

EMPLOYMENT TRIBUNALS IN SCOTLAND FAQs FOR WITNESSES

1. Where is the Employment Tribunal (“ET”)?

The Scottish ET offices are in Glasgow, Edinburgh, Dundee and Aberdeen. The ET you will be required to attend is the Edinburgh ET at 54-56 Melville Street, Edinburgh, telephone 0131 226 5584.

2. Do I have to attend?

Your attendance as a witness will normally be a matter of discussion and agreement between us and our legal advisors. If through that process we determine that your evidence is important or even desirable then you are expected to attend.

You should also note that the Tribunal has power either as a result of a request by a party to the proceedings or by its own decision to cite witnesses to attend under threat of criminal penalties if the individual then refuses.

3. When/how many days will I have to attend?

This will depend on the nature of the case but most witnesses' evidence lasts no more than 2 or 3 hours and is usually taken during the course of 1 day.

4. What time should I arrive at the ET?

The hearing is scheduled to start at 10am (subject to any short matters that the Employment Judge has to deal with first) but you are requested to arrive at the tribunal building no later than 9.30am. The ET day is usually 10 am – 1 pm and 2 pm – 4 pm but this will ultimately depend on the Employment Judge of the hearing you are attending.

5. What do I do when I arrive at the ET?

You should report to reception on your arrival. You will be asked for your name, the name of the case that you have been asked to attend to give evidence in and on whose behalf you are attending as a witness. You will then be directed to the relevant waiting room. There are separate waiting rooms for witnesses for the Claimant and witnesses for the Respondent.

Although we will try to decrease the inconvenience to you inevitably caused by your attendance as a witness, it is difficult to predict accurately how long each stage of the tribunal hearing will take so it is possible that you will need to spend a certain amount of time waiting before being called as a witness. There are few facilities provided in the waiting room so it will help pass the time if you bring something to read.

6. Can I sit in the Tribunal hearing and listen/watch the case until I have to give evidence?

In Scotland, witnesses whose evidence is still to be heard are **not** permitted to sit in the tribunal room and you must wait in the waiting room until you are called to give evidence.

7. How do I know when it's my turn to give evidence?

When the tribunal is ready to hear your evidence you will be called to the tribunal room, probably by a clerk employed in the ET office.

8. Do I have to swear on the bible before giving evidence?

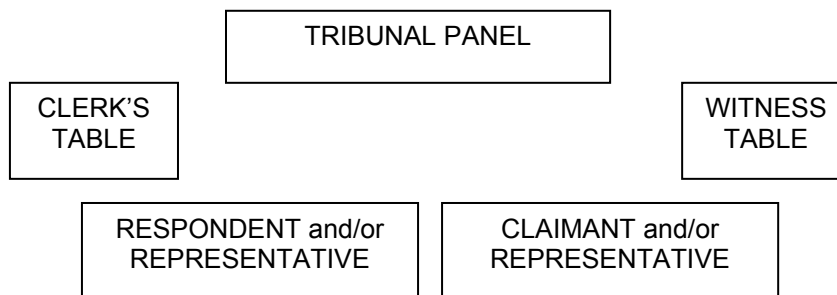
You will have to give evidence on oath or affirmation. If you do not tell the truth after swearing an oath or affirmation you could be convicted of perjury. When you come into the tribunal room, you will be directed to the witness table. You will be asked by the Employment Judge to

stand at the witness table and take the oath or affirm. You do not require to remain standing to give your evidence and will be seated throughout the questioning.

9. Is the ET very formal and where does everyone sit?

The ET is not as formal as a court although there is a structure to the proceedings which is usually followed (see below). Unlike courts, nobody wears a wig or gown. You should, however, dress smartly.

The tribunal room consists of four tables loosely shaped like a square. The tribunal panel sits at the front of the tribunal room. The representatives for both the Claimant and Respondent sit at a table opposite the tribunal panel, with the Claimant sitting on the right hand side of the table and the respondent on the left. A witness table is situated at 90 degrees to and between the tribunal panel and the representatives of the parties to the hearing. The clerk's table is situated opposite the witness table.



