

A brief guide to the Employment Tribunal process



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This Inbrief provides an overview of the Employment Tribunal process, from making a claim to the outcome of the final hearing.

It is deliberately brief and does not cover every aspect of tribunal procedure, so do seek specific advice on your own circumstances if you are involved in a claim.

This applies to England and Wales only, as the process in Scotland and in Northern Ireland is a bit different – do contact us if you need more information about this.

Starting a claim

The person who wants to make an Employment Tribunal claim must usually contact the Advisory Conciliation and Arbitration Service (Acas) first. This is known as early conciliation.

The claimant provides Acas with basic information about their claim. If both parties want to conciliate, a support officer will facilitate discussions and can help them to reach an agreed settlement. There is no obligation to engage in early conciliation, and it may not resolve the dispute. If so, Acas issues an early conciliation certificate with a number which must be included on the claim.

A claim is made on a claim form called an ET1 which is completed online. Most claims must be received by the tribunal within three months of the event complained of. This is extended by time spent on the Acas early conciliation process. Time limits for claims are strict and taken extremely seriously. If a claimant misses the deadline, the tribunal is very likely to reject the claim.

The claim must contain specific information, including:

Express terms – as agreed between the employer and employee, which can be either verbal or written.

- ▶ who the claim is against - usually the employer, but sometimes, specific individuals may also be named;
- ▶ the early conciliation certificate number(s);
- ▶ the type of claims that are being brought, e.g. unfair dismissal, discrimination;
- ▶ the remedy sought, e.g. the amount of compensation;
- ▶ the facts upon which the complaint is based.

Responding to a claim

The business or person against whom a tribunal claim is made is known as a respondent.

The tribunal will send the ET1 to the respondent, together with a response form called an ET3. The respondent must send their response to the claim and the completed ET3 back to the tribunal within 28 days of the date on which the tribunal sent the ET1.

As a minimum, the response must confirm the name and address of the respondent and whether they intend to contest the claim. Usually though the respondent will provide a detailed response to the claim, either in the form or attached in a separate document.

The tribunal then sends a copy of the response to the claimant.

If the response is submitted late, it will not be accepted and the tribunal may issue a "default judgment" where it decides the case without hearing the parties.

Case management orders

Once the response has been submitted the tribunal will specify what the parties need to do to prepare for the hearing, known as "orders" or "directions".

In simpler cases, such as claims for deductions from wages or unfair dismissal, the tribunal will schedule a date for the hearing and send out orders in writing.

In more complex cases, the parties will be asked to attend a Preliminary Hearing to discuss preparation of the case. These are private hearings (so members of the public cannot attend) and are often held by telephone. The tribunal will discuss the claims and



issues to be decided at the final hearing, fix the final hearing date and make orders for preparing for that hearing.

A typical set of orders will cover the following, with dates by which each step needs to be done:

- ▶ The claimant sets out a calculation of what they are claiming (a "schedule of loss").
- ▶ Both parties send each other a list and copies of all documents they have which are relevant to the case ("disclosure"). "Documents" include letters, notes (however rough), emails, diary entries, drawings, recordings, minutes and computer files, regardless of how confidential they are, or whether they are copies of originals.
- ▶ The parties agree and prepare a combined set of documents for use at the final hearing (the "bundle"). Normally the respondent will prepare the final bundle, which must have an index and page numbers.
- ▶ The parties send to each other written witness statements for every witness they are calling at the final hearing. These statements should set out everything the witness wants to say and cross-refer to documents in the bundle where relevant.

It is important to comply with these orders, including the relevant dates. If not, the other party can complain to the tribunal. If one party persistently fails to comply with the tribunal's orders it is possible for some or all of the claim or response to be prevented from going ahead ("struck out").

Public Preliminary Hearings

In some cases there will be an additional Preliminary Hearing before the final hearing, to decide issues that may affect what claims can be heard. These are usually held in public. They often take place online by video instead of in the tribunal building.

This type of hearing may consider whether all or part of a claim (or sometimes a response) should be struck out. For example, because the claim is out of time, or is not something that a tribunal can decide. The hearing may also decide preliminary points such as whether someone was an employee, whether the claimant had the two years' service required to claim unfair dismissal, or whether the claimant meets the test of disability for a disability discrimination claim.

