

GUIDANCE NOTE: CHALLENGING A JUDGMENT

Tribunal judgments, decisions, directions or orders may be changed only:

- if the Tribunal decides, at the request of either party or on its own initiative, to **set aside** a default judgment made under Article 12 of the Employment and Discrimination Tribunal (Procedure) (Jersey) Order 2016 (the “Order”); or
- after an **appeal** by one of the parties.

This Guidance Note sets out the procedures which you must follow if you:

- want to ask the Tribunal to set aside a judgment, decision, direction or order; or
- wish to appeal against a Tribunal judgment, decision, direction or order.

If you want to ask the Tribunal to reconsider a decision to reject a Claim form or a Response form, please refer to [Guidance Notes on Rejected Pleadings](#).

SETTING ASIDE A JUDGMENT

WHEN CAN I ASK THE TRIBUNAL TO SET ASIDE A JUDGMENT?

You can request that a Tribunal sets aside any judgment (including a judgment on a counterclaim), decision, direction or order (in this Guidance Note referred to as “Judgment”) of the Tribunal in the following circumstances:

- that the judgment was made in default under Article 12 of the Order; and
- it is in the interests of justice to do so.

In deciding whether it is in the interests of justice to set aside a judgment the Tribunal will take into account the following factors:

- whether the party seeking to set aside the judgment has a reasonably arguable defence to the claim;
- the reason why the party failed to submit a Response form;
- the timing of the request to set aside;
- whether serious injustice would be done to the party defending the claim if the judgment is left in place; and
- whether serious injustice would be done to the party making the claim if the judgment is set aside.

The Tribunal has the power to set aside all or part of the judgment.

WHAT SHOULD MY REQUEST TO SET ASIDE INCLUDE?

You should explain to the Tribunal why you think that you have a defence to the claim. It is helpful if you send in a draft Response form that sets out what your case will be if the judgment is set aside. Alternatively, you must explain in detail what the defence will be to each aspect of the judgment you want the Tribunal to set aside. You can submit evidence in support of your defence. For example, if the claim is for unpaid wages and you say the wages were paid you should attach a pay slip or other evidence of payment.

You should explain why you failed to respond to the Claim. If you did not respond because you were unaware of the Claim you should explain how this came about e.g. the Claim form was sent to the wrong address.

While there is no strict deadline for filing the application, it should be made within 14 days of being notified of the judgment. If there is any delay in making the application, you must explain why you did not make the application earlier. The Tribunal will take into account the timing of the application, so it is important that you make the application quickly.

You should explain the impact on the Respondent of the judgment being left in place.

WHERE SHOULD I SEND MY REQUEST?

You should send your request to the Tribunal's offices. The Tribunal prefers to receive applications by email unless circumstances make this difficult:

Employment and Discrimination Tribunal
1st Floor
International House
41 The Parade
St Helier
Jersey
JE2 3QQ
Email: RegistrarTribunalService@gov.je
Office hours are 09:00-17:00

You must also send copies of your application to all other parties to the proceedings.

WHAT HAPPENS ONCE I HAVE SENT MY REQUEST TO SET ASIDE?

The Tribunal will acknowledge receipt of your application to set aside the judgment and will confirm to the other parties that an application has been submitted. Your application will then be passed to the Chair to consider and to reach a decision.

If the Chair considers that there is no reasonable prospect of the original judgment being set aside, your application will be refused and the Tribunal Registrar will inform the parties of that refusal. Otherwise, the Tribunal will send a notice to the parties which will:

- set a time-limit for the other parties to respond to the application to set aside;
- ask for the parties' views on whether the application may be determined without a hearing.

Once replies are received, the Chair will decide whether your application to set aside requires a hearing. If it does, you will be notified when to attend in due course.

An application to set aside does not change the time-limit for making an appeal and you may appeal while waiting for the result of the set aside application.

APPEALS

WHEN CAN I APPEAL AGAINST A JUDGMENT?

It is only possible to appeal against a judgment on a point of law; you cannot appeal simply because you disagree with the Tribunal's judgment or with its findings of fact.

