

Being a witness in the Employment Tribunal



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This Inbrief provides an outline guide to being a witness at the Employment Tribunal, covering what to expect and tips on giving evidence both in person and online.

This applies to England and Wales only, as the process in Scotland and in Northern Ireland is a bit different – do contact us if you need more information about this.

Before the hearing

All witnesses in Employment Tribunal cases need to prepare a written witness statement. The statement sets out the factual evidence that you want to give at the hearing.

Witness statements will be exchanged with the other parties in the case before the hearing, normally at least a few weeks in advance. You may also be asked to read and comment on statements from the other parties to help with preparing for the hearing.

A day or two before you are due to give evidence, read your witness statement carefully. You should also read it at least once on the evening before you are due to give evidence, and, if you have time, again on the morning itself.

It is helpful to remind yourself of what is in the documents that are referred to in your statement. There is no need to memorise the documents because the tribunal will have an indexed set of all relevant documents (the “bundle”). Each document will be numbered, and your statement will refer to the relevant page number.

What happens at the hearing?

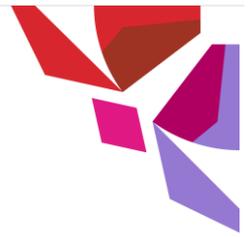
The tribunal hearing is chaired by an Employment Judge (who is legally qualified). In some cases there will also be two lay members on the panel, one of whom has a management or personnel background, and one of whom has a Trade Union or employee representative background. The Judge should be addressed as “Judge” and lay members should be addressed as “Sir” or “Madam” as appropriate.

Witnesses in the tribunal are allowed to attend all of the hearing. You are not required to attend the whole thing, but it is often helpful for you to watch the evidence given by the other witnesses in the case.

The usual order of events is:

- ▶ The tribunal usually takes some time before the hearing starts to read the witness statements and documents.
- ▶ The parties or their representatives may make opening statements, setting out the issues in the case.
- ▶ Each party then presents its evidence in turn by calling witnesses.
- ▶ Witness statements will usually be taken “as read”, meaning witnesses do not need to read them out at the hearing.
- ▶ Each witness will be cross-examined by the other party. The witness may then be questioned again briefly by the party calling that witness.
- ▶ The tribunal has an active role and often puts its own questions to the witness, especially when one party is unrepresented.
- ▶ After all the evidence has been heard, both parties make closing submissions.
- ▶ The tribunal adjourns the hearing to make a decision. This may be given orally on the same day, or a written decision may be forwarded in writing at a later date.

If the claim succeeds, the tribunal will hold a remedy hearing to decide what compensation or other remedy should be awarded.



Giving your evidence

Witnesses give evidence at a witness stand (which is usually just a table). Witnesses do not have to stand up during their evidence.

When you are called to give evidence you will be asked to stand up and swear a religious oath (using a religious book if you wish) or to affirm that the evidence you are to give is truthful. Before the hearing starts, the tribunal clerk will normally check whether you wish to swear or affirm. You will either read the relevant words from a card on the witness stand or be asked to repeat them after the Judge or clerk.

There will be a copy of your statement and the bundle of documents on the witness stand. You are not allowed to use your own copy of the statement or bundle (or any other notes) when you are giving evidence.

The tribunal usually reads the witness statements to themselves before the hearing starts, although sometimes the witnesses may be asked to read their statements aloud.

The barrister representing the party who is calling you as a witness may ask you a few questions to clarify any extra points the tribunal should have specifically drawn to their attention.

The other party will then ask you questions in cross-examination. They may be represented by a lawyer or other professional. They may also be represented themselves, or have help from someone who is not a professional (such as a friend or relative).

Once cross-examination has finished you are likely to be asked a few questions by the Judge or the other tribunal panel members if applicable. The barrister representing your side may also ask you questions to clarify any matters that have arisen during cross-examination (called re-examination).

