

Likely cost of using our services in unfair and wrongful dismissal claims in the employment tribunals.

Essential Employment Law Services Ltd is regulated by the Solicitors Regulation Authority (SRA). Under the SRA Transparency Rules, solicitors who undertake certain types of legal work for clients are required to provide information on their website about the likely cost implications for the client of using the solicitor's services.

The provision of advice and representation in relation to bringing and defending unfair and wrongful dismissal claims in the employment tribunals is one of the areas of work covered by the Transparency Rules. 'Unfair dismissal' is a dismissal in contravention of the statutory regime for fair dismissal contained in the Employment rights Act 1996 and a 'wrongful dismissal' is a dismissal in breach of the terms of the employee's contract of employment.

Each case we undertake is assessed at the very start of the matter and is reviewed continuously as it progresses. We look at a number of factors including the complexity of the legal and factual issues involved and the likely length of any hearing and then offer the best estimate of costs we can. This information is set out in the 'client care' letter we send to clients when they express interest in using our services. Sometimes this is the 'best estimate' we can give on limited available information and may need to be updated as the case progresses, as may our advice on the cost benefit to the client of incurring further costs.

By looking at the unfair dismissal and wrongful dismissal cases we have worked on over the years, we have been able to identify an average range of costs that a client is likely to incur by using our services. This information is set out below to help potential clients decide whether they would like our help.

We have also listed the most important factors that are likely to affect the amount of time we should have to spend preparing a case and attending a tribunal hearing as these will help to indicate the range of costs that a case may generate.

Methods of funding legal costs that we offer and our charging rate

We do not work for fixed fees in unfair and wrongful dismissal cases since in our experience so many unpredictable factors can increase or reduce the cost of running a case that it is fair neither to the client nor us to operate a fixed fee system. Instead, we charge for the time we have to spend on a case to progress this effectively and efficiently. Our current charging rate £175.00 per hour plus VAT at the prevailing rate (currently 20%). All work is undertaken by the directors of the business, Justin Lewars and Heather Cowan, who have been practising solicitors for 38 and 21 years respectively and employment law specialists for more than 20 years. .

Unless the case can be resolved quickly, we normally send out interim bills as the case progresses, and we can sometimes agree to payment by instalments.

We do not offer conditional fee agreements.

We do undertake work for clients who have the benefit of legal expenses insurance but it is worth noting that fees incurred by a claimant before a claim is submitted to the employment tribunal and/or the claim is accepted by the insurer are generally not recoverable under the terms of most legal expenses policies .

If you run a business which has the benefit of legal expenses insurance, you will need to check your policy to see what steps, if any, you have to take to avoid losing the benefit of cover: these might include promptly notifying the insurer of a potential claim against the business and asking the insurer to confirm from what point in the proceedings legal fees may be covered.

Whether you are a claimant or a respondent in an unfair dismissal /wrongful dismissal claim, it would be sensible to check whether any trade union or professional organisation can assist you with the case or at least help with the cost of getting private legal services.

Range of Fees for bringing and defending claims for unfair and wrongful dismissal

Simple case: £6,000- £9,000 (excluding VAT)

Medium complexity case: £9,000-£16,000 (excluding VAT)

High complexity case: £17,000-£30,000 (excluding VAT)

Factors that could make a case more complex:

- If it is necessary to make or defend applications to amend claims or to provide further information about an existing claim
- Bringing a claim against or defending a claim brought by a party who does not have legal representation
- Making or defending a costs application
- Resolving complex preliminary issues such as whether a claimant is disabled or has brought the claim in time (where this is not agreed by the parties)
- The number of witnesses and documents
- If it is an automatic unfair dismissal claim e.g. if the claimant is dismissed for blowing the whistle on wrongdoing or for asserting one or more of a number of specified statutory rights
- Allegations of discrimination which are linked to dismissal
- Whether expert evidence has to be obtained

The above cost ranges are based on cases with final hearings of up to 5 days. If the case is listed for longer than this there will be an additional charge for attending at tribunal of £900 per day (excluding VAT) either if we are representing you at the tribunal hearing or a barrister is representing you but requires us to be in attendance on any of the hearing days: (if a barrister requires our attendance, for example to manage witnesses or take notes or assist in any way, then we are obliged to do so).

Disbursements

Disbursements are costs related to a client's matter that are payable to third parties. The most common disbursements are the cost of obtaining help from a barrister and, especially where the dismissal claim is linked to a claim of unlawful discrimination, an

expert witness such as a medical doctor. We will either handle the payment of the disbursements on your behalf or you can pay them direct to the service provider.

The cost of a medical expert can vary tremendously. It can be anything from £100 plus VAT for a very short GP report to £3-£4,000 for a full Consultant's report (a process which will usually involve obtaining your medical records, your meeting with or being examined by the Consultant followed by the preparation of the report). Often the choice of expert will be agreed between the parties and the cost shared but that is not always the case.

If we instruct a barrister to represent you (which will only be done with your consent) his or her fees will be made up of what is known as a 'brief fee' which covers the preparation of the case and the first day's hearing. The amount of the brief fee will be agreed beforehand and will be based on the complexity of the case and the experience of the barrister. A typical brief fee for a relatively simple case would be around £1500 plus VAT but for a complex case it could be between £3,000 and £5,000. In addition to the brief fee the barrister will then charge what is known as a 'refresher fee' for each subsequent day or part day of the hearing. This refresher fee is generally between £800 to £1500 plus VAT per day depending on the experience of the advocate. It is worth remembering that once the 'brief' to counsel has been delivered, the brief fee is payable.

