STUC Information Guide
Scottish Employment Tribunals

stuc

In association with

THOMPSONS SOLICITORS
& SOLICITOR ADVOCATES

DEDICATION | KNOWLEDGE | STRENGTH

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Contents

Introduction

This leaflet is designed to provide you with some basic information about bringing a claim in the Employment Tribunal. It is not intended to be a full statement of the law or of Employment Tribunal practice and procedure. It should help you to understand the processes involved in bringing a claim in outline. You may want to keep it to refer to as your claim proceeds.

This leaflet is intended to provide guidance in relation to the Employment Tribunals in Scotland only.

About STUC

Our purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland and, through the creation of real social partnership, to promote: trade unionism; equality and social justice; the creation and maintenance of high quality jobs; and the public sector delivery of services.

The STUC represents over 630,000 trade unionists, the members of 37 affiliated trade unions and 22 Trades Union Councils. We speak for trade union members in and out of work, in the community and in the workplace, in all occupational sectors and across Scotland. Our representative structures ensure that we can speak with authority for the interests of women workers, black workers, young workers and other groups of trade unionists that otherwise suffer discrimination in the workplace and in society. **We believe that Access to Justice is an important aspect of Workplace Rights.**

To find out more about STUC, go to **www.stuc.org.uk**

To provide Feedback on how useful you found this leaflet and Employment Tribunals in Scotland please telephone 0141 566 8086.

This leaflet is intended for any claimant who is not already represented.
STUC would strongly recommend you join a trade union, not least that subject to Trade Union Rule Books trade unions will commonly be able to provide support and in some cases representation under their discretionary schemes for legal assistance.

Other forms of legal support can be available including via **Legal Expenses Insurance, Citizens Advice and limited forms of Legal Aid.**

Should you wish to contact STUC please telephone 0141 566 8086.
This booklet does not change the terms of any scheme for legal assistance.

Early Conciliation: Requirement To Contact ACAS

From 6th May 2014, almost everyone considering making an Employment Tribunal claim will require to contact ACAS before they are permitted to make any complaint to an Employment Tribunal.

There are a small number of exceptions but it is recommended that this option is pursued in all cases because failure to comply with this obligation would prevent the person from being allowed to lodge their claim at the Tribunal.

ACAS will offer Early Conciliation to try and resolve disputes about alleged infringements of individual employment rights. ACAS will have a short window of opportunity of 1 calendar month to try to help to resolve these issues.

Potential claimants (generally the employee) will access Early Conciliation by completing a form online or over the phone, or via post although this would generally be discouraged given the risk of lost/ mislaid mail. The form will ask for the names of the parties, addresses and contact numbers. After these details are completed an ACAS Early Conciliation Support Officer will make what ACAS describe as reasonable efforts to phone the potential claimant directly to obtain details of the dispute.

As indicated, it is vital that claimants give the correct legal name of their employer when they complete this form. If they fail to do so, the ACAS Early Conciliation Certificate may contain the wrong employer details. This may prevent the claimant from being allowed to lodge their claim at the Tribunal. You must also be sure that you name every employer against whom you believe you may have a claim. It is also important to note that you will have to complete a separate Early Conciliation form for each respondent against whom you wish to make a claim. We would advise against using any postcode checkers which may be automated and not give the correct legal definition. If you fail to name the correct employer, you would probably not be able to recover any compensation if you win your case.

The true identity of your employer might not always be clear to you as they may be known by a “trading name”. You may find out the correct name of your employer by checking:

- your statement of terms and conditions (which you have a legal right to receive within two months of staring your job);
- your P60;
- your P45;
- any letters received on headed paper; or
- companies house online “Webcheck” service (in the case of a limited company)
- your wage slip

You should consider whether or not your employer changed since you first started work. If you are still unsure about the correct name for your employer then you should list all the possibilities you are aware of in the box headed “additional respondents” or give that information to whoever is completing the form on your behalf, for example Thompsons. If you fail to name the correct employer then you would probably be unable to recover any compensation if you win your case. We would caution against relying on any postcode checkers which could be automated and may not give the correct legal definition.

If the potential claimant identifies a named representative then ACAS will again seek to make reasonable efforts to contact that Representative to explore whether a resolution to the dispute is possible. Where the matter relates to unlawful discrimination or is part of a group claim, the matter will normally be referred to the ACAS Early Conciliation Officer based in Scotland. ACAS operate specific arrangements for such matters in Scotland including providing for joint meetings in unlawful discrimination claims.

The Early Conciliation process is intended to take, at most, one month (with the possibility of a short extension) but may take less than that if either you or your employer do not wish to engage in the process. While the process is ongoing then the time limit for lodging the claim to the Employment Tribunal stops running but you should not assume that this will give you an extension to the time limit.

If the Early Conciliation ends and the certificate is issued by ACAS before the end of the normal 3 month time limit to lodge your claim in the Tribunal then you should lodge your claim before that time limit expires. This will avoid any argument in the future that your claim has timebarred.

If the normal 3 month time limit expires before the end of the Early Conciliation process then you will be able to lodge the claim once ACAS issues the certificate even though the time limit has expired. We would recommend that you lodge the claim with the Tribunal without further delay once the certificate is received from ACAS.

If the matter is not resolved then ACAS will issue the Certificate with the unique Early Conciliation reference number which will be required to be retained and used to permit the lodging of the claim in the Employment Tribunal. If the employer indicates that they do not wish to engage in Early Conciliation or where after making what it considers are reasonable efforts ACAS has been unable to contact the employer ACAS will immediately issue the Certificate with the unique Early Conciliation reference number and no extension to the time period for lodging a claim will be provided for.

About the Employment Tribunal

The Employment Tribunal has to deal with cases with "the overriding objective" in mind. The overriding objective requires Employment Tribunals to deal with cases fairly and justly.

