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# The role of employment tribunals

Guidance for employers on the claims process, the tribunal hearing and settlement of claims

## Introduction

Employment tribunals deal with claims brought against employers by employees. Claims can typically relate to unfair and wrongful dismissals, discrimination, equal pay, and deductions from wage deductions. Employees must contact Acas first to try to resolve the dispute through early conciliation.

This factsheet examines the first steps in starting a claim and the employer's response. It looks at the tribunal hearing, including the types of hearing, preparation, procedures and outcomes. The factsheet also looks at alternative ways of settling claims and the key features of settlement agreements.

## What is an employment tribunal?

UK employment tribunals deal with claims that may be brought against employers by employees relating to their employment or its termination. In Northern Ireland they are called industrial tribunals.

When employment tribunals were first set up, they were intended to be a speedy, informal and inexpensive way of resolving employment disputes. However, employment law is complex, and although there is no requirement for employers and employees to be legally represented at a tribunal, many choose to have a lawyer

The employment relationship is governed both by the law of contract and by statute law. Some contractual disputes can be dealt with by a tribunal or an ordinary civil court (for example the High Court). Most statutory rights can **only** be enforced in a tribunal

Examples of the types of dispute heard by employment tribunals:

- Unfair dismissal.
- Wrongful dismissal.
- Discrimination (race, sex, disability, religion or belief; sexual orientation, age, maternity or paternity leave/pay).
- Equal pay.
- Deductions from wages.

Examples of employment disputes heard by the civil courts:

- Accidents at work.
- Restrictive covenants.
- Contract claims for non-payment of wages.
- Wrongful dismissal claims and other contract claims.

In Northern Ireland, there's a separate tribunal, the 'Fair Employment Tribunal', which deals with religious and political belief claims – see Useful contacts for more information.

An Employment Judge usually decides tribunal claims. The judge will sit alone or as part of a panel which includes lay members depending upon the complexity of the claim.

## Employment tribunals in the time of coronavirus

The employment tribunal system is evolving during the COVID-19 pandemic and directions and guidance from the tribunals' President provide updates on the conduct of tribunal proceedings. The system was already under strain at times and coronavirus has increased the pressures with significant delays and a backlog of cases. The furlough system combined with redundancies and health and safety concerns are likely to increase claims and negatively affect the tribunal system.

The courts and tribunals have implemented technology for remote hearings involving a Cloud Video Platform system so that hearings can continue during lockdowns and high tier restrictions. The aim is that during periods of tighter restriction physical attendance at an Employment Tribunal venue in England and Wales will be the exception, and only where needed in the interests of justice. In periods of lower restrictions, in-person hearings can take place in rooms that are suitable for social distancing, with all parties present. There can also be hybrid hearings where some parties or witnesses attend by video link. The entire tribunal system is likely to be changed permanently because of these changes.

Remote hearings taking place at home will present new challenges for the judge,

employer, employee and their representatives, and for some participants who may struggle with the technology.

Find out more on what employers should be doing in our [Responding to the coronavirus hub](#).

## Employment tribunal fees and charges

Employees do not have to pay any fees to start a tribunal claim. Fees were introduced in 2014 but were declared unlawful by the Supreme Court in 2017. We welcomed this ruling as claims fell by over 70% when fees were introduced suggesting that the fees affected access to justice.

A more proportionate fee system may reappear in the future. There have been previous [government reviews on the impact of tribunal fees](#). A long term [review of the entire civil courts structure in England and Wales](#) has resulted in an online an e-filing service for many claims including in appeal courts and the Employment Appeal Tribunal.

CIPD members can see more on these developments in our [Tribunals and settlements law Q&As](#) and [Employee status law Q&As](#).

## Starting and responding to a claim

Before starting a claim, there are various pre-claim steps for employees (known as 'claimants') to follow:

- Checking the time limits for bringing a claim, although in certain circumstances a time extension may be granted.
- Participating in the employer's own dispute resolution procedures in most cases.
- Checking the [Acas Code of Practice on discipline and grievance and procedures](#) has been followed. (Both the employee and the employer are responsible for keeping to this code.)
- Ensuring there has been an appeal following the employer's own procedures.
- Contacting Acas for voluntary 'early conciliation' to see if there's potential to resolve the dispute as an alternative to a tribunal claim.
- Getting a 'conciliation certificate' which shows that the Acas help did not enable the parties to agree a settlement.