10. Who hears the case?

The case is heard by a tribunal panel, comprised of 3 members who will listen to the evidence. These are an Employment Judge, who is legally qualified, and two lay members, who sit on either side of the Employment Judge. Neither lay member will be legally qualified but one will usually have an HR or management background and the other a trade union or employee background.

11. Which side gives evidence first?

Generally in an unfair dismissal case the Respondent will give evidence and call any witnesses first, while in a discrimination case the Claimant will normally be first to give evidence followed by any witnesses. However, there is no absolute rule as to which side starts and this will be discussed with you before the hearing begins.

12. How will I give my evidence?

In Scotland, you will first be asked questions by the person presenting the case for the party that has called you as a witness, to draw out your evidence; (this is called "examination in chief"). Once (s)he has completed their questioning, you will be questioned by the other party/parties or their representative(s); (this is called 'cross-examination'). Once that is completed, the person who questioned you first will again have the opportunity to question you further should (s)he wish, in order to clarify matters which came up when being asked questions by the other side; (this is called "re-examination"). Finally, the Employment Judge and members may ask you some questions in order to clarify any points about which they are unclear.

Once the tribunal is satisfied that no more questions require to be asked you will be informed of this by the Employment Judge and you may sit in the gallery to listen to the rest of the case or leave the tribunal room.

The same procedure is then usually followed for the other witnesses and then with the witnesses for the other side.

Once all the evidence has been heard, both sides can sum up before the tribunal retires to consider their judgment.

13. Can I refer to my own notes?

Almost certainly not. A full pack of papers which is called an Inventory of Productions will be put together and will be sitting on the desk in front of you. These are the papers which are referred to in the case. During the preparation phase (see 14 below), all these documents will be identified so it is vitally important that any papers which you wish to refer to are inserted into that pack. There are, however, certain exceptional circumstances where additional papers can be referred to. Where this happens, arrangements will be made to photocopy these papers so that they are visible to all three Members of the Tribunal and all parties in the case. Please be alert to the fact that if you want to refer to a note which you regard as private then it will cease to have its private status as soon as you refer to it.

14. What preparation will I get/need to do?

Arrangements will be made for you to attend a preparation meeting (perhaps more than one), when the issues in the case will be discussed in depth, a strategy for the case will be developed and you will be given a full indication as to the questions that you are likely to be asked and the papers to which reference is going to be made. It is very important that you attend any such meetings as otherwise, neither the case nor you will be adequately prepared.

A copy of the Inventory of Productions will normally be made available to us no later than 14 days before the case is due to start. You will be provided either with a copy of that whole bundle of papers or the sections of it which are referable to you. It is very important that the papers within that bundle, which are referable to you, are familiar to you by the time the Hearing starts. For example if you were an Investigating Officer and prepared an Investigation Report or a Disciplinary Officer and convened a Disciplinary Hearing then you have to be extremely familiar with that Report or the set of Minutes of the Hearing so that your evidence represents an accurate narration of what happened. In Scotland (unlike in England) you are not referred to a written statement which you can read. Your evidence has to be reasonably spontaneous in answer to questions asked of you. Accordingly, you have to be very clear as to what evidence you intend to give and to make sure that that evidence sits neatly with the documents that are being read by all the parties involved in the case.

15. Is the decision in the case given immediately after the end of the hearing?

The tribunal may reserve its judgment, in which case, it will be sent out in writing at a later date. This may happen in complicated cases or if there is not enough time on the day of the hearing to come to and announce the judgment. Alternatively, the Employment Judge will announce the judgment at the end of the hearing.

16. Can members of the public attend ET hearings?

Almost all hearings are open to the public.

17. Can I recover expenses in attending the ET to give evidence?

You may be entitled to travelling costs and other allowances when going to a tribunal hearing. You can download a copy of the guidance leaflet "Expenses and allowances payable to parties and witnesses attending an Employment Tribunal" at http://www.employmenttribunals.gov.uk/publications/documents/ExpensesLeafletamendv.410.06.rtf1_ETS_guide.doc for information on what you are entitled to. You can also obtain this from the Employment Tribunal enquiry line 0845 795 9775 or any tribunal office.