

A Central London
Law Centre
Publication

claimant's *companion*

by Tamara Lewis

a client's guide to employment tribunal cases



**claimant's
companion**

contents

Introduction	1
Overview:	3
how does employment law work?	
what is an employment tribunal?	
appeals	
Unfair dismissal: key points	5
Discrimination: key points	7
Should you bring a tribunal case?	10
Case preparation	11
The tribunal hearing	17
Compensation and remedies: what will you get if you win?	25
Settlements and ACAS	30
Costs – what will you have to pay?	35
Myths, worries, dangers	37
Finding someone to represent you	40
Books, guides and websites	44
Glossary	46
Your notes about your case	49



introduction

A note to claimants

This is your guide.

It is for you, if you are bringing – or thinking of bringing – an employment tribunal case.

It is only for use if you already have an adviser or representative, or if you are trying to find someone to help you. There is not enough information in this guide to help you understand the law or run a tribunal case on your own.

This guide assumes you have an adviser or representative who understands the law and procedure and can give you appropriate advice. Assuming this is so, you are strongly recommended to listen to your adviser. There is not enough information in this guide to enable you to make your own decisions.

The idea is that you can look at this guide to remind you and help you understand what your adviser has told you. I have tried to put in answers to questions which clients so often ask us at the law centre.

There is a lot of jargon used in employment cases. There is an explanation of the most common words in the Glossary on p46.

This guide uses the words 'adviser' or 'representative' to refer to the person who is offering you legal assistance, whether or not s/he is a qualified lawyer. The words can be read interchangeably, although I tend to say 'representative', where I mean someone who has taken on your case and is 'on the record'. Where I use the word 'adviser', I am including someone in the background, who is helping you run your own case, but remains 'off the record'. (See p11 for more on this distinction.)

Your experience is likely to be very different according to whether you have help from a law centre, a private solicitor in a private firm, or a citizens advice bureau. But wherever you get help, hopefully this guide will make the experience of running a case less bewildering.

Good luck!



A note to advisers and representatives

This guide is not intended to supplant you. Clients need specific advice on their own particular cases. But often the procedures can be confusing and the amount of new information and experience, overwhelming. The idea is that this guide is a reference which your clients can look back at, to help remember what you have said, and answer some anxieties. Although it is very simplified and should not replace any advice or client care letters, you may want to help your client fill in the notes at p49.

Hard copies of the guide can be obtained from Central London Law Centre, or you can print off pdf copies from our website at www.londonlawcentre.org.uk

Acknowledgements: The Nuffield Foundation

I would like to thank the Nuffield Foundation for their generosity once again in funding this guide and for helping make justice accessible to everyone.

Thanks also to David Jones, employment editor of the ADVISER magazine and free-lance consultant, and Philip Tsamados, solicitor, for their useful comments.

© Tamara Lewis 24.3.08

overview

How does employment law work?

Workers have two kinds of employment rights – contractual rights and statutory rights.

Contractual rights are those given to you in your contract of employment. For example, how much you get paid and where you work.

Statutory rights are those given by parliament. For example, the right not to be unfairly dismissed and the right not to be discriminated against for various reasons.

- Your rights will often depend on whether you are an employee or another kind of worker.
- Your rights may also depend on how long you have worked for your employer. For example, to claim ordinary unfair dismissal, you must have worked for your employer for at least 1 year. For other rights, it does not matter if you have not worked there for very long.
- Employment law is very complicated and keeps changing.
- When you bring an employment case, you need to be sensible. Don't just put in a claim for everything you can think of. This may annoy the tribunal and distract from your strongest claims. You should only claim for those rights which are relevant and important and where you have the necessary evidence. You should listen to your adviser's advice on this.

What is an employment tribunal?

- Nearly all employment cases – including all unfair dismissal and discrimination cases - are decided in employment tribunals.
- Your case will usually be decided in the employment tribunal nearest your workplace.
- An employment tribunal is sometimes referred to as an 'ET' for short.
- There are usually three people who decide your case. The chair of the panel is a solicitor or barrister of at least seven years' standing. This is the 'employment judge'.

- As well as the judge, there are two 'lay members' or 'wing members'. One of them has background from the employer / personnel side of industry, and one of them has background from the employee / trade union side of industry. They are all supposed to be neutral when they listen to your case.
- An employment tribunal (ET) is like a court, but it is a little less formal. Everyone sits down at tables, with some rows of chairs at the back. The tribunal panel sits on a slightly raised platform. See diagram on p22. There are no wigs and gowns.
- Nevertheless, an ET has some formal procedures. Witnesses must take the oath or promise to tell the truth. There are formal rules about the order of events and who can speak (see p19).
- With few exceptions, employment tribunal hearings are open to members of the public.
- If you are worried about what the ET will be like, you can go any time and watch someone else's case. Ask your adviser how to go about this. But be careful not to assume that your case will be like the one you see. All cases are very different, with different personalities (judges, representatives etc) and different stories. The atmosphere can be quite different in different cases.

Appeals

- Appeals from employment tribunal decisions are made to the Employment Appeal Tribunal (EAT).
- You do not automatically have the right to appeal if you lose. You can only appeal if the employment tribunal made a legal mistake or was 'perverse' ie made a ridiculous decision on the facts.
- It is therefore very difficult to appeal and there are relatively few appeals compared with employment tribunal cases. It is best to go into a case expecting that you will only have one chance to argue your case, ie in front of the employment tribunal.

unfair dismissal

key points

Your adviser will give you advice about whether you have a strong or weak case and what points need to be proved.

These are just a few key points about how unfair dismissal law works.

What makes most misconduct or incapability dismissals unfair?

- There was not a strong enough reason to dismiss you.
- During your employment, your employer did not follow fair procedures. You were not told the relevant rules or taught the job. You were not given proper warnings and a chance to improve.

Obviously this is not relevant to dismissal for gross misconduct, eg theft.

- The dismissal procedures were unfair. There was no proper investigation. You were not given a proper chance to answer the allegations against you.

But, if the dismissal was fair apart from the dismissal procedures, you will not get much compensation – and may not even win at all.

This may surprise you:

- Tribunals will rarely interfere with employers' business decisions.
- The law is more concerned with whether the employer has acted reasonably than whether you have been treated fairly. That is not always the same thing.

For example, if an employer for economic reasons moves the workplace from London to Newcastle and you are dismissed because you won't move, that is unlikely to be unfair dismissal if there is nowhere else for you to go.

...was the employer reasonable...?

...no chance to answer the charges...

- It is not enough that the tribunal thinks you were treated unfairly and that the tribunal would not itself have dismissed you. After all, different people can have different legitimate opinions. You only win your case if the tribunal decides that no reasonable employer would have dismissed you. This rule is called 'the band of reasonable responses'.
- If you were dismissed for alleged misconduct, eg theft, the important point is not whether you committed the theft or not. The important point is
 - did your employer carry out a proper investigation and give you a chance to answer the charges?
 - was it reasonable for your employer, on the evidence, to believe that you committed the theft?

So the main focus is on whether your employer 'acted reasonably'. Therefore, even if you win, you may not feel you have cleared your name. And you may lose, even though you never committed the theft.

tribunals will rarely
interfere with
employers'
business decisions

discrimination

key points

Your adviser will tell you whether you have a strong or weak case and what points need to be proved.

Discrimination law is very complicated. You must not try to work out how the law applies to you from the following very simple summary. You need specialist advice. These are just a few key points about how discrimination law works, which may apply to your case.

What is unlawful discrimination?

- Discrimination law covers bad treatment related to race, sex, being married or a civil partner, gender reassignment, pregnancy, sexual orientation, religion or belief, disability, age.
- 'Direct discrimination' means your employer has treated you differently or worse on grounds of race, sex, age etc than your employer has treated or would treat a person of a different race, sex, age etc.

For example:

- an employer promotes a man rather than a more qualified and experienced woman for a job.
- an employer dismisses a black worker for a particular offence. A white worker committed the same offence and only received a first written warning.

- 'Harassment' is upsetting and offensive behaviour related to race, sex, age etc, eg racist abuse; unwanted sexual remarks.
- 'Victimisation' has a specific meaning. It does not mean victimisation in the normally understood manner. It means your employer has treated you badly because you complained about discrimination.

For example, shortly after you raise a grievance about race discrimination, your employer finds some pretext to make you redundant.

- 'Indirect discrimination' is where your employer applies a general provision, criterion or practice which causes you a disadvantage and would cause others of your racial group, sex, age etc a particular disadvantage.

direct discrimination

harassment

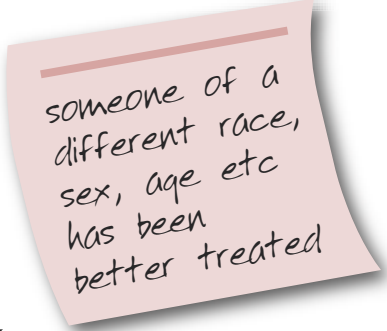
victimisation

For example, an employer insists on all staff working full-time. A female employee cannot work full-time because of childcare.

Indirect discrimination is permitted if the employer can justify imposing the provision, criterion or practice.

