

WHAT HAPPENS AT TRIBUNAL



Location

- > Melville St (Edinburgh) / Bothwell St (Glasgow)
 - > Sign in
 - > Waiting Rooms
-

What happens at Tribunal continued

- Bundles / extra papers
 - Clerks visit
 - Representatives discussions
-

- › Parties to attend Tribunal room
 - › Judge and the lay members
 - › Introductions
 - › Preliminary matters
-

Witnesses

- Oath or affirmation
 - Examination in chief - open questions / your chance to tell your story
 - Evidence of loss
 - Cross examination - closed questions/ get the witness to agree certain facts/ put evidence to them
 - Re examination
-

- Role of the bundle (six copies minimum)
 - Tribunal Panel questions
 - Timescales
-

- Legal submissions (written and oral)
 - Schedule of Loss
 - Decision
-

PREPARING FOR TRIBUNAL



- Time / effort = success?
 - Failing to plan.....
-

- Claim form - ET1
 - Response - ET3
-

- Role of ACAS
 - Time/cost/prospects
 - Tribunal orders
-

Advocate's Preparation

- › Chronology
 - › Witness statements (cover every part of the story)
 - › Understanding the detail
 - › Bundle
 - › Submissions (facts/ evidence/ law)
 - › Examination in chief
 - › Cross examination
-

If you are a respondent company

- Assist with the chronology
 - Supply all paperwork on time
 - Respect time scales
-

If you are a witness

- Know the bundle
 - Know your statement
 - Listen to the question/ answer the question
 - The evasive witness
-

If you are a witness

- › Keep a cool head
 - › Show respect
 - › Don't be overawed
 - › Think of it as a conversation
 - › Answer honestly
 - › Think before you speak
-

KEY STEPS FOR PREVENTING TRIBUNAL CLAIMS

- Paper trail
 - Policies
 - Timing of advice
-

Culture of your organisation

- Employees are disposable
 - Lucky to have a job
 - One size fits all (this is the way we do things around here)
 - We have never had any problems
 - We are a small unit and everyone rubs along together
 - Single minded approach to policy and procedure
-

Culture of your organisation

- Employee well-being
 - Flexible approach to problem solving
 - Considered approach
 - Consultative decision making
 - Keep employees in the loop
 - Value the individual
 - Clear procedures but with an ability to think flexibly
-

Focus on the relationship of trust and confidence

- Two stage test

Abbey National LC v Fairbrother, 2006
EAT/0084/06/RN

- 1) Did the employer have reasonable and proper cause for its conduct?
 - 2) Was the conduct calculated to or likely to destroy or seriously damage the relationship of trust and confidence?
-

Focus on the relationship of trust and confidence

- Recommended steps to ensure that you personally are not accused of breaching contractual trust and confidence term
 - **Focus on developing communication skills**
-

Potential Flashpoints

Delivering difficult/bad news

- **Internal i.e. work related**
 - non-payment of bonus
 - non promotion
 - redundancy – NB pool of one
 - rejection – application/promotion
 - disciplinary/grievance procedures
-

Potential Flashpoints

Receipt of bad news

- **External i.e. personal life**
 - divorce/separation
 - loss of house
 - financial – debt
 - illness – mental/physical
 - bereavement
 - **Ability to elicit information from employees in order to obtain the full picture**
-

Influencing Styles

Directive v Collaborative



Pushing and Pulling

Directive

Pushing Behaviours

- Telling you what I believe
- Stating what I expect
- Ignoring your wishes
- Making you promises
- Offering financial reward

Collaborative

Pulling Behaviours

- Asking what they believe
 - Exploring their expectations
 - Actively listening
 - Agreeing common beliefs
 - Identifying their needs
-

Rapport

Listening and Building Empathy



What is active listening?



Listening – Key Skill

- **Hearing**
 - **Watching**
 - **Asking**
 - **Acknowledging**
 - **Showing Empathy**
 - **Pausing**
-

Listening - Barriers

- **Not interested**
 - **Switched off**
 - **Heard it before – we assume**
 - **Know answer already**
 - **Pre-judge**
 - **Considering our position/response**
 - **Preparing to butt in**
-

Questioning Skills



- **Useful questioning techniques**
 - As you gather information about the situation you may wish to utilise some of the following questioning techniques
-

Open Questions

- These are questions that do not give the answer in the question
 - If you ask an open question you are more likely to get a full response rather than using a closed question which is likely to elicit a “yes” or a “no” answer
 - Open questions generally begin with:-
What? Why? Where? When? How? Who?
 - If you are not sure how to open the conversation then try using the phrase “Tell me about.....”.
-

Probing Questions

- These questions follow up with specific requests for information
 - For example “You mentioned that last week you were late in to work one day. Which day was that?”
-

Reflective Questions

- This type of question signals interest – you are effectively mirroring what the other person has said
- For example *“I’m not sure this role is right for me”*

“You’re not sure your role is right, tell me more”

Closed Questions

- These questions tend to tie up loose ends and restrict the other person to a “yes” or “no” answer. For example “*It’s right that you were off sick again last week due to a stomach bug?*”
 - It might be better to use an open question in order to elicit a fuller response. For example “*Can you tell me about when you were off work last week?*”
 - Closed questions have a place but if they are used too much then you run the risk of failing to get the full picture from the other person
-

Summary Questions

- These questions signal interest and show that you have been actively listening to what the other person has to say. It gives you the chance to check that you have understood them correctly. For example “*So am I right in saying that your doctor has advised you to think about a staged return to work?*”
-

Hypothetical Questions

- This type of question is very useful in testing the water regarding a potential resolution without committing prematurely or seeming to be overly directive
 - For example “*How would you feel about a staged return to work?*”
 - Compare this to “*I think you should have a staged return to work*”
-

Reframing

- These are questions that put the other person's objections in a different way, to allow the person who is objecting to try to come up with a solution
 - **Objection:** *"I can't come back to work because I cannot face managing the client database"*
 - **Reframe question:** *"How could we re-arrange your duties to ensure that you are comfortable with the workload?"*
-

Risk Management

- Timely advice
 - Act on advice
 - Policies and procedures
 - ACAS code
-

Risk Management

- Employee communication
 - Mediation skills/ problem solving
-