After these steps, if the employee wishes to pursue a claim, they can complete a claim form (Form ET1) and submit it to the employment tribunal.

Upon receipt of the claim form, the tribunal:

- Logs the claim.
- Sends a copy to Acas.
- Sends a copy to the employer (known as the 'respondent'), together with a form for the employer to complete in response (Form ET3).

The respondent has 28 days to complete and return the form to the tribunal. It's very important that employers deal with the response form as a priority, taking legal advice if necessary. If the form is not returned in time, there may be a default judgment and the employer will not be able to defend the claim. Although the employer can apply to the tribunal for a time extension, there's no guarantee this will be granted.

In their response, the employer sets out the main points of its argument. Holding back important information with the intention of surprising the employee at the hearing is not a good strategy. The tribunal could penalise the employer by imposing costs, or rule that the late information is inadmissible.

The next stages may include a preliminary hearing to explore the matter further or listing the case for the final full hearing. The tribunal offices send out instructions setting out the case preparation steps to make sure things happen properly and punctually - this is known as giving 'directions'. Examples of directions include dates for exchanging lists of documents and witness statements. Directions also set out other relevant deadlines including the hearing date.

As a result of the COVID-19 pandemic, the parties need to co-operate with running cases. Changes may include providing electronic bundles of documents, shortening the issues in a case by agreement to make the hearing time shorter, or considering alternatives such as judicial mediation which can also be done by video link or by telephone. As cases can take much longer to be allocated hearing dates employers should retain relevant documents and take witness statements at an early stage in case memories fade before the delayed hearing. Judicial mediation may involve less preparation than a tribunal and frees space for other cases.

## **Time limits**

The time limit for bringing many tribunal claims is within three months of the date of termination of employment.

For some claims, for example, discrimination, the time limit may be within three months

of the act complained about. Other claims, such as for a redundancy payment, have a six-month time limit.

An additional one month is allowed for Acas conciliation (plus a further 14 days in some circumstances). The conciliation period temporarily stops the normal three- or six-month clock for lodging a tribunal claim until conciliation has ended.

## The tribunal hearing

Claims that are not settled or withdrawn come before the tribunal for a formal hearing.

### Types of hearing

There are two main types of hearing:

- **Preliminary hearing:** a short hearing to address any issues so that the case can proceed smoothly before a full hearing. For example, there may be a disagreement over whether or not the claimant was an employee and whether they were entitled to bring the claim.
- **Full hearing:** when all the evidence is heard.

### Preparation

To prepare for a full hearing, both parties will need to:

- **Exchange lists of all documents relevant to the claim.** Examples of these include contracts of employment, letters, emails, notes of meetings and any other paper or computer generated records even if these help the other party's case. The documents will need to be agreed by both sides, and will be presented in one 'bundle' for the hearing. It's usual for the respondent to put the bundle together. All pages in the bundle must be numbered, with a contents page at the start.
- **Prepare witness statements** from all witnesses who will give evidence at the hearing. The witness statements must be written in numbered paragraphs and will often refer to documents that have been disclosed.

### The hearing

All parties and witnesses must attend the tribunal on time whether this takes place in person or remotely.

At the hearing, the Employment Judge usually sets out the key issues and checks whether

there are any preliminary matters. In most cases, the witness statements have already been lodged and are 'taken as read'. This means that they are the witnesses' chief evidence unless the tribunal says otherwise. In some cases, the judge may ask the witness to read their statement out or clarify some crucial passages. Each witness takes an oath before reading their statement or being asked questions by the 'other side' and then by their 'own side'. The judge may also ask questions.

Once all witnesses for one party have given evidence, then the other side's witnesses have their turn. At the end, the representatives of both sides will 'sum up' their case, and the tribunal will adjourn or, in some cases, give its decision immediately.

