

Legal Representation

Members face problems which may require referring their case to either an Industrial Tribunal or the County or High Court. This guidance clarifies the arrangements between members and INTO representatives in respect of these cases.

INDUSTRIAL TRIBUNALS

An Industrial Tribunal is a type of court set up under employment legislation to deal with specified issues in the field of employment law. These can include:

<i>Unfair dismissal</i>	<i>redundancy pay</i>	<i>payment of wages</i>
<i>breach of contract</i>	<i>equal pay</i>	<i>whistle blowing</i>
<i>health and safety</i>	<i>sex/race/disability discrimination</i>	

Tribunals may also deal with matters affecting a group of INTO members such as:

- *Failure to consult on redundancy*
- *Transfer of employment where an undertaking is transferred (TUPE)*

An application to an industrial tribunal must be submitted, for most claims, within **3 months** of the complaint; i.e. *within 3 months of the date of termination of employment, or discrimination incident. A tribunal judges whether* the way in which someone was treated was fair, judged by how a reasonable employer should have treated that employee. Tribunals are required to act in accordance with precedent cases decided in higher courts, which can often mean that they are restricted in the decisions they can reach.

WHAT IS INTO POLICY ON INDUSTRIAL TRIBUNALS AND COURT CASES?

Tribunals and court cases require considerable input in time and resources. The priority is to concentrate resources representing our members in schools and with the employing authorities. Tribunals are a poor substitute for INTO organisation in schools. They are lengthy, complex and time consuming. They rarely provide an effective remedy and are a last resort when other procedures have failed or do not exist.

From April 2000 to March 2001, the median compensation award at tribunals for unfair dismissal was £2,515 and less than 1% of successful applicants' claims to tribunals resulted in re-instatement. In the same period, the median award in sex discrimination cases was £2,180 and in race discrimination cases, £2,378. Compensation for injury to feelings ranged from £500 to £37,500, with most awards at the lower end of the range. Compensation in the court system may also not reflect the hurt or grievance which the individual INTO member has suffered or feels. This is because in the Court system, a judge will apply the law rigorously and may be limited by legislation or precedents established in case law.

WHY IS MY CASE BEING REFERRED THROUGH THE COURT SYSTEM?

The industrial tribunal system can only deal with matters that fall within its jurisdiction. Members with issues relating to stress, breach of contract or other civil matters may have to make a complaint through the Court system.

A decision on which court to refer the case to will be taken after an initial legal opinion has been obtained. The legal opinion will involve the member meeting INTO solicitors or barrister, and may also involve INTO

seeking a medical and / or psychiatric assessment of the member in relation to the issues raised. These reports are confidential and are not discussed with any individual not directly involved in the case.

WHAT LIMITS ARE THERE ON THE LEVEL OF LEGAL SUPPORT I CAN RECEIVE?

1. INTO legal advice is given and continued only if the advice given is followed.
2. A member is not obliged to accept INTO legal advice or assistance. However, if advice given by INTO is not followed, the Organisation reserves the right to withdraw assistance.
3. Should a conflict arise between the member and the CEC, in relation to the provision of legal assistance, the decision of the CEC is final.
4. Should a member seek alternative legal assistance, INTO has the absolute discretion to withdraw the provision of INTO legal assistance at any time.
5. The prior official authority of the CEC / BFC or designated officials must be obtained for legal expenditure. INTO will not recoup members expenses incurred in consulting their own legal representatives.
6. INTO is not liable for the actions of any member while in the course of their employment as a teacher and will not provide any indemnification or be responsible for any loss.
7. The INTO Teacher Indemnity Policy indemnifies members against liability at law for damages and legal costs and expenses. The policy excludes libel or slander or claims relating to sexual abuse, molestation, harassment or interference.
8. INTO will not support, assist or defend any legal claim, instituted by one member against another or the INTO, or any officer or servant of the INTO.
9. Where a member chooses to accept advice from the INTO, no liability will attach to the INTO, its officers, or agents, servants, for any loss or damages arising out of such advice.

INTO SUPPORT

INTO support is discretionary. Normally INTO will support members where:

- The member is compliant with the rules governing membership, including subscriptions.
- The case has a reasonable prospect of success,
- It is justifiable in terms of INTO time, organisation and resources.

INTO does not normally support members who join after the events giving rise to the possible tribunal case have occurred.

THE *PRIMA FACIE* COMMITTEE

INTO support for any case to an industrial tribunal or for a legal opinion in respect of any issue is determined by the union's *Prima Facie* Committee. This committee consists of the Official dealing with the case, the Northern Committee Representatives. and the Northern Secretary. This committee makes a recommendation about the case as set out, and the decision of the committee is communicated to the member in writing.

