



Responding to a claim to an Employment Tribunal

Presidential Guidance

Under the Employment Tribunal Rules the Presidents of the Employment Tribunals in England and Wales and Scotland may issue Presidential Guidance. The aim of that guidance is to improve consistency in the way Employment Tribunals manage cases and enable the parties to better understand what is expected of them and what to expect. It is not binding but should be followed where possible.

The Presidential guidance issued by both Presidents may be found at:
www.judiciary.uk/subject/employment/

Having a claim determined by an Employment Tribunal can take a number of months. The length of time it takes to complete the process will depend on what the claim is about and the issues involved in the claim – if there are lots of issues, or they are complicated, the case may take longer.

Cases that are accepted into, and proceed through, the employment tribunal system are determined on their merits. If the employment tribunal upholds the claimant's case, the tribunal will consider what award to make and calculate what should have been paid if the breach of a claimant's rights had not occurred. The majority of jurisdictions (types of claim) do not allow for unlimited awards and, even where they do and claims are made for large amounts of compensation, the tribunal will take into account the relevant information to ensure that any awards are appropriate.

Tribunals will decide what award the claimant is entitled to according to their personal circumstances, including age, earnings, and for cases involving discrimination, injury to feelings. Awards for injury to feelings will be based on existing guidance, set down in case law. For unfair dismissal claims, the tribunal can make an award for future loss of earnings. The purpose of the award is to compensate employees, not to punish employers.

General Data Protection Regulations

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-andtribunals-service/about/personal-information-charter>

To receive a paper copy of this privacy notice, please contact our Customer Contact Centre. Details can be found on the back page of this publication.

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

Welsh Language Act

If you are responding to a claim in Wales you can ask that correspondence and phone calls are in Welsh. If both sides agree, the hearings may be carried out just in Welsh. If both English and Welsh are used at a hearing, we can provide translation facilities if you ask

What do Employment Tribunals do?

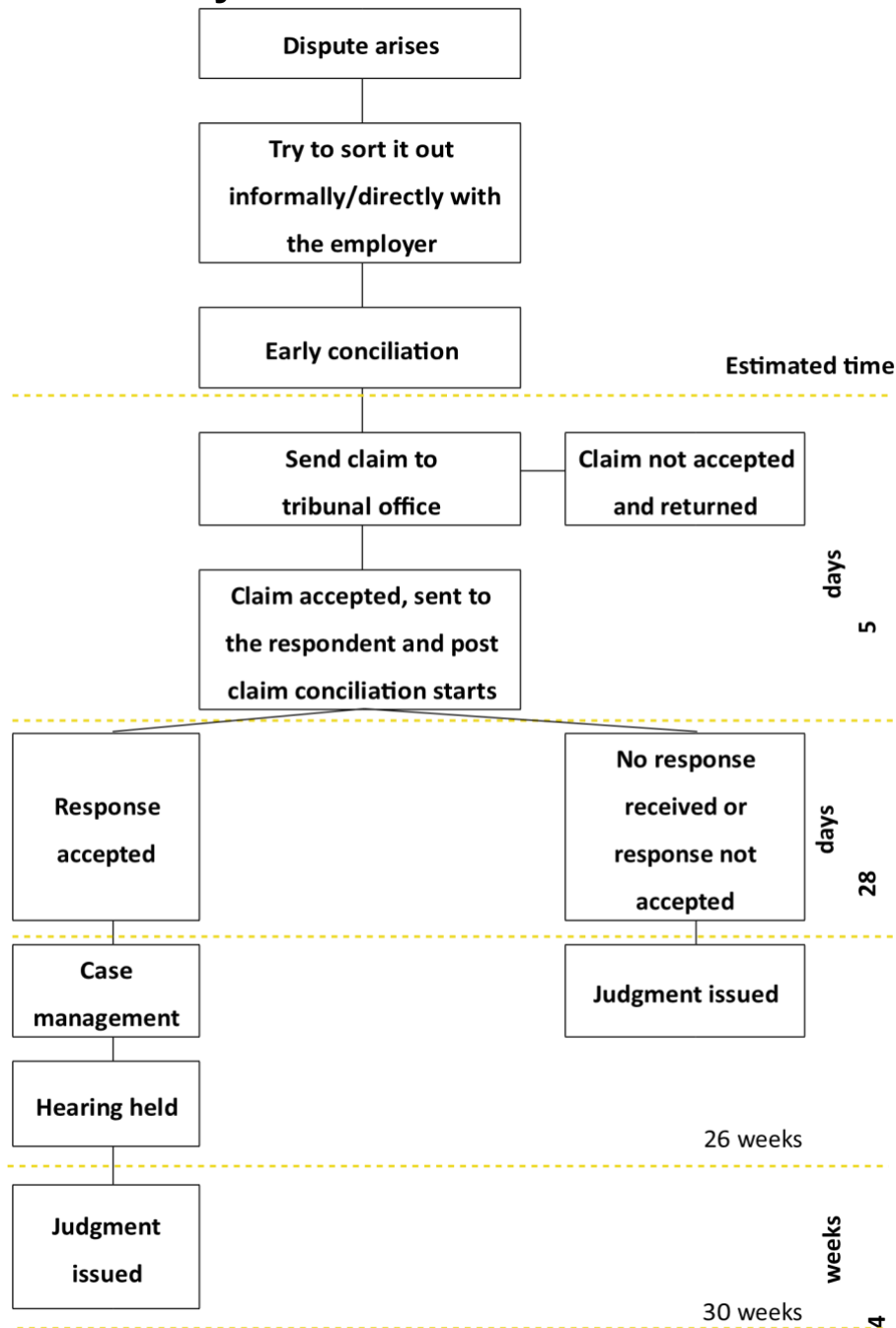
Employment Tribunals hear cases and make decisions on matters to do with employment such as unfair dismissal, redundancy payments discrimination and a range of claims relating to wages and other payments. Although an Employment Tribunal is not as formal as a court it must comply with rules of procedure and act independently.