Evidence to prove direct discrimination

- Your adviser will tell you what evidence is most important in your particular case.
 - Usually, though not always, it is really helpful to think of the 'but for' question. ie 'but for' your race, sex, age etc (ie if you were of a different race, sex, age etc), would the employer have recruited, promoted, warned, dismissed you?'
 - A comparator is particularly helpful evidence, ie someone of a different race, sex, age etc who has been treated better by your employer in comparable circumstances. For example:
 - you were disciplined for private use of the telephone. Your colleague, who is of a different race, sex, age etc was not disciplined for doing the same thing.
 - you were dismissed for not meeting targets. Your colleague, who is of a different race, sex, age etc also did not meet targets, but was not dismissed.
- Can you think of any examples which applied in your case?
- Let your adviser know at the outset if any racist, sexist, ageist remarks were made. Tell your adviser what was said even if you are not sure if the remark was bad enough or meant as a so-called joke. It is for your adviser to decide whether this is important evidence.
 - It is useful to think about what explanation your employer will give when challenged. You have to discredit that explanation, so try to think in advance what it is likely to be.



someone of a different race, sex, age etc has been better treated

Surprisingly, it is not enough that:

- Your employer followed bad equal opportunities practices in a recruitment exercise.

This does not in itself mean you would have been selected for the job if you were a different race, sex, age etc. The successful candidate may genuinely have more qualifications or experience than you or be better for other reasons.
- Your employer treated you extremely unfairly.

Some employers are just bad employers and treat everyone unfairly. The tribunal wants to know whether your employer would have treated you so badly if you were a different race,

sex, age etc. You may have a strong instinct that the answer to that question is 'no'. But the tribunal cannot rely on instinct, it needs evidence.

Evidence to prove victimisation

- You need to prove you complained about discrimination in the first place. This can be difficult if your complaint was verbal. It is best always to raise such issues in writing and keep a copy.
- Then you need to prove you were treated badly as a result. Your employer is unlikely to admit there is any connection.
- You won't get any legal protection if the tribunal thinks you maliciously made up the original allegation of discrimination.

Questionnaires

- There is a special questionnaire procedure in discrimination cases. This procedure helps you find out information from your employer, which you need to prove your case.
- Before you start your case (or within 21 days afterwards – 28 days for disability cases) you can send your employer a written questionnaire.
- This is very important. You should make sure it is done.
- The questionnaire is written on a standard form. You write down very precise questions for your employer. The point is to get information and find out what your employer's defence will be.

For example, you can ask who decided not to promote you, why not, who was promoted, why, what were their qualifications and experience, who else applied etc.

- Employers don't have to answer, but usually they do. If they don't answer within 8 weeks, it is likely to be held against them at the tribunal hearing.
- For more detail of the procedure, see the guides listed on p44.

...send written questionnaire...

should you bring a tribunal case?

You will need to take the following factors into account when deciding whether or not to bring a tribunal case:

- What are your chances of success? You need to listen to your adviser. It is very easy to be over-optimistic about your own case.
- Is there any risk of costs being awarded against you? This shouldn't happen if you have a reasonable case to argue (see p35).
- What will the tribunal award you if you win? Remember the tribunal only has limited powers. See p25 regarding compensation and remedies. Again, take your adviser's advice.
- Is there any risk that your employer cannot afford to pay you even if you win? This can be a risk with small employers who are in financial difficulties and go into liquidation.
- Can you face the tribunal process? It will take a lot of your time and energy. See p12 regarding how long the case may take, p11 regarding the preparation steps and p17 regarding the tribunal hearing.
- Can you cope with the emotional stresses? You will probably have to put up with the employer criticising your work or your character. You will see your employer in the tribunal. You may well find that witnesses let you down. You will have to give evidence and answer questions from your employer's representative and the tribunal panel. It is possible the tribunal will not believe you when you are telling the truth.
- Do you mind if there is any publicity? The risk of this is small in a normal unfair dismissal case, but greater in certain discrimination cases.
- Will there be any other bad effects of bringing a case? For example, will it make your employer refuse to give a reference or write a bad one? If you are still in work, and bringing eg a discrimination case, will you be victimised?
- Who will represent you and how much will it cost? (See p35.)

Listen to your adviser and make up your own mind. Well-meaning friends and family, especially if they have had their own case or studied some law, often want to offer advice. It is important to listen to an experienced and objective adviser.

case preparation

Before the case starts

For some cases, it may be necessary or a good idea for you to send your employer a grievance letter before you start your tribunal case. Your adviser will give you advice on this.

In a discrimination case, you should normally send a questionnaire to your employer (see p9).

Starting a case

- Your tribunal claim must be written on a standard form, called the 'claim form'. It is also called an 'ET1' for short. That is the number on the standard form.
- You have a choice of completing a paper copy or sending in an on-line version over the internet.
- Your case starts when your claim form arrives at the correct employment tribunal office.
- All employment rights have time-limits. There are different time-limits for different rights. Your claim must arrive within the time-limit.

How much help will your adviser give you?

- You must discuss with your adviser at the outset how much help s/he can give you and how much it will cost. (See p40 regarding sources of legal advice and representation.)
- If your adviser has agreed to represent you in the case preparation, s/he will write his/her name and address on the claim form as your representative. This means your adviser is 'on the record'. The tribunal will then send all correspondence to your adviser. The tribunal will also expect your adviser to represent you at any tribunal hearings.
- On the other hand, if your adviser is merely helping you behind the scenes, s/he will not put his/her name and address on the form and all correspondence will go to you. This means your adviser is 'off the record'.

It will be your responsibility to make sure your case is prepared and keep in touch with your adviser. You must contact your adviser as soon as you get anything from the employment tribunal, or even if you have heard nothing for some time. Your adviser will not be able to help you prepare your case if you only go back to him/her just before the hearing.

- If you fill in the tribunal form yourself, do not put down your adviser's name and address as your representative, without your adviser's permission.
- You need to find out whether your adviser / representative will represent you at the tribunal hearing. Usually, if your adviser is 'on the record', it means s/he will represent you at the tribunal hearing. But some solicitors are only 'on the record' for the case preparation. You need to check this clearly with your adviser at the beginning.
- If your adviser does not intend to represent you at the hearing, you will have to represent yourself unless you can find anyone else to do so. Many workers do represent themselves and tribunals are quite used to this.

How long will this all take?

- People always want to know how long their case will take, once their claim form has been sent in. It depends on which part of the country your case is being heard. Some regions have faster turn-over than others. It also depends on how long your hearing will take. One day hearings get 'listed' (fixed for hearing) much more quickly than long cases.
- The length of the hearing is estimated by the tribunal and the representatives in advance. Most hearings about wages take less than 1 day. Most unfair dismissal hearings take 1 – 2 days. Most discrimination hearings take 3 – 5 days or longer.
- Once the length has been estimated, the tribunal will set a date. For a 1 or 2 day case, it is most likely to take 4 – 6 months from the date of your tribunal claim to the date of the hearing. For longer cases, it may take 6 – 9 months, or even 1 year. These are very rough estimates.
- If your case unexpectedly lasts longer than the number of days estimated, it will not be able just to run over into the next day. A new date will need to be fixed which suits everyone. This can cause further delays.
- The tribunal may make a decision as soon as the case has finished and let you know its judgment on the spot. But if it is a difficult case, eg for many discrimination cases, it may not decide till later (see p17 regarding procedure at the hearing). It may then take another few months before you hear the outcome.
- If you or your employer appeals the tribunal's judgment, you could be in for a really long haul, getting into several years.

Preparing the case

- Case preparation is really important. It makes a huge difference to whether you win or lose your case.
- This guide does not give a detailed explanation as to how to run a tribunal case. Your adviser will give you the necessary advice. There is also more detail set out in *Employment Law: An Adviser's Handbook* by Tamara Lewis (see p44).

Some of the key steps are set out below. Where you have a representative, s/he will take the necessary steps on your behalf.

show adviser everything...

Getting more information and documents

- About 4 weeks after you send in your tribunal claim (ET1), you will receive your employer's response. It will be written on a standard form (ET3).
- This is where you find out what your employer's defence will be. If your employer is very vague, you can write asking him/her to supply additional information to clarify.
- You should also ask your employer to supply all documents relevant to your case.
- If your employer does not willingly supply the additional information or documents, you can ask the tribunal for an order. If the tribunal thinks you are asking for too much, it will not make the order you want.
- In the same way, your employer can ask you to provide additional information and documents, and get an order if you refuse.
- If an order is made against you, it is essential to take it seriously. Make sure you provide the ordered information within the time-limit or, if you have good grounds to object, write your letter of objection well within the time-limit.
- You may not have many documents, but it is important to show your adviser everything you have. Don't forget any diary which you wrote at the time.
- When you receive your employer's ET3 or additional information, you may not agree with what s/he has written. The time to dispute this is at the hearing. You do not get into lengthy correspondence with your employer or with the tribunal discussing the strengths and weaknesses of your case. The point of preparation is simply to find out in advance what your employer's defence will be and to get the necessary documents – not to argue your case in writing

...preparation, preparation...

Fixing the hearing date



witnesses can
often do more
harm than
good

- Soon after you receive your employer's ET3 from the tribunal, the tribunal will send out a letter fixing the hearing date. On more complicated cases, eg discrimination, there may be a case management discussion first.
- The tribunal only needs to give 2 weeks' notice of the hearing, though usually you get more warning.
- You need to tell your adviser immediately if you cannot make the hearing date, eg because of a pre-arranged holiday. Tribunals are very strict and do not change hearing dates without an extremely good reason, which you can prove.