If there is a break when you are part way through giving your evidence (e.g. for lunch or at the end of the day), you are not allowed to speak to anybody about the case or the content of your evidence. The Judge will explain this to you, and it is very important that you comply as otherwise it may damage the credibility of your evidence. This may mean that you are required to have lunch or travel home on your own.

Top tips for giving evidence

Be aware of your body language and appearance. The way in which you present yourself to the tribunal will affect how your evidence is received. Some points to bear in mind are:

- ▶ Wear neat and professional clothing.
- ▶ Be punctual.
- ▶ Show respect for the Employment Tribunal and interest in the proceedings.
- ▶ Do not avoid eye contact with the person asking you questions.
- ▶ Remember that you will normally be on view even when not at the witness stand. Always remain professional in demeanour and avoid making comments, whispering to others, laughing/smiling, or reacting in a dramatic manner to points made by others.

Some tips on how to answer questions during your evidence are:

- ▶ Tell the truth and don't exaggerate. If you do not tell the truth even on a minor part of the case, it will affect the credibility of all your evidence.
- ▶ Always look at the tribunal when answering questions. This can be a bit confusing at first, but it is important that the tribunal hears all of the evidence. This can also help you to remain calm if you are finding the questions frustrating.
- ▶ Listen to the question. It is important to focus carefully on each question you are asked and to ensure that you understand it. Do not be afraid to ask for it to be repeated or clarified. Only answer the question you are asked, and not the one you would prefer to have been asked.
- ▶ If you do not understand what the questioner is asking, say so. Do not speculate or guess what answer the questioner is trying to get from you.
- ▶ Say if you do not know the answer to a question. Again, do not guess, as this can undermine all the other evidence you have given.
- ▶ Take your time in considering your response, then answer the question directly, keeping your answers short. If the person asking the question needs more information on a particular issue, they will ask for it. You are not required to answer questions that have not been put to you. By keeping your responses brief and to the point you will help yourself, the questioner and the tribunal to retain focus.



- ▶ Do not simply refuse to answer a question. If the question is inappropriate, either your side's barrister or the Judge will challenge it. Ask the Judge if you are unsure.
- ▶ Speak slowly and clearly. If you speak too fast, the tribunal may miss things. The Judge will often take a note of the answers you give to questions, and it is useful to keep your eye on them to check whether you are speaking too quickly.
- ▶ Be firm and positive in your answers. If you are asked the same question (in different ways) several times over, give the same answer. The Judge is likely to intervene if they consider the questions are repetitive or irrelevant.
- ▶ Sometimes a questioner will leave long pauses between questions, to encourage a witness to expand on their answer. Do not allow yourself to be drawn into this. If you have answered a question in full, there is no need to add anything more just because there is silence.
- ▶ If you are interrupted when answering a question, turn to the Judge and say you would like to be able to answer the question in full. Where a point is put to you and you answer "yes", but you are stopped from adding an important qualification, turn to the Judge and explain that the answer to the question is "yes" but there is an important qualification you wish to add.
- ▶ Do not be drawn into argument with the questioner, even if they try to provoke you. This can be difficult if the party asking you questions is representing themselves. Do your best to stay calm and stick to the facts.
- ▶ Do not relax too much. The questioner may try to win your confidence by adopting a friendly tone. Again, just concentrate on the questions asked and on giving your answers.
- ▶ Refer to documents if necessary and if you are unsure where to find the document do ask to be directed to the appropriate place in the bundle. Also ask if you do not recall the answer to a question and need to refer to a document to refresh your memory.
- ▶ Remember that you are not obliged to give evidence on legal advice which you have been given in relation to the proceedings, including any proposed settlements. Your side's barrister will normally intervene but do query the question if you are concerned that answering it would require you to stray into legal advice.
- ▶ Finally, don't be afraid to ask for a break if you need one. Tribunals normally break roughly every one and a half hours, but you can ask for a break at any time.

Giving evidence at online hearings

Many tribunal hearings nowadays take place online by video conference. The whole hearing might be online, or some of the witnesses might give evidence remotely.