Dealing with a case fairly and justly includes, so far as practicable, dealing with the case in ways that:

- seek to ensure that parties are on a equal footing;
- are proportionate to the complexity and importance of the issues;
- avoid delay so far as compatible with proper consideration of the issues;
- avoid unnecessary formality;
- seek flexibility in the proceedings; and
- save expense.

Time limits for lodging your claim

There are strict time limits which apply to claims relating to your employment. There are a number of different time limits for different kinds of claim.

In particular, any claim in connection with a disputed termination should, where the employment is in Scotland, be lodged with the Central Office of Employment Tribunals office in Glasgow within **3 months minus one day** of what is known as the "Effective Date of Termination". That is usually the date of dismissal. There are different dates taken depending on whether the dismissal is with notice or not and whether the dismissal occurs at the end of a fixed term contract. If in doubt you should get advice as to when the Effective Date of Termination is. If the Effective Date of Termination was on 5th November the claim would need to be lodged by 4th February. A claim lodged on 5th February would be late.

The 3 months minus one day time limit may run from an earlier date in other kinds of claim if the matter complained of occurred at an earlier date. For example an act of discrimination based on race or gender might not involve a dismissal. The time would run from the date of the act complained of in the simplest case. Where there is a course of behaviour or conduct which is a series of connected acts extending over a period of time, special rules apply. You should get advice if that situation might apply to your case.

The **Central Office of Employment Tribunals in Scotland is in Glasgow**. While a claim may be presented at other full time Scottish Tribunal Offices such as Edinburgh, Dundee and Aberdeen, these offices will not have the facility to accept payment of Tribunal Fees. This may result in a delay in the claim being accepted for the purposes of time limits on lodging a claim. It is strongly recommended that, where possible, Scottish Employment Tribunal claims are lodged in the Glasgow Central Office of Employment Tribunals. There are facilities to make on line submissions of claims, which can be located at https://www.employmenttribunals.service.gov.uk/employment-tribunals.

In relation to the majority of possible claims which can be submitted to the Employment Tribunal it may assist in maximising the compensation payable to you, if you win your case, if you lodged a detailed **written grievance** prior to the submission to the Tribunal claim. Where a grievance is not submitted this can, in some circumstances, reduce the amount of compensation you can receive in the event of a successful claim.

Unfair Dismissals

- If you started your employment **on or after 6 April 2012** then you cannot bring a claim for unfair dismissal unless you have been continuously employed for a period of 2 years.
- It is important to note that if your employment started **before 6 April 2012**, then the qualifying period of continuous employment is 1 year.

However, for some kinds of unfair dismissal claims you do not require to have any qualifying period of employment. Examples of such claims are where your dismissal amounts to unlawful discrimination based on a protected characteristic like sex or disability (there are others) or, where it was for a reason such as trade union activities or raising a health and safety matter. You should seek legal advice about your dismissal to determine if you can pursue a claim.

Fees in the Employment Tribunal

As mentioned above the introduction of a fees system occurred in 2013. The level of fees payable will depend on whether the claim is for a Type A claim or a Type B claim. While these fees are presently subject to challenge in the Civil Courts with the possibility that fees which have been paid may ultimately be repaid by the Employment Tribunal it should not of course be assumed that any such challenge will succeed and that fees paid will be refunded. For now the fees must be paid (subject to an application for remission of fees which we shall say more about below).

For each claim, there will be two sets of fees to pay. The first fee, called an "issue fee", is paid before you can start your claim. A second fee is payable called a "hearing fee" before the final hearing fixed to decide the outcome of your claim.

Type A claims

Type A claims cover what are sometimes regarded as more straightforward claims, such as claims for: unpaid wages, redundancy pay, holiday pay and notice pay. In fact some type A claims are as complex as type B claims. A £**160** **issue fee** is payable to start the claim, and **£230** for the **hearing fee** in a type A claim.

Type B claims

Type B claims cover most of what are considered to be the more complicated kinds of claims which can be brought in the Employment Tribunal such as unfair dismissal claims, discrimination claims, and claims based on whistleblowing. A **£250** **issue fee** is payable to start the claim and **£950** for the **hearing fee**.

How much will you have to pay? .

Only one set of fees needs to be paid for your case, regardless of the types of claims you are making. For example, you will only pay one fee if you are claiming for unfair dismissal and for discrimination at the same time. If you are making both Type A and Type B claims, you will have to pay the Type B fees. Note however that if the Tribunal considers that you have made a claim or additional claim which is not merited you may not be able to recover the fee and may face an award of expenses against you. It is important therefore to focus on the type of claim or claims which is considered to have merit.

If you are making a claim with more than one person in relation to the same matter, the fees will depend on how many of you are making the claim.

Other than fees for starting your claim and for a hearing, you may also have to pay fees for some other applications to the Tribunal in some fairly limited circumstances. There are also fees payable if you want to appeal to the Employment Appeal Tribunal.

Fee Remission

If you are on a low income and/ or on certain state benefits when fees fall to be paid, you may not have to pay the fees or may be entitled to pay a reduced fee. This is called a "fee remission".

Since 7th October 2013 the fee remission scheme has operated a 2 stage test based around Household Disposable Capital and Household Disposable Income. The tests are complex and based on definitions in the legislation as well as the particular circumstances of the applicant. The following comments give some guidance but are not a full description of the tests.

The capital and income of any partner of yours is taken into account. If you live with someone and you are a couple then their income and capital is taken into account. It does not matter if you are not married or civil partners. The income and capital of a partner who does not live with you simply because of circumstances such as he/she is ill and in hospital or is working away from home, or in prison still counts in the calculation of Household Disposable Capital and Household Disposable Income.