Witnesses

- People always want to bring witnesses. But you need to think carefully whether this is a good idea. A good witness can be excellent. A bad witness can make you lose your case.
- You do not necessarily need witnesses. Cases are not won or lost because the employer has more witnesses than you. There is only any point in bringing a witness if there is a dispute about whether something important happened, eg whether a racist remark was made. Vague witnesses are not helpful. Always consider exactly what your witness can say that helps you.
- So-called 'character witnesses' are not relevant or useful in an employment tribunal. The tribunal is not usually interested in whether a colleague thinks you are a nice person or a good worker. The tribunal is more interested in the business opinion of your managers and in evidence which helps establish relevant facts.
- Witnesses can often do more harm than good. The employer's representative will ask them awkward questions. Make sure there is nothing that your witness knows or thinks which is harmful to your case. It is bound to come out.
- Although there is a procedure whereby you can force a reluctant witness to come to the tribunal, it is a bad idea. Hostile witnesses will find a way to hurt your case.
- Unfortunately, it is usually difficult to persuade witnesses to come voluntarily, especially if they are still employed by your employer. Even your friends, or people who offered to help you originally, tend to back out later. This can be very upsetting for you, but try not to take it personally. People are afraid to lose their jobs. It is always easier for an employer to find witnesses.
- Sometimes people offer to write statements for you but do not want to come to the tribunal. This is not much good. The tribunals don't take much notice of written statements if the witness is not there.

Witness statements

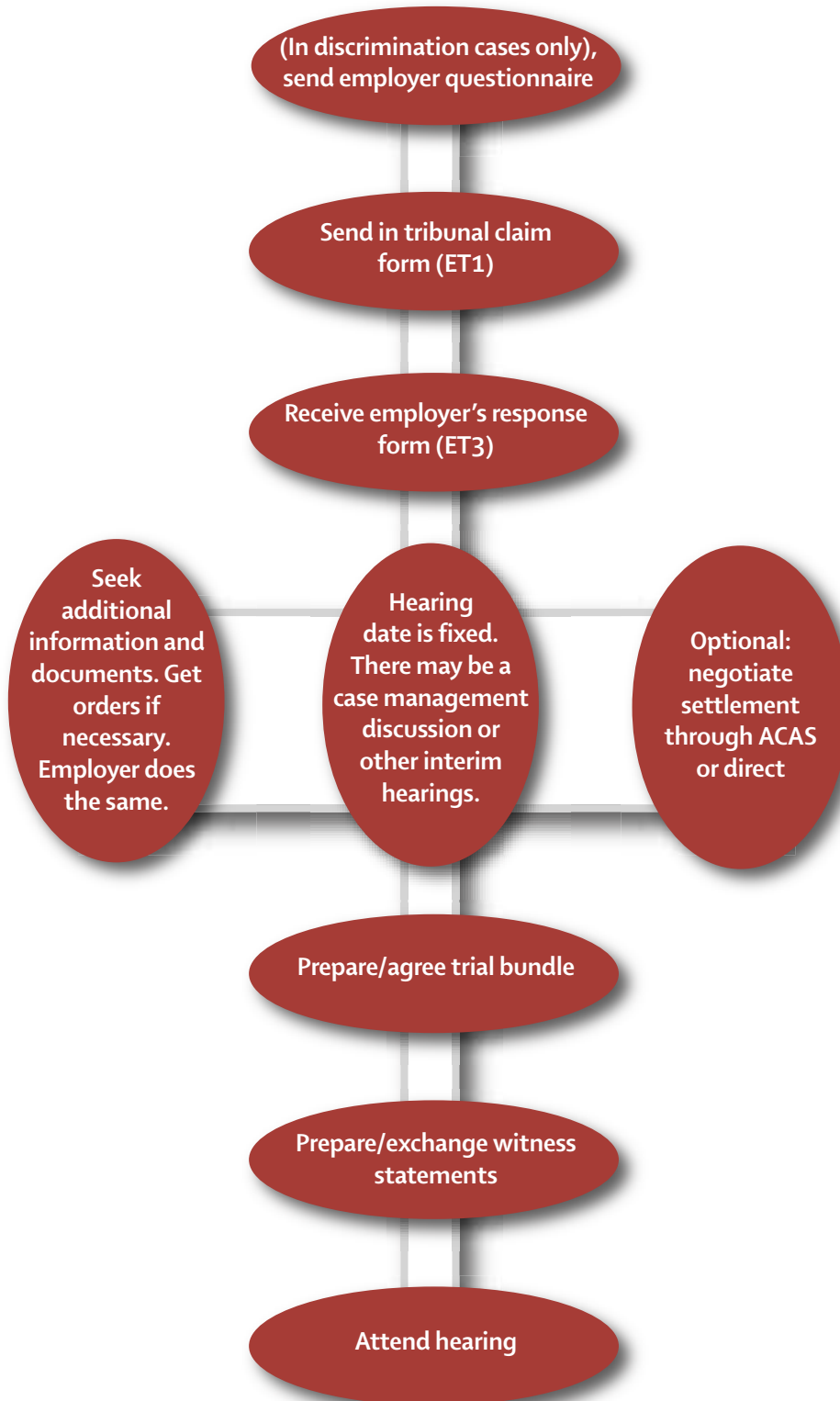
- In England and Wales – and sometimes in Scotland – the tribunal expects each witness to write a witness statement before the hearing. The statement is usually written by the representative jointly with the witness.
- It is OK for your adviser to write your statement, but you must make sure you understand and agree with everything that is written. Check very carefully that it is accurate and not misleading.
- You will probably have to read your statement out loud at the hearing. Make sure you can do this easily. It is useful to practise at home. It is easiest to read statements which have short sentences and use everyday words. The tribunal will expect your statement to sound like the evidence you give when you answer questions.
- If you have any difficulty reading – or reading English – , tell your adviser as soon as possible. Don't be embarrassed. Your adviser can make arrangements so you don't have to read your statement at the tribunal.
- Your witness statement, and those of any witnesses you have, is swapped ('exchanged') with the employer's witness statements a few weeks before the hearing. This gives you a chance to see exactly what your employer's witnesses will say at the hearing.

practise at home....

Documents for the tribunal – trial bundle

- A few weeks before the hearing, all the documents which both sides want to use at the tribunal are put into one bundle (sometimes in Scotland there are two separate bundles). The pages are numbered. This is known as the 'trial bundle'.
- You may have to look at some of the documents during the hearing. It is worth making sure you have read through them all first.
- The bundle can be prepared by the employer's representative or by you. If it is prepared by the employer's representative, make sure you get it at least one week before the hearing, but preferably even earlier, before the witness statements are exchanged. If you are representing yourself at the hearing, you need time to prepare and you do not want to be surprised by any last minute documents.
- Having said that, it is not unusual to get documents or even the whole bundle, shortly before the hearing. This is sometimes because the employer's representative has only prepared for the hearing at the last minute. If you only get the documents on the morning of the hearing, you can tell the tribunal and ask for time to read them.

Key steps in case preparation



the tribunal hearing

Your adviser will tell you when to arrive at the tribunal and where to meet. You will feel more relaxed on the day if you go there in advance to check the route, parking facilities etc.

If you like, you can bring with a friend or relative for moral support. They must sit quietly at the back of the tribunal room and not interrupt the tribunal.

- Most hearings start at 10 a.m. and finish at about 4 p.m. with a 1 hour lunch break. Some cases start later on the first day because they are in a queue, waiting for the first tribunal panel to come free. This is called 'floating'.
- You can arrive between 9 and 10 a.m. and wait in the Claimants' waiting room. There may be a hot drinks machine in the building or you can bring a take-away coffee into the waiting room.
- You can't take your hot drink into the tribunal room, but there will be water at the witness and representative tables.
- A clerk will come to greet you at some stage in the waiting room. The clerk will ask whether you want to take a religious oath to tell the truth or affirm (see below). The clerk may also ask whether you have claimed any benefits. This will be relevant if you win your case, as some of your benefits may be repaid to the Department for Work and Pensions (see p27, deductions for recoupment). These are all standard questions which everyone is asked.
- The clerk will return to take you into the hearing room. Make sure you switch off your mobile phone before going into the tribunal room. Don't take in food (unless for health reasons) and remove any chewing gum.
- Sometimes there are reporters hanging about in the waiting rooms. This is less common than it used to be. Discuss with your adviser how to deal with them if they approach you.
- If you arrive before your adviser, your employer's representative may come into your waiting room. Don't get involved in any conversation about your case. Just say your adviser will be coming.

don't be late.....

- There are sometimes last minute settlement negotiations in the waiting rooms just before 10 a.m. Your employer may be more willing now to discuss settlement, or may be using a barrister who is keen to settle. Be prepared for this. (See p30 for settlements generally.)
- Discuss with your adviser what you should wear. It probably depends on your job and the kind of impression you want to make. If you want to look professional, wear a suit. But otherwise, it is enough to look neat, clean and tidy, and to dress conservatively. Do not wear jeans or shorts.

dress conservatively....