Further information

The Employment Tribunals have a Customer Contact Centre which can answer general enquiries, give information about tribunal publications and explain how the tribunal system works. They may be able to help you fill in the form **but they cannot give legal advice**, such as whether the claim made against you is likely to be successful.

Customer Contact Centre details on the last page.

Claim process summary



Please note: Judgments issued to parties from February 2017 are published on the online public register at <https://www.gov.uk/employment-tribunal-decisions>

Further help and advice

You do not need to take advice before you fill in the response form but you may find it helpful to do so. You can get information on employment law from Acas who may also be able to assist you resolve the claim against you through conciliation and without the need for a Tribunal hearing.

The Acas help line number is **0300 123 1100**. The Acas website address is www.acas.org.uk

You can get more help and advice from:

- Free advice services such as a citizens advice or a law centre. The website address for Citizens Advice in England and Wales is **www.citizensadvice.org.uk** and in Scotland, **www.cas.org.uk**
- Employers' organisations – if you are a member
- Solicitors and other professional advisers

How do I respond to the claim?

Your response will not be accepted by the tribunal office unless it is on a form which is approved (prescribed) by HM Courts & Tribunals Service. The form is available in the following formats:

- the paper copy of the form which was sent to you or;
- a version which can be found on our website at www.gov.uk/being-taken-to-employment-tribunal-by-employee/overview

You must complete and return your response form to the tribunal office to reach us by the date given on the letter sent with the claim form. It is your responsibility to ensure that the tribunal office receives your response within the relevant time limit; that is 28 days from the date we sent you a copy of the claimant's claim form.

Or, you can make your response on-line through our website at www.gov.uk/being-taken-to-employment-tribunal-by-employee/overview

When you respond on-line, it will be sent automatically to the tribunal office dealing with the case. There is no need to send a copy of your form or to send any other documents by post at this stage.

You should keep a copy of your response form for your records. Whenever you contact us you must quote the case number on our letter and any relevant documents. When you write to us by letter or email, you should send a copy to the claimant and any other respondent in the case and tell us you have done so. If you are asking the Tribunal to make an order or take other action, you must also tell the claimant they should send any objections to the Tribunal as soon as possible.

