



**Acting as a witness in a remote
employment tribunal hearing**

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Introduction

Being a witness in a tribunal is not something you are likely to do often in your life, and it can therefore be an unsettling experience. Even if you have previously been a witness, it is unlikely that you have given evidence in a remote hearing, as the use of this technology is relatively new.

This guide is intended to:

- (i) familiarise you with the tribunal process and some of the approaches you may encounter from representatives when you are being questioned; and
- (ii) give you practical information and tips about how to give evidence at a remote hearing.

It is vital to note that no one can tell you what evidence to give, and we are unable to ‘coach’ you in any way about your evidence.

What is an employment tribunal?

The employment tribunal is a court whose function is to rule on employment disputes over, for example, whether a person has been unfairly dismissed or discriminated against by their employer.

The tribunal will either consist of an employment judge sitting alone or a panel of three members made up of:

- an employment judge, who is legally qualified; and
- two lay members: one from an employee background (e.g. trade union representative); and one from an employer background (e.g. human resources specialist).

In a panel of three, they will decide the outcome of the case together, although if they cannot agree, the majority opinion prevails. The employment judge will normally take the lead throughout the hearing in asking questions and in giving directions as to how the proceedings should be conducted.

Where the tribunal consists only of an employment judge, the judge will be the sole arbiter.

You should address the employment judge as “Judge” and the panel members should be addressed as “Sir” or “Madam”.

Role of a witness

As a witness, you will be asked to detail and explain your involvement in a case, e.g. the events which you were involved in that have led to the claimant making the claim. It is essential that in doing so, you tell the truth. You are not there to win the case for your employer; that is the legal team’s job!

Witness statements

In general, witness evidence must be produced in the form of witness statements, to be exchanged between the parties before the hearing.

In the run up to the tribunal hearing a solicitor will work with you to prepare a ‘witness statement’ which sets out all the evidence that is intended you will give to the tribunal. This will give you the opportunity to recall your version of events in detail ahead of the tribunal. It is therefore vital that the witness statement is accurate and reflects the true version of events. Do not hide anything from your solicitor. Although a solicitor will help you prepare it, make sure the witness statement is yours, check it carefully and change anything which is not accurate.

The witness statement forms the basis for the questions you will be asked, so you should ensure that you are familiar with it. Read it and re-read it several times. You will only truly appreciate how important it is to have a properly prepared witness statement when you are being cross-examined.

Remote hearings

As a result of the COVID-19 pandemic, employment tribunals have begun to hold hearings remotely using video conferencing platforms. This means that the judge (and any panel members), the claimant, the witnesses and the legal teams all attend the hearing from different locations, often from their homes.

This arrangement obviously presents its own challenges and needs to be approached differently from a traditional in-person hearing at an employment tribunal building. However, many of the principles of attending an employment tribunal hearing and giving evidence remain the same.

The video conferencing platform to be used for the hearing will depend on the tribunal and the parties. The legal team will give you further information about the particular platform that will be used for your hearing. Please see below for information on using the Cloud Video Platform (also known as the CVP).

The following are some practical tips to assist you when preparing for and attending a remote hearing.

Practical Tips

Preparing for the hearing

- Ensure that you have access to either a hard or electronic copy of your witness statement and the hearing bundle, both of which should be 'clean', meaning that they contain no notes, highlighting or tabs.
- If you have made notes or written on the hard copies of these documents, please ensure you use the electronic documents we have circulated to refer to when giving your evidence.
- If using electronic versions of documents, you may want to have access to these separately on another screen or tablet, as it can be difficult to observe the hearing and review the bundle at the same time on one screen. Download the documents in advance, to prevent any connectivity issues during the hearing.
- Read your witness statement thoroughly, and review the documents referenced within it.
- Familiarise yourself with how to use an e-bundle, navigating to documents by clicking through from the index.
- You should dress formally for the hearing, as you would for an in-person hearing. Remember that this is a formal tribunal hearing like any other, even though you are attending remotely.

Arranging your space

- Make sure that you have a computer with a camera and microphone, and a stable internet connection.
- Ensure that you have a quiet space where you will not be disturbed.
- Arrange to have your camera facing a neutral background, without any personal items or photographs.
- Avoid having any windows or light sources behind you.
- Consider using headphones to prevent any echoes and to keep discussions more private.
- Have a glass of water with you, to avoid having to leave the room during the hearing.
- If you intend to swear on a holy book, try to have a copy of this with you.

Attending the hearing

- The tribunal day usually begins at 10am. Join the hearing at least 15 minutes early to ensure that you are able to access the technology correctly.

- If you have any issues hearing or seeing the proceedings, contact the legal team or your IT support team. Try to avoid repeatedly logging into and out of the hearing, as this can be disruptive for the other participants.
- Try and attend the whole hearing before you give evidence, if possible, to understand how the process operates and to hear the questions others have been asked and the answers they have given.
- Remain on mute when you are not giving evidence, unless told otherwise by the judge. The judge may ask all participants to keep their video cameras turned on. If the judge does not ask you to do this, you can turn it off when you are not giving evidence.
- Where possible, avoid taking calls or responding to emails during the hearing to ensure that you are fully engaged and attentive.
- Do not record, broadcast or take photographs of the hearing - it is a criminal offence.

