

# **EMPLOYMENT TRIBUNALS - TAKING YOUR OWN CASE**

- 1 Submitting the Claim**
  - Time Limits
  - Preparing your statement
- 2 The Employer's Response**
- 3 The Role of ACAS**
- 4 Gathering Evidence**
  - Witnesses
  - Records and Papers (Further Information and discovery)
- 5 Valuing your Claim - Negotiating a Settlement**
  - Basic Award
  - Compensatory Award
  - Contributory Fault
  - Example Valuing a Claim / State Benefits*
- 6 Preparing for the Hearing**
  - Tribunal Checklist
- 7 Tribunal Procedure**
  - Order of Evidence
  - Cross Examining
  - Giving Evidence
  - Witnesses
  - Closing Address
  - Example*
- 8 Compensation**
- 9 Costs**
- 10 Appeals**
- 11 Enforcement**
- 12 Bankrupt Employers**
- 13 Other Types of Tribunal Hearing**

## **Introduction**

The Law Centre has more requests for representation at Employment Tribunals than it can cope with. This Guide has been written to help employees represent themselves with a little advice and assistance from us. It covers the main points of tribunal procedure. It does not deal with employment law.

Taking the case yourself will not necessarily put you at a disadvantage, even if your employer is represented legally. Tribunals have a relatively simple procedure and are used by employees who do not know the ropes: they will ensure you get a fair hearing. The Tribunal will try to ensure your case is brought out by appropriate questioning of you, your employer and any other witnesses. Many Claimants at tribunals are unrepresented.

Your alternative is to pay for a solicitor to represent you. If you wish to do this, you should instruct a solicitor in good time - sooner rather than later. The Law Centre can help you find a solicitor if you do not already have one. Charges could be between £1000 - £5000 or more depending on the complexity of the case. It is very unlikely you will recover these costs even if you win. Some solicitors operate no win no fee arrangements.

This Guide is an outline of the main points, which may arise, in a straightforward case. Not all of it will be appropriate for your particular case; equally, you may meet complications, which are not dealt with here. The Guide concentrates on Unfair Dismissal cases, and the procedure is generally the same for other types of claim, such as Redundancy. Whilst a tribunal hearing about unfair dismissal may often last all day or occasionally longer, claims for money due, e.g. holiday pay and notice pay, are simpler, and are often dealt with in an hour or so.

The Law Centre will advise you individually as appropriate. You should contact your caseworker as and when you need advice as your case progresses.

## **1 SUBMITTING THE CLAIM (Form ET1)**

### **Preparing your statement:**

A witness statement is simply the witnesses' story about what happened. It is always best to get your story down in writing as soon as possible and before you complete your application to tribunal. There is a separate Law Centre fact sheet entitled 'Preparing a statement'. You should read this before you start your statement. Your statement will alter as your case progresses as you will need to amend the statement to take account of any facts that the employer raises in their response (form ET3).

Once you have prepared the first draft of your statement you should let us see it so we can check it and comment on it. Once the first version of your statement is finalised you can then use this to prepare your application to the tribunal.

The Law Centre can give you an *Application to Employment Tribunal* form, or you

can get one from a Job Centre. They come inside a booklet called 'How to apply to an Employment Tribunal'.

Keep what you say on the application form simple. **Summarise** the facts of what happened from your statement and then say why you think you have a claim, for example why the dismissal was unfair. You will have the opportunity to go into detail about your claim when you read out your full statement at the hearing. If you want the Law Centre to check your ET1 before you submit it we can do. We will also need to see your statement and any relevant documents when we check it.

Once you have completed your application then **photocopy it** before sending it to the relevant tribunal office. If you worked in postcode areas S1-S81, then send it to:

Office of Employment Tribunals  
14 East Parade  
Sheffield S1 2ET  
Tel: 0114 276 0348                      Fax 0114 2762551

If you worked elsewhere send it to the address indicated in the 'How to Apply to an Employment Tribunal' booklet.

You can also apply on-line by going to the employment tribunal website at [www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk)

### **TIME LIMITS:**

Most claims must be **received at the tribunal** within 3 months of your last day at work, so do not delay. However, if you are still involved in either dismissal or grievance procedures with your employer at the time the 3 months is up, your time limit may be extended by a further 3 months. If you are in any doubt about when the time limit is, phone the Law Centre for advice about this.

