



Introduction

For many Clients, giving evidence at an Employment Tribunal Hearing is usually the first time they have been in a Courtroom. Naturally, this can be quite a daunting and stressful experience, particularly when individual or corporate finances and reputation are at stake.

Whilst we cannot coach Client's on what to say we can explain the process and how to give the best impression of yourself during evidence. The purpose of this guide is to help you prepare for being a witness so that when you give evidence it does not feel like a step into the unknown.

Employment Tribunal

This section is about the layout of the Tribunal and how the Tribunal process works.

Arrival

Firstly, most Tribunal buildings require you to go through a search and metal detector. You will not be allowed to bring aerosols, sharp objects or any other hazardous objects into the Court. If you have some on you, they can be left with security and picked up when you leave.

Once you arrive you will need to get to the appropriate waiting room. There will usually be a room for both parties to wait in to avoid any awkwardness and allow private discussion with Representatives. A Clerk will then come into the room and ask for the party's names and what Oath they will be swearing – Bible, Quran, affirm etc. – the choice is yours depending on your religious beliefs.

Like any important occasion it is crucial that you are early. Being late will immediately give off the wrong impression to the Judge and Tribunal staff – who are keen to save the Tribunal's time, money and resources. It will also cause you to feel flustered or stressed which is the exact opposite of how witnesses should be feeling prior to giving evidence.

Tribunal Hearings usually start at 10am. Arriving for 9am will allow you time to get through security, get to the appropriate room and discuss any questions with your Representative. It will also afford time to re-read your statement and refresh your memory of some of the key documents in the bundle.

Layout

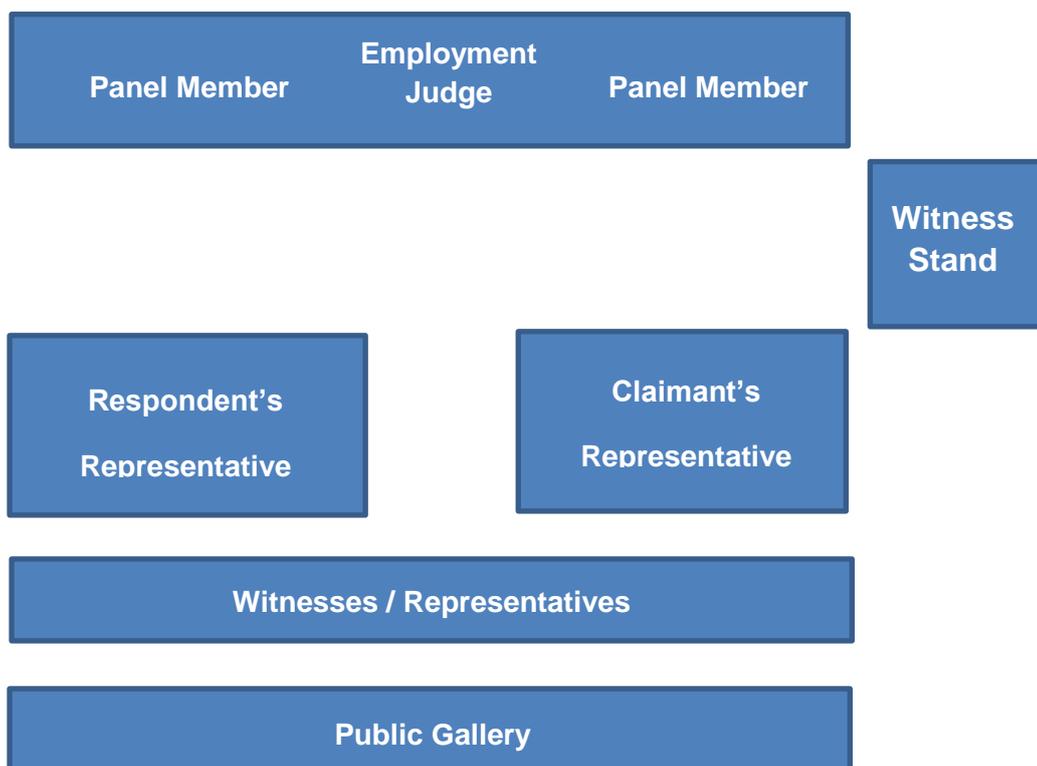
Tribunal Hearings are more informal in comparison to other Court environments. The layout of a typical Employment Tribunal is usually similar to the diagram below.

In some Tribunals the witness stand will be on the left, right or even centre of the room and in some cases the room may also be used for Crown proceedings so there will be a vacant jury bench.

The Employment Judge will nearly always be sat at a table that is level with the parties. They will not be towering over you like in stereotypical TV Dramas!

