

STEVE NORTON – FREELANCE SOLICITOR

Professional legal advice and useful legal resource materials

EMPLOYMENT TRIBUNAL PROCEDURE

Preparation for a Preliminary Hearing

This presentation provides general guidance and is not a substitute for seeking independent legal advice

This presentation will look at the following subject areas:-

Introduction to some key terms

The process of making a claim including
ACAS Early Conciliation

- The Sifting Stage
- The Preliminary hearing process
- The documents needed and disclosure process and how to prepare them

Witness Statements and Orders

Some key terms

CLAIMANT: This is the person/party bringing the case usually the Employee

RESPONDENT: This is the person/party defending themselves against the claim – usually the Employer

Other important key terms

ACAS stands for the **Advisory, Conciliation and Arbitration Service**.

ACAS work with employers and employees to try to resolve employment disputes. They must work with you before you make a claim to the employment tribunal, and before your hearing. They have a confidential helpline where they provide free and impartial information on all aspects of workplace relations and employment law.

- **Helpline: 0300 123 1100**
- **Website: www.acas.org.uk**

Before making a claim you must go through the Early Conciliation process

ACAS Early Conciliation Process - Advantages

8

Free and Confidential Process

ACAS Early Conciliation offers a no-cost, confidential way to address workplace disputes before legal action is taken.

Impartial Conciliator Role

An unbiased ACAS conciliator helps both parties communicate effectively and facilitates finding a resolution.

Time and Cost Savings

Early Conciliation saves time and reduces legal costs, often resulting in mutually agreeable settlements without tribunal involvement.



The role of ACAS

ACAS are a publicly funded, independent organization. They have an important role in working with the claimant and respondent in trying to resolve disputes by reaching settlements where possible.

Some of the benefits of using ACAS

9

SIMPLICITY

Provides the chance of settling claims without attending court.

NEUTRALITY

A conciliator offers the chance for an outsider to offer an objective solution.

AVOIDING LEGAL CLAIM

Offers settlement outside stress and trauma of legal proceedings

ACAS EARLY CONCILIATION PROCEDURE

10

A prospective claimant who wishes to issue relevant proceedings must first comply with the EC requirement.

The prospective claimant will do this by either submitting an EC form online or by post, or by telephoning ACAS who will complete the EC form for them.

The claimant should make sure your name and address and the name and address of the prospective respondent are current and included on the form, or run the risk of the EC form being rejected by ACAS.

ACAS must make 'reasonable attempts' to contact the prospective respondent. If both parties agree a settlement this will be set out in a binding agreement (COT3)

If ACAS are not successful contacting the prospective respondent or the respondent is not interested in reaching a settlement ACAS will issue a form with a ref number to be quoted on the ET1 claim form if moving to the claim stage.

If the prospective claimant wishes to conciliate, then the matter will be passed to an ACAS conciliator who will take further details of the matters in issue and ensure that they consent to them contacting the prospective respondent. If the prospective claimant has a legal representative, the conciliator will be prepared to liaise with them rather than directly with the prospective claimant.

EC will end after six weeks and the clock stops during this period. The claimant then has 1 month to bring a claim.

MAKING A CLAIM

Time limits

A claim must be 3 months less 1 day from the event, such as dismissal in an unfair dismissal claim the time limit is paused after you contact ACAS.

The time limit starts again once you have your unique reference number.

At any time a resolution can be found through conciliation if both parties agree

The ET1 form (claim form)

EXAMPLE OF ET1 FORM

Employment Tribunal

Claim form

You must complete all questions marked with an *

Official Use Only	
Tribunal office	
Case number	Date received

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

<http://www.gov.uk/employment-tribunals/make-a-claim>

ET3 Form (used to respond to a claim)

WHEN A TRIBUNAL ACCEPTS A CLAIM, IT WILL SEND A COPY OF THE ET1 TO THE RESPONDENT, WITH:

- AN ET3 FORM; AND
- A NOTICE OF CLAIM EXPLAINING: HOW TO PRESENT A RESPONSE AND THE DEADLINE FOR DOING SO; AND WHETHER ANY PART OF THE CLAIM WAS REJECTED.