If you are in doubt about whether you want to pursue your claim but are near the time limit, submit a claim - you can always withdraw it later if you decide not to pursue it. Late claims are rarely accepted.

## **2 THE EMPLOYER'S (Respondent's) RESPONSE (Form ET3)**

You will probably receive a copy of their response - called a Response Form (*form ET3*) - within 2 to 4 weeks of submitting your claim.

Go through it carefully: which parts do you agree with; which do you dispute? You now need to make the first set of amendments to your statement to cover any points that have been raised in the ET3 that you either disagree with or that you haven't covered already in your statement.

If we have agreed to assist you, and if you want to discuss the case with us, send us copies of Forms ET1 and ET3 along with your amended statement. We can then

discuss it with you - probably over the phone or we may write to you - and advise on the next steps including any extra points we think need to be covered in your statement.

You are normally notified of a date for your hearing a few days after you receive the ET3. In practice you normally get between 2 and 4 months notice of a hearing if your case is at the Sheffield tribunal office.

### **3 THE ROLE OF ACAS**

Your application and the employer's response will be sent to ACAS - the Advisory, Conciliation and Arbitration Service. A Conciliation Officer will contact you to see if a settlement can be negotiated.

Using Section 5 of this Pack, you can calculate what a reasonable settlement would be, and you should tell the ACAS officer what you are looking for: for example money, a reference, re-instatement. If you want to check the settlement figure that you have calculated with us, you can phone us, or better still send us a copy of your calculation for us to check.

In the last few years ACAS has introduced a special arbitration scheme for cases as an alternative to the employment tribunal. To use this scheme both parties must agree. The scheme is designed to be quicker, less legalistic and more user friendly. If you want advice about this scheme please phone us.

### **4 GATHERING EVIDENCE**

You need to think carefully about what evidence you can collect to support your case.

**a) Are there any witnesses who would come to the Tribunal to speak for you to back up any relevant points that are in dispute?**

Generally only people who saw or heard what happened can give evidence. The Tribunal will not be impressed by general character references or testimonials; nor will they normally attach much weight to written statements from people who do not also attend the hearing, unless the person is ill or away for some good reason. If possible you should work with the witness to help them prepare a written statement that they can read out at the tribunal.

In practice, the commonest categories of witnesses are ex-colleagues. For obvious reasons, people still working for your employer will be reluctant to speak up for you. In most cases the employee doesn't have any witnesses.

It is possible to ask the Tribunal to issue a *Witness Order* requiring someone to attend. This should only be done if:

- their evidence is crucial
- there is no other way they are willing to attend
- you are confident they will support your case at the Tribunal

***ELFS 14: Employment Tribunals - Taking your own case, page 5***

- you apply in good time - at least 3 weeks before the Hearing; earlier if possible.

If you want to apply for a Witness Order, write to the Tribunal giving the full name and address of the person concerned and explain why their evidence is important in your case. You should also explain that they will be unwilling to attend unless a Witness Order is made.

A witness can claim expenses for their attendance at the Tribunal. They should ask the clerk for a claim form at the hearing.

**b) Discovery and inspection of Documents which you want in the bundle.**

Are there any *Records* or *Papers*, which would help your case?

You probably have some of these yourself, for example a Warning or Dismissal Letter, or a pay slip. You may have kept a diary or notes of what happened at the time.

More commonly, your employer will have documents which may be helpful. You should write and ask for what you need and give a date 3 weeks from the date of your letter for the employer to respond. If your employer does not reply within the time limit you have set, write to the tribunal enclosing a copy of your original letter and ask the Tribunal to issue *Orders for Discovery and Inspection of documents* so that the employer has to send copies to you. Again, this should be done in good time, soon after you receive the employer's response. If you leave it too long the tribunal may not make the orders.

Typical documents to ask for include:

- your contract of employment, or statement of terms and conditions
- disciplinary and grievance procedures applicable to you
- your Personnel Record, and copies of any Warnings

Depending on what the case is about, you might also want copies of, for example:

- time sheets or job cards
- minutes of a disciplinary meeting
- complaints from customers

You should also always ask for copies of any documents the employer intends to rely on.