You can choose to sit either next to your Representative or on the bench behind. If you are the lead witness, then it is recommended that you sit at the front so you can discuss any issues that may arise with your Representative.

There is a public gallery at the back of all hearings but in most Tribunal Hearings this will only be used by the friends, colleagues and family of the parties involved in the case.



Judge, Panel and Legal Representatives

The Judge will enter the room from a separate door to you at the back of the room. As stated above, the Judge will most likely be sat on the same level as the two parties. Unlike other Courts, the Judge will not be wearing a wig and gown, instead they will be wearing formal business wear.

If it is a discrimination claim there will be two panel members to assist the Judge. They will be in suits or smart clothing as well.

Like the Judge, Representatives will be in smart clothing and not wigs and gowns. If you have more than one Representative – such as a Barrister and a Solicitor – then the Solicitor will sit with the Barrister with the other witnesses sat behind.

Waiting

Throughout the hearing, there may be several instances where you are waiting around for a prolonged period. For example, on the first day, the Judge may call everyone in and then excuse them so the Judge can read all the relevant documents and witness statements.

During this time, you can either wait in your designated room, or, time permitting, leave the Tribunal and grab something to eat and drink. If you do leave the Tribunal be sure to leave enough time to get back to the Tribunal and through security.

Basic Rules

To ensure witnesses give the best impression of themselves there are a few basic rules.

Witness Statement and Bundle

In many cases, the events in question date back several months, or even years. Therefore, you will be forgiven for not having all the facts at the front of your mind. A well drafted witness statement should not only refresh your memory of the events but may also provide many of the answers to the questions being asked of you.

You must ensure that any relevant documentary evidence is disclosed.

Make sure you re-read your witness statement and key pieces of evidence before the Hearing so it is fresh in your memory. This will be very helpful throughout the Hearing

Presentation

Like a job interview, first impressions are important. Looking and dressing smartly will give a good first impression to the Employment Judge. A suit or smart clothes and tidy hair will help portray you as the honest, reliable person that you are.

On the other hand, tracksuits, jogging bottoms and other inappropriate clothing will not give a good first impression so be sure to dress for the occasion. Look the part, be the part!

Language

It is crucial that you are polite to all staff in the Court. Security guards, receptionists and Clerks are all colleagues of the Judge. If you are rude to the Clerk, then the Judge will more than likely hear about it before even the Hearing begins. Good manners cost nothing.

When speaking to the Judge, or panel members, address them as Sir or Ma'am. Calling them anything else is deemed impolite and may annoy the Judge.

When speaking to the other side's Representative be polite and civil. You may not agree with what they are saying but do not be rude.

Whilst giving evidence it is important to speak both clearly and slowly. The use of slang words is also discouraged. The Judge will be taking notes of everything that is said and these may be inaccurate if you do not express yourself clearly. A good rule to follow is watch the Judge's pen, if they are furiously scribbling, pause to let them catch up and take accurate notes.

Finally, when not giving evidence, if the other side's witnesses say something that is upsetting or untrue do not heckle them. This will not only annoy the Judge but may result your case being dismissed for unreasonable conduct. This could result in a costs award against you.

Body Language

You will most likely be nervous when giving evidence but try not to let it show. Having neutral, confident and open body language will portray you as the honest person you are.

Fidgeting and twitching may be a sign of nervousness but it is also a sign of dishonesty. Sitting up straight with your hands on your lap is a guaranteed way to avoid negative body language.

When answering questions, turn and face the Judge so they can see your face. When listening to a question turn and face the person asking it. Making eye contact is another great way to show that you are not lying and are confident in your answers.

People who are confident immediately appear more honest and trustworthy. You have not lied, are not going to lie and therefore have nothing to be unconfident about so let that show in your answers.

Some questions may ask you about deeply personal or sensitive subjects. For example, if you are called a liar that is obviously very offensive and it is okay to show a moderate degree of emotion, however do not become aggressive.

Likewise, you may be asked about something that is upsetting - it is okay to cry, Judges are human and understand that many people will get upset. However, do not cry at the drop of a hat. Crying about an injury sustained to a colleague or a battle with mental health is fine – crying when being asked about what you had for lunch isn't!

Breaks

Whilst giving evidence there may be a break for several reasons. Whether it is a toilet break, lunchtime or the end of the day a witness giving evidence remains under Oath. It is vital that you do not discuss your evidence, or the case in general, with anyone outside the Tribunal whilst under Oath. This includes your Representative and other witnesses.

Ignoring this warning could result in your case being dismissed and costs being awarded against you. Furthermore, it is also imperative that all parties do not post about the case on social media until the conclusion of the Tribunal for the same reasons.

Giving Evidence

Depending on the type of case you are involved in will determine whether the Claimant or Respondent's witnesses go first. At some point, evidence from all witnesses will be heard. Here is the order of proceedings when you give evidence.

