

# **GUIDANCE TO THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL PROCESS**

These guidelines explain the Tribunal process once a claimant has sent a Claim Form to the Tribunal and the Tribunal has sent that Claim Form to the respondent.

The way in which each case is managed will depend upon whether or not the respondent completes a Response Form and upon the issues of the case.

## **HELP AND ADVICE**

You can obtain help and advice from:

- Jersey Advisory & Conciliation Service (JACS) on 01534 730503 for employment-related claims (including discrimination arising in the workplace). Their website is [www.jacs.org.je](http://www.jacs.org.je);
- Citizens Advice Jersey (CAJ) On 01534 724942 for non-work related discrimination. Their website is [www.cab.org.je](http://www.cab.org.je);
- your trade union, staff or professional association (if you are a member); or
- lawyers and other professional advisers.

It may be useful to look at previous decisions of the Tribunal in cases similar to the one in which you are involved at [www.jerseylaw.je](http://www.jerseylaw.je) .

Please note that the Jersey legal aid scheme does not pay for employment or discrimination law advice or representation.

Staff at the Tribunal office can answer general enquiries, give information about Tribunal publications and explain how the Tribunal system works. They cannot give legal advice, such as whether your claim is likely to be successful.

The flowchart on the next page provides a summary of the entire Tribunal process. You will then find some answers to frequently asked questions to help you to prepare for the hearing of your case.



## **HOW SOON MUST THE RESPONDENT RESPOND TO THE CLAIM?**

Once the Claim Form has been admitted by a chairman, it will be given a claim number which both parties must include in all correspondence with the Tribunal. The Tribunal will then send a copy of the Claim Form to the respondent who is named on the Claim Form.

The respondent must complete and return the Response Form to the Tribunal office within 21 days from the date on which the Claim Form was sent to the respondent by the Tribunal. The respondent can ask the Tribunal to extend the time limit if it is not possible to complete the Response Form within the 21 day time-limit. Please read 'Responding to a claim in the Employment and Discrimination Tribunal' for details on how to make such an application.

## **WHAT WILL HAPPEN IF THE RESPONDENT DOES NOT COMPLETE THE RESPONSE FORM OR THE TRIBUNAL DOES NOT ACCEPT THE RESPONSE FORM?**

If no Response Form is completed or the Tribunal does not accept a Response Form, then a chairman can decide the claim without the need for a hearing although a chairman may still decide to call a hearing in circumstances where sufficient evidence is not available in the Claim Form to make a judgment or to determine compensation. In such circumstances, the Tribunal will correspond with both parties but the respondent will only be entitled to participate in the hearing to the extent permitted by a chairman.

## **WHAT HAPPENS WHEN THE TRIBUNAL RECEIVES THE RESPONSE FORM?**

Once we receive the respondent's Response Form, we will send a copy of that form to the claimant. In most cases we will also send copies of the Claim Form and the Response Form to JACS (for work-related disputes, including discrimination) or to CAJ (for non-work related discrimination). A JACS or CAJ conciliator will contact you to explore whether or not it might be possible to resolve the claim through conciliation and without the need for a Tribunal hearing. This conciliation period lasts for 21 days, during which time the claim will be stayed. If, by the end of the conciliation period, the claim has not been settled or withdrawn a chairman will review the case and decide how it should proceed.

## **WHAT ARE THE DIFFERENT TYPES OF HEARING?**

### **1.1 CASE MANAGEMENT MEETING**

A Case Management Meeting (CMM) is a meeting which takes place in the Tribunal between a chairman and the parties. It is held assist the Tribunal in managing the case, particularly to:

- clarify the issues in the case;
- decide what orders should be made about matters such as documents and witnesses; and
- decide the date, time and length of the interim or final hearing.

After the CMM, the relevant chairman will send written Case Management Orders to the parties. These will confirm the points which will have been discussed at the CMM.

In some cases, upon reviewing the case, a chairman will decide that the case does not require a CMM. In such circumstances, written Case Management Orders will be issued without a CMM.