The Household Disposable Capital Test

Broadly speaking, if the Household Disposable Capital is £3,000 or over then you will not be entitled to receive fee remission. The Household Income Test would not need to be considered.

For those over the age of 61 or who have a partner over that age , then the claimant applying for remission of fees passes the test if Disposable Capital is less than £16,000.

A number of items of capital are **not** included when considering what Disposable Capital there is. Examples are:

(a) a property which is your main or only dwelling house and is occupied by you;
(b) the household furniture and effects of the main or only dwelling house occupied by you;
(c) articles of personal clothing;
(d) any vehicle, the sale of which would leave you, or your partner, without motor transport;
(e) tools and implements of trade, including vehicles used for business purposes;
(f) the capital value of your or your partner's business, where you or your partner is self-employed;
(g) the capital value of any funds or other assets held in trust , where you or your partner is a beneficiary without entitlement to advances of any trust capital;
(h) a jobseeker's back to work bonus;
(i) a payment made as a result of a determination of unfair dismissal by a court or tribunal, or by way of settlement of a claim for unfair dismissal;
(j) any compensation paid as a result of a determination of medical negligence or in respect of any personal injury by a court, or by way of settlement of a claim for medical negligence or personal injury;
(k) the capital held in any personal or occupational pension scheme;
(l) any cash value payable on surrender of a contract of insurance;
(m) any capital payment made out of the Independent Living Funds;
(n) any bereavement payment;
(o) any capital insurance or endowment lump sum payments that have been paid as a result of illness, disability or death;
(p) any student loan or student grant;
(q) any payments under the criminal injuries compensation scheme.

Items of Capital which are taken into account include cash and money held as investments, such as stocks and shares or property other than your main home. Non-money resources of a capital nature are valued by considering the sale value and factoring in a discount (10%). If land or a building qualified as capital and was held with a loan or mortgage secured over it, the value of the loan would be deducted when considering its value. Capital not held in the UK is taken into account and there are detailed rules as to how it is valued.

You are not permitted to deliberately dispose of capital, for example, by giving it to a friend or family member simply to be able to qualify for fee remission. Disposal of capital to pay a properly due debt or in exchange for proper value is permitted.

Only if you satisfy the Household Disposable Capital test is the Household Disposable Income test applied.

The Household Disposable Income Test

Entitlement to certain state benefits will entitle you to full remission. There are broadly two types of benefits- Income based and Contribution based. Contribution-based benefits are for people who have enough National Insurance contributions paid over the past two years. If you have been working full time for the past two years then you will ordinarily be entitled to Contribution-based benefits. Contribution-based benefits last for approximately six months. After the six months are over you may be eligible for income-based benefits. The main difference between contribution-based and income-based benefits is that income-based benefits take household income into account (i.e. your spouse or partner's earnings will affect them), whereas the test for contribution-based benefits is simply whether you have paid enough in National Insurance contributions.

You will have to provide the required proof of entitlement. You will be entitled to full remission if you are receiving one or more of the following benefits:

- Income based employment and support allowance
- Income Support
- Income based Job Seekers Allowance
- State Pension Guarantee Credit
- Universal Credit where your gross annual earnings are less than £6,000

Even if you do not receive a relevant benefit you may still qualify for full or partial remission based on household income. As mentioned above the assessment takes into account whether you have a partner and whether you have children who are financially dependent on you and if so, how many such children you have.

If gross monthly household income is equal to or is less than the applicable threshold in the table below you will be entitled to full remission. Remember that you would have to provide the appropriate evidence to use that entitlement.

Gross Monthly Household Income Test Thresholds

Gross monthly income with	Single	Couple
No children	£1,085	£1,245
One child	£1,330	£1,490
Two children	£1,575	£1,735
For each additional child add	£245	£245

If your gross monthly household income exceeds the thresholds you may still be entitled to partial remission. For every £10 of income over the threshold you would require to pay £5 of Tribunal fee up to the limit of the full fee payable.

There are set caps of income above the relevant thresholds where you would receive no remission. If your income is more than £4,000 above the threshold applicable to you, you will not be entitled to remission. For example, where a single person with no children had gross monthly income of more than £5,085 i.e. £4000 over the applicable threshold of £1,085, there would be no entitlement to remission.

Gross Monthly Income is determined by reference to the total monthly income in the month before the fee remission application is made. It includes all sources of income other than certain excluded benefits. An application requires you to provide certain documentary evidence such as 3 months' worth of bank statements and original wage slips.

It is important to apply for remission where eligible and you need to make every effort to ensure that you provide the relevant information in order that assessment can be made.

We can provide a Remission Form (T438A) which is contained within "*explanatory guide*" T438. There is in addition a separate "*explanatory guide"* T435 explaining how fees operate in the Employment Tribunal for individual claims and a separate Explanatory Leaflet (T436) for "*group"* (multiple) claims. Where a remission is applied for, a Notice to Pay confirming the amount of any sum due may be issued by the Tribunal. This may have the practical effect of postponing the date on which payment of fee is to be made. It is important to comply with the Notice to Pay as to the date of payment and the amount due to be paid because failure to comply with the Notice to Pay following the lodging of a claim would result in the claim being rejected and your claim will be treated as if it was not lodged with the Tribunal. That could mean that any new claim you wanted to submit would be time barred. Your claim could well be lost.

Paying the other side's tribunal fees if you lose your claim

If you lose your claim, the tribunal will have the power to order you to reimburse the fees paid by the other side; for example, if your employer was to successfully apply for a reconsideration of any judgment made by the Tribunal in your case then you could be required to reimburse them for the fee involved in such an application. However, the tribunal can decide whether or not you will have to do this on a case-by-case basis.

What happens once your claim has been lodged?

