

Employment Tribunals

Tuesday, 29 January 2019
Part 1 - Before the Hearing

Session Objectives

Objectives

By the end of the session you will:

- Understand the process leading up to a hearing
- Be able to avoid unnecessary risks and delays
- Have an insight into tactical considerations
- Understand the importance of key landmarks

Statistics



31% increase in
claims compared
to same quarter
in 2017

- Most common complaint was Unfair Dismissal
- Most common discrimination claims were disability, equal pay and sex discrimination

Order of Events

Order of Events

- Pre-claim conciliation and ACAS
- Receiving the ET1 form and response times
- Preliminary hearings
- Documentation and Bundles
- Witness Statements

The Anatomy of a Basic Employment Tribunal Claim



Pre Conciliation Process

Pre-Claim Conciliation

- Mandatory for the last 4 years
- Introduced to reduce the number of claims and hearings dealt with by the Tribunal
- Claims will not be accepted by the Tribunal unless process undertaken

Conciliation – Time Limits

- Prospective Claimant must make contact with ACAS within the normal limitation period for the claim
- “Clock stops” on the limitation period during conciliation, but the Claimant will always have at least 1 month to bring claim from the end of the conciliation period
- Conciliation period lasts for 1 month and can be extended for up to a further 14 days

Conciliation - Notification

- When the prospective Claimant is willing to participate in pre-claim conciliation, ACAS will make “reasonable attempts” to contact the prospective Respondent.
- Will depend on contact details available to ACAS but most likely by telephone or post.
- Ensure staff know to direct calls/correspondence accordingly.

Conciliation – Participation?

- Both prospective Claimant and Respondent need to be willing to participate.
- Can choose not to participate, Claimant then free to issue claim.
- ACAS settlement – most common resolution of a claim (28% in the last published figures)

Conciliation – Keep an eye out

- Any ET1 form filed with a Tribunal must include a reference number from ACAS – if not, the claim should not be allowed to proceed.
- Pre-claim conciliation must be attempted with each named respondent, so all respondents should have own reference number.

EARLY CONCILIATION CERTIFICATE
- Employment Tribunals Act 1996 s18A

Acas EC Reference Number R [REDACTED] 18

Prospective Claimant

[REDACTED]

Prospective Respondent

[REDACTED]

Date of receipt by Acas of the EC notification 22 May 2018

Date of issue by Acas of this Certificate 22 Jun 2018

Method of issue - Email

This Certificate is to confirm that the prospective claimant has complied with the requirement under ETA 1996 s18A to contact Acas before instituting proceedings in the Employment Tribunal.

Please keep this Certificate securely as you will need to quote the reference number (exactly as it appears above) in any Employment Tribunal application concerning this matter.

[REDACTED]

Conciliator

The Claim

The ET1 Form

- The “ET1” is the Claimant’s Claim Form
- Particularises the Claimant’s case – in theory
- Beware of leniency/flexibility towards litigants in person in particular

Claim form

You must complete all questions marked with an *

1 Your details

1.1

Title

☐ Mr

☐ Mrs

☐ Miss

☐ Ms

1.2*

First name (or names)

1.3*

Surname or family name

1.4

Date of birth

/

/

Are you?

☐ Male

☐ Female

1.5*

Address

Number or name

Street

Town/City

County

Postcode

1.6

Phone number

Where we can contact you during the day

1.7

Mobile number (if different)

1.8

How would you prefer us to contact you?

(Please tick only one box)

☐ Email

☐ Post

☐ Fax

Whatever your preference please note that some documents cannot be sent electronically

1.9

Email address

1.10

Fax number

2 Respondent's details (that is the employer, person or organisation against whom you are making a claim)

2.1*

Give the name of your employer or the person or organisation you are claiming against (If you need to you can add more respondents at 2.5)

2.2*

Address

Number or name

Street

Town/City

County

Postcode

Phone number

ET1 - Claim form (12.18)

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2.3*

Do you have an Acas early conciliation certificate number?