Responding to a claim

WHAT DO YOU NEED?


- ❑ YOU MUST USE THE ET3 FORM
- ❑ YOU MUST PROVIDE ALL THE NECESSARY INFORMATION
- ❑ YOU MUST SUBMIT THE RESPONSE WITHIN THE TIME LIMIT

THE RESPONSE MUST BE SUBMITTED **WITHIN 28 DAYS**. THE DEADLINE WILL BE SPECIFIED ON THE NOTICE OF CLAIM.

IMPORTANT – IF YOU WANT TO MAKE A COUNTER CLAIM THIS WILL BE TREATED AS

A SEPARATE CLAIM.

THE
RESPONDENT
MUST REPLY
WITHIN **28 DAYS**,
OR ASK FOR AN
EXTENSION
WITHIN THE
STIPULATED
TIME PERIOD.

	
<h2 style="margin: 0;">EMPLOYMENT TRIBUNALS</h2>	
<p>To:</p>	<p>Office DX e-mail:</p>
<p>Case Number:</p>	
<p>Claimant</p>	<p>• Respondent</p>
<p>v</p>	
<h3 style="margin: 0;">NOTICE OF A CLAIM</h3>	
<p><u>The Claim</u></p>	
<p>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.</p> <p>A copy of the claim form is enclosed for the respondent(s).</p> <p>[Part of the claim has been rejected, namely the complaint(s) of [insert details]. The remainder of this letter does not apply to those complaint(s)].</p>	
<p><u>Responding to the claim</u></p>	
<p>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 http://www.justice.gov.uk/tribunals/employment/claims/responding . If a respondent wishes to defend the claim their response must be received at the Tribunal office by . 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.</p>	

THE SIFTING PROCESS

The sifting stage

THE CLAIM AND RESPONSE WILL BE REVIEWED BY AN EMPLOYMENT JUDGE TO SEE WHETHER THE CASE CAN BE PROGRESSED AND HEARD AT THE EMPLOYMENT TRIBUNAL AND ISSUES BELOW CONSIDERED:-

ARE THERE REASONABLE PROSPECTS OF SUCCESS?

IS THE CLAIM/RESPONSE WITHIN THE TRIBUNAL'S JURISDICTION? IS THE CLAIM/RESPONSE SUITABLE FOR JUDICIAL MEDIATION* (COMPLEX CASES / HEARINGS LONGER THAN 3 DAYS) * SEPARATE JUDGE USED / IS NEUTRAL / DOES NOT ADVISE ON MERIT OF EITHER PARTY'S CLAIM / SEPARATE FROM ACAS ROLE / SEPARATE FEE PAID BY EMPLOYER / IN LINE WITH ADR PHILOSOPHY.

THE CASE MAY BE STRUCK OUT. IF IT IS PROGRESSED YOU WILL RECEIVE A WRITTEN CASE MANAGEMENT ORDER.

Case management orders

THESE SETS OUT THE TIMETABLE AND PROCESS UP TO AND INCLUDING THE FINAL HEARING, THIS INCLUDES: -

- ❑ SCHEDULE OF LOSS
- ❑ LIST OF DOCUMENTS
- ❑ BUNDLE/FILE OF DOCUMENTS
- ❑ WITNESS STATEMENTS
- ❑ PRELIMINARY HEARING

THE JUDGE AT ANY TIME DURING THE CASE HAS THE DISCRETION TO MAKE ADDITIONAL ORDERS OR FOLLOWING AN APPLICATION BY THE PARTIES.

Case Management Orders

20

Examples of tasks and deadline which may be contained in a Case Management Schedule:



6 weeks from the date of this letter	The claimant shall set out 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...
8 weeks from the date of this letter	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.