Claim form

An Employment Tribunal claim is made on a form called an "ET1" or "claim form". This form sets out the basis of your claim and you must be confident that it is completely accurate **including correctly identifying your actual employer and ACAS Early Conciliation number** before it is submitted to the Tribunal.

As with Early Conciliation and any Early Conciliation form that is provided, it is important that the correct employer is also named on your ET1 claim form. The true identity of your employer might not always be clear to you as they may be known by a "trading name". As mentioned previously, you may find out the correct name of your employer by checking:

- your statement of terms and conditions (which you have a legal right to receive within two months of staring your job);
- your P60;
- your P45;
- any letters received on headed paper; or
- companies house online “Webcheck” service (in the case of a limited company)
- your wage slip

You should consider whether or not your employer changed since you first started work. If you are still unsure about the correct name for your employer then you should list all the possibilities you are aware of in the box headed “additional respondents” or give that information to whoever is completing the form on your behalf, for example Thompsons. If you fail to name the correct employer then you would probably be unable to recover any compensation if you win your case. We would caution against relying on any postcode checkers which could be automated and may not give the correct legal definition. If you discover the name you have provided is in fact incorrect, then you should let the tribunal know as soon as possible and ask for it to be amended.

It is also of course vitally important that the claim form covers all the matters you wish to raise. That includes the legal claims you want to bring and the facts on which those claims are based.

It is important that where possible a claim identifies the dates of important events as this may be crucial in establishing whether a claim is presented in time. The facts on which the claim proceeds need to be set out. A succinct explanation of what happened in chronological order should be given.

When the Tribunal receives your ET1 it will review the document to satisfy itself that you have provided the name of the party you think is your employer. It is important to note that the Employment Tribunal will not take any responsibility to establish that the employer is correctly named.

The claim will not be accepted if the wrong form is used or the employer is not named. The ET1 form identifies boxes which must be completed if the claim is to be accepted.

The Employment Judge can reject the claim if the Judge is not satisfied that the Tribunal has the power to consider the type of complaint you are raising (in other words, it does not have jurisdiction), or because the claim is not in a form which can sensibly be responded to or is otherwise an abuse of process. If the wrong fee was paid or there was no remission application made the claim will be rejected. You may be allowed to remedy any such defect. Until this is done and the claim is accepted by the Tribunal the time limit for bringing the claim will continue to run against you. If a claim is submitted close to a time limit it must be correctly submitted or there is a risk of the claim becoming time barred. Once your claim is accepted the Tribunal will allocate a case number to it and send a copy of the ET1 to your employer.

Tribunals and employment lawyers use certain terms when taking about the case. You would be referred to as the “Claimant”. The “Respondent” is the person or company the claim is brought against. It is usually the employer. The Claimant and the Respondent are often referred to jointly as the “Parties”.

Your employer (or former employer) is given 28 days to respond to the complaint in writing. They do this by completing a form known as an ET3. They should set out what they say occurred and state any defence they have. Their response is then sent to you by the Tribunal. The time between lodging the complaint and you receiving the response is usually about six weeks.

What happens if the Employer does not respond?

If the Employer does not respond in time, an Employment Judge will look at the paperwork and consider whether they have enough information to issue a judgment in your case. If they require more information (e.g. they need more financial information, or it is not clear to them whether your claim is in time or not), they will fix a hearing at which evidence can be led on the missing information.

An employer who has submitted no response will be informed of any future hearings, but may play no further part in the proceedings unless the Employment Judge permits them to do so.

If an employer submits a response, but it is received late, then they can ask an Employment Judge to allow their response to be accepted late. This will usually result in a hearing.

Initial Consideration by the Tribunal

Where the respondent does lodge a response the claim and response forms will be referred to a Judge for initial consideration soon after the response is lodged. The Judge will assess whether there are "arguable complaints and defences within the jurisdiction of the Tribunal". The Judge who is considering this can ask for more information at this stage.

If the Judge considers that the Tribunal has no jurisdiction to consider the case (or any part of it), or that the claim has "no reasonable prospect of success", then a letter will be issued which will say that the claim (or the part of it affected if it is only a problem with part of the case), will stand as dismissed on a date which will be set out in the letter, unless a letter is issued to the Tribunal giving a reason why the claim should not be dismissed. If the claim is dismissed that will mean it (or the dismissed part) has come to an end so it is very important that if you think that you should be allowed to continue with your case, a detailed letter is issued to the Tribunal explaining why your case should not be dismissed. If such a letter is issued to the Tribunal then the Judge will either consider whether to allow claim to continue or, if there is still some doubt about it, an opportunity will be given to attend a Tribunal hearing at which to explain your argument to the Judge in person.

Correspondence to and from the Tribunal

If any party writes to the Tribunal then he/she must copy that letter (and other documents sent) to the other party in the case and must tell the Tribunal in the letter that he/she has done this. The other party in the case will be expected to do the same if they write to the Tribunal.

In a discrimination case the Tribunal will issue a questionnaire to both sides in the claim, which will be designed to gather further information about the case so that it can be managed effectively. If such a questionnaire is issued, then you will be expected to complete it as fully as you can and return it.

You should not assume that by completing such a questionnaire naming a claim or a set of facts not mentioned in the initial claim form completed that this will form part of your case. For instance, if your initial Tribunal claim form (ET1) does not refer to the type of claims which you then say you are making in the questionnaire response, then it will probably be necessary for the Tribunal to consider whether you should be allowed to amend your initial claim.

Case Management Orders

Certain types of decisions by Employment Judges are referred to as "Case Management Orders". Broadly these are decisions which order or direct that a party or, in some cases, both parties should do something (such as providing particular information or exchanging documents).

These Orders will be made where they are necessary or helpful for the effective management and progress of the case.