Whether or not a CMM is required, the parties will always receive Case Management Orders which will clearly set out the relevant deadlines for the preparation of the case for hearing. **It is important that you keep the Case Management Orders in a safe place and that you check them regularly to ensure that you do not miss any of the deadlines contained in them.**

## **1.2 INTERIM HEARING**

In some cases, a chairman will direct that an interim hearing must take place before the case can proceed to a final hearing. An interim hearing is conducted in the same way as a final hearing but is convened to decide upon discreet points such as:

- whether the whole or part of the claim or response should be dismissed; or
- whether a party is entitled to bring or defend a claim.

The Tribunal will tell the parties whether an interim hearing is necessary at the case management stage of the process (see above) and the parties will receive Case Management Orders accordingly.

## **1.3 FINAL HEARING**

The final hearing is the hearing at which the Tribunal:

- decides whether the claim succeeds or fails and, if it succeeds,
- what remedy is appropriate.

The final hearing may, depending on the nature of the claim, be conducted either by a full Tribunal (which includes a chairman and two lay members) or by a chairman sitting alone. Whether or not the matter will be heard by a panel or by a chairman sitting alone will be decided at the case management stage of the process.

Please see the 'What will happen at the hearing?' section later in these guidance notes for full details of the procedure at hearings.

## **THE HEARING**

You will find the date, time and place of the CMM, interim hearing or final hearing and the estimated time it will take on the letter we send to you. If you are not sure about where and when the hearing is to be held, please contact the Tribunal office. You should arrive at the Tribunal at least 10 minutes

before the hearing is due to start, making allowances for possible travel delays.

### **CAN I ASK FOR THE HEARING TO BE POSTPONED?**

You must make a request for a postponement in writing as soon as possible after receiving the notification of hearing, giving full reasons for your request. You should also send a copy of your request to the other party so that they are aware of it and you should tell them to contact us as soon as possible if they object.

A chairman will decide whether it is in the interests of justice to grant a postponement and they may want the views of the other side before reaching a decision. You should not assume that your request has been granted. The Tribunal will let you know whether or not your application is successful.

If you or the other party (or somebody else acting for you or the other party) fails to appear at a hearing, the Tribunal may decide the case in your or their absence.

### **WHAT SHOULD I DO IF MY CASE SETTLES OR I WANT TO WITHDRAW MY CLAIM?**

You should let us know immediately if your case settles before the hearing. The conciliation officer will let us know if your case is settled through JACS or CAJ. If you are the claimant you must tell us in writing if you decide to withdraw either all or part of your claim. You must also tell the respondent that you are withdrawing your claim. You must do this as soon as possible. If you withdraw your claim then it will be automatically dismissed except in some very limited circumstances where you ask that it should not be or the Tribunal considers that dismissal would not be in the interests of justice. If the claim is dismissed you will not be able to make a further claim against the respondent which raises the same complaint.

If your claim settles through JACS or CAJ the claim will be removed from the list for hearing and the case file will be destroyed in accordance with our destruction policy 2 years from the date of settlement.

### **REPRESENTATION AT THE HEARING**

Even if you have represented yourself or your own organisation up to the date of the hearing, it may be possible for you to arrange representation at the hearing itself.

You can contact one of the following sources for assistance although you must do this in good time.

- If you are a member, you can contact your union;
- You can contact free advice services such as a JACS or CAJ; and
- You can contact lawyers or other professional advisers.

## **PREPARING FOR A HEARING**

It can be useful to watch a hearing at a Tribunal so you understand the procedure and what happens. You can do this by contacting the Tribunal Registrar and asking if there is a suitable hearing for you to observe. A list of forthcoming hearings can also be found on the Tribunal's website, but we suggest that you contact the Tribunal before attending to check that the hearing will be going ahead.

## **WHAT DOCUMENTS DO I NEED FOR THE HEARING?**

Except in circumstances where all parties have all relevant documents, your Case Management Orders will order you to share your documents with the other party by a certain date. You must comply with such an order and must not withhold any relevant documents, even if they are detrimental to your own case.

## **CAN I BRING WITNESSES TO THE HEARING?**

You can bring witnesses to the hearing to give relevant evidence. The names of any witnesses will normally have been agreed at the Case Management Meeting or shortly thereafter. You will have been ordered by the Tribunal to produce a written witness statement of your own evidence and separate witness statements for each of your witnesses. Please remember that the witness statements are important documents and should contain all of the witness' evidence.

It is very important that your witnesses attend the hearing to give evidence as the Tribunal will place very little weight on the statement of a witness who is not present. It is your responsibility to make sure that your witnesses come to the hearing.

