

Dos and Don'ts at a First Tier Tribunal Hearing

AS A lawyer with nearly 30 years post qualification experience, dealing with a First-tier Tribunal appeal hearing is simply part and parcel of my practice. I therefore often need to remind myself that for most of my clients attending a First-tier Tribunal appeal hearing is anything but routine. The experience has often been described to me as the most stressful event they have encountered. One reason for this is the fear of the unknown so the following will provide guidance on the process of a First-Tier tribunal (FTT) appeal.

Where will the hearing take place?

You will have received, a few weeks in advance, a Notice of Hearing. This notice will say where the court is, the time and whether it will be an "attended" or remote hearing. Some hearings are still taking place by video or phone. This remote way of proceeding was introduced during the covid restrictions and is still implemented but most hearings are now back to "in person" attendance.

When will the hearing take place?

FTT hearings are all listed at 10 am. The order of the case is for the judge to decide. It is a good idea to arrive say 30 minutes beforehand as you will need to queue to sign in. Additionally, your lawyer may wish to have a brief meeting with you before the hearing.

As all hearings are listed for a 10 am start, be prepared to wait.

Who will be there?

1. The appellant (you)
2. Your lawyer

3. The Home Office presenting officer (HOPO). They may be barristers or civil servants representing the Home Office. They do not always attend and if here is no HOPO, the hearing will still proceed.

4. The judge
Other people who could be in attendance are:

5. Your witnesses (if you have any) - your witnesses will have prepared their witness statements and have filed this with the court in advance of the hearing. They will not be allowed into the courtroom until you have finished giving your evidence. They will be asked to wait outside and will be called by the clerk when the judge is ready for them

6. An interpreter may also be in attendance if you arranged for one to be present in advance of the hearing. This request is made in the course of submitting your appeal. You do not need to pay for the interpreter as it is paid for by the court.

7. The court clerk - the clerk is there to help the judge.

8. The public - a First-Tier Tribunal hearing is open to the public so there may be other people in the room. It is nerve racking enough to attend your hearing, so the idea of the public being present can be daunting. However, you will find that most of the "public" in this case are also waiting for their own hearing to take place so are unlikely to be paying attention to you.

9. Friends and family - can be at court if they are not witnesses or if they are witnesses, and they have already given their evidence.

The courtroom decorum?

A FTT appeal is less formal than those you see on TV. There will be no wigs, gowns and gavels, but it is nevertheless a formal occasion so you should dress appropriately. The Judge, your lawyer and the presenting officer will likely be dressed in suits.

There is usually only one judge but sometimes there are two, with one training/observing. The Judge will sit at an elevated bench, looking down on the room.

Your lawyer or the court clerk will show you where to sit. Your seat will be at a desk facing the judge's bench. If you have an interpreter, he or she will sit next to you.

If you see a badge that says "respondent", that is the HOPO's designated seat. This will usually be the desk closest to the door. The order of things will generally be as follows.

The judge may address your lawyer and HOPO before the hearing. The Judge will usually say a few words to explain to you how the hearing will proceed.

If you need to address the Judge or HOPO, you should refer to them as "Sir" or "Madam".

Once the introductions are made. The next phase will be for



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the appellant (you) and your witnesses to give evidence. When you give your evidence, at this stage, to your lawyer, this is called "examination-in-chief".

Examination-in-chief

Before the hearing you will have prepared and submitted a statement. This should set out your circumstances and the facts that you are relying on. Your lawyer will ask you to confirm whether you made the statement and ask you to confirm this to be true. Unless there are issues your lawyer feels have not been addressed in your statement, for example where an error needs to be explained, this stage of examination-in-chief should be fairly short.

Cross-examination

Once you have finished giving your examination in chief, then follows what is generally regarded as the most stressful and time-consuming part of the hearing.

You will be cross-examined on evidence (oral and written) you have provided. "Consistency" is key. Read your statement(s) before the hearing to ensure that you remember dates and names. It is crucial that you understand the questions before answering them; hence if you did not hear or fully understand what has been put to you, do not be afraid to ask the HOPO or Judge to repeat it.

Re-examination

Once the HOPO has finished asking you questions, the next

phase is "re-examination". This is carried out by your lawyer. He/she will address or clarify any points raised during cross-examination by asking you additional questions.

Closing submissions

The final stage will be for the HOPO and your lawyer to make their final submissions. The HOPO will sum up the Home Office's case and your lawyer will sum up your case.

Decision

Some clients also believe that a decision is handed down at the end of the hearing and that it is also enforced immediately, expressing concerns that they will be bundled away after the hearing. This is not correct. Although a judge can make an immediate decision, this very rarely happens. As for the immediate enforcement of a negative decision, this does not happen as appellants will generally have a right to challenge a negative decision.

Tips:

No children are allowed other than in the public area.

Dress formally (no jeans, no hats or any head coverings unless it is for religious reasons) if you can as it shows respect for the process.

Bring drinks, snacks or even lunch and be prepared to wait, but do not eat or drink in the actual courtroom or during the hearing.

Do NOT be late ■

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