**c) Do you need any further particulars from your employer?**

If the employer's response is vague, you should write, again with a time limit 3 weeks from the date of your letter and ask for *Further Particulars* (i.e. more details) of it. For example, if your employer claims that you were selected for redundancy "after consideration of such factors as performance, skills and past

record", you could ask:

- how was the information collected?
- who considered it?
- who else was considered for redundancy?
- what information was used to assess me?
- how did I rate compared with others?
- what skills or other factors were taken into account?

As before, if the employer doesn't reply, send a copy of your letter to the Tribunal and ask the Tribunal to issue an *Order* requiring the employer to supply the further particulars.

If you are requesting discovery/inspection and further particulars you should make your requests in the same letter.

d) **Further Information.**

If there are other points which are not mentioned in the ET3 about which you require more information you can ask for the employer to provide answers to specific questions you ask. As with your request for further particulars, give them a time limit and ask for an order to supply Further Information, if they don't respond.

## **5 VALUING YOUR UNFAIR DISMISSAL CLAIM - NEGOTIATING A SETTLEMENT**

The ACAS Conciliation Officer will act as a go-between and help both sides negotiate a settlement, but how do you know how much your claim is worth? An exact value can rarely be given, but there are clear guidelines to help you.

At the end of the day, unless you are seeking re-instatement or re-engagement, the Tribunal can only give you money: however outrageously your employer has behaved, the compensation you receive will only reflect your financial losses, not the distress and trauma that unfair treatment can cause.

There are two main elements (apart from some special cases) to compensation, the basic award and the compensatory award:

a) **The Basic Award**

This is calculated in the same way as for Redundancy Pay. It is paid in respect of your past service according to a simple formula:

- half a week's pay for each full year of service between age 18 and 21
- one week's pay for each full year of service between age 22 and 40
- one and a half weeks' pay for each full year of service between ages 41 and 65

A week's pay, for this purpose, means your gross basic pay, before stoppages, up to a maximum of £330.00 at March 2008 (this is usually increased each

year).

You can claim for up to 20 years' service, counting backwards from the date of dismissal (or the end of when your statutory notice period would have run out if you were dismissed without the proper notice).

**b) The Compensatory Award**

This is designed to compensate you for the amount you have lost as a result of your dismissal. It can vary enormously, up to a maximum of £60,600. (From Feb 08 – this figure increases slightly each year. S124 ERA 1996.)

It may be nothing at all. For example, if you get another, better paid, job straight away, you will, financially, have lost nothing (though you will still get the Basic Award).

The main ingredient of this Award is usually:

**Loss of Wages**

This is calculated on your average take-home pay (the amount left after deductions for tax and national insurance). If this varies, calculate the average over the three months prior to dismissal.

What period should you be compensated for?

- If you get another job, up to that date. If the new job pays less, then compensation as well for the future continuing loss.
- If you are still out of work when it comes to the Tribunal hearing, or are in a lower paid job, the Tribunal will have to estimate how long it may take you to get work or to get work at similar pay to what you were earning before. Depending on your age, skills and job situation this is typically anything between a few months and a year. To persuade the Tribunal to give you as long a period as possible, it is important to be able to give specific evidence of your attempts to find work. (The legal jargon is mitigating your loss). So, start to keep a detailed daily record now of every job you ask after, every visit to the Job Centre, and so on. Keep all letters you receive from employers to whom you have applied for work. You must remember to take all this information with you when you go to the Tribunal. There is a law centre fact sheet called 'Mitigating your loss' which tells you more about this. **Proving that you have mitigated your loss is very important.**

**Other items that you may be compensated for include:**

- **Fringe benefits** - Company car, health insurance, discounted goods, etc. You will have to make an estimate of the value of these benefits. you can talk to the Law Centre about this if you need to.
- **Expenses** for moving, or going on a Training Course to get a new job.
- **Pension Rights**. These can be very valuable; you should take advice.

- **Loss of Statutory Rights.** This compensates you for the fact that it will take a year in a new job before you are legally protected again. About £250-£300 is normally allowed, even if you have no other losses.
- **Loss of Long Notice.** If you have worked with your employer for longer than 6 years, you may be compensated for the fact that it will take this long to accrue your right to a long notice period. The formula is  $\frac{1}{2} \times$  years of service  $\times$  weekly take-home pay (subject to a maximum of 12 years' service).