Layout of the tribunal room

- See p3 for a general description an employment tribunal and p22 for a diagram.
- The clerk will lead you into the tribunal room. Your representative will sit at a table on the right, facing the tribunal panel. The employer's representative will sit at a table on the left. Everyone else will sit on chairs behind. You will sit next to your representative or immediately behind.
- In England and Wales, though not in Scotland, witnesses are allowed to sit in the room before they have given evidence. It is up to each side whether to bring their witnesses in early. If so, they sit in the chairs behind the representatives.
- Although your employer will be in the room, s/he won't have any direct discussion with you (apart from saying hello), unless s/he has no representative and is doing the legal representation him/herself.
- You must sit very quietly or you will annoy the tribunal. Do not call out to the tribunal or anyone else. Do not try to talk to any of the witnesses in the room. If you have something to say to your representative, whisper quietly or pass him/her a note. Tear some small pieces of paper before you go into the tribunal room, so that you can write notes to your representative if you want to.
- Remember that you are very visible to the tribunal panel. They can see you, as clearly as you can see them. They will probably be watching you. Always behave respectfully.
- If you need to go to the toilet when you are not giving evidence, you can just slip quietly out of the room and back in again. If you need to go during your evidence, ask the tribunal's permission. The tribunal will want to ensure you don't speak to anyone while you are out of the tribunal room. Therefore it is better if you can avoid this, but not if it is making you uncomfortable. (See below, if you have a disability.)

...behave respectfully.....

Order of events for a typical unfair dismissal case

- See p12 regarding the likely length of your hearing. Not all cases follow exactly the same order, but the usual pattern for unfair dismissal is as follows.
- The tribunal judge introduces the panel and clarifies the issues in the case. There may be some technical arguments to sort out.
- Your employer's representative introduces the case very briefly.
- Your employer gives evidence first. The first witness is likely to be the main decision-maker in your case, but there is no strict rule about this. Each of the employer's witnesses gives evidence in turn.
- Each witness gives 'evidence-in-chief' first. This is usually by reading out his/her own witness statement. Then s/he is cross-examined by your representative. Finally, the employer's representative asks a few more questions. This is called re-examination. The tribunal panel also asks questions.
- When all the employer's witnesses have finished, it is your turn. The same procedure applies in reverse.
- You will usually give evidence before any of your witnesses. Your representative or the tribunal will ask you to come up to the witness table. You stand up while you take the oath. This is a promise to tell the truth. You can swear on a religious book of your choice or simply affirm. The clerk will ask you in advance in the waiting room what you want to do.
- You sit down. You are asked to confirm your name and address. You are asked if your witness statement is accurate or you want to make any last minute changes. Then, usually, you are asked to read out your statement. Sometimes the tribunal panel prefers to read it quietly to themselves.

Don't worry if you can't read out loud. Tell your representative before the tribunal day, and s/he will have a quiet word with your employer's representative and the tribunal panel.
- Your representative may ask you a few more questions. Then your 'evidence-in-chief' is finished.
- In Scotland, witness statements are less common and you may give your evidence verbally.
- After you have given evidence, whether in a witness statement or completely verbally, the employer's representative cross-examines you.
- When cross-examination is finished, the tribunal panel may ask you questions. The tribunal judge may also interrupt and ask you questions at any other time.

*employer first.....
...you last.....*

- Your own representative re-examines you. That means s/he asks you questions to clear up any issues that have come out of the cross-examination which need clarifying.
- You are then finished and you are told you can go back and sit in your seat. If you have any witnesses, they are then called one by one and go through the same process.
- If the lunch-break comes while any witness is giving evidence, no one is allowed to talk to that witness about the case during the break. This is so that the witness does not get influenced by other people to change what s/he is saying. In fact, it is best for the witness not to talk at all. It can be a bit lonely if you are the one in the middle of your evidence, but it is better that no one thinks you are breaking this rule.
- When all the evidence is finished, your representative gives a final speech. Then your employer's representative gives a final speech. In Scotland, the order of final speeches is reversed.

don't argue with the employer's representative

look the tribunal in the eye

Tips for when you are giving evidence

- Keep your temper. Don't argue with the employer's representative, even where you feel you are being provoked.
- Don't guess when you don't know or can't remember the answer. Just say you don't know or can't remember.
- Don't talk too much, especially when you are being cross-examined. You will probably cause problems for yourself by raising other issues. If there is a silence, don't be tempted to fill the gap. No one is waiting for you to talk. The silence is probably because someone is doing something, eg the tribunal is taking some notes, or your employer's representative is trying to think of what to ask you next.
- Turn your chair so that you slightly face the tribunal panel. As you speak, look the tribunal in the eye and tell the truth.
- Listen very carefully to everything the tribunal panel says or asks. This shows how they are thinking and what they think is important.
- If you are answering a question from the tribunal panel, including the judge, you can call the person you are speaking to 'sir' or 'madam'.

...and tell the truth..

Tribunal panels hate it when ...

- You talk too quickly, especially when you have a lot to say. The tribunal judge has to write down what you are saying.
- You don't answer the question which has been asked. If you want to add something, add it *after* you have answered the question.
- You make wild allegations, accusing lots of people of lying. Try always to sound reasonable and use moderate language.
- Time is wasted. Tribunals hate it if witnesses come who have nothing relevant to say, or you want to go into a lot of detail about something which is not important or relevant.
- A case is badly prepared.
- They suspect a witness is lying.

...don't make wild allegations.

What are leading questions?

- Your own representative is not allowed to ask you a leading question. This means a question which suggests the answer. For example, your representative cannot ask 'Did you arrive at 9 a.m.?' S/he can only ask, 'What time did you arrive?'
- This means you need to communicate well with your representative so you understand what s/he is trying to prompt you to say.
- The employer's representative may ask you leading questions, but you don't have to agree. For example, 'You arrived at 9 a.m. didn't you?' If that's untrue, you may answer, 'No, I arrived at 8.45.'

...use moderate language

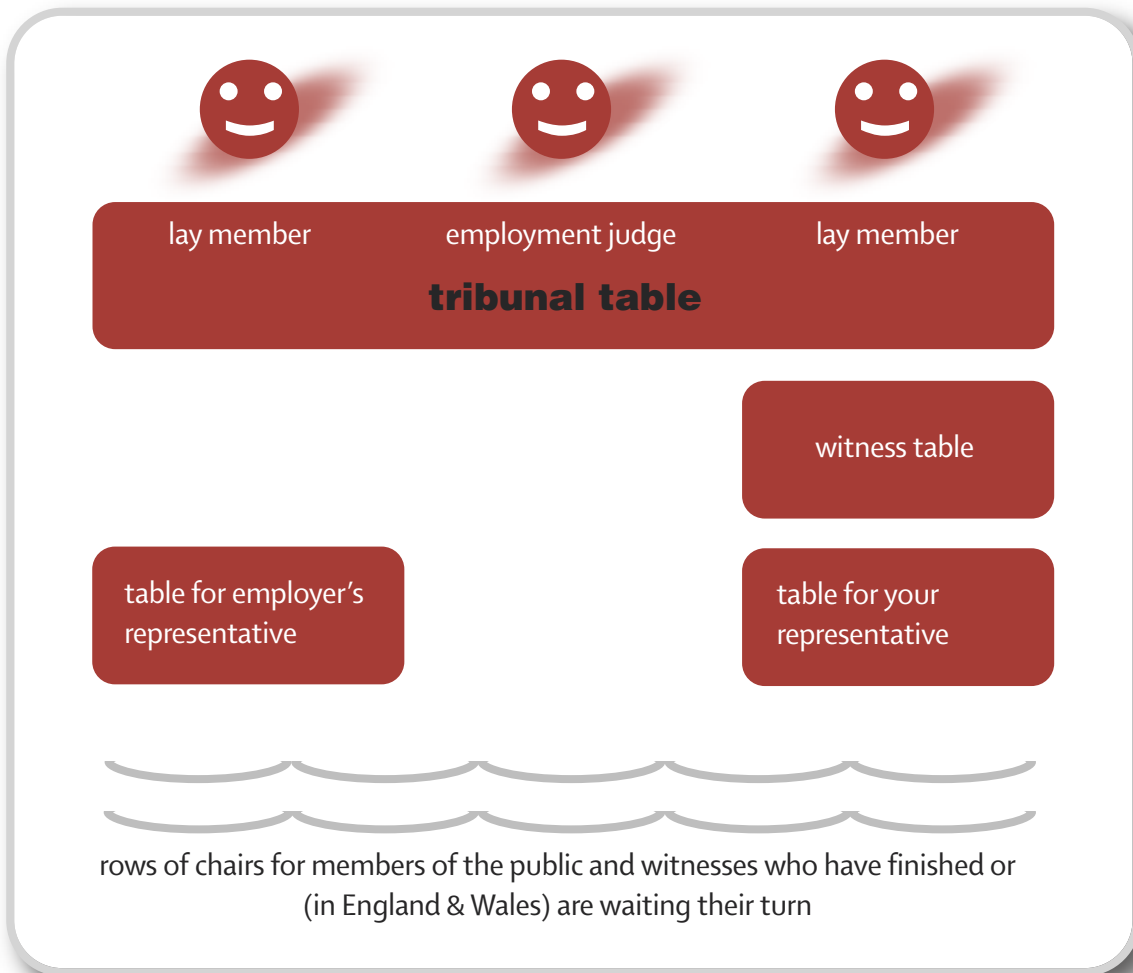
Getting the result

- After the final speeches, the tribunal will 'adjourn' (go out the room for a while) to make its decision. You will wait in the waiting room. The tribunal will then call you back in and tell you the result. If you have won, the tribunal may go on to deal with evidence about how much compensation you should get.
- Sometimes, in big cases, the tribunal will say it cannot decide on the spot and it will write to you later. If this happens and you win, you will need to come back to the tribunal to discuss how much compensation you should get.
- Sometimes the tribunal suggests each side first tries to negotiate how much the compensation should be.

