



## Higher National Unit specification: general information

**Unit title:** Employment Tribunal Procedure and Practice

**Unit code:** FT5T 35

**Superclass:** EC

**Publication date:** August 2011

**Source:** Scottish Qualifications Authority

**Version:** 01

### Unit purpose

This Unit is designed to provide candidates with an understanding of the Employment Tribunal process. It is intended to give them an introduction to the practical skills they will need in order to manage a case file in the workplace.

This Unit is particularly geared towards the paralegal who may be asked to draft documents in the course of proceedings; who may be called upon to explain to clients (or others) what happens at a tribunal hearing; who may be called upon to assist in the various steps of case preparation; and the benefits of considering settlement. This Unit is also intended to be relevant to those already employed in the legal sector who may wish to broaden their expertise and candidates or others who aspire to work in a relevant role in the legal sector.

On completion of the Unit the candidate should be able to:

- 1 Draft Tribunal pleadings.
- 2 Assess the potential value of a claim and explain why the parties would choose to negotiate settlement.
- 3 Explain the differences between the various hearings.
- 4 Assist with the preparation for hearings.

### Recommended prior knowledge and skills

Access to this Unit is at the discretion of the centre. However, candidates would normally be expected to have competence in *Communication Skills* at SCQF level 6 or equivalent and should normally have completed Unit *F1A7 34: Scottish Legal System* or have similar qualifications or experience.

## General information (cont)

**Unit title:** Employment Tribunal Procedure and Practice

### Credit points and level

1 Higher National Unit credit at SCQF level 8: (8 SCQF credit points at SCQF level 8\*)

*\*SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

### Core Skills

The Unit should provide candidates with an opportunity to develop the following Core Skills/Core Skill components in this Unit, although there is no automatic certification of Core Skills or Core Skills components:

- ◆ *Problem Solving*
- ◆ *Numeracy*
- ◆ *Communication*
- ◆ *Working with Others*

### Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

### Assessment

This Unit could be assessed with four assessment events. The candidate could be provided with case studies for each of the assessments to enable the candidate to produce the relevant documents and provide the required advice to the fictitious client.

**Centres will have discretion in designing assessments so that they can assess Outcomes individually or combine Outcomes where they consider it appropriate.**

## Higher National Unit specification: statement of standards

**Unit title:** Employment Tribunal Procedure and Practice

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

### Outcome 1

Draft Tribunal pleadings.

#### Knowledge and/or Skills

- ◆ Draft Claims
- ◆ Draft Responses
- ◆ Consider and Apply Time Limits
- ◆ Understand the Jurisdictions of the Employment Tribunal
- ◆ Identify the Relevant Points of Law

#### Evidence Requirements

The candidate will draft a minimum of one claim form and one response form from information provided in a given case study or case studies. The candidate must correctly identify the relevant points of law and accurately take account of relevant time limits for bringing and responding to claims and tribunal jurisdiction.

This is an open-book assessment and the candidate will have a period of 14 days from receipt of the case study/ies to submit the completed assessment.

Knowledge which cannot be inferred from the evidence produced for the above should also be sampled and the evidence may be in written and/or oral form.

#### Assessment Guidelines

The candidates could be given two case studies with sufficient information to enable the candidate to choose which of the relevant documents they wish to produce.

Candidates could be given the pro-forma documents for completion.

## Higher National Unit specification: statement of standards (cont)

**Unit title:** Employment Tribunal Procedure and Practice

### Outcome 2

Assess the potential value of a claim and explain why the parties would choose to negotiate settlement.

#### Knowledge and/or Skills

- ◆ Assessing potential value of a claim.
- ◆ Financial/economic considerations to be taken into account when considering settlement.
- ◆ Non-financial considerations such as adverse publicity.
- ◆ Different types of award that are available for particular types of claims.
- ◆ Role of ACAS in assisting parties to reach settlement.
- ◆ Alternative Dispute Resolution.

#### Evidence Requirements

Candidates should provide written and/or oral evidence of being able to assess the potential value of at least two types of claim, one covering unfair dismissal, the other covering discrimination, and explain why the parties would choose to negotiate settlement.

Candidates will be given the information in the form of case studies which should provide sufficient detail in order for the candidate to make an assessment of the potential value of a claim, providing a breakdown of the value of each claim and identifying what considerations they have given to each of the component elements of compensation available to each of the claims in question.