## **CAN THE TRIBUNAL ORDER A WITNESS TO COME TO THE HEARING?**

You may ask the Tribunal to issue a witness order which will summon someone that you want to have at the hearing, even if they do not want to be there, provided the evidence they will give is relevant to your case. If you believe that you may wish to make an application for a witness summons, you must apply in writing well before the hearing. You may also wish to raise it at the Case Management Meeting.

If you wish to make a witness summons application, you will need to tell the Tribunal:

- the name and address of the witness;
- what the witness will say and how it will help your case; and
- why the witness is not willing to come to the hearing voluntarily.

A chairman will consider your application and decide whether it is in the interests of justice that such a witness summons be issued. You should not

assume that your application for a witness summons is successful. The Tribunal will let you know whether or not your application is successful.

## **WHAT DO I NEED TO DO ABOUT COMPENSATION AND REMEDY?**

### **If you are the claimant:**

You will need to produce evidence to show that you are entitled to the amount you are claiming. In a wrongful dismissal (notice pay) case or discrimination claim involving loss of employment, you must be able to show what steps you have taken to find new employment.

### **If you are the respondent:**

You should produce any evidence and submissions which relate to what the claimant is looking for if their claim is successful.

If the claimant succeeds in a complaint of unfair dismissal (or failing to allow a woman to return to work after pregnancy) the Tribunal may consider ordering reinstatement or re- engagement. As a result you should be prepared to give evidence at the hearing as to:

- the availability of the job which the claimant held or of similar jobs;
- whether you would take the claimant back either in the old job or in a similar one; and
- your reasons if you say it would not be practical or possible to reinstate the claimant.

## **WHEN SHOULD THE FILES FOR THE HEARING BE DELIVERED TO THE TRIBUNAL?**

The file for the hearing must usually be delivered one week before the hearing date. Please check your Case Management Orders, which will state:

- which party should produce the hearing file; and
- the latest date upon which the hearing file must be delivered to the other party and to the Tribunal.

## **WHAT WILL HAPPEN AT THE HEARING?**

When you arrive at the Tribunal you should report to reception. Before the hearing a Registrar will ask you to confirm the names of your witnesses and the order in which you would like them to give their evidence. You should tell the Registrar if you or any of your witnesses have any special needs or concerns.

The chairman will make sure that you take the steps described below in a calm and measured way. However, he or she may have to be firm in moving the case on to make sure that it proceeds at a pace which allows it to be dealt with within the time set aside.

Generally the claimant will give evidence and call any witnesses first. However, there is no absolute rule as to which side starts and this will be discussed with you before the hearing begins.

You and your witnesses will have to give evidence on oath or affirmation. If you lie after swearing an oath or affirmation you could be convicted of perjury. Your witness statements will stand as the witness's evidence and in most cases will not be read out in Tribunal. You should therefore ensure that your witness statement contains all of your evidence. You or your witnesses can be asked questions by the other side (this is called 'cross-examination'). You or your witnesses can then give further evidence to clarify matters which came up when being asked questions by the other side ('re-examination'). Finally, the chairman and lay members may also ask some questions which both parties can answer.

The same procedure is followed with all witnesses and parties. Once all the evidence has been heard, both sides can sum up before the Tribunal retires to consider their judgment. It will be at the discretion of the chairman of the hearing whether to announce the judgment and the reasons for it at the end of the hearing. Alternatively, the Tribunal may 'reserve' its judgment. If the judgment is reserved you will receive it, and the reasons for it, in writing at a later date.

The Tribunal will normally expect to deal with compensation issues at the hearing. The time set aside for the hearing will usually include time for this.

### **WHAT HAPPENS NEXT?**

The Tribunal will send copies of the Tribunal's judgment to all parties. You must abide by the Tribunal's judgment as it is legally binding. If written reasons are not provided at the time of the judgment, these will be sent to you within 14 days of the date that the judgment was sent to you.

### **WHAT IF I DISAGREE WITH THE TRIBUNAL'S JUDGMENT?**

It is only possible to appeal against a decision of the Tribunal on a question of law.

If you wish to appeal to the Royal Court against a Tribunal judgment, you must set out your grounds for appeal in writing and send it to the Tribunal Registrar within 28 days of the date on which the Judgment with written reasons was sent to the parties.

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