By way of example, you could be ordered to provide (a) details of the money which you have lost as a result of your employer's treatment (this could include lost wages, the value of benefits which you may have lost such as pension and insurance) (b) further information about your claim (c) copies of documents which you hold which are relevant to your case. This could include documents which prove the efforts which you have made to find another job if you were dismissed by your employer or resigned. A respondent could be ordered to provide records relating to a disciplinary process or copies of emails and records relating to the matters in dispute.

It is possible for a party to apply for a Case Management Order (or for a Judge to make an Order even if a party has not asked for it). Applications for Case Management Orders (for example, to obtain more information from the other party or documents from the other party or to ask the Tribunal to order someone to attend as a witness), must be made in writing to the Tribunal. Any application for a Case Management Order which is made (except a request for a Witness Order) should be copied to the other party in the case, and should tell them that if they object to the application then they must do so in writing as soon as possible.

If there is objection to a Case Management Order which has been granted at the request of the other party, then the party objecting can ask the Tribunal to change the Order, suspend it, or to set it aside. The Judge would have to be satisfied that it was "necessary in the interests of justice to vary, or suspend or set aside" an Order that has already been made so when writing in about this it is important to explain why it would be in the interests of justice for the tribunal to grant the request.

Case Management Orders are sometimes referred to as "Directions" or just "Orders". Whatever the term used, it is important to make sure that they are complied with or that an explanation as to why it is not possible to comply with the Order is given. For example, it may be that you are ordered to produce a document but in fact you do not have that document. Orders will often contain a time limit for compliance. It is important to meet that deadline but sometimes an extension of time may be able to be applied for if there is a good reason why it cannot be met.

Some orders provide that if they are not complied with the result is that the claim or response, or, a part of the claim or response, is struck out. Clearly such an order has to be complied with in time if it can be.

You may find that both parties are ordered to produce a "joint set of productions" (sometimes referred to as a "bundle"). This means that all of the documents that both parties want the Tribunal to consider as part of the case are to be put together in a single bundle, usually in date order with page numbers on the pages and an index, which is then copied for the Tribunal. Often, when an Order of this type is made, the parties will also be told when they must produce the documents and which party is to take the lead in producing the bundles. If you want to refer to any document at Tribunal you should have a copy for yourself and your opponent as well as copies for any witness and the Tribunal.

Disclosure

In general, there is no requirement for disclosure of all documents even those which may adversely affect that party's claim. It is possible to ask for an order from the Tribunal that the other party discloses documents. The Employment Tribunal in Scotland will require the party seeking any documents to specify the actual documents (or at least the kind of documents) which are sought. This of course can mean that documents not known by a claimant to be in the possession of another party, or indeed someone who is not a party to the claim, may not be subject to an order to produce documents in Scotland. You should identify any documents in respect of which you consider that an order for recovery could be usefully sought at the earliest opportunity.

Note that broadly, and subject to compliance with ACAS Code of Practice, evidence of negotiations about the ending of the employment relationship on agreed terms would be inadmissible in any subsequent Unfair Dismissal claim, unless for instance the Tribunal considers that anything said or done was improper, or was connected with improper behaviour. If there is such an issue arising in your case you should take advice.

Medical Evidence

Sometimes medical evidence is necessary in Employment Tribunal cases. If your claim is one of disability discrimination for example, medical evidence may be needed if your disability is disputed. Medical records, GP "Fit Notes" and/or Occupational Health records may be of assistance and may need to be recovered and lodged with the Tribunal. Sometimes a report of a medical specialist is needed and that might require you to be seen by the specialist. Sometimes the other party will want you to see a specialist appointed by them and usually it would be expected that you would agree to see such a specialist. If you have concerns about doing that you can discuss them with Thompsons. If the Tribunal orders a medical report to be produced it may be that the cost of this will be covered by the Tribunal. The Employment Judge will explain this to you if the situation arises.

Schedule of loss and compensation

As part of the proceedings a claimant will often be ordered to produce a document setting out a view on the value of the claim. This is called a Schedule of Loss.

Generally you should provide the following documents to assist in preparing the Schedule of Loss:

- pay slips from your previous employment (at least the last 3);
- your P45;
- your last P60;
- any documents detailing how your bonus or any extra payment was calculated;
- any documents relating to pension entitlement;
- details of any jobs you applied for and other steps you may have taken to find a new job if you were dismissed;
- details of any new job you have obtained to include when it started and what pay and other benefits are payable to you;

Statistically speaking, many cases are settled shortly before the date fixed for the Hearing. Often it is not until then that all the issues in the case are in clear focus in the minds of both sides to the dispute. If settlement is not agreed the Hearing will proceed.

An employee who succeeds with an unfair dismissal claim has, the right to apply to an Employment Tribunal for reinstatement (ie the employee returns to the same job), re-engagement (the employee returns to a different but comparable job) and/or compensation. It is often difficult to obtain reinstatement or re-engagement but it is possible. Compensation for unfair dismissal is the more common remedy granted in unfair dismissal claims. Compensation is limited to a basic award and a compensatory award. The basic award is the same as a statutory redundancy payment. It is based on pay, length of service and age at dismissal. The compensatory award depends on circumstances however and where the termination date is on or after 1st October 2013 it is capped at the lower of 1 years pay or £74,200. The compensatory award includes compensation for losses which often include loss of earnings, loss of pension rights, loss of other rights and benefits which would have been paid under the contract of employment and loss of statutory rights.

Different kinds of claim have different elements of award. Clearly any sum which might be awarded in any particular case depends on the kind of claim it is and what the facts are.

You should keep a record of your efforts to find work, such as job adverts, application letters and rejection letters, and you should keep evidence of any new employment you have obtained, including pay slips and contracts.