- If you lose, your adviser will give you advice on whether you have grounds for appeal. This will be difficult (see p6). If you do have grounds for appeal, you must do so within strict time-limits.

Disability adjustments

- If you have any disability which may cause you difficulty at the hearing, let your adviser know. S/he will be able to make special arrangements with the tribunal in advance, eg for you to have all the breaks you need.



order of events

typical unfair dismissal hearing

typical discrimination hearing



giving your evidence

Evidence-in-chief

You read out your witness statement and answer your representative's questions

Cross-examination

The employer's representative asks you questions

Tribunal questions

The tribunal panel asks you questions

Re-examination

Your representative asks a few more questions to clarify misunderstandings

compensation and other remedies

what will you get if you win?

General comments

If you win your case, the tribunal will usually order your employer to pay you compensation.

It is important to know from the beginning how the tribunal would calculate compensation in your case. Ask your adviser.

- Your adviser will only be able to give you rough advice at an early stage. There are many variables which affect how much you would get.
- You should not get carried away by any newspaper reports of large tribunal awards.
 - Compensation is calculated according to specific rules and the key element is usually your pay. Unless you know how much the person in the newspaper was paid in his/her job, you don't know how an equivalent award would work out on your own pay.
 - Newspapers often talk about tribunal awards when in fact the case has been settled. Settlements in certain cases may be higher than what a tribunal would award.
 - Newspapers only report 'news'. If they bother to report a tribunal award or settlement, it is precisely because it is exceptionally high and not what you can usually expect.
- If you do win your case, you will find that your employer fights very hard to keep your compensation low.
- Don't assume that just because you have won your case, the tribunal will be generous with compensation. Tribunals are often quite mean with compensation.
- It is unfortunately the case that people rarely get full compensation for their full financial loss, even if they win.

...people rarely get full compensation...

Unfair dismissal

Getting your job back

- The tribunal cannot force your employer to give you your job back. The tribunal can only make an order and award you more money if your employer refuses.
- The order may be for 'reinstatement' (to the same job and terms and conditions) or for 're-engagement' (to a job with different terms and conditions).
- The tribunal is unlikely to make the order if it is not practicable to take you back, eg because your job was redundant, or if you caused or contributed to your dismissal to some extent by your conduct.
- If your employer refuses to take you back, the tribunal can order more compensation. This 'additional award' is for 6 – 12 months' pay.
- It is not a good idea to pretend you want your job back when you do not, in the hope that your employer will refuse and you will get an additional award. Tribunals usually guess this is the true position and get very annoyed. Or your employer may call your bluff and offer you your job. Then if you refuse, the tribunal will not order any compensation for loss of earnings.

Financial compensation

- If you don't want or can't get an order for reinstatement, you can claim financial compensation. There is a basic award and a compensatory award.
- The basic award is not usually worth very much. It is calculated according to a formula. It allows for one-and-a-half weeks' pay for each year of employment in which you were not below the age of 41, one week's pay for each year of employment when you were below 41 but not below 22, and half a week's pay for each year of employment below the age of 22. A maximum of 20 years' employment will be counted. A week's pay is gross pay subject to a maximum which goes up every year. If you were dismissed in the year starting February 2008, the maximum is £330 per week.
- The compensatory award is the main compensation. It is subject to an overall upper limit. If you were dismissed in the year starting February 2008, the limit is £63,000. Most awards are nowhere near this upper limit.
- The compensatory award can be complicated to calculate, but its main elements are these:
 - loss of earnings, past and future (net of tax).
 - loss of pension (this can be very complicated to work out).
 - job-hunting expenses (usually very low).

- In unfair dismissal cases, the tribunal does not order interest or compensation for injury to feelings.

Looking for a new job

- If you get a new job very quickly at the same or higher level of pay, the tribunal will probably order the employer to pay your loss of earnings for the period you were out of work.
- If you are out of work for a long time, the tribunal may say that you should have found a new job sooner. The tribunal may only award loss of earnings for some of the time you were unemployed, eg for the first 6 months, if it thinks you did not try hard enough to find a new job or you turned down a job which you should have accepted. This is called 'failure to mitigate'.
- It is therefore essential that you start looking for a new job immediately and keep records of everywhere you have tried. Make sure you print out your e-mails as soon as they are sent. Also print out internet job applications and on-line registration with agencies as soon as you do these. Electronic e-mails often get lost or deleted by the server over time, or the date cannot be reproduced. If you apply for jobs advertised in a newspaper, keep copies of the job pages and mark the jobs you applied for with the date.
- If you are out of work for a long time, you will want to get awarded all your loss of earnings. If you haven't yet got a job by the time of the tribunal hearing, you will also want compensation for future loss of earnings. Tribunals do not like making employers pay large awards, if they are not sure whether you have been trying very hard to get a new job. Therefore you need very strong evidence of all your efforts. It is not enough that you have signed on for benefit and are deemed to be 'actively seeking work' by the Department for Work and Pensions.
- Don't say there is no point trying to find a job because you would get a bad reference. The tribunal will simply say, 'But did you try?'

Deductions

- The tribunal can make deductions from your compensation for various reasons. The most common reasons are that you were partly to blame for a misconduct dismissal, or that the employer had fair reasons to dismiss but followed bad procedures.
- There is also recoupment. Any income support or job seeker's allowance which you received is deducted from your compensation for loss of earnings and repaid by your employer to the Department for Work and Pensions.

...you need very strong evidence..

...of your efforts to find work...

Redundancy pay

- Statutory redundancy pay is calculated the same way as the basic award for unfair dismissal. If you win a case for unfair dismissal on grounds of redundancy, any redundancy payment you received will be set off against the basic award.

Discrimination

- If you win your discrimination case, a tribunal can make recommendations that your employer takes action to alleviate the effect of the discrimination on you, eg by removing a warning from your file.
- The tribunal cannot order that you are given your job back.
- The tribunal can order financial compensation consisting of:
 - loss of earnings
 - compensation for injury to feelings
 - compensation for injury to health
 - interest.
- There is no upper limit on how much compensation a tribunal can award.
- If you were dismissed, the tribunal will not necessarily award you loss of earnings for the whole time you were unemployed. The same considerations apply as for unfair dismissal (see above).
- If you are unable to work because the discrimination has seriously damaged your health, the tribunal may award several years' loss of earnings. But you would need very strong medical evidence.
- The tribunal can award compensation for injury to feelings if there is evidence that you have suffered this way. It is very hard to predict how much a tribunal will award for injury to feelings. Your adviser can give you guidance but will be unable to be precise as tribunals vary so much.
- If there has been damage to your health, eg depression or a nervous breakdown, the tribunal can also award compensation for injury to health. Strong medical evidence will be necessary.

the tribunal cannot order that you are given your job back

...compensation for injury to feelings, health...

- Where you are claiming a high level of compensation because of damage to your health, your adviser may want to get a report from a consultant psychiatrist. You should not take this to mean anything 'is wrong with you'. Psychiatrists are the consultants who usually have the most relevant expertise to explain the impact of the discrimination on your feelings.

What if your employer won't pay?

- If your employer won't pay, it is necessary to go to the county court or high court to enforce the award. This can get complicated and expensive. For more information see 'Enforcing ET Awards and Settlements' (Edn 2) by Philip Tsamados. See p44 for availability.
- If your employer becomes insolvent, s/he may never have enough money to pay your award. The state guarantees certain debts through the National Insurance Fund but this is very limited.
- In reality, if you can foresee that your employer will become insolvent, it may not be worth bringing your case.
- In discrimination cases, if this is a risk, it may be worth naming the individual discriminator as another Respondent. You can then try to claim compensation against the individual.

...a case may not be worth it if you're employer can't pay up...

settlements and ACAS

Should you settle your case?

ACAS (Advisory, Conciliation and Arbitration Service) is an independent organisation, which encourages employers and workers to negotiate instead of letting the employment tribunal decide the case. Its services are free. (See p31 for more detail.)

Most cases settle before they reach a hearing. In the year 2005/6, only about 25% of all unfair dismissal cases were decided at a tribunal hearing. 33% settled through ACAS and a large additional number settled without ACAS's help (the latter is not clearly recorded).

- A 'settlement' happens when the employer agrees to pay the claimant some compensation instead of going ahead to the tribunal hearing
- When you start your case, you will probably think settlement is a terrible idea and it will be important to you as a matter of principle to have the tribunal decide the matter. But as time passes, you may feel you want to move on.

Good reasons to settle

- There are many advantages in settling your case, for example:
 - You may lose in the tribunal. This is called the 'litigation risk'. Even if your case seems strong, there is always something that can go wrong! You may give bad evidence on the day; the tribunal may be in a bad mood; the tribunal may really like one of your employer's witnesses; you may win, but the tribunal may not give you much money etc.
 - You remain in control of the outcome. The minute you step into the tribunal room for a hearing, you will realise you are no longer in control.
 - Your employers have had to pay out some compensation which they did not want to pay. It is a form of victory.
 - The result is quick.
 - You don't have to go to the tribunal.

- You can ask for things which a tribunal cannot grant, eg an agreed reference.
- You have not lost. The employer has not won. The matter remains on the record of the manager who treated you badly.

