



## WITNESSING EMPLOYMENT TRIBUNALS

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Being asked to witness at an employment tribunal can be a stressful time, particularly if you are unsure what to expect, which is why we have outlined everything that is expected of you to successfully fulfil this role.

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## BEFORE THE HEARING

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You will be asked questions on the evidence you have given in your witness statement. Make sure that you are familiar with your witness statement and any documents it refers to. It is a good idea to re-read your statement the morning before you appear as a witness so that it is fresh in your mind.

- If there are any words in your statement or in associated documents that you are unable to define, look them up in a dictionary before the hearing. Sometimes a questioner will ask a witness what something means. This preparation can be helpful and boost your confidence and credibility.
  - Ensure that you know the correct time of the hearing. Tribunals usually start at 10am but not always. It is best to arrive at least 15 minutes before the hearing time to check which room your hearing will be held in and the names of the panel members. This will also allow you to settle in to the tribunal environment.
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## AT THE TRIBUNAL

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Be aware that you are on view at all times and may be seen and heard by members of the tribunal panel and tribunal staff even when you are not giving evidence. Everything you do influences the way others perceive you and your case. Try to give the best impression at all times while you are on public display.

Additionally, be aware that what you say to other witnesses or the lawyers in your party may be overheard by the other side's witnesses and lawyers or others attending for different cases. Proceed cautiously. There are usually separate Respondent and Claimant rooms where witnesses from either side wait when not in the tribunal room. This means that you do not have the embarrassment or awkwardness or being with the 'opposition'. Even if you are friendly with members of the opposition it is better not to converse with them until after the hearing. When you are in your room bear in mind that there may be strangers present who can overhear whatever you say.

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## LAYOUT OF THE TRIBUNAL ROOM

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You will normally be allowed into the tribunal while other witnesses are giving evidence so you can see the layout of the room and the way that evidence is given. When called to give evidence, you will be directed to the witness table towards the front of the room at the side, where you may sit.

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## THE PANEL

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A panel of three people sits at the front of the tribunal room on a raised platform. In the middle will be the employment judge.

The employment judge is generally the only legally qualified member and will be either a solicitor or a barrister of at least seven years' experience. If you need to speak to the judge, call him 'Sir' or her 'Madam'. To speak about the judge, refer to him/her as 'the judge'.

The other two 'lay' members of the panel will come from opposite backgrounds. They are there to contribute balance and to bring practical knowledge of the workplace and industrial relations. One will come from an employer background and the other from an employee background such as a trade union. The intention is that each panel member is non-partisan. They can be referred to by name or as 'colleagues' of the judge.

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## THE OATH

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The court clerk will administer the oath that the evidence given will be the truth, the whole truth and nothing but the truth. You read from a card. Whatever your religion, the tribunal will have the relevant religious book to enable you to take the oath. If you prefer, you can make an affirmation instead of an oath. It is no advantage to profess a religion if you do not have one. The key thing is that the evidence you give is truthful.

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## YOUR WITNESS STATEMENT

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If you haven't already done so, you will be asked to sign your witness statement before being questioned.

A witness statement is a formal document and will usually have been drafted by a lawyer. This is standard practice. If you are asked in cross-examination 'Did you write this yourself?' do not say that you did when this is untrue. Some witnesses are caught off balance by this sort of question because they assume that it will be thought improper if they tell the truth. Have no fear: if you worked with your lawyer to produce your statement, say so. Ideally, you won't be in a position where you say that your lawyer not only wrote your statement but also invented its contents!

Often witnesses are asked to read their statements aloud to the tribunal. Afterwards you will be asked questions about your evidence. Whether you are asked to read your statement will depend on the time available and the preference of the judge.

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## BREAKS

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Once you start giving your evidence, you should not discuss your evidence with anyone from your legal team or indeed with anyone. This rule applies during any lunch time adjournment and overnight if you do not complete your evidence by the end of the day. If you are not giving evidence you are free to discuss the case, but take care what you say in or around the tribunal: you could still be questioned about anything that is overheard.

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## CROSS-EXAMINATION

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In cross-examination the other party or the other party's representative asks you questions based on your witness statement.

The aims of the cross-examination are to discredit you as a witness, to undermine or neutralise your evidence, or to get you to change it.

This is no cause for alarm as most advocates are pretty average and not of the standard you will have seen on TV and in films. Nevertheless, be aware.

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*Please note that this is a basic guide, for more information please contact [corporatelaw@taylor-rose.co.uk](mailto:corporatelaw@taylor-rose.co.uk)*