☐ Yes

☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

2.4

If you worked at a different address from the one you have given at 2.2 please give the full address

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.5

If there are other respondents please tick this box and put their names and addresses here.

(If there is not enough room here for the names of all the additional respondents then you can add any others at Section 13.)

☐

Respondent 2

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Page 2

2.6 Do you have an Acas early conciliation certificate number?

☐ Yes☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 3

2.7

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.8 Do you have an Acas early conciliation certificate number?

☐ Yes☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.Acas.org.uk

If Yes, please give the Acas early conciliation certificate number

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

3 Multiple cases

3.1 Are you aware that your claim is one of a number of claims against the same employer arising from the same, or similar, circumstances?

☐ Yes☐ No

If Yes, and you know the names of any other claimants, add them here. This will allow us to link your claim to other related claims.

4 Cases where the respondent was not your employer

4.1 If you were not employed by any of the respondents you have named but are making a claim for some reason connected to employment (for example, relating to a job application which you made or against a trade union, qualifying body or the like) please state the type of claim you are making here. (You will get the chance to provide details later):

Now go to Section 8

5 Employment details

If you are or were employed please give the following information, if possible.

5.1 When did your employment start?

Is your employment continuing?

☐ Yes☐ No

If your employment has ended, when did it end?

If your employment has not ended, are you in a period of notice and, if so, when will that end?

5.2 Please say what job you do or did.

6 Earnings and benefits

- 6.1 How many hours on average do, or did you work each week in the job this claim is about? hours each week
- 6.2 How much are, or were you paid?
- Pay before tax £ ☐ Weekly ☐ Monthly
- Normal take-home pay (Incl. overtime, commission, bonuses etc.) £ ☐ Weekly ☐ Monthly
- 6.3 If your employment has ended, did you work (or were you paid for) a period of notice? ☐ Yes ☐ No
- If Yes, how many weeks, or months' notice did you work, or were you paid for? weeks months
- 6.4 Were you in your employer's pension scheme? ☐ Yes ☐ No
- 6.5 If you received any other benefits, e.g. company car, medical insurance, etc, from your employer, please give details.
-

7 If your employment with the respondent has ended, what has happened since?

- 7.1 Have you got another job? ☐ Yes ☐ No
- If No, please **go to section 8**
- 7.2 Please say when you started (or will start) work.
- 7.3 Please say how much you are now earning (or will earn). £

8 Type and details of claim

8.1* Please indicate the type of claim you are making by ticking one or more of the boxes below.

- ☐ I was unfairly dismissed (including constructive dismissal)
- ☐ I was discriminated against on the grounds of:
- | | |
|---|--|
| <input type="checkbox"/> age | <input type="checkbox"/> race |
| <input type="checkbox"/> gender reassignment | <input type="checkbox"/> disability |
| <input type="checkbox"/> pregnancy or maternity | <input type="checkbox"/> marriage or civil partnership |
| <input type="checkbox"/> sexual orientation | <input type="checkbox"/> sex (including equal pay) |
| <input type="checkbox"/> religion or belief | |

☐ I am claiming a redundancy payment

- ☐ I am owed
- ☐ notice pay
- ☐ holiday pay
- ☐ arrears of pay
- ☐ other payments

☐ I am making another type of claim which the Employment Tribunal can deal with.
(Please state the nature of the claim. Examples are provided in the Guidance.)

8.2* Please set out the background and details of your claim in the space below.

The details of your claim should include **the date(s) when the event(s) you are complaining about happened**. Please use the blank sheet at the end of the form if needed.

9 What do you want if your claim is successful?

- 9.1 Please tick the relevant box(es) to say what you want if your claim is successful:
- ☐

If claiming unfair dismissal, to get your old job back and compensation (reinstatement)
- ☐

If claiming unfair dismissal, to get another job with the same employer or associated employer and compensation (re-engagement)
- ☐

Compensation only
- ☐

If claiming discrimination, a recommendation (see Guidance).