If you believe that the Tribunal made a legal mistake in your case, you can ask for permission to appeal against that judgment. Therefore, you could appeal if the Tribunal:

- got the law wrong or misapplied the law;
- had no evidence to support a conclusion or finding of fact;
- made a decision that no reasonable Tribunal could have made or reached a decision that was obviously wrong; or
- did not follow the correct procedures and this affected the judgment.

WHAT IS THE DEADLINE FOR APPEALING?

The usual rule is that your Notice of Appeal and supporting documentation must be received by the Tribunal **no later than midnight on the 28th day after the date on which the Tribunal sent you the judgment, decision, direction or order**. Therefore, if the Tribunal sent the judgment to you on Thursday 1 March, you must ensure that the Tribunal receives your Notice of Appeal and supporting documentation by midnight on Thursday 29 March.

You should note that time limits are strictly enforced and it will only be in exceptional circumstances that the Tribunal will accept an application for permission to appeal outside the normal 28-day time limit.

WHAT IF I HAVE ASKED THE TRIBUNAL TO SET ASIDE ITS ORIGINAL JUDGMENT?

If you have requested the judgment be set aside (see above) but you also wish to appeal on a point of law, you must still ensure that you submit your Notice of Appeal within the normal 28-day time-limit. **You should not await the Tribunal's judgment on the application to set aside or you risk missing the appeal time-limits.**

WHAT DOCUMENTS SHOULD I SEND TO THE TRIBUNAL?

If you wish to appeal, you must send the following documents to the Tribunal within the 28 day time limit:

- a Notice of Appeal, ensuring that you set out your reasons for appealing the Tribunal's judgment;
- a copy of the judgment, direction or order against which you are appealing;
- a copy of the Claim form;
- a copy of the Response form; and
- if you have asked the Tribunal to set aside its original judgment, a copy of your application to set aside (and Tribunal's judgment if available).

WHERE SHOULD I SEND MY APPEAL

You should send your Notice of Appeal and supporting documents to the Tribunal's offices. The Tribunal prefers to receive applications by email, unless circumstances make this difficult:

Employment and Discrimination Tribunal
1st Floor
International House
41 The Parade
St Helier
Jersey
JE2 3QQ
Email: RegistrarTribunalService@gov.je

Office hours are 09:00-17:00

You must also send copies of your Notice of Appeal to all other parties to the proceedings.

WHAT HAPPENS ONCE I HAVE SENT MY NOTICE OF APPEAL?

The Tribunal will acknowledge receipt of your Notice of Appeal and will confirm to the other party that an application for permission to appeal has been submitted. Your application will then be passed to a Chair to consider and to reach a decision on whether to give you permission to appeal the judgment to the Royal Court.

You will usually receive the Chair's decision within six weeks of the date on which the Tribunal receives the application. If this is not possible, the Tribunal will contact you and will keep you informed.

WHAT IF MY APPLICATION FOR PERMISSION TO APPEAL IS REJECTED?

If a Chair rejects your application for permission to appeal (usually because the Chair does not consider that your appeal is about a legal mistake), you may then apply to the Royal Court to grant you permission to appeal. If you decide to apply to the Royal Court, you must ensure that the Assistant Judicial Greffier receives that application within 14 days of the date on which the Tribunal rejected your application.

You should send your appeal and supporting documents to the Assistant Judicial Greffier at:

The Judicial Greffe
Royal Court Building
Royal Square
St Helier
JE2 1JG

within 14 days of the decision for the Tribunal to refuse permission.

The Tribunal will have no further involvement in your case and, from this point, all enquiries must be directed to the Assistant Judicial Greffier or as otherwise advised by the Greffe.

WHAT IF MY APPLICATION FOR PERMISSION TO APPEAL IS SUCCESSFUL?

If your application is successful and the Tribunal grants you permission to appeal to the Royal Court, you will have 14 days in which to send your appeal to the Royal Court.

NB: The Royal Court has the power to make an award for costs against an unsuccessful appellant/respondent

Your appeal should be sent to the Assistant Judicial Greffier at:

The Judicial Greffe
Royal Court Building
Royal Square
St Helier,
JE2 1JG.

The Tribunal will not be involved any further in the process of your appeal and from this point, all enquiries must be directed to the Assistant Judicial Greffier or as otherwise advised by the Greffe.

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