



## Birmingham Peoples Centre

Putting People First

### Witness statements

For most types of claims you will have to produce a witness statement. It is an important document and you should give yourself sufficient time to complete it. You can find several examples of witness statements in the resources section and they show how it should be set out.

Usually it will only be you giving evidence at the hearing but you might have other witnesses who have relevant evidence about your claim. If you ask somebody else to provide a witness statement it is important that they are prepared to attend the hearing. Little weight will be given to a statement if the witness is not present at the hearing to be asked questions (cross-examined). A witness will not be able to give evidence at the hearing unless they have provided a witness statement.

The witness statement is your version of what has happened, and you will be asked questions by the Respondent's representative about your statement at the hearing. You should write your statement imagining that you are speaking to the tribunal. It's not an essay, it's your opportunity to explain in your own words what happened.

The Presidential guidance on witness statements in the resource section contains useful information that will help you write your statement, what to do if you realise you have left something out and the exchange process.

### Witnesses

Although the Respondent might have several witnesses, typically the dismissing officer and the person who heard the appeal in unfair dismissal cases, it is usually only the Claimant who gives evidence for their own behalf. There is little point in bringing along a character witness as they will not add anything.

Sometimes it might be useful to ask other people to be a witness where a relevant point is contested. For example, if you are claiming that the process was unfair because you were not permitted to bring a colleague to the disciplinary hearing the colleague could confirm that they were excluded from the meeting. Similarly, if you are claiming that the investigation was unreasonable because the company failed to interview an important witness and the Respondent states, falsely in your opinion, that the witness refused to be interviewed the person could have valuable evidence to give.

It is possible to ask the tribunal to order a witness to appear but you need to be careful as you might not know what they will say, especially if they are still working for the employer.

### When to complete the witness statement

The Case Management Order, which you should have received when the employment tribunal wrote to you acknowledging that your claim had been accepted, will usually state the date by which your witness statement needs to be completed. The typical wording used by the employment tribunal is:

"By no later than 17th May 2018 the claimant and the respondent shall prepare full written statements of the evidence they and their witnesses intend to give at the hearing. No additional witnesses may be allowed at the hearing without permission of the Tribunal. The written statements shall have numbered paragraphs. The claimant and the respondent shall send the written statements of their witnesses to each other. Two copies of each written statement shall be provided for use by the Tribunal at the hearing (and not before)."

The sooner you start on your witness statement the better. It is likely to take longer to complete than you think. If you start early you will have time to reflect on what you have written and to make changes to improve it. We are happy to read what you have written and provide useful feedback.

### **What to include in the witness statement**

The witness statement should be your "story" of what happened and include all relevant facts. It will not look good if when questioned at the hearing you say something that is not in your statement. It will also undermine your credibility if when questioned you contradict what you have said in your statement.

When writing your witness statement, you should refer make to what you wrote in your claim form and ensure that you are consistent in what you are saying. If you realise you have made a mistake on the claim form, then you should explain in your statement how the mistake occurred.

It is best to describe what occurred in date order. Don't make your paragraphs too long and number each paragraph. The witness statement is not the place to make legal arguments it should be a factual account of the relevant events. Where appropriate use the actual words that were said by either yourself or others.

The witness statement should explain what you have done to find alternative employment to mitigate your losses. If you are claiming that you have suffered discrimination you should describe how being discriminated against made you feel.

You should end your statement by detailing what you are claiming and refer to your schedule of loss. For example, "I believe that my dismissal was unfair, and I am claiming compensation as detailed in my schedule of loss [page 43]."

### **Exchanging witness statements**

It is usual for the Claimant and the Respondent to exchange their witness statements at the same time on the date given in the Case Management Order. Exchange is normally completed by email and both parties should have agreed a time for exchange beforehand. At the set time you should email or phone the Respondent's representative to ensure that they are ready to exchange.

If for some reason either party is not ready to exchange it should be possible to agree a short delay and set an alternative date with the other side. However, if the date of exchange is close to the hearing date you will have less time to prepare the questions you want to ask the Respondent's witnesses.

### **Referring to the hearing bundle**

The employment judge will usually only read those documents in the bundle that are brought to their attention. One way to do this is in the witness statement. The hearing bundle will have page numbers and every time you mention a document in the witness statement you should include the relevant page number(s). For example, "I appealed my dismissal by letter dated 20th March 2018, in which I explained that my dismissal was unfair because the company did not interview relevant witnesses [pages 34-35]." If you are only referring to a specific part of a document then insert the paragraph number and page number in the statement, [para 3 page 45].

## **At the hearing**

You should check the Case Management Order to ensure you take the right number of copies of your witness statement to the hearing. You should also take a copy for yourself. The tribunal clerk will ask you before the hearing starts if you have any documents and you should give them the signed copies.

You will not be asked to read out your witness statement at the hearing, it will be taken as read and the judge will have read it before the hearing starts. You should ensure that you familiarise yourself with what you wrote in your statement before the hearing.

The Respondent's representative will ask you questions on your witness statement. They will pick up anything that is wrong and where there is evidence in the hearing bundle that suggests what you have written is not correct. Your credibility will be undermined if you appear to change what you say happened when cross-examined.



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