If you are receiving state benefits the Tribunal will want to know which ones and the period for which you have received them. The Tribunal may reduce your compensation if it decides that you have not made enough effort to find work.

In addition, if you are claiming discrimination, you may be able to claim compensation for injury to your feelings and/or personal injury. If you have suffered an injury/illness as a result of your employer's treatment of you, you should let the Tribunal and Respondent know the precise nature of that injury/ illness as soon as possible and keep any evidence of the injury/illness, such as medical notes and letters from your doctor.

It is important to recognise that there is a general obligation to minimise loss and as such you may be criticised by the Tribunal (by reduction of any possible award and or rejection of claim) if for instance you elected not to seek benefits which you were otherwise entitled and /or elected to not to take up the opportunity of alternate employment.

Awards in unfair dismissal cases can be reduced if the Tribunal thinks that the employee's conduct contributed to the dismissal. In some unfair dismissal cases compensation can be limited if the Tribunal thinks that even if there had not been an unfair dismissal the employment relationship would have come to an end anyway for other reasons.

Mediation

Increasingly, Employment Judges will offer parties the opportunity, in appropriate cases, for Judicial Mediation. That is where a trained employment judge will act as the impartial mediator at the judicial mediation to try to help the parties resolve their dispute. The process differs from a Hearing where evidence and arguments are heard and the judge decides in favour of one party. Rather in mediation there is an attempt to reach an agreement to end the dispute which is acceptable to both sides.

The role of the mediating employment judge is to help identify the areas of dispute and act as a catalyst to enable the parties to resolve the difficulties for themselves. If the mediation fails to resolve the case the employment judge is prevented from being involved in any subsequent hearing on the case.

Nothing that happens or is said at the judicial mediation (including any documents prepared for the mediation) can be referred to in any subsequent tribunal hearings. There is no argument over the technical legal merits of the case in a judicial mediation.

In Scotland Judicial Mediation has resulted in many satisfactory outcomes for claimants while reducing the stress of what can often be a lengthy and complex traditional hearing. Not all cases are suitable for mediation however.

Deposits

If an Employment Judge determines that your claim or part of the claim is unmerited then the Judge can require you to pay a deposit of up to £1,000 in relation to each separate type of complaint in order to be able to continue with your claim.

Hearings

The hearing procedure

Broadly there are 2 types of hearings - Preliminary Hearing and Final hearing.

Preliminary Hearings

At a preliminary hearing the Tribunal can deal with all Case Management matters, including identifying what the issues will be for a final hearing, whether the case might be suitable for Judicial Mediation and whether there are any Orders that could be made which would assist the progress of the case. At a preliminary hearing a decision can also be made about any technical legal issues affecting your case, some of which can be very significant and lead to your case, if decided against you, coming to an end. If your case is considered to be a weak one, then at a preliminary hearing a Tribunal could consider striking out your case. This would bring your claim to an end. You will be told in advance about the range of matters that will be dealt with at the preliminary hearing and it will be made clear in advance if the tribunal is going to be considering striking out your case or any legal issue which could lead to your claim coming to an end.

If the preliminary hearing is only going to deal with Case Management matters, then it is likely to be held in private. However, if the hearing is going to consider the type of issues which could bring your case to an end, then the hearing must normally be held in public, although special rules do apply if there is a very good reason why such issues should be considered in private. The Notice of Hearing you receive giving the date of the hearing will set out the matters to be considered at the hearing.

The hearing date

A case can call in the Tribunal a number of times before the final Hearing. These earlier callings usually do not require evidence to be led but rather involve discussion about matters concerning the case. Eventually a date or dates are set for evidence to be led, the case to be considered and a decision made. That is called “the Hearing”. Employment Tribunal Hearings can take between a day and several weeks depending on the nature and complexity of the claim. Many Hearings in more complicated cases take more than two days.

Generally, before fixing Hearing dates the Tribunal will ask for dates on which you and any witnesses you wish to call are available within a 2 month window. The Tribunal will generally require a quick response when it asks for this information. It is important that you discuss with any witnesses who you wish to call their availability. Once dates are set if you or a witness cannot attend the Hearing for some unforeseen reason (such as illness etc) you should let the Tribunal and Respondent know as soon as possible.. Note that the Tribunal may direct that the party calling any witnesses is to be responsible to meet their costs and/or expenses in connection with attending Tribunal. You should carefully consider what witnesses if any may be necessary and appropriate. The Tribunal may ask why a witness is required. Usually in Scotland all witnesses give oral evidence. However the Tribunal can order witness statements to be lodged which the witness would then adopt as their evidence and they could then be questioned orally about that. When allocating a hearing, the Tribunal may also ask you to provide any reason why the case should not be considered by Judge sitting alone instead of a three person Panel consisting of a judge and two lay members.

Location

The Tribunal will send you details, including the address of the venue where the hearing of your claim will take place. In Scotland most hearings take place in Glasgow, Edinburgh, Dundee and Aberdeen. There is also a part-time office in Inverness and some other venues are used if necessary.

Most hearings begin at 10am. You should try to arrive at the Tribunal in good time (at least thirty minutes before the start time), not least so that you can discuss any last minute items with your solicitor or representative if you have one or the respondent or any respondent's representatives, before the hearing starts

When you arrive at the Tribunal you should give your name and the case name to the receptionist. You will be asked to wait in the claimants' waiting room.

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Remember that it is likely that the Employer will be present at any hearing, this may mean that the owner of the business and a manager who may have knowledge of the issues may be in attendance along with any representative they may have appointed. The employer may also have its own witnesses in attendance. There are separate waiting rooms for each of the parties and their witnesses.

