

## CLIENT GUIDE – usual stages of an Employment Tribunal case

In plain English with translation where appropriate!

Initial instructions	Talking to you about your case, what has happened. Reviewing documents and available evidence. Building a picture of the facts of the situation and assessing how this amounts to the legal claims you may have.
Advice on merits	Letting you know whether you have a good case or not and what risks you run in bringing the claim. A bit like a strengths and weaknesses assessment with a best guess about the likelihood of you winning your claim.
Acas Early Conciliation	This is a mandatory initial step for starting any ET claim. Can also be used to explore settlement. You will need an Early Conciliation number to be able to file (send) your claim to the Employment Tribunal via their online portal.
Preparing Form ET1	This is the claim form setting out your case. Accompanied by your Statement of Case also known as the Particulars of Claim.
Reviewing Form ET3	This is the response form for the employer to answer your claim. Accompanied by employer's Grounds of Response or Particulars of Defence.
Instructions to Counsel	Your solicitor will usually need to instruct a barrister at some stage in your case, either to represent you at hearings or give advice on specific issues to supplement your solicitor's advice. This is a document your solicitor will prepare for the barrister providing details about your case and setting out the assistance needed from the barrister.
Exploring settlement	We will often try to find a non-litigation solution to your issue. This is done through without prejudice negotiations.
Preparing a Schedule of Loss	This is a formal document in a specified format which sets out for your employer and for the tribunal what you say you have lost financially as a result of your claim and how much compensation you are seeking.
Preparing for and attending a Preliminary Hearing	Preparation for a Preliminary Hearing (or PH) will include liaising with your employer or their legal representative to complete an Agenda and to try to agree a List of Issues.

PH Agenda	A PH Agenda is sent out to the parties by the tribunal and deals with things like whether there are any dates to avoid for the final hearing and what elements of the claim are disputed. Your solicitor may need information from you to complete this but it is a legal job to prepare this form.
List of Issues	A List of Issues is a formal legal document. The parties may attempt to agree it between themselves and present it to the tribunal.
<i>Procedural</i> Preliminary Hearing (also known as case management)	In a straightforward case you should only have a procedural PH. This will be where Case Management Orders are issued by a judge and a timetable for preparing the case for trial will be agreed. This is a private hearing not open to the public.
Case Management Orders	This is a list of instructions from the tribunal telling both parties what they need to do and when by, in order to prepare the case for a hearing.
Judicial Mediation	At a PH a judge may suggest to the parties that they participate in a Judicial Mediation. This is where the parties meet before a judge to try to find a solution before proceeding to a full trial. It is not obligatory but is recommended, especially if we have tried to find a resolution and have been unable. It is a last chance to see if the parties can avoid the time, effort and cost of full litigation in the Employment Tribunals.
Substantive Preliminary Hearing	<p>This is an open hearing meaning it is open to third parties including press to attend. A substantive PH may be needed in more complex discrimination cases where any aspect of the legal basis of the claim is disputed. Examples include:</p> <ul style="list-style-type: none"> <li>• In a disability discrimination claim, there may be a PH on whether the claimant's health condition meets the definition of disability.</li> <li>• In some cases, it may be necessary for the tribunal to determine whether they have jurisdiction to hear the case. If the case is not within the jurisdiction of the tribunal, it is not their case to determine and the case will not proceed in tribunal. Examples include where it is not clear that the claimant is working under a UK contract (territorial jurisdiction) or if the claim has been presented outside of the tribunal time limits (time jurisdiction).</li> </ul>
Impact statement	In disability discrimination cases, if disability is challenged by your employer, you may need to prepare an impact statement for a substantive PH. This takes the form of a sworn witness statement where you set out the impact of your disability/disabilities on your normal day to day activities supported where appropriate by medical evidence.

Disclosure	Disclosure is the process of each party to the claim showing the other which documents they have in their possession relevant to the case. Often this is done by means of parties exchanging a List of Documents, but sometimes you have to share the List and all the documents at the same time. This requires the claimant and the respondent to show all documents regardless of whether they help or hinder the claim. Once the parties agree on which documents the tribunal should see, a bundle of documents is agreed and prepared for use at the final hearing.
List of Documents	This is exactly what it says on the tin. A list of all the documents which will be used in the case. The parties start out with their own lists, helpfully named Claimant's List of Documents and Respondent's List of Documents. After review and discussion a joint list is agreed. This can be quite a time-consuming part of the preparation process!
Preparing a bundle of documents	The documents from both sides are assembled in chronological order to be presented to the judge at the final hearing. Ordinarily the Respondent to a claim (the employer) will be responsible for the cost and effort of this preparation, but your solicitor will need to check it carefully and sometimes may decide that it is best for your case if we do this work. It is time-consuming and can add expense but it is often vital to the success of the case that the documents be organised correctly.
Preparing witness statements	Witness statements in tribunals are taken as read. This means that you do not get the opportunity to read them out in the hearing, the tribunal judge or panel (of two lay people and one judge depending on the type of case) will pre-read them. This is where you detail what has happened to you, how you say the law has been breached, the impact on you, etc. Your solicitor will help you prepare this document but this must be your evidence and you will be asked to sign a Statement of Truth.
Exchange of statements	The parties will be ordered by the tribunal to exchange witness statements simultaneously on a given date and a specified time. This is to ensure neither party has any advantage over the other of seeing the other's evidence first.
Reviewing the opposing party's witness statements	This stage of the preparation allows your solicitor to understand the case in much more detail, particularly the arguments that your employer intends to make to defend your case. This may indicate difficulties with the case ahead, if there is a big difference between what the parties each say happened, or it may indicate that the case is even stronger than anticipated. This is often the moment in the process when the parties think seriously about whether a settlement might be preferred than a full trial hearing.

Pre-trial Conference	It is usually helpful to have a conference with your solicitor and your barrister shortly before the final hearing, to prepare and strategize for the final hearing and discuss any final steps necessary to ensure the case is fully prepared for trial. The barrister's attendance at this conference will usually be included in the trial fee.
Preparing a chronology	In complex cases the tribunal may order the parties to prepare and agree an outline chronology to help them get to grips with what happened when. This and the cast list are usually required right before the final hearing.
Preparing a cast list	In complex cases the tribunal may order the parties to prepare and agree a cast list so that they can quickly understand all the people involved.
Preparing and attending a final hearing	The moment you have been waiting for arrives. The Brief Fee you are paying your barrister will have become payable before the first day of the hearing. Some cases settle on the first day of the hearing – literally on the steps to the tribunal.
Cross-examination	Cross-examination is when you are questioned by the opposing side's lawyer(s) about your witness evidence. This is where the opposing solicitor/barrister will try really hard to undermine you or your evidence so that they can persuade the tribunal that you should lose your case.
Judgment	Judgment is when the tribunal gives its formal decision. In complex cases the judgment will almost always be reserved at the end of the full hearing, meaning that you will not get a decision on that day and may have to wait weeks and months to find out if you have been successful or not.
Remedy	Some cases will require a separate Remedy Hearing. This is where the tribunal decide, if you have won your case, how much compensation is payable to you. If judgment is not reserved and you are given a decision at the end of the final day of the full hearing the judge will tell you what they have decided to award.