If the claimant is claiming a redundancy payment or notice pay, wages or holiday pay which you cannot pay due to financial difficulties, you should explain this in your response and tell us about any formal proceedings that are being taken in connection with your financial situation.

What can I do if I cannot meet the deadline for sending in my response?

You can ask the tribunal to extend the time limit if it is not possible for you to fill in the form in time. For example, if you need more time because an important witness, such as the person who took the decision to dismiss the claimant, is abroad on holiday and you need information from them. If you do not ask for such an extension within the 28-day time limit the claim is likely to be treated as one to which no defence has been submitted and a judgment will probably be made against you. Applications for an extension of time must be in writing and provide full reasons why you are asking for the extension. If you apply after the 28 day time limit has expired you must, in addition, either send in a draft of the response you wish to submit or explain why this cannot be done. An Employment Judge will then decide whether to grant an extension. You will be informed of their decision and cannot assume an extension has been granted until then.

Information needed before your response can be accepted

The tribunal cannot accept your response unless you provide certain minimum information. By law, you must tell us:

- your full name and address;
- whether you want to resist (defend) all or part of the claim;

If your response is not on a form approved (prescribed) by HM Courts & Tribunals Service or does not contain the information shown above, it will be returned and the claim dealt with as if we have not received a response.

What will happen if the tribunal does not accept my response?

Your response will not be accepted and so you cannot resist the claim if:

- Your response is not on a form prescribed by HM Courts & Tribunals Service;
- The tribunal office does not receive your response within the time limit and an extension of time has not been granted;
- Your response does not provide all the minimum information

In these circumstances, an Employment Judge may issue a judgment if they considers it appropriate.

If no response is accepted in relation to a claim then an Employment Judge can decide the claim without the need for a hearing although a hearing to determine compensation may sometimes be required. You would only be entitled to participate in such a hearing to the extent permitted by the Employment Judge who hears the case.

What happens when the tribunal receives my response?

If the tribunal accepts your response, we will send a copy to the claimant. In most cases we will also send a copy to Acas.

Acas's role

Where we send a copy of your response to Acas, the Advisory, Conciliation and Arbitration Service, an Acas conciliator will contact you to explore whether it may be possible to resolve the claim against you, through conciliation, and without the need for a tribunal hearing.

Public Interest Disclosure claims

Where a claim consists of, or includes, a claim that the claimant has made a protected disclosure under the Employment Rights Act 1996 (otherwise known as 'whistleblowing') HM Courts & Tribunals Service is required, where the claimant has given their consent that we should do so by ticking box 10.1 of the ET1 form, to copy the claim form or extracts from it to the relevant Regulator. Where the claim contains complaints other than the 'whistleblowing' complaint, all references to the other complaints will be deleted prior to HM Courts & Tribunals Service copying the claim to the Regulator.

Where the claimant has given their consent that we should copy the claim form, or extracts from it, to the Regulator we will write to you to say when and to whom the form was sent. It will be for the Regulator to decide whether the underlying issue contained in the claim form requires investigation.

This will not affect in any way how the claim is processed by HM Courts & Tribunals Service.

Further guidance can be found at <https://www.gov.uk/whistleblowing>

What should I do if the case settles?

Both parties should let us know immediately if the case is settled before the hearing. The conciliation officer will let us know if your case is settled through Acas.

If your claim settles through ACAS the claim will be removed from the list for hearing (if listed) and the case file will be destroyed in accordance with our destruction policy 12 months from the date of settlement.

Breach of contract claims

If a claimant is no longer employed, he or she may make a claim against an employer for breach of contract. In certain circumstances, this entitles you to make an employer's contract claim.

Any such employer's contract claim must be included in the response form and must be made within 28 days of the date that the copy of the claim form was sent by the Tribunal.

Correspondence

When we write to you we will refer to you as the 'respondent'.

We will send a copy of your response form to the claimant.

Parties are required under the Rules of Procedure to copy any letters or documents that they send to the Tribunal (other than an application for a witness order) to all other parties and must state that this has been done. You can show that this has been done, for example, by the use of "cc".