THE PRELIMINARY HEARING

Preliminary hearings

HOW IS A PRELIMINARY HEARING INITIATED?

THEY CAN BE ORDERED BY THE TRIBUNAL; OR
PURSUANT TO AN APPLICATION BY EITHER PARTY.

WHAT FORMAT DO THEY TAKE?

IT DEPENDS ON THE TYPE OF PRELIMINARY HEARING

PUBLIC - PRELIMINARY ISSUES TO BE DECIDED

PRIVATE - CASE MANAGEMENT ISSUES

**AT LEAST 14 DAYS NOTICE WILL BE GIVEN IF PRELIMINARY
ISSUES ARE TO BE DETERMINED**

Preliminary hearings

THIS IS EVERYTHING THAT NEEDS TO BE INCLUDED WHEN MAKING AN APPLICATION TO REQUEST A PRELIMINARY HEARING:

- ☐ CASE NAME, CASE NUMBER
- ☐ YOUR NAME
- ☐ WHAT ISSUES YOU WANT TO BE DETERMINED IN THE PRELIMINARY HEARING
- ☐ WHAT ORDERS YOU WANT TO SEEK, I.E. REMEDY
- ☐ INDICATE YOU HAVE SENT A COPY OF YOUR REQUEST TO THE OTHER PARTY
- ☐ NOTIFY THE OTHER PARTY THAT ANY OBJECTIONS HAVE TO BE SENT TO THE TRIBUNAL WITH A COPY TO YOU

Preliminary hearings

24

Two types of Preliminary Hearings –

1. Hearings to determine issues
2. Case Management Hearings

PRELIMINARY HEARINGS WILL BE USED TO DETERMINE PRELIMINARY ISSUES AND ESTABLISH IF THE REQUIREMENTS TO BRING A CLAIM ARE SATISFIED. THIS WILL INCLUDE ISSUES SUCH AS:-

IS THE EMPLOYEE DISMISSED?

IS THE CLAIM OUT OF TIME?

DOES THE CLAIMANT HAVE A DISABILITY AS DEFINED IN THE EQUALITY ACT 2010? (DISABILITY DISCRIMINATION CLAIM)

IS (OR WAS) THE CLAIMANT AN EMPLOYEE? (RATHER THAN SELF-EMPLOYED, FOR EXAMPLE)



Case management orders may also be made
Including for instance:-

Deposit orders
Amended claim or response
Strike out
Specific disclosure, etc



Clarified issues to be determined at the Final Hearing
Look at exploring the possibility of settlement or judicial assessment and/or judicial mediation

Deposit orders

25

WHAT ARE DEPOSIT ORDERS?

- ❑ DEPOSIT ORDERS CAN BE ISSUED IF THE TRIBUNAL BELIEVES ANY ALLEGATION OR ARGUMENT HAS LITTLE REASONABLE PROSPECT OF SUCCESS
- ❑ THEY WILL NOT BE ISSUED WITHOUT A HEARING
- ❑ THE LETTER THAT COMES WITH THE DEPOSIT ORDER WILL EXPLAIN THE REASONS
- ❑ TO BE AWARE THERE WILL BE COSTS CONSEQUENCES IF YOU SUBSEQUENTLY LOSE YOUR CASE

Preliminary Hearings can be held via telephone

- ❑ Preliminary Hearings can be held by telephone, but this is **exceptional**
- ❑ You must put in your request in writing for such a hearing
- ❑ It is important to note it is unlawful to record these calls
- ❑ It is not usual to provide translation services in telephone hearings

Preliminary hearings

WHAT WILL HAPPEN BEFORE THE MEETING?

- ❑ YOU WILL BE INFORMED IN WRITING OF THE DATE AND TIME
- ❑ YOU WILL BE PROVIDED WITH A NUMBER TO CALL
- ❑ A PIN WILL BE GIVEN TO YOU TO JOIN THE HEARING VIA CONFERENCE CALL
- ❑ THE PARTIES SHOULD SEND IN ADVANCE RELEVANT DOCUMENTS, SUCH AS THE CASE MANAGEMENT AGENDA TO THE TRIBUNAL. SHOULD BE SENT TO THE TRIBUNAL.