Giving evidence at online hearings involves some extra challenges. It is important to be prepared to make sure that your evidence comes across effectively.

Before the hearing:

- ▶ You will need access to a computer with video and a good internet connection. It is not satisfactory to use a smartphone for an online hearing. Arrange a test of your equipment if possible.
- ▶ Find a quiet location. If you think that there could be background noise, you may wish to consider using headphones.
- ▶ Check that you can be seen clearly in your video and the camera is at an appropriate height.
- ▶ Check what is visible on your screen – are there any personal or confidential items behind you, and does your background look professional? Some of the video platforms used by the tribunal allow to you blur your background.
- ▶ Be ready to attend the hearing at least 10 minutes before the start time.
- ▶ You should dress smartly as you would for an in-person hearing.
- ▶ If you would prefer to take the oath using a religious book, you will need to ensure that you have your own copy of your chosen book.

During the hearing:

- ▶ You must not record the hearing without permission. It is a criminal offence to do so.
- ▶ You will be sent a link to join the hearing in advance. Join the hearing and wait for the Judge to begin proceedings. It is likely that everyone will be asked to mute themselves when they're not speaking. You may also be asked to turn off your video.
- ▶ Remember that this is a formal hearing so you should not interrupt when others are speaking.
- ▶ Do not enter share mode, or send a document or attachment, without



the Judge's permission, and only use any "chat" function as directed by the Judge.

- ▶ Bring a glass of water – but no other drinks or food (as would be the case at an in-person hearing).
- ▶ As far as possible, you should turn off notification sound effects so that incoming message alerts do not disrupt you or the hearing.
- ▶ Have a phone nearby so that you can be contacted by your side's representatives or the tribunal clerks if required.
- ▶ Technical problems often happen. If you are cut off, you should try to re-join on the same invitation link. Have the pin/password written down so that you can find this easily if you need to log back in.
- ▶ You will be sent an electronic copy of the bundle ahead of the hearing. During the hearing, you should have the bundle open on a separate screen to the one that you are using for the video conference so that you can refer to it. It is not satisfactory to use a smartphone for this. If this is not possible you should ask for a hard copy of the bundle.

Dos and don'ts for giving evidence online:

- ▶ You must not have anyone in the room with you who is helping or prompting you. If someone is in the room with you, make sure they are visible. The Judge may ask you to confirm at the start of your evidence whether you are alone.
- ▶ Speak slowly and remember to look at the camera. Sometimes there can be a time lag, so it can be helpful to pause briefly before answering each question to make sure there is no overlap.
- ▶ Take proper breaks. Giving evidence virtually can be even more tiring than in person, so try to move away from your screen during any breaks if possible. If you need a break, politely raise this with the Judge.
- ▶ Speak up if it is unclear which page or document you should be looking at.
- ▶ You must make sure that you only refer to a clean copy of the bundle while you are giving evidence. This must not be written on or marked up in any way.
- ▶ You must not have any documents to refer to during the hearing other than the agreed bundle of documents and witness statements. The Judge may ask you to confirm at the start of your evidence whether you have any other documents.
- ▶ As with in person hearings, you must not communicate with anyone other than the Judge while you are giving evidence. This means that if there is a break while you are part-way through giving evidence, you must not speak with anyone else about the case or your evidence.
- ▶ Don't assume that you cannot be seen or heard, even if you think your camera and microphone are turned off – it is very easy to make a mistake about this! Behave professionally at all times while you are connected to the hearing.

Summary

It is natural to be a little anxious about giving evidence but try not to worry. Preparing thoroughly will help you give your evidence in the most effective way possible. As will focussing on assisting the tribunal by answering questions as directly and honestly as you can.

For more information on this topic, please contact us:



Emma Delap
Managing Associate

+44 (0)20 7074 8489
emma.delap@lewissilkin.com



Rachel Ward
Managing Associate

+44 (0)20 7074 8040
rachel.ward@lewissilkin.com