REPRESENTATION

INTO Officials represent members in Industrial Tribunals -rather than legal representatives. Legal representation is expensive and officials provide advocacy from a practical employment perspective. The success rate at tribunals of teachers represented by union officials is higher than where legally represented. Legal advice is sought when deemed necessary by the Organisation. The Northern Secretary takes this decision, in consultation with the General Secretary and Treasurer. Representation in the court system is determined by the Organisation but will involve legally qualified representatives and the INTO Official who will advise them on the merits of the case.

IF I RECEIVE INTO SUPPORT, WHAT WILL I NEED TO DO?

INTO needs full information, documents and evidence from you about your employment situation in school to be successful in bringing a claim. You may need to supply the names of people who will act as witnesses for you or provide other information. It is essential that you cooperate with the INTO Official at all stages of your claim by providing what is asked for and by being available to discuss developments. You should contact your

Official if your circumstances change, for example if you move school or go on holiday or sick leave. It is vital that the Official handling your case is fully aware of all details / information pertaining to the case. *The Official is representing you and acting in your best interest. Advice and support are offered in good faith. If you decide not to take the Official's advice or take action without consulting him or her, INTO reserves the right to withdraw support for your case.*

WHAT WILL INTO DO?

The Official investigates your claim and provides you with appropriate advice and representation. They will correspond on your behalf. They may also attend meetings with our legal representatives and yourself to discuss matters relating to your case. Attempts may be made to negotiate with the Respondent to try to settle your case and you will be kept abreast of any developments.

An investigation may result in the Official deciding that your case is unlikely to succeed at Tribunal and it may be better to attempt to settle the matters or withdraw the claim. The Official may seek a legal opinion on the matters under consideration before reaching a conclusion. Full advice will be given and you will be expected to make a decision based on that advice.

THE HEARING

If the decision is to go ahead with the tribunal hearing, the Official will explain what happens on the day and go through your witness statement with you. He / she will discuss your evidence with you and whether your witnesses should attend. At the hearing the Official will represent you and will expect you to be available throughout the hearing to deal with any points or questions. It is important that you raise any concerns or questions you have with the Official, so that they are aware of them

In respect of a court hearing, similar discussions will take place between INTO legal representatives and yourself and the Official dealing with your case, witnesses will also have to make themselves available to speak to our legal representatives **prior** to the case being listed for a hearing

WHAT IF I RECEIVE AN OFFER OF SETTLEMENT?

Where an offer of settlement is received, this will be discussed with you and the merits of accepting or rejecting any offer considered, taking into account the strengths of your case and the possible compensation payable from a tribunal or court. In some cases the Respondent may decide to settle your claim just before the hearing. You may therefore be asked to make a quick decision. The Official will advise you about this and assist you in coming to a decision.

Where you wish to continue your case and an offer is made which is considered reasonable by INTO, and should have been accepted, INTO reserves the right to discontinue support. Such circumstances include:

- Proceeding to a hearing may be an unjustifiable use of INTO resources;
- It is unlikely to improve the settlement already made;
- And / or in some circumstances could involve costs being incurred.

INTO will always seek to ensure the best possible outcome for you from the claim.

CAN I USE MY OWN PROFESSIONAL ADVISOR?

Members may engage their own professional advisors **at their own expense**. INTO representation is **free**, and INTO has access to legal advice through our solicitors. Most solicitors are not employment law specialists. You should bear in mind that you cannot recover any costs in most tribunals and even if you win you will have to pay your own solicitors costs. Where a member takes separate advice, INTO will not continue to support the case.

RIGHTS AT WORK

Good union organisation and representation in school is the best mechanism for improving your rights at work. It is not always possible to prevent employers from denying you these fundamental rights. INTO will provide support, both in school and at tribunal when such problems arise. It is important that you stay in touch and maintain your membership in order to benefit from INTO support.

July 2003

UNDERTAKINGS

INTO

INTO agrees to consider your case for representation including possible submission to an Industrial Tribunal / County / High Court on the terms set out in this document (delete as appropriate)

Signed (INTO Official)

APPLICANT

I am willing to be represented by INTO in accordance with the terms as set out, and I understand that I am agreeing to appoint INTO as my representative in all matters arising from representations including any tribunal or court proceedings.

I understand that INTO reserves the right not to continue support for my case should an offer of settlement be made which is considered reasonable by INTO

I am willing to allow my case to be publicised by INTO if successful. *(The information will be used responsibly and will be discussed with me before publication)*

Name

School

Address (home)

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Post Code

Telephone

Date

Signature