We will send you and the claimant any decision or judgment the tribunal makes.

You must let us know immediately if your contact details change.

If you have a representative acting for you, we will send all correspondence about the case to them and not to you and you must pass any further requests for information through them and not straight to us.

Can I correspond by e-mail?

Yes – a full list of employment tribunal e-mail addresses can be found at the back of this publication. You should make sure you quote the case number in any correspondence and in the title bar of the e-mail and send it to the tribunal office dealing with the claim.

The office will correspond by email if this is your preference.

Documents you send to the tribunal must be in a 'Word' compatible format. We will not accept documents in other formats. When we receive your e-mail, we will send you an electronic acknowledgement. Do not send further e-mails or phone the tribunal office unless you have not received an acknowledgement within two working days of sending your e-mail.

You are responsible for making sure that the tribunal receives any correspondence sent by e-mail within the relevant time limit.

If you want us to communicate with you by e-mail, you will need to supply a valid e-mail address. You can do this by filling in box 2.6 on the response form or at any stage later. When you ask us to communicate with you by e-mail you are agreeing that you check for incoming e-mail at least once every day and that we may pass your e-mail address to other people involved in the claim.

The hearing

You will find the date, time and place of the hearing, and the estimated time it will take on the letter sent to you with the claim form. If you are not sure about where and when the hearing is to take place, please contact the tribunal office. Make sure that you arrive at the hearing centre at least 30 minutes before the hearing is due to start, making allowances for possible travel delays. You may find that on arrival you are asked to wait until the tribunal completes other hearings.

Can I ask for the hearing to be postponed?

You must make any request for a postponement in writing as soon as possible giving full reasons for your request. You must also send a copy of your request to the claimant so that they are aware of it.

An Employment Judge will decide whether to grant a postponement.

If you or the claimant (or somebody else acting for you or the claimant) fail to appear at a hearing, the tribunal may decide the case in your or their absence.

Preliminary issues

You will be notified if there are any preliminary issues which the tribunal will need to decide, for example whether the claim has been submitted to the tribunal within the required time limit. Where such issues arise they will usually be dealt with at a preliminary hearing.

Preparing for a hearing

It can be useful to watch a hearing at a tribunal so you understand the procedure and what happens. You can do this by contacting any tribunal office and asking if there is a suitable hearing for you to observe.

What documents do I need for the hearing?

You may have documents which support your defence and want to put them before the tribunal as evidence. If the notice of hearing sent with the claim form includes case management orders relating to documents you must comply with them. If it does not, you must still make sure the claimant has reasonable notice (at least seven days) of the documents you intend to use at the hearing.

What will happen at the hearing?

The tribunal will decide whether the claim succeeds or fails and if it succeeds, what to award to the claimant.

It is usual in claims such as the one you are defending, for the Employment Judge to sit alone. If you think it should be heard by a full tribunal, please write to the tribunal, giving your reasons.

During the hearing the Employment Judge will make sure that you take the steps described below in a calm and measured way. However, he or she may have to be firm in moving the case on to make sure that it proceeds at a pace which allows it to be dealt with within the time set aside.

The claimant will normally give evidence and call any witnesses first. However, there is no absolute rule as to which side starts. You and your witnesses will have to give evidence on oath or affirmation. If you lie after swearing an oath or affirmation you could be convicted of perjury. In England and Wales if case management orders have been sent with the claim form they will probably require the parties to exchange witness statements by a set date. The witness statements will be read by the tribunal and will not usually be read out at the hearing by the witness. In Scotland witness statements are not normally used but they can be in some cases if ordered by a judge.

You can ask the claimant and their witnesses questions (this is called 'cross-examination'). Finally, the Employment Judge may ask some questions. The same procedure is then usually followed for the other witnesses and then with your evidence. In England and Wales, once all the evidence has been heard, the Employment Judge will usually announce the judgment and the reasons for it. In Scotland the judgment is less frequently announced at the end of the hearing.

What happens next?