Reasons not to settle

- There may also be disadvantages in settling your case, for example:
 - You do not have the satisfaction of winning.
 - You probably have to accept less compensation than you would get if you won (though not necessarily).
 - Your employer is not publicly held to account.
 - You have to agree to settlement terms which you may not like (see below).

Making up your mind

- Three things are relevant when you negotiate a settlement:
 - How much will a tribunal award if you win?
 - What are your chances of winning at tribunal? How much should you discount for the risk of losing?
 - What are the other settlement terms?
- Listen to your adviser's advice on these points. In nearly every case, there will be a risk that you lose. The question is only how great the risk is. People understand they might lose, but in their hearts find it hard to believe this will happen. This can lead to the wrong decisions about settlement and rejection of good offers.
- Don't overestimate how much the employer will be prepared to pay to get a settlement.
- Don't be unrealistic. When advisers negotiate or write a 'schedule of loss' for the tribunal, they make the claim as large as they can within the rules. Your adviser will not expect you to get the whole amount. It is extremely rare for a tribunal to award the maximum, even if you win. You also have to take account the risk that you will lose. Listen to what your adviser says you are most likely to get awarded – don't just remember the maximum you could get. Then make some discount to allow for the risk that you are negotiating and may lose your case in the tribunal.

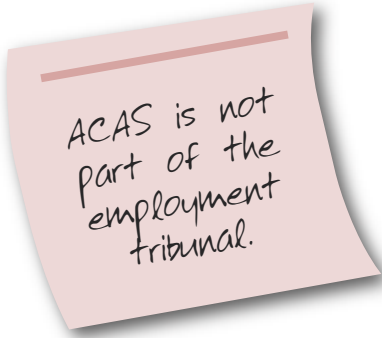
Who are ACAS?

- Some people negotiate settlements direct, or if they are represented, through their advisers. Other people or their advisers choose to negotiate through ACAS.

...there will be a risk that you lose...

...don't be unrealistic...

- ACAS is an organisation which is independent of the tribunal and independent of the people involved in the case. ACAS is not part of the employment tribunal.
- Settlements are only binding from the tribunal's viewpoint if they go through ACAS or are written as a 'compromise agreement' by lawyers or other authorised representatives.
- Although it is optional whether to use ACAS or to negotiate direct, there are various technical reasons why ACAS is usually the preferred option.
- In most types of employment case, including unfair dismissal or discrimination, the tribunal claim form (ET1) and employer's response form (ET3) are sent by the tribunal to ACAS. The job of ACAS officers is to offer to act as intermediaries in any settlement negotiation. Their role is completely off-the-record and the employment tribunal does not know what anyone said to them.
- Fairly early in the case preparation, an ACAS officer will write or telephone each side (or if they are represented, their advisers) and will offer his/her services. Your adviser will decide whether it is good tactics to negotiate through ACAS or to negotiate direct with the other side's representative.
- An ACAS officer will only telephone you direct if s/he thinks you do not have a representative. If you are now represented, say so at the outset. Do not try to talk to ACAS yourself.
- If you are not represented, but you are getting off-the-record advice from an adviser, make sure you discuss with your adviser what to say to ACAS in advance of any telephone call. If you are caught by surprise, ask if you can phone back. Do not try to talk unprepared.



ACAS is not part of the employment tribunal.

Does the tribunal know how the settlement negotiations went if they fail?

- Settlement negotiations are usually off-the-record. If no settlement is achieved, you may not want the tribunal to know what you were asking for. To make sure the negotiations are off-the-record, your adviser will usually use the words 'without prejudice' before having any conversation with the other side, and will write that phrase on the top of letters.
- It is only letters that are about a settlement which can be 'without prejudice'. Other letters cannot be kept off-the-record just by writing those words. The law on this is very complicated.

...be careful when you talk to ACAS...

- Conversations with ACAS are automatically off-the-record, without the need to use the words 'without prejudice'. However, ACAS will report what you tell ACAS to the employer's representative, and vice versa.

...off the record...

How do settlement negotiations go?

- If you are represented, then the employer's representative is not allowed to negotiate with you direct. S/he must only negotiate with your representative. This is to protect you.
- When you negotiate, especially through ACAS, the employer usually wants to know how you justify what you are asking for. You are usually asked about whether you have got a new job, what your earnings are etc. If you have not got a new job, the employer may try to argue that you should have tried harder to find one. (See p27.)
- It is normal to haggle in settlement negotiations. No one mentions their bottom line first time. The usual tactic is to ask for a little more than you are aiming for, but not so much more that you frighten the employer away from offering you anything at all. It is a tricky balance to achieve.
- Your representative must get your agreement to the settlement sum and other terms before finalising any settlement.
- Once you have told your adviser that you agree a particular settlement, you should not change your mind. Your adviser may well have taken a step which it is impossible to go back on. For example, once your adviser tells ACAS that the settlement is agreed, it cannot be undone.

Other settlement terms

- It is not only a question of agreeing the right sum of money. You may want to ask for a reference.
- Your employer may insist on the settlement agreement containing complicated terms and conditions. Your adviser will advise you on what these mean. Make sure you understand and agree to them. These are some very common terms to watch out for:
 - **'without admission of liability'**
Employers like to say they are not admitting anything, just because they have agreed to pay you money. This is not usually something to worry about.
 - **confidentiality**
Employers often want you to agree that you will keep the amount of the settlement confidential or even that you will keep all your complaints confidential. This is particularly

common in discrimination cases. You need to think about: what is being kept confidential; who do you need to tell; do you want your employer also to keep things confidential.

Do not agree to keep something confidential if you intend to break that promise. It will only cause you problems in the future.

- **'full and final settlement'**

If you no longer work for the employer, it is very likely the settlement will include not only the particular claim you brought to the tribunal, but any other possible claims. Make sure nothing is owing to you, eg wages, holiday pay, notice pay, before making such an agreement. It is common to exclude any pension rights or unforeseen personal / industrial injury claims (eg unknown to you, you have been inhaling asbestos dust).

- **tax and benefits**

Ask your adviser whether you will have to pay tax on your settlement. If you are claiming benefits, ask whether it will affect whether you can claim in the future.

...When you negotiate, especially through ACAS, the employer usually wants to know how you justify what you are asking for...

costs

what will you have to pay?

The employment tribunal does not charge any fee for starting the case or for its services.

Depending on where you get legal advice and representation, you may have to pay the legal costs of your own legal representatives (see p40).

The normal rule is that both you and your employer pay your own legal costs, whoever wins or loses.

- Therefore if you win, you still have to pay your own legal costs if you have an adviser who is charging for his/her services. If the tribunal does not award you a lot of compensation, you may not have much left after you have paid your legal costs. You need to discuss this with your adviser at the outset.
- If you lose, you do not normally have to pay any of your employer's legal costs. But there are some exceptions.

The tribunal may order you to pay some or all of the employer's costs if:

- You do not comply with one of the tribunal's orders during case preparation, eg you are ordered to supply written information by a certain date and you fail to do so. (See p13 regarding tribunal's orders.)
- You cause a hearing to be postponed at the last minute without a very good reason.
- You have brought a hopeless case. It does not matter if your case was a little weak or even that you lose. But it is important that it was not obviously hopeless from the start.
- In bringing or running the case, you act vexatiously, abusively, disruptively or otherwise unreasonably.

The best way to avoid costs being awarded against you

- Costs are the exception, not the rule, although employers often threaten to seek costs against you.
- If you bring a reasonable case and behave reasonably during the case preparation and hearing, it is very unlikely that costs will be awarded against you.
- You are at a big costs risk if the tribunal thinks you have brought a fabricated case out of malicious motives.
- Don't bring a hopeless case in the hope that at some stage your employer will offer you some money to go away. Many employers will not offer anything if they realise your case is hopeless. Then you will end up having to go through the hearing, losing the case, and possibly paying costs.
- Don't withdraw from the case at the very last moment, when your employer has spent a lot of money defending it, without a very good reason. If you are going to back out (which is always risky), do it at an appropriate point, eg when you have just received your employer's response or questionnaire reply, making your employer's defence clear to you for the first time.
- Listen to your adviser as to whether there is any costs risk.

If you bring a reasonable case and behave reasonably it is very unlikely that costs will be awarded against you.

myths, worries dangers

You need to speak to your adviser and read the rest of this guide to get the general picture, but here are a few common myths and worries.

It is a myth that ...

- **You must win because your employer treated you really badly.**
The law allows a lot of bad treatment and cases are hard to prove. Your employer may give a different version of events and the tribunal may believe your employer rather than you. See unfair dismissal (p5) and discrimination (p7) for some key points.
- **You have such a strong case, you are certain to win.**
There is rarely a sure-fire winner. If your case was so obvious, your employer would probably have offered you a large settlement sum long ago.
- **The tribunal will clear your name and generally solve your problems.**
Because the law is only interested in a certain way of looking at things, tribunals often do not criticise your employer's behaviour in the way you would like. Even if you win, you may not get compensation which covers all your financial losses. The tribunal's powers are limited and it cannot force your employer to give you a job or a reference.
- **Your employer will pay anything rather than go to court.**
Some employers do have a track record of settling cases, and obviously certain types of case will be very embarrassing for the employer. However, it is rare that an employer offers much to settle a weak case or pays over the odds, even to avoid embarrassment.
- **You will be able to get lots of bad publicity for your employer if you win.**
Newspapers are not interested in most cases, even those showing quite serious mistreatment or discrimination. Even if they do report your case, you cannot be sure you will like the way they report it. Sexual harassment cases, for example, can be reported in quite an objectionable way.