**c) Contributory Fault**

Even if you win, the Tribunal may still reduce your compensation if they decide you contributed to some extent to your dismissal. Your compensation may be cut by 25%, 50% or more if you were partly to blame.

**d) Chances of Success**

Once you have worked out some estimates for the figures above, you still have to consider whether you are likely to win. After all, if you lose, you get nothing. If you think, or are advised, that your chances of winning are low, then it may be sensible to accept even a small offer, however big your losses. Many firms will offer £100 - £500 simply to avoid the expense, inconvenience and publicity of going to a Tribunal.

**AN EXAMPLE**

*This may help make the calculations clearer:*

*Anne is a secretary dismissed in April for poor work after five and a half years' service. She is aged 44. She had two written warnings, the most recent in November, but was actually dismissed whilst on holiday - Her dismissal letter was waiting for her on her return! She took home £250 pw on a gross wage of £300.*

**a) Anne's Basic Award**

*3 years over age 41:*

*3 x 1 ½ ; weeks x £300 gross pay . . . £1350*

*2 years age between 22 & 41:*

*2 x 1 week x £300 gross pay . . . £600*

*Total = £1950*

**b) Anne's Compensatory Award**

- i) Loss of Wages:** *Anne has tried for a job but has been unsuccessful so far, save for a few weeks' temporary work.*

*Period from dismissal to Tribunal hearing*

- *15 weeks' loss at £ 250 pw . . .£3750*
- *less 4 weeks' earnings at £100 pw i.e. less £400 = Total = £3350*

*Future Loss: Depending on the Tribunal's assessment, this could typically be*

	<i>13 weeks at £250 pw . . .</i>	<i>£3250</i>
ii)	<i><b>Fringe Benefits:</b> Anne used to be able to book discount holidays, at a saving of £200 per annum . . .</i>	<i>£200</i>
iii)	<i><b>Loss of Statutory Rights . . .</b></i>	<i>£300</i>
	<i><b>Total of Basic and Compensatory . . .</b></i>	<i><b>£9050</b></i>

**c) Contributory Fault**

*The Tribunal are likely to find Anne to blame at least to some extent, since she already has one Written Warning:*

*Perhaps between 25% and 50% reduction, say 50%: ... £4525*

**d) Chances of success**

*Anne is likely to win, on procedural grounds alone. No one should be dismissed while on holiday. However, Tribunal decisions can never be predicted with certainty:*

*So, reduce by 10% . . . £452.50*

**Total** . . . . . **£4072.50**

*A settlement of £3000 looks reasonable. In practice, Anne might decide to hold out for £3500, and go to the Tribunal if the company wouldn't pay up; or settle for £2000, especially if prompt payment was part of the deal. Any settlement will in practice be negotiated through ACAS: the Conciliation Officer will tell you what, if anything, the employer is offering, and will tell the employer what you are looking for.*

**e) State Benefits**

*None of the figures used above takes account of Jobseekers Allowance or Income Support. In practice, if you are getting JSA, your loss of earnings will be lower, and you might therefore accept a lower settlement offer.*

One big advantage of agreeing to an out-of-court settlement is that it does not affect your benefit position: you can go on drawing JSA or Income Support. If your compensation takes your savings above £8000 this will affect any means-tested benefits you receive; take advice if this is the case.

If you do not agree a settlement, and the Tribunal awards you compensation, it will order your employer to repay (or recoup) any JSA or income support you have received in the meantime, and your award will be reduced by this amount. This is known as Recoupment.

In practice, most cases settle without going to a Tribunal hearing although often they only get settled during the week of the hearing as both sides are holding out for the best deal.

N.B. If for any reason you are unable to work after your dismissal this is likely to affect the compensation you could receive. The Law Centre can advise you on this.

## **6 PREPARING FOR THE HEARING**

### *Directions from the tribunal on preparation.*

After receipt of the ET3 a tribunal Employment Judge considers your application and the employer's response to consider how complex the case is and decide whether to direct the parties to do certain things prior to the hearing to ensure the case is properly and adequately prepared and is set down for hearing at a time which is convenient for everyone.