A satisfactory response will provide evidence of due consideration of the component elements of compensation for each type of claim, and consequently the reasons why the parties would choose to negotiate settlement.

This assessment should be carried out under supervised conditions and be carried out within one hour.

Written and/or oral evidence of knowledge which cannot be inferred from the practical exercise should be sampled.

#### Assessment Guidelines

The sampling of knowledge could be achieved by including sampling questions covering the Knowledge and/or Skills section. The assessment of this Outcome could be integrated with the assessment of Outcome 5 of the HN Unit *FT2A 35: Unfair Dismissal*.

## Higher National Unit specification: statement of standards (cont)

**Unit title:** Employment Tribunal Procedure and Practice

### Outcome 3

Explain the differences between the various hearings.

#### Knowledge and/or Skills

- ◆ Case Management Discussions — The nature of matters to be discussed; the private nature of the hearing; whether it is by telephone conference or in person; what will be discussed/decided at the discussion; what information may be needed in preparation for the discussion (eg the identity of witnesses, dates of unavailability for the purposes of date listing); the application of the Rules of Procedure.
- ◆ Pre-Hearing Reviews — How a Pre-Hearing Review may come about (ie due to a Jurisdictional point, upon application of one of the parties, the reasons for such an application such as non-compliance with Orders, a case not being actively pursued); the preliminary issue(s) to be considered; what will happen at the Pre-Hearing (ie whether it will be heard by a Judge sitting alone or a full panel, whether evidence will require to be led, whether it is a public or private hearing; what the possible Outcomes are and what the next step in the process may be (depending on the Outcome).
- ◆ Full Merits Hearings — the composition of the Tribunal Panel (Employment Judge plus two Lay Members or Employment Judge sitting alone); the formalities at the hearing (requirement to take an oath/affirmation, stand when the Panel enters); the structure of the hearing (which side will give evidence first, evidence in chief, [use of written witness statements — where used — statements read out or taken as read], cross examination, re-examination, reference to the bundle of documents, legal submissions); the likely Outcomes of the hearing (decision on the day or a reserved decision, remedy); what happens next?
- ◆ Understanding the differences in practice between Tribunals in Scotland and those in England & Wales

#### Evidence Requirements

Candidates should provide written and/or oral evidence to explain and discuss the differences between at least two different types of hearing, and the differences in practice between tribunals in Scotland and those in England and Wales for each type of hearing.

When contrasting each of the two hearings, the candidate should correctly cover all the points in the Knowledge and Skills for each type of hearing.

This assessment should be carried out under supervised conditions and undertaken within one hour.

Written and/or oral evidence of knowledge which cannot be inferred from the application of knowledge should be sampled.

#### Assessment Guidelines

The candidate could be provided with a case study detailing a query from a fictitious client. The candidate should correctly explain the differences between the different types of hearings, provide advice to the client on what happens at each type of hearing and what the potential Outcome of each is.

## Higher National Unit specification: statement of standards (cont)

**Unit title:** Employment Tribunal Procedure and Practice

### Outcome 4

Assist with the preparation for hearings.

#### Knowledge and/or Skills

- ◆ Document Orders.
- ◆ Duty to disclose relevant documents.
- ◆ Processes of Disclosure, Discovery and the preparation and agreement of a trial bundle.
- ◆ Discrimination Questionnaires — their role in the litigation process; deadlines for completion; consequences of not responding.
- ◆ Production of Witness Statements — statement preparation and the principle and practice of mutual exchange (where appropriate).
- ◆ Applying the Rules of Procedure — obligations of Rule 11(4).
- ◆ Understanding sanctions of non-compliance with Orders.
- ◆ Understanding the paralegal support role at Hearings — dress; conduct; note taking; dealing with clients.

#### Evidence Requirements

Candidates will provide written and/or oral evidence of their knowledge of the various steps involved in preparing a case to be heard by an Employment Tribunal, and the paralegal's role in assisting with the preparation.

The candidate's evidence should show a clear understanding of the obligations and duties placed upon representatives in relation to production of relevant documents, the consequences of not responding; the processes for agreeing a trial bundle; the rules of procedure and sanctions for non-compliance with Orders and conduct expected of them at Hearings. Evidence should be generated through assessment in supervised conditions.