It is dangerous to ...

- **Put your life on hold while you run your tribunal case.**
It is best to apply for new jobs and think about what you want to do in the future. That way, you will be less devastated if you lose. And if you win, you have a reasonable chance of getting

...rarely a sure-fire winner...

proper compensation. If you don't try to get a new job, you may win and get almost no compensation.

- **Take advice from too many different people.**

You should find a good adviser / representative and listen to that person. Getting second opinions from people who do not know as much about the case, or who have no experience of employment tribunal cases, can cause a lot of problems.

- **Rely on press reports and internet articles.**

These are often unreliable and can be misleading if read out of context and without understanding how the whole of employment law applies to the facts of your case.

- **Take a case only because someone else is pressurising you to do so.**

You have to want to run your own case. Otherwise you will find the experience very stressful and you are likely to make bad decisions. It is not easy to back out of a case once you have started it.

- **Take a case which you have been advised is very weak.**

You may get costs awarded against you – see p35. Don't assume you can back out at any time. You risk costs being awarded against you if the tribunal thinks you have acted unreasonably.

Are you worried that ...

- **You can't win because you have no witnesses?**

You don't necessarily need to have witnesses to win a case. Most claimants do not have witnesses. Your adviser will tell you your chances of success.

- **You will be embarrassed giving evidence?**

Most people get used to giving evidence after the first 15 minutes and don't find it too bad. Tribunals are used to hearing from all sorts of different people.

- **You will have to give evidence about embarrassing subjects, eg sexual harassment, or repeat swear words said by your manager?**

Tribunals are very experienced in listening to what happens in normal workplaces. They will have heard industrial language before. They will not be embarrassed by descriptions of sexual harassment.

- **Your English is not good enough to give evidence?**

Discuss with your adviser whether to give evidence in English or whether to give evidence in your first language, and use an interpreter. If possible, and if you use English at work, the tribunal would prefer to hear you speak in English. The tribunal will be used to listening to people for whom English is a second language. But if there is a danger that you will misunderstand what is happening or that others will not understand you, you must have an interpreter.

- **You will have to reveal your age or sexual orientation?**
If your case is that you have been discriminated against because of your employer's assumptions about your age or sexual orientation, you will have to say what those assumptions are. Realistically-speaking, it is hard to avoid stating what is your actual age / sexual orientation.
- **Your employer will be sitting in the same room?**
You can't avoid seeing your employer's witnesses at a tribunal hearing, even though in Scotland, some witnesses can be kept out of the room before they have given evidence. This can be particularly unpleasant where your employer was threatening or sexually harassed you. However, provided both you and the employer have representatives, you do not need to talk directly to any of the witnesses.
- **Because of a disability, you cannot cope with a long hearing or complicated questioning, or you cannot read documents or you will have other difficulties?**
The employment tribunals are under a duty to make reasonable adjustments for any witness or representative who has a disability. Tell your adviser well in advance about your needs and suitable adjustments to the usual procedure can be made.
- **You will be unable to take a religious oath because your religion does not permit it in the context of a tribunal hearing, or you will be unable to wear religious dress or pray?**
As always, discuss these matters in advance with your representative. There should not be any problem. You can choose to 'affirm' to tell the truth, without any reference to a religious book. The tribunal will also understand if you explain that you will swear on a holy book but for reasons of cleanliness or respect, cannot touch it. You are entitled to wear your religious dress. The Judicial Studies Board guidelines say that tribunals should allow Muslim women to wear the veil, except in extreme circumstances where there is a crucial question of truthfulness and the tribunal panel feel they need to see the witness' face. Even then, tribunals must handle the matter sensitively and consider whether the veil is causing them an actual rather than an imagined difficulty.
- **You will appear in the newspapers?**
There are sometimes reporters hanging about the tribunals, but they are not interested in most cases. The tribunal can make restricted reporting orders in cases involving sexual misconduct or sexual offences, disability cases where evidence of a personal nature is given, and possibly other cases of particular sensitivity, eg those concerning gender reassignment. Restricted reporting orders keep your name out of the newspapers until the case is decided. This often has the effect of preventing all publicity, especially if you lose. In certain cases, the tribunal can also order that names are kept permanently anonymous.

...you are entitled to wear your religious dress..

finding someone to represent you

Private solicitors

If you go to a private solicitor, you need to consider how your case will be paid for. The most likely possibilities are:

You pay your solicitor an hourly rate.

You make a contingency fee agreement with your solicitor.

You have legal expenses insurance.

The cost of preparing your case is covered by the Legal Help scheme.

- You must remember that with private solicitors, 'time is money'. Solicitors need to be very efficient with their time. Otherwise your case becomes very expensive. Be careful not to increase your own bill by unnecessary phone calls.
- Many tribunal cases involve a surprising amount of work. Your solicitor cannot always control how long everything takes. Sometimes the employer's solicitor wastes everyone's time by being inefficient. You can't do much about this.
- Keep track on how much time and therefore how much of a fee is accumulating.
- If your solicitor asks a barrister to represent you at the hearing (see below), the barrister will charge either an hourly rate or, more commonly, a daily rate. The daily rate is higher for the first day because it includes the barrister's preparation costs.

This higher first day fee is called the 'Brief fee'.

Contingency fee agreements – 'no win no fee'

- In employment tribunal cases, it is possible for solicitors to offer contingency fee agreements. The basic idea is that you only pay if you win or you settle your case for some money. Then you must pay your solicitor a percentage of your winnings, usually between 20% and 33%.
- You will therefore end up out of pocket. This is because – unlike in many other courts – even if you win, your employer does not have to pay your legal costs.

- Solicitors are reluctant to take on long expensive cases unless they are worth a lot of money and are very likely to win. Discrimination cases often do not suit this system.

Legal expenses insurance

- Check your household insurance. You may be surprised to find you have insurance which covers the cost of running a tribunal case. The insurers will sometimes insist on choosing your solicitors from their own panel.

Legal Help: Legal Service Commission (LSC) contracts

- If you are on benefits or low income and do not have much in the way of savings, you may be eligible for Legal Help. If you go to a solicitor who has an LSC contract, the solicitor will prepare your case for you free. The solicitor gets paid by the government through the LSC.
- You will have to help your solicitor fill in a form about your finances. Bring documentary proof of your income and main outgoings to your first meeting, eg your benefits book, your rent book, pay-slips etc.
- Your solicitor must write you two letters at the start. One of them is a letter of advice. The other is called a 'client care letter'. These can be quite formal and technical. If you don't understand what they mean, ask your solicitor.
- Unfortunately, not many solicitors do Legal Help employment cases any more. This is because the government rates are now so low as to be unworkable. Currently they allow an average case preparation time of approximately 4.5 hours. This is totally unrealistic for most cases.
- The other problem with Legal Help is that it does not cover the cost of representation at the employment tribunal. There may be some exceptions in Scotland – ask your solicitor.
- To find a list of local solicitors and law centres who do Legal Help employment work, you can consult Community Legal Advice (formerly known as the Community Legal Service). You can search the website on www.clsdirect.org.uk or telephone 0845 345 4345. The listing is not a reliable quality control. If you want a more specific recommendation, you may get a suggestion from your local Citizens Advice Bureau.

The voluntary sector: possible sources of free advice or representation

Law Centres Federation (LCF)

- Your first choice may well be a law centre. Law centres generally offer free advice and representation to full legal standards.

You may be surprised to find you have household insurance which covers the cost of running a tribunal case

If you are eligible, the law centre may ask you to fill in a Legal Help form (see above). This gives the law centre some income. But most law centres will give you free assistance even if you are not eligible.

- Not all law centres cover employment law, though most do. You need to be within their geographical catchment area and priority work areas. For contact details of your local law centre, telephone LCF on 020 7428 4400 or check its website at www.lawcentres.org.uk

Citizens Advice (CitA)

- If there is no law centre in your area, you could try a Citizens Advice Bureau (CAB). CAB advisers vary greatly in their level of expertise and how much help they can offer in case preparation. Only a small proportion will be willing to represent you at the tribunal hearing, but they may be able to refer your case to FRU (see below). For a listing of local CABs, see the website of the national organisation at www.citizensadvice.org.uk

Free Representation Unit (FRU)

- FRU is an organisation of volunteer law students, barristers and solicitors, some experienced, some just learning, who offer free representation at the tribunal hearing. You cannot approach FRU direct. You need a member organisation, eg a CAB, law centre or other organisation such as MIND, to make a referral for you once the hearing date is fixed. It is a matter of luck whether FRU will take on your case. It depends on the level of demand and availability of representatives. Long cases are less likely to be taken on. You may not find out until just before the hearing whether you will be represented or not. FRU will prepare your case only if and when it has taken it on. As this tends to be late in the day, you must ensure your case is fully prepared meanwhile. FRU reps cover London and some adjacent tribunals, eg Reading or Brighton. FRU's website is at www.freerepresentationunit.org.uk

Bar Pro Bono Unit

- Like FRU, the Bar Pro Bono unit offers free tribunal representation for some cases. You cannot approach it direct - your case must be referred by a solicitor or advice agency. Representation is by volunteer barristers. There is no guarantee that your case will be taken up. For more detail, visit its website at www.barprobono.org.uk

Your trade union

- If you are a member of a trade union, the union may be prepared to represent you. Unions tend to have different arrangements for legal representation, but most of them will not take a legal case for you if you have not already been a member for a certain number of weeks before the problem arises.