In a straightforward case the tribunal will often simply write to you and the employer. This letter will be headed something like 'Directions of the Tribunal'. It will then give both parties instructions about what they need to do to prepare for the hearing and will give deadlines for doing these things. If you realise at any point you are going to have difficulty meeting any of these deadlines you need to let the tribunal know as soon as possible.

If a case is more complicated the tribunal chair may decide to hold a hearing for the purposes of making directions where the parties have an opportunity to discuss these issues with a chair. This hearing may be held at the tribunal office or it may be done over the phone by way of a three-way telephone link. You simply phone the number the tribunal give you and follow the instruction. The tribunal office pays for the call and will provide a written decision setting out the directions agreed at the hearing.

You should contact the Law Centre to discuss anything about the directions you are unsure about if it is unclear from the tribunal's letter or decision.

Even if the tribunal don't direct you to do so it is always a good idea to try and agree a bundle of documents with the other side beforehand. 6 bundles will be needed at the hearing, that is 3 for the tribunal members, one for you, one for the employer and one for the witness table. If the employer is legally represented you should write to the representative asking if they would be willing to prepare the bundles.

The tribunal often orders you to exchange your witness statement(s) with the other side. Again 6 copies of each statement will be required at the hearing. NB You should always try to get everything you want to say into your statement but if you forget to include a point in your written witness statement the tribunal will often allow you to mention it anyway. Witness statements are not usually put in the bundle but are kept separately.

There are several other steps you can take to prepare for a hearing:

- Arrange for a friend to go with you to provide moral support and make notes.

## ***ELFS 14: Employment Tribunals - Taking your own case, page 11***

- Sit in on a tribunal to see what they are like. (Ring the tribunal office 0114 2760348 and ask when a suitable day to attend would be; hearings are open to the public and you can sit in at any time).
- If a plan or photographs would help you explain a relevant point, draw one up or get some taken. Remember to include these in the bundle
- Make sure the bundles are prepared (often employer will do this, particularly if they are represented by a solicitor). Make sure you have enough copies of your statement ready.
- Write a list of the main points which you know you and the other side disagree on. You can ask questions about these during cross-examination at the tribunal. If you have exchanged witness statements beforehand it is much simpler to prepare this list because you know exactly what the other side are going to say.
- Make sure your list of your attempts to find work is up to date and get any letters from employers ready to take with you to the tribunal.
- If you are taking witness(es), check you have contacted them, told them the time and place of the hearing, and confirmed they will attend, and will support you. Serve Witness Orders if appropriate as soon as you receive them, either deliver them personally or post them Recorded Delivery.

### ***Tribunal Checklist***

*On the day, take with you:*

- Pens
- Paper, for note-taking
- Diary or Calendar (to check dates)
- Calculator (to work out compensation)
- Tribunal Papers - letters, etc. from Tribunal
- Bundle(s) of documents
- Your witness statement(s)
- List of cross examination points
- Friend - for moral support

*Aim to arrive half an hour or so before the Hearing. Introduce yourself to the clerk, who will show you where to go. There is a law centre fact sheet on giving evidence at the tribunal. Please contact us if you want a copy.*

## **7 TRIBUNAL PROCEDURE**

Tribunal procedure is controlled by the Employment Judge. They will tell you when to speak, when to ask questions and so on. They are generally called 'Sir' or 'Madam'. If you are in doubt at any stage about what to do, ask the Employment Judge. They will not expect you to know the procedure.

The Tribunal usually decides the case after hearing evidence; that is, statements from the parties and their witnesses given on oath on which they are then cross-examined by the other side.

### **Order of Evidence: Dismissal Cases**

Normally the employer goes first; in a case of Constructive Dismissal (where the employee resigned) or where the employer denies there has been a dismissal, the employee goes first.

After each person gives evidence, they are cross-examined by the other side. They will then be asked questions by the Tribunal members and finally asked if they have anything further to add. (This final bit is called 're-examination')

Although there are technical rules governing how questions should be asked at Tribunals, you will not be expected - as a layperson - to know these. The Employment Judge may stop you if you ask questions that are irrelevant or out of order.

### **Cross-examining**

When the employer's witnesses give their evidence, take note of what they say, especially the major points which you disagree with. You can add any new points to the list of disagreements you prepared before the tribunal hearing.