The Employment Tribunal

When the Tribunal panel is ready to start your Hearing you will be called by the clerk and shown into the Tribunal room. You and your representative (if you have one) will normally sit at the table marked "Claimant" and your employer's representative, usually with someone from the employer's organisation, will sit at the table marked "Respondent". Any witnesses will wait in the waiting room until they are called. Tribunal hearings are usually public and members of the public and/or your family and friends will be allowed to attend the hearing.

The Tribunal consists of either an Employment Judge alone or a panel of three members who sit at a raised table in front of you. If it is a panel of three, then the panel member in the centre is the legally qualified Employment Judge (somebody who has qualified and practised as a solicitor or advocate for a number of years). The other two panel members, or "wing members", are not legally qualified. One of them is usually from a business/employer background and one is from a trade union background, to provide a balance

The Tribunal is intended to be less formal than a traditional court and neither the Tribunal panel members nor the representatives involved will wear wigs or gowns. However, smart dress is appropriate. It is usual to address the judge as "sir" or "madam" if you have to address them .

Giving Evidence

At the Hearing, the Tribunal will hear evidence from both sides on the merits of your case. Who leads evidence first depends on the type of claim. If the claim is for unfair dismissal, the Employer usually leads evidence first as it is for them to prove what the reason for dismissal was and that they acted fairly. In a case concerning discrimination, it is usual for you to lead evidence first as you must establish sufficient evidence that there has been an act of discrimination before the Employer has to answer the allegation. However, there are no fixed rules and it is up to the Tribunal to conduct procedure as they see fit .

When you are called to give evidence you will be asked to go to a desk in front of the Tribunal panel. You will be asked to make an oath or affirmation that you will tell the truth. If you have a representative he or she will the ask you questions. If not the Judge and/or Panel may ask you a series of questions about the issue which the Tribunal is considering.

Next you will be cross-examined by the employer's representative. Although this can be a stressful experience, it does not resemble the kind of cross-examination that you see in television court room dramas. The Tribunal panel will not allow the employer's representative to bully you. If for any reason you do not understand a question, for instance because it is very long or complicated, you can ask for clarification. You should not be worried if you genuinely do not understand and the Tribunal Panel may assist you. The Tribunal panel may also ask you questions. You may be asked a few more questions by your own representative to clarify matters.

When you are responding to questions from anyone, whether your own representative, the Tribunal or the respondent's representative, you should give a clear and honest answer. You should try not to become upset, agitated or angry, however if you do, you might want to ask for a brief pause to allow you to collect yourself

If at any stage you want to leave the room, you should ask your representative to request an adjournment or ask for one yourself if you have no representative.

You will not be permitted to, and you must not, discuss your evidence with your representative or any other witnesses whilst you are still under oath, i.e. whilst you are still giving evidence or being cross-examined on your evidence. If for example your evidence was interrupted by a lunch break or was not completed by the end of the day and you had to continue to give evidence after lunch or the next day you should not discuss your evidence with your representative or any witness. Even once you have finished giving evidence you should not discuss your evidence with other witnesses before they give their evidence. This reduces the risk that the other witness is criticised as giving evidence which has been influenced by what you said.

You must address your answers directly to the Tribunal panel rather than to the representative who asked the question. Once you have given evidence you will remain in the hearing room whilst other witnesses give evidence. You would sit with your representative if you have one at the table where the claimant's side sits. You should not make any verbal comments while other witnesses give evidence as this can create a bad impression with the Tribunal panel. You may wish to write down any comments if you believe that there are specific issues that you wish to raise with the witness before they finish giving their evidence or which you think your representative ought to raise on your behalf. The same process of asking questions which was followed in relation to you will be followed in relation to the other witnesses.

Once all the evidence is led the representatives sum up what they invite the Tribunal to find as proved and how they say the Tribunal ought to decide the case referring to any legal authorities they rely on.

Postponements

It is very unusual for Tribunal proceedings to be postponed. The Employment Tribunal invests considerable time and effort to ensure that judges and panel members are available to hear your case. However, you should be prepared for the fact that Tribunal hearings can sometimes be postponed.

Should you require a postponement of your Employment Tribunal hearing, notice should be given as soon as is reasonably practicable. If you have a representative you should raise the matter with him/her as soon as possible. If you are not represented you should initially give notice by phone and followed that up in writing copying any communication to the other parties. Postponements are only granted at the discretion of the Employment Judge and are only granted in exceptional circumstances. Usually, they require to be supported by written evidence. Should your postponement relate to a medical condition for example you will require written evidence to be given from a medical practitioner to the Tribunal.

Please note that you and your witnesses should make yourself/themselves available for the whole of the period of the tribunal case, even if it runs over several days. While every effort will be made to give witnesses notice of when they will be called to give evidence, this is not always possible. Witnesses should therefore never make other commitments (e.g. holidays) during the period during which a hearing is listed. It is very useful to have mobile telephone numbers for any witnesses so that they can be kept advised of any changes as to when they are expected to be called to give evidence. Sometimes if the Hearing is to last a few days a witness can be asked to come for only one or two of the days when he or she is expected to be heard

The Tribunal will send you details, including the address of the venue where the hearing of your claim will take place. In Scotland most hearings take place in Glasgow, Edinburgh, Dundee and Aberdeen. There is also a part-time office in Inverness and some other venues are used if necessary.

Further information on postponements can be detailed on the Presidential Guidance form, which can be located at https://www.justice.gov.uk/downloads/tribunals/employment/rules-legislation/presidential-guidance-postponements-scotland.pdf

Expenses

Your witnesses may be able to claim certain expenses for attending an employment tribunal hearing from you. If you are successful the Judge may agree to allow you to recover these expenses from the unsuccessful party.