Solicitors, barristers, advocates and other representatives

- Lawyers may be solicitors or barristers (advocates in Scotland).
Traditionally, solicitors have the main relationship with clients. Clients cannot approach a barrister directly.
- Solicitors prepare the case and barristers represent in tribunals and courts. Nowadays, some solicitors also do the tribunal representation and do not use a barrister at all. Both ways are acceptable.
- The employment tribunal does not require advisers and representatives to have any legal qualifications. Whether you go to a private solicitors' firm or to an advice agency, you may find that your adviser / representative is a solicitor or a legal trainee or someone with a lesser qualification or none at all. The important thing is their level of knowledge and experience.
- Your adviser will discuss with you whether s/he will ask a barrister to represent you at the hearing. This is called 'instructing' a barrister. If a barrister is instructed, it is your adviser's job to pass on all the information including a statement of your evidence to the barrister.
- Sometimes solicitors and other advisers come to the hearing to sit next to the barrister, take notes and generally help think through the case. However, it is expensive for both to be at the hearing. Unless your case is big and complicated, your solicitor / adviser probably will not come too.
- You may not meet the barrister until the day of the tribunal hearing itself. It is often helpful to have a conference with the barrister a few days before the hearing, but that costs money!

*...if a barrister is instructed,
it is your adviser's job to pass
on all the information...*

books, guides and websites

- **Employment Law: An Adviser's Handbook.** By Tamara Lewis
Published Legal Action Group. Tel: 020 7833 2931. Edition 7 (2007). Updated every two years. For workers and their advisers in unions / voluntary sector. Guide to law, evidence, tactics and tribunal procedure, with comprehensive check-lists and precedents. Covers all key areas of employment law with large discrimination section. Updated approximately every 2 years.

Central London Law Centre guides

Tel administrator: 020 7839 2998

- **Identifying employment cases: checklists for diagnosis and interviews.** By Tamara Lewis. Published Central London Law Centre, February 2008. Guide for generalist advisers or those new to employment law on how to start investigating cases. Cross-references to *Employment Law: An Adviser's Handbook*.
- **Enforcing ET Awards and Settlements** by Philip Tsamados. 2nd edn 2006. What to do when your employer won't pay the tribunal award.
- **RRA Questionnaires: How to Use the Questionnaire Procedure in Cases of Race Discrimination in Employment.** By Tamara Lewis. Published Central London Law Centre. Guide to procedure and sample Questionnaires for many race discrimination situations. Updated (2008) version on EHRC website.
- **SDA and Equal Pay Questionnaires: How to Use the Questionnaire Procedure in Cases of Sex Discrimination in Employment.** By Tamara Lewis. Published Central London Law Centre. Guide to procedure and sample Questionnaires for many sex discrimination situations. Edition 2, 2005. Updated (2008) version on EHRC website.
- **DDA Questionnaires: How to Use the Questionnaire Procedure in Cases of Disability Discrimination in Employment.** By Tamara Lewis. Published Central London Law Centre. Guide to procedure and sample Questionnaires for many disability discrimination situations. Updated (2008) version on EHRC website.
- **Age Questionnaires: How to Use the Questionnaire Procedure in Cases of Age Discrimination in Employment.** By Tamara Lewis. Published Central London Law Centre. Guide to procedure and sample Questionnaires for many age discrimination situations. Updated (2008) version on EHRC website.

- **Discrimination Questionnaires: How to Use the Questionnaire Procedure in Cases of Discrimination in Employment.** By Tamara Lewis. Published Central London Law Centre. Guide to procedure and sample Questionnaires for situations related to discrimination on grounds of race; religion and belief; sexual orientation, sex; equal pay; disability, age. Updated (2008) version on EHRC website.

Other guides

- **How to recognise cases of age discrimination: an adviser's toolkit.** By Tamara Lewis. Published by Help the Aged, August 2006. Available for downloading as a pdf at www.taen.org.uk/Publications/ad_guide_for_advisers.pdf

Websites

ACAS	www.acas.org.uk
AdviceUK	www.adviceuk.org.uk
Age Concern	www.ageconcern.org.uk
Citizens Advice	www.citizensadvice.org.uk
Employment Tribunals	www.employmenttribunals.gov.uk
Employment and Human Rights Commission	www.equalityhumanrights.com
Help the Aged	www.helptheaged.org.uk
Law Centres Federation	www.lawcentres.org.uk
Office of Public Sector Information	www.opsi.gov.uk
TAEN (The Age and Employment Network)	www.taen.org.uk
TUC	www.tuc.org.uk

glossary

Adjourn; adjournment	Postponing a date fixed for a hearing or tribunal meeting.
ACAS	Advisory, Conciliation and Arbitration Service. Independent industrial relations organisation which can help you negotiate a settlement – see p30.
Barrister	See p43.
Case management discussion	Meeting sometimes held by tribunals, particularly in discrimination cases, to discuss case preparation. Can be held over the phone.
Claimant	The person who brings the tribunal case, ie you!
Compromise agreement	An agreement meeting formal requirements between lawyers or authorised representatives. It is used where an agreement is made without using ACAS. The special rules are needed to ensure it is a binding agreement.
Conciliation Officer	The ACAS officer who offers to help negotiate a settlement.
COT 3	The form used by an ACAS officer to record a settlement once it has been agreed.
Disclosure	This is the process during case preparation whereby each side must tell the other side what relevant documents they have in their possession – see p13.
EAT	Abbreviation for 'Employment Appeal Tribunal'.
Employment Tribunal	The court which decides cases of unfair dismissal, discrimination at work, and most other employment disputes.
Employment Appeal Tribunal	Appeals from the employment tribunal go to the Employment Appeal Tribunal.
ET	Abbreviation for Employment Tribunal.
ET1	Standard tribunal form where you write your claim – see p11.

ET3	Standard form where employers writes their defence.
Evidence – in – chief	The evidence given by a witness before s/he is cross-examined, often in the form of a witness statement. See p19.
Listing; your case has been 'listed' for hearing	The hearing date has been fixed.
Litigation risk	Jargon used often during settlement negotiations. It means the risk which exists for everyone, that they will lose their case.
Your claim has been 'lodged'	Your claim form has arrived at the tribunal office.
Your adviser is 'off the record'	Your adviser is helping you behind the scenes and will not write letters for you or represent you at the tribunal hearing.
Your adviser is 'on the record'	Your adviser is officially representing you and will write and receive letters on your behalf. Unless s/he has told you otherwise, s/he will probably also be representing you at the hearing.
Mediation	A formal method of trying to find a negotiated settlement through the services of an independent mediator. This can take place early in a case or before it has even started.
Mitigation	Efforts to find a new job and reduce the loss of earnings caused by your employer's behaviour – see p27.
Particulars	Old-fashioned word, often used by lawyers, to mean written details of your claim or your employer's defence.
Pleadings	This usually means the formal documents which set out each side's case, ie the tribunal claim (ET1) and employer's response (ET3), plus any formal additional information or further particulars.
Quantum	The amount of compensation the tribunal will award if you win.
Questionnaire	Written form asking the employer for information in a discrimination case – see p9.
Re-instatement	If you win an unfair dismissal case, the tribunal can order the employer to give you your job back on the same terms and conditions as if you had not been dismissed.

Re-engagement	The tribunal can order that you are given a job but not necessarily the same as previously.
Recoupment	If you win, the amount you claimed in benefits is deducted from your tribunal award for loss of earnings and repaid by your employer to the DWP.
Remedies	Compensation or any other award the tribunal can make if you win – see p25.
Remedies hearing	A separate tribunal hearing after you have won your case, just to consider how much the tribunal should award you.
Reserved decision or judgment	The tribunal does not make a decision on the day, but sends it to you in the future.
Respondent	The person you have brought your case against – usually your employer.
Solicitor	See p43.
Without prejudice	Phrase used in settlement negotiations meaning 'off the record' – see p32.
'Without prejudice save as to costs'	Phrase often used by employers' representatives, when making a written settlement offer. They mean the offer is off the record unless they choose to tell the tribunal about it because they want to ask the tribunal to award costs against you.
Witness order	A tribunal order which forces an unwilling witness to come to the tribunal. Similar to a 'subpoena' in the county court or high court.
Witness statement	Statement containing a witness's tribunal evidence, usually used as that witness's evidence-in-chief. See p15.

your notes about your case

Fill in whatever you find helpful. You may choose to ask your adviser to help you.

Contact details

My adviser's name: _____

My adviser's telephone number: _____

Time-limits

The latest date when my claim form can be lodged with the tribunal is: _____

Who will write my tribunal claim? _____ me / my adviser

Who is responsible for lodging my claim form with the tribunal? _____ me / my adviser

Who is responsible for making sure my claim form arrives on time? _____ me / my adviser

My claim

my claim is for:

unfair dismissal

discrimination (type?)

notice pay

holiday pay

wages owing

other: _____

Representation

Who will letters from the tribunal and my employer go to: _____ me / my adviser

Who will represent me at the tribunal hearing: _____

How much will I have to pay my adviser / representative: _____

The hearing date

The hearing has been fixed for: _____

notes

**claimant's
companion**

Central London Law Centre
19 Whitcomb Street
London
WC2H 7HA

T: 020-7839 2998
F: 020-7839 6158