

Referral of a Complaint

If a complaint to the Tribunal cannot be resolved through the conciliation process it will be referred to the Tribunal for a hearing. A Chair will be appointed to hear the complaint and a case management meeting will be arranged. This is a meeting between the Chair and one person from each party, usually the Applicant (the person making the complaint) **or** a representative and the Respondent (employer) **or** a representative. The meeting is to make arrangements for organising the hearing only.

At the case management meeting the Chair will:

- Confirm what the issues are in the complaint
- Decide how long the hearing should last and set date(s)
- Explain the hearing process
- Decide what 'Orders' should be made about documents and witnesses

The Chair's Orders are instructions about what should happen with the complaint to make sure things happen properly and on time. (For example, there might be an Order about deadlines for when the parties have to exchange documents). If the Orders are not followed it will delay the process and may result in the parties having to meet with the Chair again.

After the meeting the Chair's Orders and confirmation of the points discussed, will be sent to both parties by letter.

A separate letter, giving the date, place and time of the hearing and the names of the Chair and two Side Members of the Tribunal, will also be sent to both parties; this is the Notice of Hearing. It is a requirement of the Law that the Notice is displayed in the Royal Court building for seven days immediately before the hearing.

The Secretary to the Tribunal (the Secretary) will deal with any correspondence to and from the parties, pass on information to the Tribunal and will make the arrangements for the hearing.

Postponements

Once a hearing date is set it will not be changed unless there are exceptional reasons. A request to change the date must be sent in writing to the Secretary giving the reasons for the request and a copy must be sent to the other party. The Chair of the Tribunal will consider the request and any comments from the other party before deciding whether or not the date will be changed. You may be asked for more information to show that there is a good reason for changing the date.

Preliminary Hearings and Pre-Hearing Review

In some situations it may be necessary for the Tribunal to be sure that the complaint has been properly made before holding a hearing. (For example the Applicant may say they have been employed for at least one year – the minimum length of employment (unless there is an exception) in order to be able to make a claim – but the employer may disagree). The Tribunal can hold a preliminary hearing to listen to information from both sides on the issues raised. If the Tribunal is satisfied that the complaint can be heard – the main hearing will go ahead.

Alternatively the Tribunal may hold a pre-hearing review, in which case the parties will be asked to send in documents to show why they believe the complaint can go ahead or otherwise. The Tribunal will meet, consider the documents and make a decision on whether a hearing will then be held and the parties will be informed.

Witnesses

The Chair will consider the information a witness can give and whether it is relevant to the complaint. It will be decided at the case management meeting which witnesses can be called.

Each witness must have something relevant to say. For example, if they saw or heard what happened in the lead up to a dismissal, their evidence may be useful if the other party says something different happened. It is not necessary to call several witnesses if they are all going to say the same thing. It is not necessary to take a character witness; the Tribunal will want to know about what happened, not what sort of person someone is.

Once the witness list has been agreed, it is your responsibility to let the witnesses you are bringing to the hearing know of the date, time and place for the hearing. If you are represented the representative will usually make these arrangements.

Documents and Information

At the case management meeting the Chair will ask both parties to put all the documents and information for the hearing into a file (also referred to as a 'bundle'). The documents should be numbered and divided into sections with an index, so that they can be found easily at the hearing. If possible, a joint bundle should be made; this will include the documents from both sides. If the parties cannot agree to do this - each party should prepare their own bundle.

You must prepare **seven** copies of the bundle:

- One copy for you
- One copy for the other party
- Three copies for the Tribunal (one for each Tribunal Member)
- One copy for the witness table at the hearing
- One file copy

When you are preparing your documents you should think about what you need the Tribunal to know. If you kept a diary of what happened, this can be helpful and may be important evidence. Other documents you may want to include are: the contract of employment, pay or salary details, any notes you have made about what happened, letters, emails and phone texts that are relevant and also any relevant sections from staff handbooks.

If phone texts or recordings are part of your evidence you should transcribe them (copy them out in writing) so that they can be included with your bundle of documents. You should bring the device with you that contains the original information, in case the evidence is disputed.

Opening Statements

At the start of the hearing both parties may want to make a brief general statement about the complaint as they see it but this is not compulsory. It is helpful to write or type out the statement if you are going to make one and if you do this you must bring **seven** copies to the hearing. You can put the statement into the bundle of documents or you can bring it separately on the day of the hearing.

Witness Statements

The Tribunal will want to hear evidence from you and any witnesses you have called. The Chair will confirm, at the case management meeting, that each person is required to write a

statement. It is usual practice that they will be asked to read the statement out loud at the hearing. The statement should be dated and signed by the person making it.

The statement should say what happened in the order that it happened. It should be as clear as possible. You should use the full names of anyone you mention and use the language you would normally use. If there was any bad language used during the situation the complaint is about – including by you – you should put this in, the Tribunal will be used to hearing this sort of thing.

Statements should be included in the document bundle unless different arrangements have been agreed with the Chair. It is possible for the Chair to agree to a witness statement being included without the witness coming to the hearing but the statement will be treated as less important, as the person cannot be questioned on their evidence.