9.2 What compensation or remedy are you seeking?

If you are claiming financial compensation please give as much detail as you can about how much you are claiming and how you have calculated this sum. (Please note any figure stated below will be viewed as helpful information but it will not restrict what you can claim and you will be permitted to revise the sum claimed later. See the Guidance for further information about how you can calculate compensation). If you are seeking any other remedy from the Tribunal which you have not already identified please also state this below.

10 Information to regulators in protected disclosure cases

10.1 If your claim consists of, or includes, a claim that you are making a protected disclosure under the Employment Rights Act 1996 (otherwise known as a ‘whistleblowing’ claim), please tick the box if you want a copy of this form, or information from it, to be forwarded on your behalf to a relevant regulator (known as a ‘prescribed person’ under the relevant legislation) by tribunal staff. (See Guidance).

☐

11 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

11.1 Name of representative

11.2 Name of organisation

11.3 Address

Number or name

Street

Town/City

County

Postcode

11.4 DX number (if known)

11.5 Phone number

11.6 Mobile number (if different)

11.7 Their reference for correspondence

11.8 Email address

11.9 How would you prefer us to communicate with them? (Please tick only one box)

Email

Post

Fax

11.10 Fax number

12 Disability

12.1 Do you have a disability?

Yes

No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system, including for any hearings that maybe held at tribunal premises.

13 Details of additional respondents

Section 2.4 allows you to list up to three respondents. If there are any more respondents please provide their details here

Respondent 4

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number?

Yes

No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

Another person I'm making the claim with has an Acas early conciliation certificate number

Acas doesn't have the power to conciliate on some or all of my claim

My employer has already been in touch with Acas

My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 5

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number?

☐ Yes

☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

14 Final check

Please re-read the form and check you have entered all the relevant information.
Once you are satisfied, please tick this box. ☐

General Data Protection Regulations
The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.
For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>.
To receive a paper copy of this privacy notice, please call our Customer Contact Centre:
England and Wales: 0300 123 1024
Welsh speakers: 0300 303 5176
Scotland: 0300 790 6234
Textphone: 18001 0300 123 1024 (England and Wales)
Textphone: 18001 0300 790 6234 (Scotland)

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

15 Additional information

You can provide additional information about your claim in this section.
If you're part of a group claim, give the Acas early conciliation certificate numbers for other people in your group. If they don't have numbers, tell us why.

Receiving a Claim

What accompanies the ET1?

- Notice of claim – setting out the deadline for response and the fact that a claim has been issued
- A blank ET3 (response) form
- Potentially case management directions and notice of hearing
- ACAS correspondence confirming conciliator identity



EMPLOYMENT TRIBUNALS

To:

Montague Court, 101 London Rd, West
Croydon, Surrey, CR0 2RF

Office: 0208 667 9131
Fax: 0870 324 0174
DX 155061 Croydon 39

e-mail: LondonSouthET@hmcts.qsl.gov.uk

Date: 17 September 2018

Case Number: [REDACTED]/2018

Claimant

v

Respondent

NOTICE OF A CLAIM

NOTICE OF HEARING on Friday, 1 February 2019 at 10:00 am

The Claim

The Employment Tribunal has accepted a claim against the above respondent(s). It has been given the above case number, which should be quoted in any communication relating to this case. A copy of the claim is enclosed for the respondent(s).

Responding to the claim

To submit a response to the claim a prescribed form, a copy of which is enclosed, must be used. Alternatively a respondent may respond on-line at www.gov.uk/being-taken-to-employment-tribunal-by-employee.

If a respondent wishes to defend the claim their response must be received at the Tribunal office by 15/10/2018. If a response is not received by that date and no extension of time has been applied for and given, or if a respondent indicates that it does not contest any part of the claim, a judgment may be issued and that respondent will only be entitled to participate in any hearing to the extent permitted by the Employment Judge who hears the case.