Candidates should also provide evidence, such as a statement, from their supervising solicitor (or other relevant person) of dealing appropriately with a client at a hearing; prepare at least one accurate draft witness statement and make an application which is compliant with Rule 11. Evidence for this part of the Outcome should be generated in the candidates own time.

In addition, written and/or oral evidence of knowledge which cannot be inferred from the above may be sampled.

#### Assessment Guidelines

The first part of the assessment which should be carried out under supervised conditions could take the form of structured questions.

In order for candidates to prepare an application in compliance with Rule 11, the candidate could be presented with a scenario from a client (such as witness unavailability to attend a hearing due to holidays) and an instruction from their supervising solicitor to draft an application (in the example case, an application to postpone the hearing).

Discrimination questionnaires are complex and are typically managed by a Solicitor, unless the Paralegal is very experienced in discrimination law. Therefore, only evidence of knowledge should be assessed.

## Higher National Unit specification: support notes

### Unit title: Employment Tribunal Procedure and Practice

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

### Guidance on the content and context for this Unit

The purpose of this Unit is to give candidates an appreciation of the Employment Tribunal process. The Unit is designed to be of assistance to candidates who hope to take up work in the field of employment law litigation in a support capacity or to give others a broad understanding of the procedure and processes involved in tribunal claims.

This Unit is particularly geared towards the paralegal who may be asked to draft documents in the course of proceedings and who may be called upon to explain to clients (or others) what happens at a tribunal hearing and the benefits of considering settlement.

Outcome 1 — is intended to encourage candidates to use their existing knowledge of employment law to identify potential claims on behalf of Claimants and potential defences on behalf of Respondents.

Outcome 2 — is arguably the most important in practical terms. The vast majority of claims raised never see the inside of a tribunal room, not for a full merits hearing in any event. It is therefore worth exploring settlement considerations as a separate Outcome within the Unit. In this Outcome it is envisaged that candidates are made aware of the financial and non-financial factors that parties should be encouraged to consider in terms of settlement.

Outcome 3 — is intended to give candidates an understanding of what types of hearings occur and what happens at each of these. It is not envisaged that candidates will be expected to undertake tribunal advocacy and this Unit is not geared to providing candidates with those skills. It is however envisaged that paralegals should be in a position to explain to a client what the difference between each of the hearings is and what happens at each.

Outcome 4 — is intended to teach candidates the various steps which are involved in preparing a case for a hearing. The knowledge and/or skills points relate to different steps in the litigation life cycle.

### Guidance on the delivery and assessment of this Unit

It is recommended that this Unit is taught after a candidate has received a broad grounding in the principles of employment law.

#### Outcome 1

This is intended to reflect a real workplace task. It is not therefore envisaged that this Outcome be assessed under controlled conditions. Rather, candidates should be encouraged to research the issues thoroughly, making full use of the resources available to them.

## Higher National Unit specification: support notes (cont)

### Unit title: Employment Tribunal Procedure and Practice

Candidates are encouraged to give some thought to matters such as time limits for bringing claims and tribunal jurisdiction (in terms of both claiming and responding).

An emphasis is to be placed on identifying the relevant points of law, ie identifying potential claims and potential defences.

The claims and responses would be best limited to unfair dismissal, breach of contract, unlawful deduction from earnings or redundancy payments. Paralegals are unlikely to be asked to draft more complex claims until they have gained considerable experience.

### Outcome 2

One of the first things for a client to understand is the potential value of a claim. After all, it makes no sense to spend thousands of pounds bringing or defending a claim which is only worth hundreds.

To allow them to make an assessment of value, candidates must be given a thorough grounding in the different types of award that are available for particular types of claims. Certain factors must be taken into consideration such as statutory maximums on a weeks pay for the purposes of calculating basic awards, 'Vento' bands for injury to feelings, etc. The duty to mitigate loss should be explored.

In terms of assessment of this part of the Outcome, the important thing is not the value arrived at but rather the thought process undertaken by the candidate. To this end candidates must be encouraged to provide a breakdown of the value showing what consideration they have given to the various factors. Importantly, in terms of calculations of value there will be a certain degree of personal judgment on the part of the candidate and they should not be penalised for this.

Once potential value has been calculated, there are other considerations which both Claimants and Respondents need to be aware of. These include financial considerations, ie costs of legal representatives, cost of time away from work (Claimants), cost of time away from the business (Respondents). Finally, there is the question of Expenses which may be awarded against a party.