When it is your turn to ask questions (but not before; don't interrupt), challenge these points. You can say:

- What you said about the morning of the 14th is not correct, is it?
- or* you've told the Tribunal about two of the incidents, but what about the time when....
- or* that's not what you said when you dismissed me; what you said was.....wasn't it?.

Remember that at this stage you are not putting your case across; you are simply challenging the employer's version **by asking questions**. Don't make speeches. Try and keep questions simple. You will get your chance to put your version later.

### **Giving Evidence**

This should be the easy part of your case because you just need to read out your written statement. You should stop along the way referring to any relevant documents in the bundle. The tribunal may interrupt you to clarify points or they may let you finish and then ask for clarification. If you remember something you wanted to say but forgot to include it in the statement you should tell the tribunal this and ask if its okay to mention it. The tribunal will normally be happy with this.

When you are being cross-examined, answer the questions simply and fully, even if they seem pointless or insulting. If you can't remember or don't know, say so; no one will be surprised if you have forgotten some things. Don't bother about looking out for traps; just answer the questions. If you don't understand a question, say so. Don't get into an argument.

### **Calling your witnesses**

If you have a witness, ask them to give their evidence once you have finished yours and you have been cross-examined. If you've helped them prepare a witness statement let them read it out. If not then start by asking them to give their full name and address, then ask their position in the firm, what they were doing at the time, what they heard, and so on. Keep your questions short. Let the witness explain what happened in their own words, not yours. For example, if a key issue is whether you get in to work at 9.05am or 9.35am, don't ask:

Did you see me come into work at 9.05?

Ask: Did you see me come into work? What time was it?

### **Closing address**

At the end of the evidence, each side gets the chance to address the Tribunal to summarise the case. Often, you may have little to say over and above what you have said at the witness table, and you can usually be brief. A long speech is not necessary.

### **The Decision**

If there is time, the Tribunal will normally give you an oral decision there and then followed by a written decision when it's typed up. If it's late, or the case is complex, they may "Reserve the Decision". This means they go away and think about it and you won't know what they decide until you receive a written decision in the post, usually between one and six weeks later.

#### **EXAMPLE**

*A typical case might go like this:*

- 9.30 Clerk sees parties in their (separate) waiting rooms to check they are present, details of addresses, etc.*
- 10.00 Clerk calls parties into the Tribunal Room. Employment Judge asks Employer to begin.*
- 10.05 John Smith, Manager, gives evidence - describes firm, explains why Mary Brown was dismissed.*
- 11.15 John Smith cross-examined by Mary Brown - e.g., "Why didn't you give me a warning?" or: "What you said about my work is not true, is it?"*
- 11.40 John Smith re-examined, Clears up any points of confusion from cross-examination.*
- 11.40 John Smith calls Sheila Black, Supervisor, to give evidence: why Mary Brown was no good at her work, etc.*

- 12.15 *Sheila Black cross-examined by Mary Brown,*
- 12.30 *Re-examination and questions from Tribunal members.*
- 12.45 *Break for lunch*
- 1.45 *Mary Brown gives evidence: explains the nature of her job, any problems, why her dismissal was unfair, how the employer's evidence is incorrect etc.*
- 3.00 *Mary Brown cross-examined by John Smith*
- 3.20 *Re-examined and questioned by Tribunal members.*
- 3.30 *Address by John Smith to Tribunal. why the dismissal was fair; summary of key points of his evidence and argument.*
- 3.40 *Address by Mary Brown to Tribunal: why the dismissal was unfair; summary of key points of her evidence and argument.*
- 3.40 *Tribunal withdraw to consider their decision.*
- 4 .30 *Decision: Mary Brown wins. Jubilation all round (except for John Smith).*

## **Tribunal Procedure: Wages Claims**

Claims which are only for non-payment of wages or notice pay are usually much simpler and shorter than the example above. Although the principles of giving evidence apply in the same way, the Claimant would normally be expected to go first to set out the claim, and documentary evidence - pay slips, written contract and so on will often be important.

## **8 COMPENSATION**

If you win, the decision may set out what compensation, if any, the employer has to pay; or it may leave this to the parties to agree in the light of the decision. If no agreement can be reached, the Tribunal may then fix a date for a further, short, hearing simply to decide the compensation. If there is time on the day they may well decide this then and there. If the tribunal are going to give a decision about compensation You will be required to give evidence about what you've done to 'mitigate your loss' - in other words what attempts you've made to get another job. You will have made a list of these things beforehand which you should now refer to - preferably have 6 copies of it.