Tribunals try to limit the time that hearings take, and judges have the flexibility to manage proceedings as they see fit.

## Outcomes

Depending on the time available, the decision (called a 'judgment') is not always given on the day of the hearing.

If the tribunal reaches a decision in favour of the claimant, depending on the type of claim, the tribunal can award:

- Reinstatement (the employee gets their job back).
- Re-engagement (the employee returns to the organisation in a new role).
- Compensation.
- Payment of wages or monies due to the employee.

Reinstatement and re-engagement are rare.

## Settlement of claims

An employer and employee may wish to settle an employment dispute without going through a full hearing either:

- Between themselves directly
- By using the conciliation service offered by Acas, or
- By using an internal or external mediator - read our factsheet on [workplace mediation](#).

Settlement will lead to an agreement 'compromising' the claim through:

- A settlement agreement (previously called a 'compromise agreement'), or
- An agreement achieved through Acas conciliation (a 'COT3').

Responding to claims has a high cost for employers especially in management time. We therefore encourage the use of alternative dispute resolution, particularly mediation, as a means of resolving disputes at an early, informal stage. We welcome the role of Acas in providing early conciliation.

Avoiding claims is even more critical since the COVID-19 pandemic as cases may increase and take longer to be heard. Internal grievance procedures and negotiations with employees internally may lead to more settlement agreements as even aggrieved ex-employees will prefer settlement rather than waiting for hearings which may take many months or years to reach a final stage.

## Settlement agreements

Settlement agreements have the following key features:

- They can only settle the particular complaint or claims that have been raised in that case, for example unfair dismissal or race discrimination.
- They must be in writing.
- The employee must take independent advice on the contents of the agreement from a solicitor or qualified independent adviser with appropriate insurance cover.
- The adviser must certify in writing that advice has been taken by the employee.
- Appropriate compensation must be negotiated with the employee.

Settlement agreements can be a helpful means of resolving a dispute or ending the employment relationship. Most settlement agreements, but not all, have confidentiality provisions. Sometimes former employees challenge the validity of settlement agreements, and employers must ensure that each agreement is carefully drafted. Acas has issued a [statutory Code of Practice and revised guidance](#) stating that confidentiality clauses should only be used when necessary and should not be included in settlement agreements as a matter of course.

Where there is alleged harassment or discrimination, HR must ensure that the confidentiality clauses in settlement agreements are used ethically and appropriately. Employees should be made fully aware of the legal status of such an agreement, including their inability to bring a future tribunal claim. They should not be used to cover up cases of alleged discrimination, harassment or bullying. Such clauses should also not be used to deter anyone from reporting misconduct such as making a protected disclosure under whistleblowing legislation.

## Acas and COT3 agreements

As previously stated, Acas must conciliate in most claims brought in employment tribunals. The main advantages of the COT3 form of settlement drawn up by Acas are:

- It's free of charge.
- It can easily settle all claims between the parties, including ruling out future claims.
- Legal advice is not compulsory.

## Useful contacts and further reading

### Contacts

[Acas](#)

[GOV.UK - Employment Tribunal](#)

[GOV.UK - Being taken to an employment tribunal](#)

[Industrial Tribunals and the Fair Employment Tribunal \(Northern Ireland\)](#)

[Judicial Appointments Commission](#) - The Commission is responsible for recruitment of lay members to employment tribunals. Their advice to CIPD members who are interested in applying to act as a lay member is to keep an eye on their website.

### Books and reports

BARNETT, D. (2019) *Employment tribunal time limits*. (Employment Law Library 4). London: Nielsen.

WAITE, J-P. et al. (2017) *The employment tribunals handbook: practice, procedure and strategies for success*. London: Bloomsbury.

### Journal articles

BROWN, L. (2021) [Covid-related tribunal claims are on the rise – here's how to avoid them](#). *People Management* (online). 15 January.

FARAGHER, J. (2018) [Tribunals: how to keep your business out of court](#). *People Management* (online). 26 April.

SUFF, R. (2018) [Employment tribunal fees and awards – where now for reform?](#) *CIPD Voice*. Issue 15, 3 September.

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