Wherever possible you or your representative will be given a copy of the tribunal's judgment on the day of the hearing. If this is not possible you or your representative will be sent a copy of the written judgment as soon as possible after the hearing. You must abide by the Employment Tribunal judgment as it is legally binding.

Where the judgment with reasons is given orally at the hearing written reasons for the judgment will also be given if you ask for them at the hearing or make a written request within 14 days of the date that the judgment was sent to you.

You must attend the hearing prepared to deal with remedy should the claimant be successful.

If you do not give the tribunal the necessary information, a further hearing may be needed, which could cause an order for costs (or in Scotland, expenses) to be made against you.

Do I have to pay the claimant's costs?

Generally, no. However, the tribunal can make an order for costs or preparation time if it believes that you or your representative have behaved abusively, disruptively or otherwise unreasonably in the way you have conducted your case or thinks that your defence to the claim was so weak that it should not have been raised. Costs are known as expenses in Scotland.

Employment Judges and tribunals also have the power, where the hearing relates to a claim made on or after 6 April 2012, to order a party to make a payment to cover

expenses incurred by any witness or witnesses who have been asked to attend the hearing.

Financial penalties

Employment tribunals will have the discretionary power, where a claim has been made after

6 April 2014, to order a respondent who has lost at a case to pay a financial penalty of up to £5,000 if it considers that the employer's breach of the claimant's employment rights had 'one or more aggravating features'. The minimum amount of any penalty will be set at £100.

A financial penalty may be ordered against an employer even if a financial award has not been made to the claimant. However, if a financial award has been made, the financial penalty must be 50% of the amount of the award. Tribunals must take account of the employer's ability to pay when deciding whether to order a penalty.

Financial penalties will not be paid to the claimant in the case but to the Secretary of State and is paid into the Consolidated Fund.

If the employer pays the penalty within 21 days sum payable will be reduced by 50%.

Disability or special needs

If you or anyone coming to a tribunal with you has a disability or a particular need, you should contact the tribunal office dealing with your case to discuss the matter. Examples of the help we can provide include converting documents to Braille or larger print and paying for sign language interpreters. We can also provide hearing-induction loops in the room where the hearing is held if you need them. Please contact us as soon as possible so we can make appropriate or suitable arrangements.

Expenses

HM Courts and Tribunals Service does not, where the claim was made on or after 6 April 2012, meet the expenses or allowances of parties, witnesses and volunteer representatives attending an employment tribunal hearing of any type (other than where the person attending the hearing has been called by the tribunal to give medical evidence).

If the claim was made on, or before 5 April 2012, then our publication - Expenses and allowances payable to parties and witnesses attending an Employment Tribunal is available at: www.gov.uk/government/collections/employment-tribunal-forms

Standards of service

If you are unhappy with our service, please contact any tribunal office or our Customer Contact Centre for a copy of our publication **EX343 - Unhappy with our service - what can you do?** This explains our complaints procedure.

Customer Contact Centre details can be found on the last page.

Futher information

Further information can be found on the following link;
www.gov.uk/courtstribunals/employment-tribunal

Filling in the response form

We have designed these guidance notes to be as helpful as possible. However, they do not give a full statement of the law. Your response will not be accepted if you do not provide the information marked with an asterisk (*).

1 Claimant

1.1 Please give the full first and family name of the claimant. It is not necessary to give a title.

2 Your details

2.1* Please give the full name of the respondent who is completing this form, or on whose behalf it is being completed. Please say whether the respondent is a sole trader, a partnership, a limited liability company, a plc, a limited company or otherwise.

2.2 Give the name of the person we should use as a contact point if you have not appointed a representative.

2.3* Give the full address and post code of the respondent completing the form including the DX number if known.

2.4 Give us the full phone number (including the dialling code) for the contact person named at 2.2.

2.5 Tick the relevant box to say how you would prefer us to contact you in future. Please do not provide an e-mail address unless you check your e-mails every day. While we will usually try to use e-mail if you want us to, this may not always be possible.

2.6 Give us the e-mail address and fax number for the contact person named at 2.2.

You are not obliged to answer questions 2.7 to 2.9 but this information would be useful for monitoring and research purposes and may assist the tribunal. Any monitoring or research carried out using this information would not identify any organisation or individual.