The hearing

The claim will be heard by an Employment Judge sitting alone at [REDACTED] at 10:00 am or as soon thereafter on that day as the Tribunal may direct.

transfer your case at short notice to be heard at another hearing centre within the region. 1 day have been allocated to hear the evidence and decide the claim. If you think that is not long enough, you must give your reasons, in writing, and your time estimate. **Unless there are exceptional circumstances, requests for a postponement or an extension to the hearing length will not be considered before the return date for the response form.**

If you wish to rely on written representations at the hearing, they must be sent to the Tribunal and to all other parties not less than 7 days before the hearing. You will have the chance to put forward oral arguments in any case. It is your responsibility to ensure that any relevant witnesses attend the hearing and that you bring sufficient copies of any relevant documents.

If you or anyone coming with you to the Hearing has a disability that makes coming to the Hearing or communicating difficult, please tell the Tribunal office dealing with your case as soon as possible. We will make reasonable adjustments to the way we deliver our service where we can.

When the Hearing Clerk comes to record details of your attendance and collect bundles or information from you, please talk to them about any disability issues so they can arrange for a Personal Emergency Evacuation Plan (PEEP) to be set up in case there is an emergency evacuation of the building. In some offices the Hearing rooms might be more than 3 floors from ground level. If that will be a problem for you, please call the hearing centre/office as soon as possible to discuss alternative arrangements.

Case Management Orders

The parties are required to comply with the following Case Management Orders and timetable.

By no later than	The following shall be done
[REDACTED]	The claimant shall set out in writing what remedy the Tribunal is being asked to award. The claimant shall send a copy to the respondent. The claimant shall include any evidence and documentation supporting what is claimed and how it is calculated. The claimant shall also include information about what steps the claimant has taken to reduce any loss (including any earnings or benefits received from new employment).
[REDACTED]	The claimant and the respondent shall send each other a list of any documents that they wish to refer to at the hearing or which are relevant to the case. They shall send each other a copy of any of these documents if requested to do so.
[REDACTED]	The respondent shall then prepare sufficient copies of the documents for the hearing. The documents shall be fastened together in a file so as to open flat. The file of documents shall be indexed. The documents shall be in a logical order. All pages shall be numbered consecutively. The respondent shall provide the other parties with a copy of the file. Two copies of the file shall be provided to the Tribunal at the hearing (and not before).
[REDACTED]	The claimant and the respondent shall prepare full written statements of the evidence they and their witnesses intend to give at the hearing. No additional witness evidence may be allowed at the hearing without permission of the Tribunal. The written statements shall have numbered paragraphs. The claimant and the respondent shall send the written statements of their witnesses to each other. Two copies of each written statement shall be provided for use by the Tribunal at the hearing (and not before).
1 week before the Hearing	Where the claimant and the respondent are both professionally represented, the professional representatives shall prepare a draft statement of issues or questions that are to be decided by the Tribunal at the hearing. The draft statement of issues shall be subject to the Tribunal's agreement at the commencement of the hearing.

These Orders are made under rules 29 and 30 of the Employment Tribunals Rules of Procedure 2013.

Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies, shall be liable on summary conviction to a fine not exceeding £1,000.

If this Order (including the timetable) is not complied with, the Tribunal, under rule 6 of the Rules of Procedure, may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or response in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings and/or (d) awarding costs in accordance with rules 74 - 84.

You may make an application under rule 30 for this Order to be varied or revoked.

Presidential Guidance

Under the Rules of Procedure the President of the Employment Tribunals in England and Wales has issued Presidential Guidance which enables the parties to understand what is expected of them and what to expect. It is not binding but should be followed where possible and includes guidance on General Case Management which will assist the parties to comply with the Orders in the timetable above.

The Presidential guidance may be found at:
www.gov.uk/employment-tribunals/legislation

Acas

Acas (whose services are free) may be able to help the parties resolve the matter at any time.

Representative

If you appoint a representative to act for you, please pass these documents to your representative as soon as possible. You remain responsible for ensuring that the representative deals with all matters promptly.