Costs

Costs are rarely awarded by the Tribunal. An application for costs must be put forward, in writing, at the hearing. If you intend to put forward an application, you must notify the other party in writing before the hearing. This is 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.

Closing Statements

A closing statement may be made at the end of the hearing after all the evidence has been put forward but it is not compulsory. This gives the opportunity for each party to sum up their case and highlight the important points as they see them, in order to persuade the Tribunal to find in their favour. It must not contain any new information that hasn't already been discussed during the hearing. You may wish to write or type the statement out before the hearing. You can add handwritten points to the statement during the hearing and then give copies to the Secretary before you intend to read it. There will usually be photocopying services available at the hearing venue but you may have to pay for these.

Summoning of Witnesses and Documents

It can be difficult sometimes to get a witness to agree to come to a hearing, particularly if they still work for the employer. You should write to the person asking them to attend and give some details of the information you would like them to give at the hearing, keep a copy of the letter. If an important witness refuses to attend the hearing or refuses to produce a document as evidence, you can apply, in writing, to the Chair (send the letter to the Secretary, who will pass it to the Chair) to issue a summons on your behalf to order the witness to attend. It is the Chair's decision whether or not a summons will be issued. Failure of a witness to attend, if they have been summonsed, could result in a fine similar to the fines in the Royal Court of Guernsey, made in similar circumstances.

Legal Authorities

Both parties can include 'legal authorities' (also known as 'case-law') as part of their documents for the hearing. Legal authorities are decisions or judgments made in other cases and are available to the general public. They can be used to highlight the outcome of a case that may have similar circumstances. It is not compulsory to include them but if you do you must highlight the section(s) you want to draw attention to. You can include them within your bundle of documents or you can bring **seven** copies to the hearing.

Special Arrangements

If you need any special arrangements at the hearing, for example wheelchair access, you should inform the Secretary as soon as you can.

Conflict

The Notice of Hearing that is sent to you will list the names of the Tribunal Members who will hear the complaint. If you think there is a conflict, (for example - if you or anyone connected with the complaint are closely related to a Tribunal Member), you must let the Secretary know as soon as possible. It may be that the Tribunal Member will be replaced.

Interpreters

You can use an interpreter to help you at the hearing. You must make the arrangements with the interpreter yourself and pay any fee that the interpreter charges. Contact the Secretary if you need help in finding someone suitable.

Support

If you are not represented it is possible to have someone to sit with you at the hearing to support you. This person will be allowed to make notes for you and to talk quietly to you at appropriate times during the hearing. They will not be able to question witnesses or talk on your behalf.

Babies and Young Children

It is not appropriate for babies or young children to attend the hearing. Please make other arrangements for their care whilst the hearing is running.

Record of the Hearing

Hearings are recorded 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. The Tribunal will ask that mobile phones are switched off during

the hearing and that all electronic equipment and personal items are taken out of the hearing room during any adjournments (adjournments are breaks in the process - for use of the toilet facilities or to look at documents etc.).

Failure to Attend the Hearing

If either party fails to turn up the Tribunal may go ahead and hear the complaint without them. It will use the information that the absent party has already provided; this may be just the Application Form (ET1) or the Response Form (ET2).

Conciliation

The parties may choose to settle the complaint through conciliation at any time in the lead up to or during the hearing. If you want to discuss settling the claim you can ask for the assistance of a Conciliation Officer from the Employment Relations Service, the Secretary will make the arrangements for you. Both parties must be willing to take part in this process. Conciliation is not available once the hearing is closed.

Withdrawing a Complaint

The Applicant can withdraw a complaint at any time up to and during the hearing; this must be done in writing. The letter should note the case number given to the complaint (this is written on letters from the Secretary) and the Applicant's name and should be sent or handed to the Secretary. Once a complaint has been withdrawn or settled through conciliation or compromise agreement, it is not possible to revive (re start) the complaint.

Tribunal Decisions

The Tribunal does not usually give its decision (sometimes referred to as a judgment) on whether or not an award will be made, on the day of the hearing. It is given in writing, usually within four weeks following the date of the hearing.

There are two parts to the document, the decision and the extended reasons. Both parts of the document will be posted or emailed to both parties by the Secretary at the same time. The Law says that the decision must be displayed at the Royal Court for seven days after it is issued. All decisions are posted on the States of Guernsey website.

Appeals

An appeal against a Tribunal decision can be made but only on a **point of law** (for example; the Tribunal failed to run the hearing process properly or did not consider relevant information provided, concerning the complaint).

If you want to appeal you must do this in writing, using the guidelines set out in the 'Appeals Order', a copy of this document is enclosed with the Tribunal's decision. The appeal should

be sent to the Secretary who will send copies of the document to the Tribunal, the other party in the complaint and to the Royal Court. The Royal Court will deal with the appeal process. An appeal must be made within **one month** of the date of the Tribunal's decision.

Other Publications

There are **two** further Employment Tribunal Guides: 'Complaints to the Employment and Discrimination Tribunal' and 'Attending 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 employmentrelations@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, GY1 3WH
- Telephone number: **01481 220026**