Important note - It is illegal to record telephone hearings

Preliminary Hearings

What happens before the preliminary hearing?

- The Tribunal will send out an agenda which contains a series of questions to be answered
- Each party should answer the questions and return to the Tribunal and other parties before the Preliminary Hearing

Standard agenda items usually include:-



Agenda items:

- List of issues
- Disclosure schedule
- Remedy
- Witnesses
- How long the Final Hearing should last
- Availability
- Accessibility

Preliminary hearings

WHAT SHOULD YOU BRING TO THE PRELIMINARY HEARING?

- ❑ YOU SHOULD BRING A COPY OF THE PLEADINGS (ET1/ET3 ETC), COPIES OF THE CLAIMS AND RESPONSES
- ❑ COPIES OF ANY AGREED DRAFT DIRECTIONS, AGREED FACTS, AGREED ISSUES
- ❑ A COPY OF ANY RELEVANT LEGISLATION
- ❑ A CALENDAR MARKED WITH YOUR DATES TO BE AVOIDED, TAKING WITNESSES INTO CONSIDERATION
- ❑ EVIDENCE REGARDING WITNESS' AVAILABILITY E.G. TRAVEL BOOKING CONFIRMATION
- ❑ PENS AND A NOTEBOOK ARE KEY
- ❑ A LIST OF ANY QUESTIONS YOU WANT TO ASK

Preliminary hearings

IMPORTANT POINTS TO REMEMBER

- ❑ ENSURE YOUR DOCUMENTS ARE SENT TO THE TRIBUNAL IN GOOD TIME
- ❑ PUT THEM IN A FOLDER IN DATE ORDER
- ❑ MAKE SURE YOU HAVE THE DOCUMENTS YOU NEED TO HAND
- ❑ WRITE DOWN YOUR QUESTIONS BEFOREHAND
- ❑ AVOID SPEAKING OVER OR INTERRUPTING THE JUDGE OR THE OTHER PARTY – IMPORTANT TO BE RESPECTFUL

THIS IS YOUR ONE CHANCE TO RAISE THINGS – MAKE SURE YOU ARE PREPARED

DOCUMENTS, DISCLOSURE & WITNESSES

Documents – Disclosure 1

STANDARD DISCLOSURE IS A DUTY TO SHOW THE OTHER PARTY
ANY RELEVANT DOCUMENT

THESE INCLUDE **ALL** RELEVANT DOCUMENTS WHICH ARE:

- HELPFUL TO YOUR CASE
- HARMFUL TO YOUR CASE
- HELPFUL TO ANOTHER PARTY'S CASE
- HARMFUL TO ANOTHER PARTY'S CASE

AND ARE WITHIN YOUR POSSESSION, CUSTODY OR CONTROL

Documents – Disclosure 2

PROCEDURE ON DISCLOSURE:

- ❑ PARTIES NEED TO PRODUCE A LIST OF DOCUMENTS (WITH TITLE OR SUMMARY OF WHAT'S INSIDE)
- ❑ THE LISTS ARE EXCHANGED
- ❑ DOCUMENTS ON THE LIST THAT EITHER PARTY REQUESTS ARE PROVIDED

SPECIFIC DISCLOSURE

- ❑ IF NOT ON THE LIST THEN A SPECIFIC REQUEST CAN BE MADE
- ❑ BUT YOU DON'T HAVE TO CREATE A DOCUMENT THAT DOESN'T EXIST

Documents in 1st bundle

The normal practice is the bundle is prepared by the respondent through a case management order using the following format:-

- ❑ Index inserted at the beginning
- ❑ Will often be large because of contracts, handbooks and transcripts etc
- ❑ Witness' copy to be clean (no notes or highlighting)
- ❑ Multiple copies will be required

The sections within bundle will usually be:-

- ❑ The pleadings (ET1 and ET3)
- ❑ Documents likely to include employment contract, letters
- ❑ Any mitigation and schedule of loss
- ❑ Each section should be arranged in date order with page numbers

Documents in 2nd bundle

Documents which you should include in this bundle:-

- ❑ Are you going to make a point about this document?
- ❑ Are your witnesses going to refer to it?
- ❑ Are you going to cross-examine the other side's witnesses about it?