Using the tribunal's Cloud Video Platform (CVP) / Kinly

- CVP is the secure communication network that connects users securely to the justice system.
- If CVP is being used for your hearing, when you join the meeting you will be prompted to enter your name. Please also include your role in the hearing (e.g. John Smith (Respondent's witness)).
- Join with your video and audio enabled before entering the virtual "waiting room". If you do not do so, you will not be able to later enable these settings.
- Parties will be kept in a virtual waiting room initially until the clerk allows you to enter the virtual hearing room. While you are in the waiting room, there is no feature for contacting other participants/the tribunal. Please see below the practical tips on discussions with the legal team should you need to contact them at this time.
- Use the blue icons towards the bottom of the screen to mute your microphone and turn off your video.
- When you enter the virtual hearing room, you will see two participants on large video screens in the middle of the platform screen. These are either the two participants who have spoken most recently or those who have been "spotlighted" by the clerk. The remaining participants will appear in small video screens towards the bottom of the platform screen. The names of all participants will appear on the left-hand side of the screen so you will be aware of who is present in the hearing.
- There is a chat function at the bottom left-hand corner which can be used to communicate with the clerk if you have connection issues or would like to request a break. Please be aware that the chat function is visible to all the hearing participants.
- The judge may ask parties to disconnect e.g. during a lunchbreak or if the judge wants to speak to panel members. Keep dial in details to hand and reconnect to the meeting in the same way after the break. Otherwise, the judge may allow parties to remain dialled into the hearing during a break, but microphones should be muted and videos turned off during this time.

Separate discussions with the legal team

- We will arrange a method of communication for the legal team to keep in contact with you before and after you have given your evidence (e.g. MS Teams), so that you can speak to the legal team about any questions or concerns you may have as you would do if you were attending the employment tribunal in person.
- Please ensure that, if you call the legal team at any point, you are disconnected from the main hearing to avoid any risk of being overheard.
- You should not contact the legal team in any way while you are giving your evidence or while you remain under oath (see further below).

Giving evidence

The process of giving evidence will usually proceed as follows:

You are called

The judge will call you to give evidence. At this point, you will turn on your camera and microphone.

Ensure that all other devices and notifications are on silent and that you have turned off any distracting pop-ups.

From the time you are called to give evidence to the time the judge releases you, it is very important that you **do not** attempt to communicate with the legal team or the other witnesses. Remove yourself from any group chat. Do not send any messages to, and do not read any messages you receive from, any such group chats. This includes during any breaks that may occur before you have completed your evidence. You remain under oath throughout any such break. Do not discuss the process or substance with anyone including your family.

You swear an oath

The judge will ask you to 'take the oath'. The form of the oath varies according to your religion – if you intend to swear on a holy book, you should ideally have this with you although witnesses can swear an oath without one. Or you can instead choose to 'affirm'. This has the same legal effect as an oath. The judge will tell you the words that you need to say to complete the oath. Please note, you remain under oath during any adjournment and therefore will be unable to discuss your evidence with any other person during this time.

Examination in chief

Your witness statement will be 'taken as read' as your 'evidence in chief'. Your representative will ask you to confirm its truth to your best recollection and belief. Your representative may ask you some additional questions, if there are any areas of your evidence that need to be clarified.

Cross-Examination

You will then go straight into being cross-examined by the claimant or their representative. In practice this means that you will be asked questions to find out areas you may have missed in your evidence in chief, which are in favour of the claimant.

The aim of the cross-examiner is to discredit your evidence. It is more difficult for them to do this if you:

- **Listen** to the question carefully
- Answer it honestly according to your **best recollection**

Tips for giving evidence generally

Speak slowly and clearly

This will allow for any delays due to issues with connectivity. Pause to ensure that others have finished speaking, so that you do not speak over them.

The tribunal panel will also be trying to take a note of your evidence so do not rush.

Give your answers to the tribunal judge

Your answers should be addressed to the judge. Depending on the video platform used, you may be able to direct your answer to the judge, rather than the person asking the question. Try to do this if possible.

Stay calm

Even if the questions offend you, do not get angry. The cross-examiner is just doing their job.

