



Guidance Notes for Members Seeking Legal Services from UCU

UCU is committed to obtaining for its members legal advice quickly and effectively. These guidance notes have been prepared with that in mind. Please read them carefully. If you have any queries about how UCU's legal scheme works or how to prepare the items below please ask your regional office.

These notes should be read in conjunction with the legal scheme regulations and the agreement for the supply of legal services. If you do not have a copy of these documents the regional office can supply you with copies.

Heads of Claim

The starting point is setting out your heads of claim. These are usually framed in the context of the legal rights which you consider may have been infringed.

Example

You consider you have experienced discriminatory treatment, suffered detriment for having complained about such treatment and have been unfairly selected for redundancy dismissal which may also be a discriminatory dismissal. If so, the heads of claim may look something like this:

- *Direct race discrimination prior to dismissal*
- *Victimization for having complained about race discrimination*
- *Detriment for whistleblowing*
- *Unfair selection for redundancy dismissal including a discriminatory dismissal*

If you are not sure what legal label to attach to your claims, don't worry. The lawyers will be able to identify those most appropriate from the heads of claim raised.

Issues

Issues are those matters where there is a dispute, i.e. a difference of opinion or view as to what happened, or the correct legal analysis to be placed on agreed matters. It is best to identify the issues against each head of claim.

Examples

Direct race discrimination – on [date] did X say to me in the presence of Y and Z "we don't want your kind working in this college?"

Detriment for whistleblowing - it is agreed I made a complaint about X's remark – does my complaint amount to a protected disclosure?

Again, don't worry if you don't feel you can identify every issue. As long as you identify the issues which are most important to you the lawyers will be able to address those at the same time as identifying any others which appear to arise.

Identifying the issues is an important task – in all claims to an employment tribunal the parties are asked to set out and agree, if possible, a list of issues.

Every issue should be concisely and succinctly phrased – it is not a submission of your opinion about the way in which the issue should be decided.

Issues must relate to the heads of claim. The employment tribunal will not want to determine issues which have no bearing on the alleged breaches of law. In other words, not every disputed fact in the case becomes an issue for determination.

Example

You raise a grievance about X's remark and the manager which hears your grievance at stage 2 decides against you. You raise an appeal and at the stage 3 hearing the panel also finds against you. You consider your manager decided against you because he is friendly with X. You also think that the appeal panel decided against you because they always back their managers' decisions.

If the issue is whether X's remarks were unlawful discriminatory remarks, neither decision by the manager or the panel are issues in the case as in neither instance are you contending that their decisions were themselves unlawful acts of discrimination.

Narrative

Having identified the heads of claim and the issues in dispute, the next task is to set the narrative background to both. The narrative is important to enable the lawyers to understand fully the factual circumstances of your case. In many cases, the narrative will form the basis of your witness evidence.

The narrative should, accordingly, set out both the facts and evidence which you consider relevant to your case. Evidence is anything which tends to prove (or disprove) the asserted fact, and will be oral or in document form. The burden of proof is on the person asserting the fact and in civil courts and tribunal is set at the threshold of the balance of probabilities.

Ideally, the narrative should be word processed and use paragraph numbering. The narrative should progress in strict chronological order. If you are seeking advice on more than one distinct matter, it may be helpful to provide separate narratives addressing matter. However, in most cases the lawyers will prefer to see a single narrative starting with the earliest relevant event and ending with the last. The narrative should be as detailed as possible, for example, when citing events you should ensure that the precise date is given, or a location provided.

Please identify individuals by name and position. Acronyms and initials can be used but please remember to give the full name on the first occasion.

The narrative should be succinct (usually not more than about 5-6 A4 pages) but include all the facts that you consider to be relevant to your case. The narrative should cross refer to numbered documents (see below).

Your narrative can include assertions of fact which you understand other people will be prepared to make on your behalf, but you must make it clear when this is the case.

Although it is tempting to provide your own analysis and set out your own conclusions it is best to avoid doing so in the narrative prepared for the professional adviser. If you wish, you can provide analysis and conclusions in a separate document.

Bundle of Relevant Documents

In almost every case there will be relevant documents which the lawyer will need to read/consider. A document is widely construed and includes all written material, photographs, audio and audio visual recordings, and may exist in hard copy or other media forms, e.g on CDs.

A document is relevant if it tends to prove a fact which you assert, or disprove a fact which the other side asserts. For the purposes of the initial assessment by UCU's lawyers not every document which you possess which pertains to your case needs to be supplied. The lawyers will be most interested in see documents which help to prove your version of the facts in relation to the issues.

Since email communication is now very common, please try and exercise restraint in the number of emails you include, especially avoiding repetition of emails in lengthy email trails. Also, emails which contain no information relevant to the disputed facts/issues can be excluded.

The documents should be compiled into a bundle. Each document should be numbered. The documents should be clean photocopies and not annotated or marked. The legal system imposes an obligation on every party to give disclosure of all documents in their possession if the document is relevant to the issues in question and irrespective of whether the document helps their own case or their opponent's case. This is a continuing obligation which means that if a document subsequently comes into your possession and is relevant, you are under a legal duty to disclose it. Naturally, you would do this by supplying a copy to your own adviser first.

You are not asked to obtain or provide documents which are not lawfully in your possession. If you believe that another person has in their possession a document which you consider is relevant you should provide as much information about the document (e.g. date, from, to, and the gist of content) to UCU's lawyers who will decide whether to seek to obtain a copy from the owner.

If your dispute relates to an issue arising from your contract of employment or the terms upon which you are employed, you should include your letter of appointment, contract of employment (and predecessor contracts if appropriate) and any statutory statement of terms and conditions which you received. If some of these are freely accessible on your employer's website you may, alternatively, provide the URL to the documents in question, especially if they are voluminous, e.g. Charter and Statutes.

If your dispute has been addressed via the employer's disciplinary/dismissal procedure or grievance procedure the lawyer will usually want to receive a full copy of the documents which were used in the internal procedure.

Mitigation of Loss

If your claim includes a monetary element, e.g. loss of future earnings, you will be expected to have taken reasonable steps to minimize your losses. For example, you will be expected to produce letters and applications for jobs.

Confidentiality

We strongly recommend you do not reveal to third parties outside the union that you are taking legal advice, or the advice itself. Additionally, if, during the course of your case, your employer makes offers of settlement, we strongly recommend you do not discuss with anyone the content of the offer – to do so may jeopardise the settlement.

Statutory Questionnaire Procedure

In equality cases, there is a legal right to submit a questionnaire to your employer to enable you to obtain information (not documents) from it to enable you to decide whether or not you have a viable claim. If you wish to raise an equality case, please discuss with the regional office whether your case is suitable for the submission of a questionnaire.

UCU Legal Services

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