The Judgement

In a very simple case the Judge might give an oral judgment on the last day of the Hearing. More often the Tribunal will want to consider matters and issue a written judgment. This will commonly be within about a 4 weeks period after the Hearing, although in some instances, normally in complex cases, it may take significantly longer.

Remedies hearing

Normally, the tribunal will hear evidence at the main hearing about your financial loss and in a discrimination case how much your feelings have been injured. However, in certain rare hearings (usually very lengthy hearings), the tribunal may decide to decide to hold separate hearings on whether your employer has broken the law (a hearing on the merits), and how much you should receive in compensation (a remedies hearing). At any hearing which is considering compensation, you may be asked to give evidence about the losses set out in your schedule of losses. You or your representative will then be expected to make submissions to the Tribunal on the appropriate amount of compensation to award you. Your employer may dispute this and give evidence that you should not be awarded the amount you are claiming. You should note that Tribunals rarely award large figures in compensation. The maximum compensatory award for unfair dismissal is the lower of 1 years' salary or £74,200 where the termination date is on or after 1st October 2013. However, unless the employee is a very high earner, it is rare for Tribunals to award this or similar amounts. For example, the most recent statistics from the Employment Tribunal show that the median awards to claimants in unfair dismissal hearings, were around £5,000.

You may be entitled to argue for loss of earnings to the date of the hearing plus a sum to compensate for future loss.

Interest runs on Tribunal awards. You should get advice about how the rules on interest apply to any award made in your favour. Please note that interest does not automatically accrue in relation to non-payment of a sum agreed by settlement as this is not an award of compensation made by the Tribunal.

Expenses/Costs

It is commonly assumed that a claim can be brought without risk of an award of expenses (in other parts of the UK the term "costs" is usually used rather than "expenses") being made against the claimant. However, this is not correct, and while the frequency of awards for expenses remains statistically low, applications by respondents for expenses arguing that the claim is unreasonable or misconceived are becoming more common.

The level of any such award can be high. Broadly, and for claims lodged after 29th July 2013, an Employment Judge can award expenses beyond £20,000 without referring the matter to a formal external expenses process, although they will be expected to apply the same principles as used in the Sheriff Court.

Where a respondent has acted unreasonably in defending the case similarly an award of expenses can be sought. The Tribunal's powers in relation to expenses vary depending in whether the party is legally represented or not.

Reconsideration

If you believe that the tribunal's decision is wrong you can in very limited circumstances apply to have the decision reconsidered within 14 days. Reconsideration may result in an issue being addressed without the cost and time of a formal appeal.

The grounds on which you can apply for a reconsideration are however limited, broadly the Tribunal may consider that it would be in the interests of justice to allow a Reconsideration where, for instance, a significant new decision by the Employment Appeal Tribunal was not appropriately explored or the Judge is satisfied that a party to the case could not have received notice of proceedings leading to the decision.

A Request for Reconsideration will be subject to initial consideration by a judge who can reject the application if he/she considers that there is no reasonable prospect of that decision being varied or revoked.

It is important to note that there will be a fee for reconsideration of £100.

Appeals

If the Tribunal has made a mistake in relation to the law when considering your case and your claim is unsuccessful as a result, it may be possible to lodge an appeal with the Employment Appeal Tribunal. An appeal must be lodged within 42 days of the date on which the judgment or written reasons were sent by the Tribunal. You can only appeal where the Employment Tribunal has made a mistake of law. You cannot appeal on the grounds that the Tribunal believed your employer's version of events rather than your version of events unless they have done so as a result of an error of law. If you win your case the respondent may appeal. The respondent can only appeal on a point of law too. Please note that you must lodge your appeal within 42 days even if you are still waiting for the outcome of a reconsideration: there is no extension of the time limit to appeal. A fee requires to be paid when making an appeal.

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Useful Contacts

You may find the following contact details to be of use:

Advisory, Conciliation and Arbitration Services (Acas)

The ACAS helpline is intended to provide clear, confidential, independent and impartial advice to assist with resolving issues in the workplace. The Helpline operates Monday - Friday 08:00-20:00 and Saturday - 09:00-13:00.

Phone 08457 474747

Text Relay 18001 08457 474747.

Equality Advisory Support Service (EASS)

Phone : 0808 800 0082

Textphone: 0808 800 0084

08457 47 47 47 Minicom: 08456 06 16 00 www.acas.org.uk

Employment Tribunal Service

The Employment Tribunals are independent judicial bodies who determine disputes between employers and employees over employment rights. Their website provides information about the Tribunal's procedures and gives guidance on how you make or respond to a claim.
Public Enquiry Line: 0845 795 9775 Minicom: 0845 757 3722

www.justice.gov.uk/tribunals/employment
https://www.employmenttribunals.service.gov.uk/employment-tribunals

Department for Business, Innovation & Skills (BIS)

BIS is responsible for UK Government Policy on Employment Relations and Business Regulations.

For more information contact : 0207 215 5000

Minicom: 0207 215 6740

www.bis.gov.uk

Feedback

We hope this leaflet contains information which is useful to you. We are constantly trying to improve the service we provide to STUC's members. To provide Feedback on how useful you found this leaflet please telephone 0141 566 8086 or write to:

Thompsons Solicitors and Solicitor Advocates

Employment Law Team

285 Bath Street

Glasgow

G2 4HQ

Please note:

This document is a guide only and must not be relied upon as providing you with legal advice in relation to your specific claim. The issue and/or receipt of this document does not create an adviser/client relationship between you, STUC and/or Thompsons. As with any area of law, Employment Law is constantly subject to change. Up to date advice should always be sought at the time your claim arises. Please note that by issuing this leaflet we provide no undertaking as to the merits or continued merits of your claim, nor are we providing any undertaking that we are going to lodge a specific claim on your behalf in any Tribunal, Court or other forum

NOTES

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