



Preparing for Industrial Tribunal

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Advisory Officers, at the Employment Relations Service, can offer confidential and free advice on all aspects of employment law and employment relations.

Overview

What is an Industrial Tribunal?

The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993 allows for disputes between employers and employees (or between an employee and employees) to be referred, through the Industrial Disputes Officer (IDO), for resolution by a third party, voluntarily by conciliation or arbitration or ultimately by a compulsory independent Industrial Tribunal. This is distinct from the Employment & Discrimination Tribunal which deals with complaints relating Unfair Dismissal, Sex Discrimination and Minimum Wage.

Referral to an Industrial Tribunal usually follows a period of conciliation which has also been unable to resolve the dispute.

Sometimes parties will opt for Voluntary Arbitration rather than Tribunal. Voluntary Arbitration is a long standing method for settling disputes and is often regarded as the last means whereby the parties can voluntarily agree to resolve a dispute. The parties (jointly) ask a third party to make a decision on a dispute which the parties have been unable to resolve themselves and agree to be bound by the decision. Further information on this process can be found in the Employment Guide “Collective Arbitration.”

If the Parties cannot agree to voluntary Arbitration, then the matter can be referred by the Industrial Disputes Officer, to an Industrial Tribunal. The Industrial Disputes Panel is made up of 16 persons, eight representatives of employees’ organisations and eight representatives of employers’ organisations. When a dispute is referred to a hearing, one representative from each side, together with an independent Arbitrator drawn from a panel of experienced employment Arbitrators maintained by ACAS (the UK’s Advisory, Conciliation and Arbitration Service) who will be brought in from the UK specifically for the hearing, to act as Chair, will form the Panel appointed to resolve the dispute with a legally binding award.

How does an Industrial Tribunal Work?

Parties (either individually or jointly) notify the Industrial Disputes Officer of a dispute. The IDO will offer the parties conciliation to try and reach agreement between them. If the IDO is satisfied that dispute can be accepted under the Law, that agreement cannot be reached and the Parties do not wish, or cannot agree, to use voluntary arbitration, he will refer the matter to an Industrial Tribunal to resolve the dispute under the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993. The decision of the Tribunal is legally binding.

So that everyone involved understands what the Tribunal is being asked to decide, the IDO will deliver "Terms of Reference" to the Tribunal. Wherever possible, the terms of reference may be drafted in conjunction with the parties; however, the IDO has the duty to deliver terms of reference and can do so without the agreement of the parties if necessary.

A Secretary will be appointed who will be responsible for facilitating the process, co-ordinating dates for the hearing, exchanging the cases and for the general administration of the hearing.

Note: All communication between the parties and the Tribunal should be made through the appointed Secretary.

A Tribunal hearing is arranged by the Secretary, on a date and at a venue that is convenient to the parties. Usually, the venue is a location that is neutral to the parties i.e. a hotel or conference facility. Each party is required to prepare a statement of its case. The cases are normally exchanged no less than seven days before the date of the hearing (see "Preparing for Tribunal" later in this booklet). A copy of each side's case will be forwarded to the Tribunal, via the Secretary prior to the hearing.

The hearing is held in public. The parties are free to choose who they wish to represent them, but in most cases they normally choose to be represented by those responsible for, or involved in, negotiations.

The decision of the Tribunal will usually be announced in **public** by the Tribunal following an adjournment after the Hearing has closed. Written confirmation of the Award will be distributed to interested parties, by the Secretary, following the announcement by the Tribunal.

Preparing for Tribunal

Why Prepare a Written Submission?

The Tribunal will approach each case impartially and with a completely fresh mind. Therefore, while the parties may have lived with a problem for weeks or even months, the Tribunal, at the outset, will need to be given full background information and to be made aware of all the relevant arguments and counter-arguments, directly related to the issues identified in the terms of reference.

By providing as clear and complete a written case as possible, with the resources available, the parties will be able to assist the Tribunal to form a clear picture of the situation and the problem in advance of the actual hearing.

It has been known for the exercise of writing a case down to focus the parties' minds, causing them to re-appraise their positions or even agree a settlement of the dispute prior to the Tribunal hearing.

What Should be Included in the Written Submission?

The written submission should be as brief as possible but it should still include a full presentation of the case. This is not a legal document and should present the case in plain and understandable language.

Included in the written submission should be:-

1. Brief background information about the organisation and its activities, union representatives etc.;
2. A brief history and background to the dispute, including an account of the sequence and outcome of any relevant meetings or discussions; (a timeline is often helpful to the Tribunal)
3. A section setting out the arguments supporting or opposing the offer or claim;
4. A brief summary of the key points which brings together the essential points that the Tribunal is being asked to consider;

5. Copies of any relevant agreements, procedures or rules should be attached as appendices. If there is agreement between the employer and the staff representatives or trade union on 1 and 2 above, it may be convenient for the parties to present a joint paper on those items. This will not only save work but will reduce the volume of paper which the Tribunal is required to read.

Joint statements may also be issued when one or more trade union is involved. In these circumstances, if no joint statement is issued, submission of statements should be co-ordinated whenever possible.

How Should the Submission be set out?

For clarity and ease of reading, submissions should be typed in double-spacing and only on one side of the paper.

All pages should be numbered. In addition, numbering paragraphs and any additional papers is also very helpful and proves convenient if, during the presentation of the case, attention needs to be drawn to a specific section.

If extracts from documents, tabulations or other evidence is to be included then they can be attached to the main statement as appendices.

Exchanging the Written Submissions

It is essential that all information given to the Tribunal is known to the other party. The parties will be required to exchange written submissions, on an agreed date before the hearing, through the Secretary, who will ensure that the Tribunal receives them in sufficient time to study them before the hearing.

The Number of Submissions Required

The Secretary will usually require five hard copies plus one electronic copy of each party's written submission. These will be distributed as follows:-

- a. The three members of the Tribunal
- b. The other party
- c. The ERS (they will also hold the electronic copy)

Can Additional Papers be submitted later?

The parties should ensure that as far as possible all the relevant papers are submitted to the Secretary to the Tribunal and the other party before the hearing.

In exceptional circumstances, the Tribunal may permit additional papers to be introduced at the hearing, providing their number or the amount of information they contain is not excessive. Such additional papers should not seek to introduce completely new points or arguments, and will need to be available to all parties involved, as well as to the Tribunal.

However, it should be noted that the introduction of additional papers at the last minute is not considered to be consistent with the spirit of Tribunal, where there should be no surprises on the day.

Who will represent the Parties at the Hearing?

It is normal for the parties to represent themselves at the hearing.

Usually, the employer's party will be represented by those who have taken part in any negotiations or, if no negotiations have taken place, by Senior Managers, or some other official of the company.

The employees' party will normally be represented by the full-time Union Officer and the Company's Union representatives, who have been involved with discussions and negotiations concerning the dispute.

However, this is a matter for the parties to decide.

Can Witnesses Attend?

Yes. If either party wishes to introduce witnesses, it is helpful for a list of witnesses to be sent to the

Tribunal and to the other party, via the Secretary. This should be done on submission of the written statement or as soon as possible before the hearing.

Further advice on the preparation of written cases, Tribunal procedures and related matters can be obtained by contacting the offices of the Employment Relations Service (see "Contact Information" for details.)

Other Publications

Publications can be downloaded from the website on a wide range of employment relations matters including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- **Contact the Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- **Call us on** 01481 732583