Oath

You will walk up to the witness stand. Remain standing and say the Oath you chose to swear by before the entering the Tribunal. Do not worry about fluffing your lines, the Oath will be written on a card for you to read out.

Evidence in Chief

After you have taken your Oath, your Representative will ask you to confirm your identity and that the witness statement in front of you is your own and is the truth.

There may be a few further supplementary questions that have arisen between drafting the statement and the beginning of the Hearing which will also be asked here.

Cross Examination

The main part of giving evidence. This is where the other side's Representative can ask you about the facts of your statement. The Judge may also ask you some questions and will interject as and when they see fit.

During cross examination, it is important that you are polite, clear and truthful when answering questions. If you disagree, say so, but do it politely. Always answer the question put to you and do not answer a question with a further question.

Some Representatives ask very longwinded questions to try and confuse you. If you do not understand, ask them to repeat it. If they refer you a document or page of your witness statement, ask to read it before answering.

They will want to rush you to make you nervous and cause you to make mistakes, don't let them. Take your time, read the relevant evidence, have a sip of water and compose yourself before answering.

If you do not remember the events in question then say so, some of these events will be several years ago and the Judge will not expect you to have a photographic

memory. Likewise, if you remember something very clearly, elaborate in your answer. Vivid details demonstrate that your recollection of events is accurate.

However, do not ‘forget’ something just because it is inconvenient or displays you in a negative way. This will make you appear dishonest and evasive. The Tribunal knows that people are not perfect so tell the truth even if it does display you in a bad light. In the long run it will make you appear to be a more credible witness.

Some questions will try and lead you to a certain answer or put words in your mouth. If this happens then answer the question, but in a manner that obviously shows you do not agree.

The table below is a list of common techniques used to try and rattle or trip up a witness.

Common cross-examination technique	Bad answer	Good answer
Asks a question on a sensitive issue	Is aggressive or rude	Shows emotion but does not go too far
Asks if something is possible	Says it is.	Says it is possible but the that possibility is slim
Will say something is right	Will say it is right without reading the evidence	Will read the evidence then comment on whether something is right
Will ask a series of questions about whether something is reasonable	Will blindly agree	Will say that it is reasonable but their conduct was just as reasonable as the question
Will ask an unflattering closed question that can only be answered yes or no	Will avoid it and appear evasive	Will answer the question and elaborate to explain themselves
Will ask a series of confusing questions	Will give a muddled answer	Will ask the representative to rephrase their question and answer it clearly
Will leave an awkward silence between questions	Will babble nervously to fill the time	Will remain silent – have a drink of water

If you make a mistake and give what you think is a bad answer, do not worry or let it unsettle you. There will be a chance to clear up any 'bad answers' in re-examination at the end.

Their Representative will be trying to unsettle you so try and play them at their own game:

1. If there is a question you can confidently answer, tell them it is a good question and you are glad they asked it, then go into detail.
2. Don't let them rattle off questions like machine gun fire, take your time.
3. If you know of a document that disproves their question direct them to it.
4. Smile at the person asking the question, show that you are not rattled or nervous.

If you are asked an unreasonable question, your Representative, or the Judge, will object. Do not answer the unreasonable question, wait until you are asked a suitable question.

Re-examination

Once the other side's Representative has finished cross-examining you there will a chance for your Representative to re-examine you on any issues that arose during cross-examination.

A sign of a good witness is very few questions being asked during re-examination. However, do not be disheartened if there are some - we are only human. Once this is done the hardest part of any litigation, giving evidence, is over and you will be free to leave the witness stand.

After Giving Evidence

The hardest part is now over. You might even be able to leave the Hearing and go home, if you wish.

If the other side still have witness evidence to give, you can stay and assist your Representative. During their cross-examination, they may say something that you know to be untrue. You can put this in a note to your Representative and they may ask the other side's witness about this.

However, do not be disheartened if they do not ask this question right away, or at all. They may save the question until the end of examination or decide not to ask it if they feel the

witness will give an answer that does not further your case. Remember, they are skilled at examining witnesses and have done numerous Tribunal Hearings. They will usually explain their decisions to you during the next break.

Once all the evidence has been examined each Representative will give their submissions and then the Judge will either give a decision at the end of the Hearing or at a later date when they have had time to consider each side's case.

Summary

If you follow this guide, then giving evidence during a Tribunal Hearing should be a lot less stressful than you might have thought. In summary, to ensure you give the best account of yourself at the Hearing, make sure you:

1. Arrive early
2. Be polite
3. Speak clearly
4. Be presentable, both in appearance and body language
5. Answer the question put to you
6. Take your time
7. Tell the truth

If you have any further questions about giving evidence, please contact us.