HMRC - NMWM16316 - Providing Information As A Witness To A Tribunal (No Direct HM Revenue & Customs’ Involvement)

If a NMW Officer is ordered to attend a Tribunal (NMWM16312), then they must do so and will be legally bound to answer any questions that are put to them. A NMW Officer should only be attending as a witness before the Tribunal when ordered to do so by the Tribunal (NMWM16310).

As a witness for the Tribunal it will not be possible for the NMW Officer to be legally represented by HM Revenue & Customs at the hearing. However, it may be appropriate for them to be accompanied by the People Leader or a colleague who should take notes of the hearing.

When attending as a witness at the pre hearing or the full hearing it is important to remember that HM Revenue & Customs is not party to the claim, and that the NMW Officer will be acting in the role of an impartial witness. Although they may have been called by the Tribunal at the insistence of one of the parties involved, the NMW Officer’s paramount aim must be to give their evidence factually and impartially to assist the Tribunal to reach a decision based on the evidence it hears.

Oral evidence provided to a Tribunal

A NMW Officer may be asked to read their prepared witness statement and should answer questions from either party (or their representatives) and members of the Tribunal panel.

Statements and answers should be limited to factual reporting of the case, such as, why the case was being investigated, what evidence was obtained from the parties, how it was collected (e.g. telephone conversation, interview, letter) what (if any) information was supplied to the parties. In particular

If appropriate it should be explained to the Tribunal that an investigation had not been completed, what stage the investigation had reached and why it was stopped.

Unless the HM Revenue & Customs investigation resulted in the issue of a notice of underpayment, it will not be possible to tell the Tribunal or other parties whether in your opinion national minimum wage was paid or is due. If asked about this, you should reiterate that you did not fully conclude your investigation and therefore are unable to express a view on the matter.

Any questions regarding the role of a NMW Officer should be explained as clearly as possible

A NMW Officer should decline to comment on Government policy and if asked about this they should say that this is a matter proper to the Department for Business, Innovation & Skills.

A NMW Officer should decline to provide their own legal opinion on the correct interpretation of NMW legislation. If asked about how NMW operates they must reply on the basis of HM Revenue & Customs/Business Innovation & Skills published external guidance.

Questions beyond the remit of a NMW Officer

If a NMW Officer feels that he is being pressed for a response which goes beyond his remit then he should politely remind the enquirer of the limits of his involvement in the case, for example;

“I was not able to complete my enquiries so I did not consider all the evidence available or finalise my opinion of the NMW position.”

“As a NMW Officer, my role is to act as an enforcement officer. HM Revenue & Customs enforces compliance of NMW on behalf of the Department for Business, Innovation & Skills and whilst I am able to describe the process I follow when conducting an investigation I am unable to comment on Government policy. Queries relating to NMW policy should normally be submitted to officials in the Department for Business Innovation & Skills”

“As an NMW Officer, my role is to act as an enforcement officer on behalf of the Department for Business Innovation & Skills. Whilst I can provide general guidance relating to the operation of NMW I am unable to provide any views on the legal interpretation of NMW legislation or offer an opinion relating to matters which are outside of officially published guidance.”

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