Enclosures

For the respondent(s)

A copy of the claim

A prescribed response form

A copy of the booklet 'Responding to a claim to an Employment Tribunal' can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

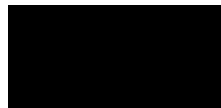
All parties

A copy of the booklet 'The hearing' can be found on our website at
www.gov.uk/government/collections/employment-tribunal-forms

A location map for the office can be found at
www.gov.uk/guidance/employment-tribunal-offices-and-venues

If you do not have access to the Internet, paper copies can be obtained by telephoning the Tribunal office dealing with the claim.

Signed,



cc ACAS

Responding to a Claim

ET1 – How to Respond

- Must be on ET3 form
- 28 days from when ET1 sent out by Tribunal
- Time is of the essence from when received – can apply for extension but such an application is often not reviewed by the Tribunal until after deadline
- General rule – response rejected if received outside deadline

The ET3 Form

- Questions marked with asterisk must be completed
- Can annexe a separate “Grounds of Resistance” to form setting out the facts of the defence
- Can complete form and send by post/email or complete the form online via Justice Website

Response form

Case number

You must complete all questions marked with an “*”

1 Claimant’s name

1.1 Claimant’s name

2 Respondent’s details

2.1* Name of individual, company or organisation

2.2 Name of contact

2.3* Address

Number or name

Street

Town/City

County

Postcode

DX number (if known)

2.4 Phone number
Where we can contact you during the day

Mobile number (if different)

2.5 How would you prefer us to contact you?
(Please tick only one box)

☐ Email

☐ Post

☐ Fax

Whatever your preference please note that some documents cannot be sent electronically

2.6 Email address

Fax number

2.7 How many people does this organisation employ in Great Britain?

2.8 Does this organisation have more than one site in Great Britain?

☐ Yes

☐ No

2.9 If Yes, how many people are employed at the place where the claimant worked?

3 Acas Early Conciliation details

3.1 Do you agree with the details given by the claimant about early conciliation with Acas?

☐ Yes

☐ No

If No, please explain why, for example, has the claimant given the correct Acas early conciliation certificate number or do you disagree that the claimant is exempt from early conciliation, if so why?

4 Employment details

4.1 Are the dates of employment given by the claimant correct?

☐ Yes

☐ No

If Yes, please go to question 4.2

If No, please give the dates and say why you disagree with the dates given by the claimant

When their employment started

When their employment ended or will end

I disagree with the dates for the following reasons

4.2 Is their employment continuing?

☐ Yes

☐ No

4.3 Is the claimant’s description of their job or job title correct?

☐ Yes

☐ No

If Yes, please go to Section 5

If No, please give the details you believe to be correct

5 Earnings and benefits

5.1 Are the claimant’s hours of work correct? ☐ Yes ☐ No

If No, please enter the details you believe to be correct. hours each week

5.2 Are the earnings details given by the claimant correct? ☐ Yes ☐ No

If Yes, please go to question 5.3

If No, please give the details you believe to be correct below

Pay before tax
(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly ☐ Monthly

Normal take-home pay
(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly ☐ Monthly

5.3 Is the information given by the claimant correct about being paid for, or working a period of notice? ☐ Yes ☐ No

If Yes, please go to question 5.4

If No, please give the details you believe to be correct below. If you gave them no notice or didn’t pay them instead of letting them work their notice, please explain what happened and why.

5.4 Are the details about pension and other benefits e.g. company car, medical insurance, etc. given by the claimant correct? ☐ Yes ☐ No

If Yes, please go to Section 6

If No, please give the details you believe to be correct.

6 Response

6.1* Do you defend the claim? ☐ Yes ☐ No

If No, please go to Section 7

If Yes, please set out the facts which you rely on to defend the claim.
(See Guidance - If needed, please use the blank sheet at the end of this form.)

