



EMPLOYMENT

GUIDE TO GIVING EVIDENCE IN THE EMPLOYMENT TRIBUNAL

A guide for witnesses

Guernsey law offers various protections to employees. Many claims which arise out of the employment relationship may be enforced in The Employment and Discrimination Tribunal of Guernsey. In this Guide, we will refer to this body as 'the Tribunal'.

This Guide provides information about the Tribunal process and what you can expect as a witness.

The Tribunal

The Tribunal is similar to a court. Its function is to resolve disputes over certain employment issues such as claims for unfair dismissal, discrimination, Sunday trade working and under Guernsey's minimum wage legislation.

Although the Tribunal is similar to a court, it is also slightly less formal. People can represent themselves, so lawyers are not always involved and, when lawyers are present, they do not wear court robes. During the hearing, the people involved generally remain seated throughout.

Common terms used

The person who brings a claim is usually called the **Applicant** or, sometimes, claimant. The claims are brought against the employer who is called the **Respondent**. Sometimes the Applicant and Respondent are called the **Party** or **Parties**.

Usually the preliminary hearings will be heard by one member of the Tribunal, called the **Chairperson**. The main hearing of evidence will be heard by three members of the Tribunal and

consists of the Chairperson and one member drawn from a management background and one from a union background.

The hearing: venue

Most hearings take place in Les Cotils, in a designated room which will be signposted with the names of the people involved in the case. It is advisable to arrive early to give you time to find the room and speak to the Tribunal Secretary. There may be a designated room in which you will be able to wait.

The hearing room itself will be laid out ready for the hearing to proceed. There will be table at the top where the Panel sits. Immediately in front of the Panel there will be three groups of seats. The centre seat is where the witness sits and is (rather confusingly) usually referred to as the 'witness stand'. The Applicant will usually sit at the table which faces the Panel right hand side and the Respondent at the table which faces the Panel's left hand side. There will also be a designated seat for the Secretary to the Tribunal.

The hearing: giving evidence

When you arrive, the Secretary will ask you to provide some information, including your name, address and job title. You will also be asked if you would prefer to swear on a holy book that your evidence is true or to affirm, prior to giving your evidence. It is entirely up to you which you decide.

Often, the Chairperson will ask all witnesses involved in the case to be sworn or affirmed at the start of the first day of the hearing. Where there are many witnesses, you may find that a timetable

has been agreed with the Tribunal which allocates approximate time slots for each of the witnesses to give evidence.

Sometimes the Chairperson will allow witnesses to remain in the hearing room while the case is being heard and before it is their turn to give evidence. However, it is increasingly common for all the witnesses to be excluded from the hearing room until after they have completed their evidence.

When it is your turn to give evidence, you will be called to the witness stand. You should remain standing until the Chairperson confirms that you may be seated.

Evidence in chief

Often you will have prepared a witness statement, possibly in conjunction with the representative of the party who has asked you to attend as a witness. You will often be asked by the Chairperson to read out that statement, as the Panel will not generally have had a chance to read this before the hearing starts.

The witness statement is likely to form the bulk of your evidence and is termed your 'evidence in chief'. However, usually you will be asked further questions by the representative of the party who called you. Often you will be asked to discuss documents which the parties have filed in relation to the case. Such documents will usually be contained in a binder or 'bundle' of documents which should be on the table in front of you.

When answering questions, you should direct your answers to the Panel. The Panel will be taking a note of everything said, so please remember not to speak too quickly. When speaking with the Panel, you should address them as 'Sir' or 'Madam'.

You should give your answers as truthfully as you

can and not try to avoid questions. Try to remain calm. It is very important to listen carefully to the question which is being asked of you - try to avoid rushing into answer what you think the question might be. Wait, and answer the question asked.

If you don't know the answer to a question, say so. Where you genuinely can't remember the answer or where you never knew the answer in the first place, you won't be criticised. It is far better to do this than to guess and to guess wrong, as then it may be suggested that you were lying. And if you think that the answer is A but aren't sure, say that you aren't sure.

Cross examination

Once you have finished your evidence in chief, the other party or his or her representative will be given a chance to ask you questions. This is called 'cross examination'. The same advice which applies to your evidence in chief also applies to your evidence given on cross examination.

Re-examination

Once the cross examination is finished, it is possible that you may be asked some follow up questions by the representative of the party who called you. The scope for this is limited though, as questions can only be asked to deal with things which came up in cross examination and then usually only to clarify your answers.

Throughout your evidence the Panel may ask you questions at any time, but often the Panel will wait to do so at the end of your examination.

Once all questions are finished, the Chairperson will confirm if you are free to go or whether there is any prospect that you might need to be called back for further evidence. This is unusual and witnesses will generally be released after concluding their evidence. You are then free to sit

in on the remainder of the proceedings.

Other points re the hearing

The Panel will usually stop the hearing at an appropriate point for lunch or because the hearing is continuing on to another day. If you are giving evidence when the hearing stops, it is important to remember that you are still under oath. For that reason, during a break you should **not** discuss the case or your evidence with your colleagues or other witnesses and you are likely to find that you will be excluded from any discussions which take place between the party who called you and their representative during this time.

You should bear in mind that hearings are usually open to the public and to members of the media. These people are free to come and go as they wish from the hearing room, although they are expected to be respectful in how they do so.

On rare occasions, hearings will be subject to reporting restrictions where the Tribunal may impose limits on who can sit in to listen to the hearing and as to what can be said about the hearing. This can happen in, for example, cases involving vulnerable individuals or sexual misconduct.

The decision

It is unusual now for the Panel to issue its decision on the claim straight away. It is more likely that the Panel will 'reserve' its decision. This means that the Panel will go away to consider its decision having regard to all the witness evidence, documents and the submissions made by the parties' representatives. If the Panel does reserve its decision, it usually tells parties how long approximately it will be before the decision is issued. The decision will then be published in the Royal Court House and, in due course, on the

Commerce and Employment Department's website at www.gov.gg.

If you have incurred expenses in giving evidence, you may be able to reclaim these. Some compensation is available for loss of wages, travelling and other costs. These allowances are paid by the Commerce and Employment Department on a fixed scale. You can get forms for claiming these allowances from the Secretary to the Tribunal.

We trust this Red Guide helps you understand what is involved in the Tribunal process and what to expect when giving evidence there.

This Red Guide is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so. If you would like legal advice or more information in relation to the matters covered in this Red Guide or generally in relation to an employment issue, please contact our employment team on +44 (0)1481 723723, or by email at employment@aohall.com. Members of our employment team, together with their contact details, are listed on our website at www.aohall.com.

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