2.7 Please give the number of people the organisation employs in Great Britain (Great Britain is England, Scotland and Wales). Please give an approximate figure if you do not know the exact number.

2.8 Please tick 'Yes' if the respondent has more than one site in Great Britain.

2.9 If you have ticked 'Yes' in 2.8 please give the number of people employed at the place where the claimant worked. Please give an approximate figure if you do not know the exact number.

3 Acas early conciliation details

3.1 Please tick the appropriate box to say whether or not you agree with what the claimant has said about early conciliation. If yes, please now go straight to section 4. If you disagree, please give the details you believe to be correct here.

4 Employment details

If the claimant is, or was, a worker providing services to you, please answer the following questions as if 'employment' referred to the claimant's working relationship with you.

4.1 Please tick the appropriate box to say whether or not you agree with the dates of employment given by the claimant in section 5.1 of their claim form. If you tick 'Yes', please now go straight to section 4.2 If you disagree, please give the details you believe to be correct here and say why you disagree with the dates given by the claimant.

4.2 Please tick the appropriate box to say whether or not the claimant's employment is continuing.

4.3 Please tick the appropriate box to say whether or not you agree with the claimant's answer about the description of their job or their job title. If you tick 'Yes', please now go straight to section 5.1. If you disagree, please give the details you believe to be correct here.

5 Earnings and benefits

5.1 Please tick the appropriate box to say whether or not you agree with the hours of work the claimant has given in section 6.1 of their claim form. If you tick 'Yes' please now go straight to **section 5.2**.

If you disagree, please give the number of hours you believe to be correct here. Please round up to the nearest hour.

5.2 Please tick the appropriate box to say whether or not you agree with the earnings details the claimant has given in section 6.2 of their claim form. If you tick 'Yes' please now go straight to **section 5.3**.

If you disagree, please give the earnings details you believe to be correct here and tick the relevant box to show whether this is for a week or a month.

5.3 Please tick the appropriate box to say whether or not you agree with the claimant's answer about working or being paid for a period of notice in section 6.3 of their claim form. If you tick 'Yes', please now go straight to **section 5.4**.

If you disagree with the claimant's answer, please give the details you believe to be correct here. If relevant, please give a full explanation of the reasons why the claimant did not work, or did not receive payment for, a period of notice.

5.4 Please tick the appropriate box to say whether or not you agree with the details given by the claimant about pension and other benefits in sections 6.4 and 6.5 of their claim form. If you tick 'Yes', please now go straight to **section 7**.

If you disagree, please give the details you believe to be correct.

6 Response

6.1* Please tick the appropriate box to say whether or not you defend (i.e. contest) the claim made by the claimant. If you only defend a part of the claim, please tick 'Yes' and tell us which part of the claim you are resisting in the space provided. If you tick 'No', please now go straight to **section 7**.

If you have ticked 'Yes', please explain the grounds on which you are resisting the claim. If the claim is about more than one issue, you will need to respond to each issue. Clearly explain what points you disagree with and give information to support your argument. If the respondent dismissed the claimant, explain the procedure you followed before the actual dismissal and give full reasons why you dismissed the claimant. Give full reasons if you disagree that your organisation owes the claimant money or if you disagree with the amount claimed. At this stage you should not send any documents to support your response. However, you may have to produce them if the claim goes to a hearing. If there is not enough space, please continue on a separate sheet and attach it to this form.

7 Employer's Contract Claim

7.1 Please refer to the section on Breach of Contract claims above for details of the circumstances when a respondent can make an employer's contract claim.

7.2 Please tick the box to confirm you wish to make an employer's contract claim in response to the employee's contract claim and continue to section 7.3.

7.3 In the space provided please set out the details of your claim, including any important dates.

8 Your representative

A person you ask to act on your behalf is known as your representative. We will deal only with your representative if you appoint one – we will not deal directly with you. Please do not give the name of a representative unless they have agreed to act for you. Do not give the name of a person or organisation who is only giving you advice on filling in this form.