Take your time

Do not be rushed, particularly if you are asked about a document – ask to be directed to the relevant paragraph in your witness statement or page in the

	hearing bundle. Clarify that you are looking at the correct document, and take the time to read it if necessary before responding.
Ask for clarification	If you do not hear or understand a question or instruction, ask for it to be repeated or clarified.
Do not be shy	The cross-examiner will almost certainly ‘put’ questions to you e.g. ‘ <i>You didn’t like Mr Jones, did you?</i> ’. Do not be shy – if you do not agree with what is being suggested, then say so.
You are not expected to remember everything	<p>Giving evidence is not a quiz show or ‘memory test’. Your evidence may be about events which took place years ago. Memories fade, and tribunal panels understand that. If you are asked a question and do not know the answer or cannot recall the event/situation then it is better to make this clear than to ‘waffle’ and provide a vague response. You can only say what you remember, so:</p> <ul style="list-style-type: none"> — If you clearly remember something, then say so; — If you do not remember at all, then say so; — If you can partially or uncertainly recall something, then say so, explaining what you can remember, and what you are not sure about. Suggest what you may have done and why you think you would have done that e.g. ‘<i>I can’t remember if I did this immediately after the call, but it is likely, as that is what I would usually do.</i>’
Do not ‘forget’ events	You may feel tempted to forget a particular event that you do not think portrays you in a positive manner - don’t! If you deliberately forget important events, it may impact your credibility e.g. ‘ <i>I do not remember whether I punched my colleague</i> ’.
Do not defend the indefensible	Tribunals do not expect you to be perfect. Your evidence is intended to persuade them that, looking at the picture as a whole, you are a reasonable person who acted in a reasonable way. If you try to defend the indefensible, you will give your cross-examiner the chance to make you look unreasonable and this may discredit your remaining evidence. If you do have any concerns, raise these with your solicitor ahead of the tribunal.
Pause after your answer	Once you have given your answer, stop speaking and wait for the next question. Do not try to fill the silence, as there may be additional pauses due to the technology.
Objections	Your representative may ‘object’ to a question from the claimant’s representative. If they do this, you should wait until the employment judge has ruled on the objection before answering. Your representative will guide you.
Body language	Be aware of your body language and eye-line, even over video. Sit up and address your answers directly to the camera.
Ask to take a break if you need one	Giving evidence at remote hearings can be very tiring. If you need to take a break, then ask the judge for one. Judges and the tribunals recognise that remote hearings can be particularly draining compared to in-person hearings.

Do not let the cross-examiner become your friend. Retain a professional detachment.

Remember that you have a real advantage over the person asking you questions. You know what you are talking about. The person asking you questions only knows what their client and the documents tell them.

Cross-examination is quite different from that portrayed in TV dramas. Witnesses rarely break down and confess. A witness who remains calm and sticks to their evidence is difficult for even a skilled cross-examiner to rattle.

In order to try and get you to say what they want you to, the cross-examiner may use a number of tactics during their cross-examination. Some common examples of these, and suggested ways of dealing with them, are detailed below.

Common cross-examination tactics		
Tactic	How not to respond	How to respond
The cross-examiner asks you to speculate about whether it is possible that a particular event occurred.	'Yes I suppose it is possible.'	Tell the tribunal how likely the event actually was: 'It is possible, but highly unlikely.'
The cross-examiner asks you to say whether a hypothetical course of conduct is reasonable. The course of conduct will inevitably be eminently reasonable.	'Yes that would have been reasonable.' This will result in the cross-examiner asking why you did not therefore take that approach.	'Yes that would have been reasonable, but in my opinion, my approach was also perfectly reasonable.'
The cross-examiner asks you a closed question, whereby the only answer seems to be 'yes' or 'no'.	Do not avoid the question – this will make you seem evasive and unhelpful.	Answer the question, but give an explanation e.g. 'No, but there are other relevant factors you need to know in order to fully understand.'
The cross-examiner attacks your memory of the documents e.g. 'This isn't mentioned in the dismissal letter is it?'	Do not simply assume this is correct.	If you are unsure whether this is correct, ask to be taken to the relevant document and take a moment to read it. If you think the matter is dealt with in another document but cannot remember which one, tell the tribunal and your solicitor will look for it.
The cross-examiner attempts to wind you up in an effort to get you to play up.	Do not argue back – you will come across as difficult and evasive.	Be calm and take your time in answering. Ensure that you are looking at the employment judge/panel when giving your answers – this will help to prevent you getting into a sparring match with the cross-examiner. If the cross-examiner does go too far, the employment judge or your representative will intervene.
The cross-examiner asks you multiple questions at once in an effort to confuse you.	Do not try and guess the questions asked if you cannot remember them.	Stay calm and ask the cross-examiner to repeat the questions one at a time and give your answer after each question.

Re-examination

After you have been cross-examined, you may be asked some questions by your representative in 're-examination'. There will usually only be a few of these questions. The aim is to address any new matters which may have arisen during the course of cross-examination, so listen very carefully to what you are being asked.

The employment judge

You may be asked questions by the judge or other panel members at any time. As in cross-examination, listen to the question **carefully**, and answer it **honestly**. The questions can sometimes seem quite aggressive (depending on the judge), but do not be alarmed – usually the judge is simply seeking clarification of some point which interests or concerns them.

After all questions are finished, the employment judge will release you. You should then turn your microphone off and you may turn your camera off too unless the judge has asked all participants to keep their cameras on. At that stage, you are free to leave or stay to observe the remainder of the proceedings.

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