7 Employer's Contract Claim

7.1 Only available in limited circumstances where the claimant has made a contract claim. (See Guidance)

7.2 If you wish to make an Employer's Contract Claim in response to the claimant's claim, please tick this box and complete question 7.3 ☐

7.3 Please set out the background and details of your claim below, which should include all important dates (see Guidance for more information on what details should be included)

8 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

8.1 Name of representative

8.2 Name of organisation

8.3 Address

Number or name

Street

Town/City

County

Postcode

8.4 DX number (if known)

8.5 Phone number

8.6 Mobile phone

8.7 Their reference for correspondence

8.8 How would you prefer us to communicate with them? (Please tick only one box)

☐ Email

☐ Post

☐ Fax

8.9 Email address

8.10 Fax number

9 Disability

9.1 Do you have a disability? ☐ Yes ☐ No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as the claim progresses through the system, including for any hearings that maybe held at tribunal premises.

Please re-read the form and check you have entered all the relevant information. Once you are satisfied, please tick this box. ☐

Employment Tribunals check list and cover sheet

- Please check the following:
1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
 2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
 3. Send the completed form to the relevant office address.
 4. Keep a copy of your form posted to us.

Once your response has been received, you should receive confirmation from the office dealing with the claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the response is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us. If you want to submit your response online please go to www.gov.uk/being-taken-to-employment-tribunal-by-employee.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Customer Contact Centre - see details below

General Data Protection Regulations

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>.

To receive a paper copy of this privacy notice, please call our Customer Contact Centre - see details below

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

Customer Contact Centre

England and Wales: 0300 123 1024
Welsh speakers only: 0300 303 5176
Scotland: 0300 790 6234

Textphone: 18001 0300 123 1024 (England and Wales)
Textphone: 18001 0300 790 6234 (Scotland)

(Mon - Fri, 9am -5pm), they can also provide general procedural information about the Employment Tribunals.

Continuation sheet

ET3 - Contents

- Address any jurisdictional issues
- Ensure that you respond to all allegations
- Admitted, denied or not admitted
- The ET3 is not a witness statement

Preliminary Hearings

Preliminary Hearings

- May be listed by the Tribunal before ET3 filed if already clear there will be preliminary issues to discuss (i.e. jurisdictional issues)
- More often listed after the filing of the ET3
- Notification of hearing sent by Tribunal

Preliminary Hearings

- Often short hearing of 1 hour to identify preliminary issues and set timetable for the hearing
- These will be private hearings, often by telephone where parties are represented

Preliminary Hearings – Case Management

- Will determine what steps need to be taken to prepare the case for hearing and the timescales for each step
- Will seek to list the main hearing if possible

**AGENDA FOR CASE MANAGEMENT
AT PRELIMINARY HEARING**

Rules 29 - 40, 53 and 56 Employment Tribunals Rules of Procedure 2013

It will help the efficient management of the case if you complete this agenda, as far as applies and send it to every other party and the Tribunal to arrive no later than 2 days before the preliminary hearing (PH). A completed agreed agenda is particularly helpful.

1. Parties

1.1	Are the names of the parties correct? Is the respondent a legal entity? If not what is the correct name?	
1.2	Should any person be joined or dismissed as a respondent? If yes, why?	

2. The claim and response

2.1	What are the complaints (claims) are brought? If any are withdrawn, say so.	
2.2	Is there any application to amend the claim or response? If yes, write out what you want it to say. Any amendment should be resolved at the PH, not later.	
2.3	Has any necessary additional information been requested? If not set out a limited, focussed request and explain why the information is necessary. If requested, can the relevant information be provided for the PH? If so, please do.	

3. Remedy

3.1	If successful, what does the claimant seek? This means e.g. compensation or reinstatement where possible etc.	
3.2	What is the financial value of the monetary parts of the remedy? All parties are encouraged to be realistic.	
3.3	Has a schedule of loss been prepared? If so, please provide a copy.	

3.4	Has the Claimant started new work? If yes, when?	
3.5	In cases involving dismissal, please confirm whether the claimant was a member of an occupational pension scheme. If so, was it a defined benefit scheme or a defined contribution scheme?	