- 8.1 If you know the name of the person representing you, give their name here.
- 8.2 Give the full name of the representative's organisation if any (for example, the firm of solicitors or the employers' association).
- 8.3 Give the full address and postcode of the 'representative or of his or her organisation.
- 8.4 Give the DX number (if known) of the representative or of their organisation.
- 8.5 Give the representative's phone number including the full dialling code.
- 8.6 Give the representative's mobile phone number.
- 8.7 Give the reference number your representative has given to your case (if you know it).
- 8.8 Tick the appropriate box to say how your representative would prefer us to contact them in future.
- 8.9 If your representative would prefer that we contact him/her in future by email, please provide their e-mail address. Please only include your representative's e-mail address if they check their emails every day.
- 8.10 If your representative would prefer that we contact him/her in future by fax, please provide your representative's fax number (including full dialling code).

9 Disability

- 9.1 Please tick 'Yes' if you consider that you have a disability. If you feel able to do so please say what this disability is and give details of any help you may need from tribunal staff. Examples of the help we can provide include converting documents to Braille or larger print and paying for sign language interpreters. Bear in mind that if we do not know that you have a disability we will not know what reasonable adjustments might assist you to participate in the tribunal process.

10

Please tick the box to confirm you have re-read the form and checked you have entered all the relevant information.

Employment tribunal offices

Aberdeen	Ground floor, AB1, 48 Huntly Street, Aberdeen AB10 1SH	t. 01224 593 137 e. aberdeen@justice.gov.uk
Bristol	Bristol Civil and Family Justice Centre, 2 Redcliff Street, Bristol BS1 6GR	t. 0117 929 8261 e. bristol@justice.gov.uk
Dundee	Ground Floor, Endeavour House, Greenmarket, Dundee, DD1 4BZ	t. 01382 221578 e. dundee@justice.gov.uk

East London	2nd Floor, Import House, 2 Clove Crescent, London E14 2BE	t. 020 7538 6161 e. eastlondon@justice.gov.uk
Edinburgh	54-56 Melville Street, Edinburgh EH3 7HF	t. 0131 226 5584 e. edinburghet@justice.gov.uk
Glasgow	The Glasgow Tribunals Centre, 3 Atlantic Quay, 20 York Street, Glasgow G2 8GT	t. 0141 204 0730 e. glasgowet@justice.gov.uk
Leeds	West Gate, 6 Grace Street, Leeds, LS1 2RP	t. 0113 245 9741 e. leedset@justice.gov.uk
Central London	Victory House, 30-34 Kingsway, London WC2B 6EX	t. 020 7273 8603 e. londoncentralet@justice.gov.uk
London South	Montague Court, 101 London Road, West Croydon CR0 2RF	t. 020 8667 9131 e. londonsouthet@justice.gov.uk
Manchester	Alexandra House, 14-22 The Parsonage, Manchester M3 2JA	t. 0161 833 6100 e. manchesteret@justice.gov.uk
Midlands (East)	Nottingham Justice Centre, Carrington Street, Nottingham, NG2 1EE	t. 0115 947 5701 e. midlandseastet@justice.gov.uk
Midlands (West)	Centre City Tower, 7 Hill Street, Birmingham B5 4UU	t. 0121 600 7780 e. midlandswestet@justice.gov.uk
Newcastle	Newcastle Civil Family Courts and Tribunal Centre, Barras Bridge, Newcastle Upon Tyne NE1 8QF	t. 0191 205 8750 e. newcastleet@justice.gov.uk
Wales	Cardiff and the Vale Magistrates Court, Fitzalan Place, Cardiff, South Wales CF24 0RZ	t. 029 2067 8100 e. waleset@justice.gov.uk
Watford	3rd Floor, Radius House, 51 Clarendon Rd, Watford WD17 1HP	t. 01923 281 750 e. watfordet@justice.gov.uk

Our offices are open from 9.00am to 5.00pm Monday to Friday.

We will direct you to a map showing the location of the office where the hearing has been arranged.

Customer Contact Centre:

England and Wales: 0300 323 0196

For Welsh speakers: 0300 303 5176

Scotland: 0300 790 6234