## **9 COSTS**

It is possible for the losing side to be ordered to pay the winner's costs in fighting the case, and this is becoming increasingly common. It can only be done if the tribunal rule that a party or a party's representative (not a Law center though) has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by a party has been misconceived.

'Vexatious' means that you have acted out of spite or for a laugh to cause trouble by taking the case, rather than because you want to win and you have no realistic prospect of success whatsoever.

Employers often threaten to claim costs as a way of frightening you into dropping the case. It is not always an empty threat that you can ignore. Ask the Law Centre if you are worried about this.

## **10 APPEALS**

Either party can appeal against the decision, but only on a point of law, not a finding of fact. Decisions on credibility - whose evidence to believe - or fairness are usually questions of fact and so appeals are rare. The Law Centre will advise you if one is appropriate.

Appeals must be made within 42 days of the date the *extended* written reasons for the decision are given. Often only summary reasons for the decision are given so if you are thinking of appealing you should ask the tribunal for extended reasons at the end of the case. If you forget to ask at this stage you have 21 days from the date of the

summary reasons to make your request in writing (keep a copy) for extended reasons.

## **11 ENFORCEMENT**

You've won the case. The Tribunal has awarded you £x,000; the employer hasn't paid. What next?

You have to wait 42 days from the date of the written decision. Then, if full payment has not been received, and providing no appeal is lodged, you can enforce the judgment through the County Court.

The Law Centre can advise you on this. You can also claim interest (8% per annum as at 2008) on the outstanding money.

To enforce through the County Court, you need:

- i) A copy of the tribunal decision;
- ii) An Application to the Court;
- iii) The Court Fee (£35.00 at March 2008) which you can then add to the amount claimed). You may be able to get the court fee waived if you are in receipt of income support or income based JSA.

The County Court will then automatically, without the need for a further hearing, enter the tribunal decision as a County Court judgment. You can then use any of the methods available through the Court to collect the money. These include:

- A. A warrant of execution: the court bailiff is instructed to remove and sell enough of the employer's goods to pay the amount of the award and the costs of sale. You should read the county court leaflet entitled 'How do I ask for a warrant of execution'.
- B. Attachment of earnings order: this is sent to a defendant's employer. It allows the employer to deduct a set amount from the defendant's earnings each day and send this to the Court's collections office.
- C. Third party (or Garnishee) debt order: This is usually made to stop a defendant taking money out of his bank account. The money owed for the tribunal award is then paid from this account.
- D. Charging order: This prevents the defendant from selling his assets (such as property, land or investments) without paying what is owed to you.

In practice, small sole trader employers may be given time to pay by the Court, and extracting the money can be a long, drawn out process.

## **12 BANKRUPT EMPLOYERS**

If your employer goes bankrupt, or is insolvent, the National Insurance Fund (NI Fund) can pay out some of the money due. They will pay for your:

- Redundancy pay (or the Basic Award in an Unfair Dismissal Claim)
  - Pay in lieu of notice
  - Up to 8 weeks arrears of pay, and outstanding
  - Holiday pay.
- A. If a Liquidator or Receiver has been appointed, they will normally process the claim for you. If not, you may be able to claim from the Redundancy Payments Office by completing form RP1, – telephone the RPO Help line on 0845 145 0004 for further details.
- B. If no receiver or Liquidator has been appointed but the firm has ceased trading, you will be able to claim only a redundancy payment from the NI Fund

### **13 OTHER TYPES OF TRIBUNAL HEARINGS.**

In some cases, prior to the main hearing of your case, there may be other hearings such as a directions hearing, a pre-hearing review or a preliminary hearing. You will not know about this because you will receive a notice of hearing from the tribunal and it will say on it what type of hearing will take place. Should you be notified of such a hearing you should telephone us to let us know and we can talk through with you how to deal with these different types of hearing.

This Guide will hopefully help you to successfully bring a claim in the employment tribunal. If you have any queries during the course of bringing the claim, you can telephone the Law Centre and we will do what we can to help you.

Good Luck!

*Updated March 2008*