4. The issues

4.1	What are the issues or questions for the Tribunal to decide? It is usually sensible to set this out under the title of the complaints.	
4.2	Are there any preliminary issues which should be decided before the final hearing? If yes, what preliminary issues? Can they be added to this preliminary hearing? If not, why not?	

5. Preliminary hearings

5.1	Is a further preliminary hearing needed for case management? NB This should be exceptional. If so, for what agenda items? For how long? On what date?	
5.2	Is a further substantive preliminary hearing required to decide any of the Issues at 4.1? If so, for which Issues? How long is needed? Possible dates?	

6. Documents and expert evidence

6.1	Have lists of documents been exchanged? If not, date/s for exchange of lists	
6.2	Have documents copy documents been exchanged? If not, date/s for exchange of copies? <ul style="list-style-type: none">• for any further preliminary hearing• for the Hearing	
6.3	Who will be responsible for preparing <ul style="list-style-type: none">• index of documents?• the hearing bundles? Date for completion of this task and sending copy to other side?	
6.4	Is this a case in which medical evidence is required? Why? Dates for <ul style="list-style-type: none">• disclosure of medical records• agreeing any joint expert• agreeing any joint instructions• instructing any joint expert• any medical examination• producing any report• asking questions of any expert• making any concessions	

7. Witnesses

7.1	How many witnesses will each party call? Who are those witnesses? Why are they needed?	
7.2	Should witness statements be exchanged on the same date or provided sequentially? Dates for exchange: For further preliminary hearing For the final hearing	

8. The hearing(s)

8.1	Time estimate for final hearing with intended time table Is a separate hearing needed for remedy?	
8.2	Dates to avoid (with reasons) or to list Any dates prelisted by the Tribunal	

9. Other preparation

9.1	Should there be admissions and/or any agreed facts If so by what date/s?	
9.2	Should there be a cast list? From whom and when?	
9.3	Should there be a chronology? From whom and when?	
9.4	Are there special requirements for any hearing? (e.g. interpreter, hearing loop, evidence by video, hearing party in private under rule 50) If yes give reasons	

10. Judicial assessment/judicial mediation

10.1	Is this a case that might be suitable for judicial assessment?	
10.2	Are the parties interested and do they consent to judicial assessment?	
10.3	Is this a case that might be suitable for judicial mediation?	
10.4	Are the parties interested in the possibility of judicial mediation?	
10.3	JUDICIAL USE ONLY	If relevant, Judge to consider whether criteria for judicial assessment/judicial mediation apply and then raise with the parties and record response. If appropriate, conduct JA and/or list for judicial mediation subject to liaison as appropriate with listing and the REJ.

11. Any other matters

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Preliminary Hearings – Substantive Issues

- Typically longer hearing than where limited to case management alone – typically from 2 hours to a full day
- Determine preliminary issues e.g. has the claim been issued in time? Is the Claimant disabled?

- A longer preliminary hearing can be listed by the Tribunal e.g. following review of the response in the ET3 or an initial hearing
- Otherwise on application of one of the parties
- Generally public hearings before the Tribunal

Advantages

- Narrow the scope of the claim – number and types of claim, numbers of respondents
- Reduces preparatory work/hearing length
- Reduce costs in the long term
- May encourage early settlement

Disadvantages

- Incur costs of an additional preliminary hearing
- May spur the Claimant on if the findings go in the Claimant's favour

General Principles

The Overriding Objective

- Tribunals must deal with cases fairly and justly
- Ensuring parties are on an equal footing
- Dealing with cases in a proportionate way
- Avoiding unnecessary formality and delay
- Saving expense

Applications and Orders

- To the Tribunal, copied to the other side
- Unless orders
- Strike out
- Deposit Orders – up to £1,000

Discovery and Disclosure

- Either by way of copy documents or written lists of documents
- All documents which are in the parties' possession, custody or control that are relevant to the issues of the case

- Includes all documents on which parties rely as well as documents which adversely affect their case or that of any other party or support another party's case
- Continuing duty – must disclose documents that come to light subsequently

- “Reasonable” not “exhaustive” search
- A “document” is “anything in which information of any description is recorded”
- Includes recordings, CCTV, electronic files, paper files and correspondence