In addition, there are non-economic considerations. These tend to be more relevant to the Respondent and are primarily centred round the risk of attending a public hearing; risks to their reputation; negative media exposure; and the potential effect on their business as a result. When delivering this portion of the course, examples will undoubtedly be available in the media and centres are encouraged to make use of these to illustrate the importance of such considerations.

Candidates should be assessed on their understanding of these considerations and how each has the potential to affect their clients.

Candidates should be taught about alternative forms of dispute resolution such as Judicial Mediation (including under what circumstances this would be offered). This type of resolution can be attractive to both parties particularly as they may allow access to a 'remedy' which is outside of the power of the Tribunal, such as an agreed reference or apology.



## Higher National Unit specification: support notes (cont)

### Unit title: Employment Tribunal Procedure and Practice

#### Outcome 3

A paralegal will often be on the front line when it comes to dealing with clients and answering any questions that they may have. It is therefore important that candidates gain an understanding of the tribunal process in order that they are able to handle any enquiries they might receive.

This Outcome deals with the function of each of the types of hearing; who is involved with each; what preparation is required; what matters are considered; whether it is dealt with by a Judge sitting alone or a full panel; whether it is a public or private hearing; and the possible Outcomes for each.

This Unit is written for delivery in Scotland, however, bearing in mind that employment law is statutory and many firms have offices in different parts of the country, centres are encouraged to make candidates aware of the main differences between the practices adopted in Scotland to those of England.

As far as is practicable, centres are encouraged to consider the knowledge and/or skills contained within this Outcome in the context of the Employment Tribunals Rules of Procedure.

Candidates should be assessed on their knowledge of the various types of hearings. To put the learning in context, this assessment may take the form of a mocked up enquiry from a client which requires an extended response from the candidate. Given the context of this particular Outcome, centres may feel that it is appropriate to assess using oral responses.

#### Outcome 4

Throughout this section of the course, the emphasis should be on compliance with Orders of the Tribunal. This Outcome considers what those Orders may be and how the candidate can assist their client and their supervising solicitor in ensuring that they are complied with.

Compliance means more than simply meeting a deadline. There are certain duties and obligations placed upon representatives and the candidates need to be aware of and understand these.

The main points to be covered off should include:

- ◆ Documents: Candidates should be taught about the duty to undertake a reasonable and thorough search for documents and to disclose any potentially relevant documents whether they help or hinder a party. They should also be taught what documents are needed to prepare the case and prove the relevant parts of the claim (or defence) — what to produce and how.
- ◆ Questionnaires: This section introduces discrimination questionnaires and the role they play in the litigation process; the deadlines for completing them; and the consequences of not responding (ie the Tribunal can draw a negative inference).
- ◆ Witness Statements: Whilst the responsibility for witness statements will more than likely lie with the supervising solicitor, it is possible that candidates will be asked to draft statements on behalf of witnesses. This section deals with statement preparation as well as the principle and practice of mutual exchange.

## Higher National Unit specification: support notes (cont)

### Unit title: Employment Tribunal Procedure and Practice

- ◆ Rules of Procedure:  
Candidates should be familiar with the Rules of Procedure; know where to find them; what can be achieved using them (ie what types of Orders are available upon application); and how and when to make use of them.  
In making applications, Rule 10 is the starting point as this determines the powers of the tribunal. Rule 11 sets out the mechanics of making an application and dictates what such an application must contain.

This section deals with the obligations placed on representatives by Rule 11(4) along with the other parties' right to object.

- ◆ Sanctions for Non-Compliance  
This section makes candidates aware of and gives them an understanding of the sanctions which can be imposed for non-compliance with an Order.
- ◆ Providing Support at Hearings  
It may be necessary for candidates to attend hearings in a support role. In these situations, candidates need an understanding of what might be required of them. This includes standards of dress and conduct whilst in the hearing room; dealing with clients/witnesses face to face (nb clients will probably be nervous/emotional at hearings); note taking to assist the representative presenting the case.

It would undoubtedly assist candidates if they were to attend an Employment Tribunal hearing. If candidates are already working in a paralegal role, then there should be opportunity for them to accompany their supervising solicitor to a hearing. For those who are not already working, Employment Tribunals are public hearings (except Case Management Discussions and Rule 16 hearings) so they can simply attend their local hearing centre and sit in on any hearing.