Overview of the final hearing

Final hearings may take place in the tribunal building. They may also take place online by video. If so, usually the entire hearing will be held online, but sometimes just some of the parties or witnesses take part remotely.

The tribunal hearing is chaired by an Employment Judge, who is legally qualified. In more complex cases (such as claims relating to discrimination or whistleblowing) there will also be two lay members on the panel, one of whom has a management or HR background, and one of whom has a trade union or employee representative background. The Judge should be addressed as "Judge" and lay members should be addressed as "Sir" or "Madam" as appropriate.

Parties can represent themselves at the hearing. If they are represented by someone else, there is no need for that person to be legally qualified. However, it is common for one or more parties to be represented by a barrister or solicitor who presents the case on their behalf. Witnesses in the tribunal are allowed to attend all of the hearing.

The usual order of events is:

- ▶ The tribunal will usually take some time at the start of the hearing to read the witness statements and key documents.
- ▶ The parties or their representatives may make opening statements, setting out the issues in the case.
- ▶ Each party then presents its evidence in turn by calling witnesses.
- ▶ Each witness will be questioned by the other party ("cross-examination"). The witness may then be questioned again briefly by the party calling that witness ("re-examination").
- ▶ The tribunal has an active role and often puts its own questions to the witness, especially when one party is unrepresented.
- ▶ After all the evidence has been heard, both parties make closing submissions.
- ▶ The tribunal adjourns the hearing to make a decision. This may be given orally on the same day, or a written decision may be sent at a later date.
- ▶ If the claim succeeds, the tribunal will hold a remedy hearing to decide what compensation or other remedy should be awarded. This may happen at the end of the main hearing or on a separate date.

For more information on being a witness please see our [Inbrief on being a witness in the Employment tribunal](#).



The usual position is that final hearings are held in public. Members of the press and the public can attend some or all of the hearing, including where it takes place online. The witness statements and bundle of documents must also be made available to the public during the hearing, and sometimes afterwards. In rare circumstances, the tribunal can order that some or all of the evidence, party names and/or witness names are kept confidential.

After the hearing

The tribunal's written judgment will be sent to the parties and published on a searchable online database. If the tribunal gave its full decision orally at the end of the hearing, the judgment will be a short document confirming the result. If the tribunal sent a written judgment, or if one of the parties asks for full written reasons, the published judgment will contain details of the facts and evidence as well as the result.

Normally the parties each bear their own legal costs and are not able to recover these even if they win. The tribunal has power to order one party to pay the legal costs of the other party in limited circumstances (such as where a party has acted unreasonably during the proceedings), but costs awards are not standard practice.

If either party thinks that the tribunal's decision is wrong, there are limited circumstances in which an appeal can be made to the Employment Appeal Tribunal. Such appeals must usually be on points of law, on the basis that the tribunal applied the law incorrectly. It is not normally possible to appeal merely because there is a disagreement with

the tribunal's decision. An appeal must be sent within 42 days of when the written reasons for the judgment were sent to the parties.

It is also possible to ask for a reconsideration of a tribunal decision, for example if there has been an obvious mistake. Again, the tribunal will not reconsider its decision just because there is disagreement with the result. Reconsideration must be requested within 14 days of when the written judgment or full written reasons was sent to the parties.

Settlement options

It is possible to settle a tribunal claim at any point during the process, and there are various ways to do this.

- ▶ Acas offers conciliation throughout the proceedings to help with settlement discussions. They can record a settlement in a legally binding agreement (a COT3).
- ▶ In more complex cases, the tribunal may offer the option of judicial mediation. If the parties agree, they can spend a day with a Judge who will help to mediate settlement discussions. The tribunal may also ask the parties to attend an alternative dispute resolution appointment shortly before the hearing to see if the case can be resolved.
- ▶ The parties can engage a private mediator to assist with settlement discussions.
- ▶ The parties can simply discuss settlement between themselves at any point up to (or even during) the final hearing.

Unless Acas is involved in finalising the settlement using a COT3, the parties should use a legally binding settlement agreement. This must contain certain provisions and the claimant must obtain independent legal advice on the agreement.

For more information see our [Inbrief on alternative dispute resolution](#).

For more information on this subject please contact:



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