Exchanging documents

- If exchanging document lists, then parties will request copies of the documents from the list they do not have from one another
- Can seek specific disclosure if you believe documents are being withheld

In the Leeds Employment Tribunal

Case No: [REDACTED]/19

-V-

Respondent's List of Documents

<u>No</u>	<u>Document</u>	<u>Time</u>	<u>Date</u>	<u>Page Numbers</u>		
1	Notice of Claim	n/a	[REDACTED]	1	-	2
2	Claim Form	n/a	[REDACTED]	3	-	14
3	Notice of Preliminary Hearing	n/a	[REDACTED]	15	-	16
4	Case Management Agenda	n/a	[REDACTED]	17	-	20
5	Email Claimant to [REDACTED]	20:05	[REDACTED]	21	-	21
6	Investigation Interview - Claimant	Unknown	[REDACTED]	22	-	22
7	Email Claimant to [REDACTED] inc Sick Note	06:25	[REDACTED]	23	-	26
8	Email [REDACTED] to Claimant	08:20	[REDACTED]	27	-	27
9	Email Claimant to [REDACTED]	08:23	[REDACTED]	28	-	28
10	Email [REDACTED] to [REDACTED]	11:39	[REDACTED]	29	-	30
11	Email [REDACTED] to Claimant	15:01	[REDACTED]	31	-	31
12	Email Claimant to [REDACTED]	15:23	[REDACTED]	32	-	32
13	Email [REDACTED] to Claimant	15:29	[REDACTED]	33		33
14	Invite to Disciplinary Hearing	n/a	[REDACTED]	34	-	35
15	Minutes of Disciplinary Hearing	12:00	[REDACTED]	36	-	39
16	Email [REDACTED] to Claimant	13:00	[REDACTED]	40	-	40

Trial Bundle

Agreeing a Bundle

- Once the parties have reviewed all documents, a hearing bundle must be agreed
- If at all possible seek to reach agreement and avoid putting two bundles before the Tribunal
- “Without prejudice” documents not included

- Tribunal may set a page number limit
- Limit documents before the Tribunal – only issues that need to be determined
- Pages must be numbered

- The bundle should be indexed
- Typically pleadings (ET1, ET3 etc) will be at the front other documents ordered chronologically, potentially within sections (e.g. correspondence, contractual documents)

Preparation of the Bundle

- The Tribunal may direct which party should be responsible for preparing the bundle and bringing sufficient copies to the hearing
- Otherwise for the parties to agree

Witnesses

Who should be a Witness?

- Key decision makers – dismissing officer, grievance or appeal chair
- Anyone investigating the issues in question
- Those directly involved with the issues e.g. a manager or colleague

Who makes a good Witness?

- Open from the outset – no nasty surprises
- Where possible, experienced in the issue in question
- Able to keep calm under pressure
- Able to focus on the questions asked of them

Witness Statements

- Written statement of the individual's evidence. Must include all areas on which the individual's evidence is required
- Statements taken as read – not read out in Tribunal
- Statements must be signed and dated

Taking a Witness Statement

- Generally preferable to meet with the individual and ask a series of questions based on their involvement
- Provide them with sight of relevant documents and cross reference bundle

Contents of Statement

- Include background information on the witness and relationship with the parties
- All the evidence the witness can give regarding the dispute
- A statement of truth

Exchange of Statements

- Simultaneously – preferably by emails sent at an agreed time
- This removes the advantage to a party of reviewing the other side's statements before finalising their own

Witnesses – Other Considerations

- Witness orders – but do you really want to compel somebody to give evidence?
- Supplemental witness statements – unusual unless new allegations or evidence contained in other side's witness statements

Other Hearing Preparation Steps

Other Documents

- List of Issues
- Chronology and agreed facts
- Cast List
- Scott schedule in discrimination claims – setting out particulars of each allegation
- Impact Statements/Expert Reports (Disability Cases)

Thank You – Any questions?