### Open learning

This Unit is suitable for open and distance learning delivery. The assessment strategy and guidelines described in this specification must still be applied if this method of delivery is chosen.

For further information and advice, please refer to the SQA document Assessment and Quality Assurance for Open and Distance Learning which is available on SQA's website [www.sqa.org.uk](http://www.sqa.org.uk).

### Opportunities for the use of e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or e-checklists. Centres which wish to use e-assessment must ensure that the national standard is applied to all candidate evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. Further advice is available in *SQA Guidelines on Online Assessment for Further Education (AA1641, March 2003)*, *SQA Guidelines on e-assessment for Schools (BD2625, June 2005)*.

## Higher National Unit specification: support notes (cont)

**Unit title:** Employment Tribunal Procedure and Practice

### Opportunities for developing Core Skills

All elements of the Core Skill of *Problem Solving* — Critical Thinking, Planning and Organising, Reviewing and Evaluating — are naturally developed as candidates analyse fictitious case studies, identify remedies available and under the supervision of a solicitor, complete tasks relating to the application of Employment Law. The potential value of claims, costs and expenses for claimants and respondents must be considered in conjunction with non-financial risks. Access to appropriate software packages would allow *Numeracy* skills to be developed flexibly and support the accurate calculation and presentation of financial data in an appropriate format. Critical analysis of relevant case studies and reading media coverage of current issues can provide formative opportunities to examine the impact of statutory rights with regard to various aspects of procedures.

Paralegals have to build and maintain effective written and oral communication with a range of others, including the Supervising Solicitor, and clients who are likely to be stressed and anxious. As the Unit is undertaken there should be a focus on methods for negotiating positive Outcomes and overcoming potential barriers in working with others. Identifying different communication options and selecting the language and format appropriate to the particular situation and/or client will be essential. Opportunities for enhancing listening skills could be provided by discussion of case studies or the option of oral explanation.

### Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website [www.sqa.org.uk/assessmentarrangements](http://www.sqa.org.uk/assessmentarrangements)

## History of changes to Unit

Version	Description of change	Date

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## General information for candidates

**Unit title:** Employment Tribunal Procedure and Practice

### What this Unit is about

This Unit is designed to allow you to put your existing employment law knowledge into practice and to give you an understanding of the Employment Tribunal process.

This Unit will be assessed using a set of case studies which will sample the Knowledge and/or Skills required in the Outcomes.

### You will learn how to:

- ◆ Draft Claims
- ◆ Draft Responses
- ◆ Take account of Time Limits
- ◆ Take account of Jurisdictions
- ◆ Identify the Relevant Points of Law
- ◆ Make an assessment of the potential value of a claim
- ◆ Explain what financial considerations the parties may take in to account when contemplating settlement
- ◆ Explain what other, non-financial factors the parties may wish to consider when contemplating settlement
- ◆ Explain the role of ACAS in assisting the parties to achieve settlement
- ◆ Explain the purpose of Case Management Discussions, Pre-Hearing Reviews and Full Merits Hearings
- ◆ Describe the procedures used in Case Management Discussions, Pre-Hearing Reviews and Full Merits Hearings
- ◆ Explain the potential Outcomes that Case Management Discussions, Pre-Hearing Reviews and Full Merits Hearings may produce

**Outcome 1** — will show you how to draft pleadings on behalf of a Claimant or a Respondent. You will be able to analyse a set of facts to identify potential claims/grounds of resistance and you will be equipped with the tools to present a case on behalf of a client under the direction of a supervising solicitor.

**Outcome 2** — the reality is that the vast majority of cases settle rather than go to a contested hearing. There are a number of reasons for this and this Outcome will allow you to explore and understand those reasons. At the end of this Outcome you will be able to give your client an estimation of the value of the claim they are bringing/resisting and also explain to them the other risks which they might be exposing themselves to by carrying on with the litigation.

**Outcome 3** — will give you an understanding of the working of the Employment Tribunal. By exploring the role of the various types of hearings, you will better understand the process of litigation. This, in turn, will give the tools to be able to explain to others (your clients) exactly what is going on at any given point in the process.

**Outcome 4** — will teach you the various steps involved in preparing a case to be heard by an Employment Tribunal.