

# BRINGING A CLAIM TO THE EMPLOYMENT TRIBUNAL

With tribunal fees having been abolished, employers in the UK have seen a 90% increase of claims brought against employers. Read on for information on the process.

## TIME LIMITS

Most claims must be brought to the Employment Tribunal (ET) within 3 months of the relevant act or date of termination of employment, subject to early conciliation.

### 1. ADVISORY CONCILIATION AND ARBITRATION SERVICE (ACAS) – EARLY CONCILIATION PROCEDURE

- Before lodging a claim, a prospective claimant must commence early conciliation via ACAS.
- This process ‘stops the clock’ on the 3 month time limit.
- An ACAS conciliation officer will try to facilitate a settlement (up to 1 month).
- If settlement is not reached, the officer will issue a certificate.
- ACAS can continue to be involved after early conciliation at any stage of the proceedings. An ACAS representative is assigned to every ET claim.

### 2. ET1 – CLAIM FORM

- The claimant completes the form and attaches their grounds and particulars for bringing the claim and submits it to the ET.
- The ET sends a copy to the respondent with a blank ET3 response form

### 3. ET3 – RESPONSE FORM

The respondent completes and returns the ET3 and its grounds of response within 28 days of the claim being sent to it (the ET confirms the exact date).

### 4. THE ET

The ET has the power to reject a claim if it does not include certain required information or if it is in a form that “cannot be sensibly responded to or is otherwise an abuse of the process”.

### 5. CASE MANAGEMENT ORDERS

Case Management Orders may be issued straight away if no issues need to be addressed. This will typically occur in ordinary unfair dismissal claims.

Such orders will include directions for both parties and deadlines as to when these directions need to be completed.

### 6. PRELIMINARY HEARINGS

Preliminary Hearings will be listed to address various issues, including:

- The use of experts;
- Providing further and better particulars (if needed);
- Disclosure;
- Preparing of documents and exchanging witness statements;
- Deciding applications to strike-out; and
- Determining employment or disability status

## 7. SCHEDULE OF LOSS

- The claimant will need to prepare and serve on the respondent an itemised breakdown of the remedy they are seeking.
- This will include their loss from termination of employment to the hearing and also their future loss.

## 8. DISCLOSURE

- All documents relevant to the claim that are in the party's possession on which they wish to rely should be disclosed to the other party.
- A written list of documents will be exchanged and either party can request copies of any documents of which they do not have a copy. A joint bundle will be produced, usually by the respondent.

## 9. WITNESS STATEMENTS

- Written statements must be prepared for any person giving evidence at the hearing.
- These statements are taken as read at hearings, so they must be detailed and consistent.

## 10. FINAL HEARING

- A hearing will be chaired by a Judge sitting alone or, in discrimination cases, by a Judge and two panel members.
- Usually the person on whom the burden of proof rests will give their evidence first.
- For each witness:
  - They will swear on oath, or affirm, that the evidence they shall give will be truthful.
  - If necessary their representative will ask them supplementary questions – this is known as examination-in-chief.

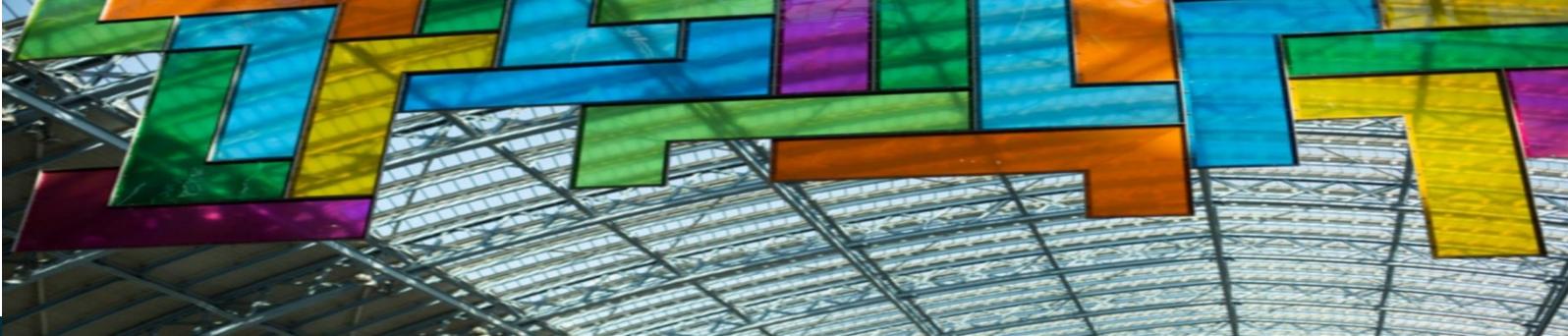
- The other side's representative will then ask the witness questions about what they have said in their statement – this is called cross-examination.
- Their representative will then have the opportunity to ask any final questions to clarify what has been said in cross-examination. This is called re-examination.
- After all witnesses have provided their evidence the representatives will provide closing submissions to the Tribunal to summarise their case.