What you must NOT include:

- ❑ Any 'without prejudice' correspondence/documents that might have taken place between claimant and respondent or during ACAS discussions
- ❑ Any details of suggested settlements / agreements offered beforehand that should not be discussed in open court.

Example of a Schedule of Loss

IN THE EMPLOYMENT TRIBUNALS

CASE NO: [CASE NO]

BETWEEN:

[NAME OF
CLAIMANT]

(Claimant)

and

[NAME OF
RESPONDENT]

(Respondent)

CLAIMANT'S
SCHEDULE OF LOSS

1. DETAILS
2. BASIC AWARD
3. COMPENSATORY AWARD

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Witness statements – General

ANY WITNESS EVIDENCE MUST BE PROVIDED IN THE FORM OF WRITTEN STATEMENTS

THE WITNESS STATEMENT IS THE MAIN DOCUMENT THAT STATES YOUR CASE


THERE IS NO PARTICULAR FORMAT BUT IT IS BEST TO BE TYPED AND DOUBLE SPACED AND CONTAIN THE FOLLOWING INFORMATION:-

- I. Identify the Tribunal (i.e. South West London Employment Tribunal);
- II. Include the Case Number; and
- III. Identify the parties to the proceedings; and
- IV. Headed '**Witness Statement of [Y]**'.

Contents of witness statements

38

- ❑ SHOULD CONTAIN ALL THE EVIDENCE THAT A WITNESS INTENDS TO GIVE
 - Necessary background
 - Only include detail relevant to the issues to be decided by Judge
- ❑ SHOULD BE WRITTEN IN THE WITNESS'S OWN WORDS
- ❑ SHOULD CONTAIN:
 - Explanation of how the witness is connected to the parties in the proceedings;
 - All the evidence the witness can give relating to the matters in dispute;
 - Reference to documents from the bundle supporting their evidence;
 - Statement of truth
- ❑ AND BE SIGNED AND DATED BY THE WITNESS



Statement of Truth

This statement is true to the best of my knowledge and belief.

.....

Joe Bloggs

Date:

Witness orders

WITNESS ORDERS

- ❑ A WITNESS CAN BE COMPELLED BY TRIBUNAL TO ATTEND
- ❑ A WITNESS ORDER CAN BE ISSUED ON A JUDGE'S OWN INITIATIVE OR FOLLOWING AN APPLICATION BY ANY PARTY.
- ❑ IT SHOULD MAKE IT EASIER FOR SOMEONE TO GET TIME OFF WORK. HOWEVER WITNESSES AREN'T COMPENSATED FOR ATTENDING.

...and finally

FINAL BIT OF GENERAL ADVICE

IT IS IMPORTANT TO BE PROPERLY PREPARED AND ORGANISED BEFORE EACH STAGE IN THE PROCESS UP TO THE PRELIMINARY HEARING.

THE PRELIMINARY HEARING IS A GOOD TIME TO ASK QUESTIONS AND RAISE ANY ISSUES YOU NEED CLARIFICATION OF.

YOU NEED TO BE RESPECT TO THE TRIBUNAL AND ALL THE OTHER PARTIES.

WE HOPE YOU FOUND THIS SUMMARY OF THE PROCEDURE LEADING UP TO THE PRELIMINARY HEARING STAGE AT AN EMPLOYMENT TRIBUNAL HELPFUL.