## 11. JUDGMENT

- The ET may give its decision orally on the day of the hearing or it may need to take time to consider its decision, in which case the parties will receive a written decision at a later date – this is called a reserved judgment.
- If an oral Judgment is given, the parties are able to request written reasons for that decision.
- Compensation may be determined by the ET immediately following the decision (if given orally and there's time), or a separate remedies hearing will be listed.

## 12. RECONSIDERATION / APPEAL

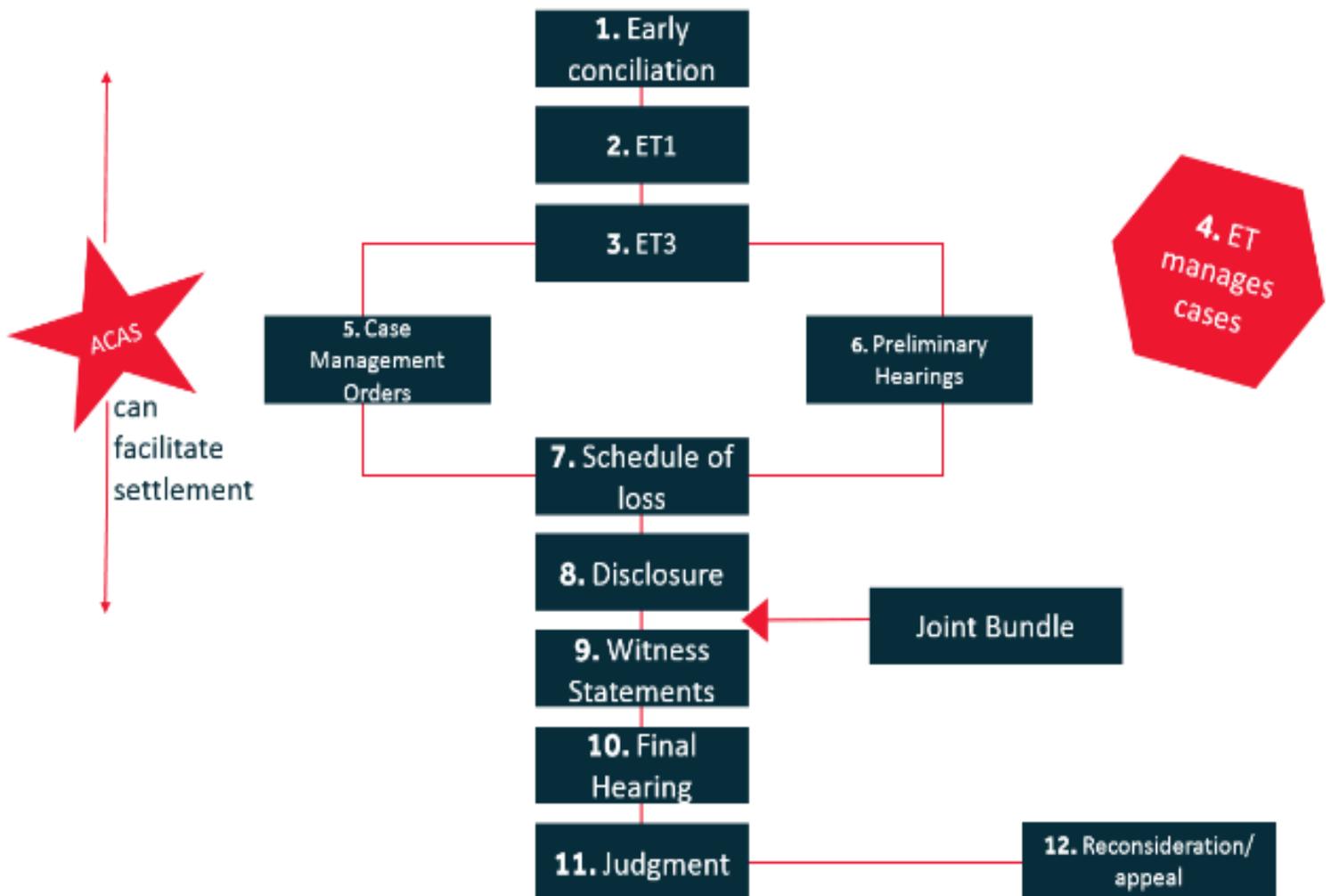
If unsatisfied with the Judgment parties are permitted to make an application for reconsideration of the Judgment and/or to appeal the decision to the Employment Appeal Tribunal – if the relevant criteria are satisfied.



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With tribunal fees having been abolished, employers in the UK have seen a 90% increase of claims brought against employers.

The aim of this guide is to explain the process of bringing a claim to an employment tribunal and advice for employers on preparing for the hearing.



If you would like more information or advice relating to this matter, please do not hesitate to contact our Employment Law team:

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