Key stages and likely timescales

The fees set out above cover all the work involved in the following key stages of a claim:

- Taking initial instructions, reviewing the papers and advising on the merits of the case and likely compensation :(this advice will be reviewed throughout the matter as unexpected developments may put a different complexion on the matter). This initial stage should be completed within 1 to 2 weeks.
- Entering into pre-claim conciliation to explore whether a settlement can be reached: Both potential claimants and respondents can refer the matter to ACAS but for claimants it is a mandatory requirement and without it no claim

can be presented to the employment tribunal. Once you make the decision to make the Early Conciliation Notification to ACAS then the process can be completed within a timescale of 2 days to 6 weeks depending on whether both parties wish to conciliate and how long negotiations take. The primary conciliation period is 1 month but this can be extended by 2 weeks if ACAS considers a conciliated settlement is likely.

- Preparing the claim or response: If the matter does not settle the claimant will have a limited time (this can vary but is generally no more than 5 months from the date of dismissal but can be less) in which to submit a claim. Once submitted, the respondent will have a further 28 days to file a response to the claim.
- Reviewing and advising on the claim or on the response from other party: This should be completed within 1-2 weeks of receiving the claim or response.
- Exploring settlement and negotiating settlement throughout the process: this should be an ongoing process throughout the life of the claim.
- Preparing or considering a schedule of loss: once a claim has been submitted it is usual for the employment tribunal to issue directions for the preparation of the case for hearing and it will give dates by which each direction will have to be complied with. The timescales for compliance can vary from tribunal to tribunal. The preparation of a schedule of loss is one of the directions the tribunal will give as it focuses the parties' minds on the likely value of the claim. The document will then have to be updated throughout the life of the claim as more information about the claimant's financial losses becomes available but the first draft is generally prepared within 4-8 weeks of the claim being submitted.
- Preparing for (and attending) a Preliminary Hearing: Sometimes the tribunal will order a preliminary hearing of one or more issues such as whether or not there has been a dismissal or whether the claim has been brought in time or whether

the claimant is disabled if the dismissal involves unlawful disability discrimination. The preliminary hearing can be conducted over the telephone or at an oral hearing at the tribunal. Tribunal hearing lists can vary tremendously and as such it is difficult to give an accurate prediction of when, in any given case, a tribunal will list a matter for preliminary hearing. It may be within 2 months of the claim being submitted but it may be as long as 6 months if the tribunal to which a claim is allocated is particularly busy. This is generally something we can only advise on when we know which tribunal is dealing with a claim and can make enquiries of it as to likely hearing dates.

- Exchanging documents with the other party and agreeing a bundle of documents.
- Taking details from witnesses , drafting statements and agreeing their content with witnesses
- Preparing a bundle of documents for use at the hearing
- Reviewing and advising on the other party's witness statements
- Agreeing a list of issues, a chronology and/or cast list: timescales for this and the previous 4 stages of the claim will be dictated by the directions given by the tribunal and the complexity of the case. In practice, these stages are generally completed within 6 months of the claim being presented. However, in cases where the final hearing is not listed for several months, it is usual for work to carry on as additional documents or information may become available.
- Preparation and attendance at Final Hearing and where necessary drafting instructions for a barrister to represent you: Again, the timescale for final hearing is dependent upon the hearing list of the tribunal handling the claim. Some are able to list for final hearing within a 6 month window from presentation of the claim. Others are only able to offer hearings within a 12 month window. It is generally the case that cases listed for a 1 day hearing will be heard within a shorter time frame while multiple day hearings are more difficult for tribunals to allocate and may take longer to be heard. It is not uncommon for hearings to be postponed at the last minute: this is because tribunals will often 'double

book' cases knowing that many cases settle at the last minute but of course this does not always work.

It is worth bearing in mind that sometimes in litigation things do not go entirely to plan and some stages can be omitted or abbreviated in which case the cost of the work they entail will be less but in others, unforeseen events may occur which can increase costs such as having to make applications to the tribunal for a witness order if one of the potential witnesses will not attend voluntarily or if you decide you want a second expert opinion.

You may wish to handle the claim or parts of it yourself and simply want our advice in relation to some of the stages. If this is the case we will certainly consider the 'unbundling' of our services so that we only charge for discrete pieces of work as the case progresses.

How long will my matter take start to finish?

The time that it takes from taking your initial instructions to the final resolution of your matter depends largely on the complexity of your case and the stage at which it is resolved. If a settlement is reached during pre-claim conciliation, your case is likely to take 4-6 weeks. If your claim proceeds to a Final Hearing, your case is likely to take between 6 and 12 months. This is just an estimate and we will of course be able to give you a more accurate timescale once we have more information and as the matter progresses.

Impact of the Covid-19 Pandemic on Employment Tribunal Cases

The Covid-19 pandemic has resulted in significant changes to the Employment Tribunal process both in terms of how cases are dealt with and the length of time it is taking for cases to be heard. There are regional variations with London Tribunals experiencing longer periods between the commencement of a claim and the hearing date. For the duration of the restrictions that HMCTS has had to put in place in the Employment Tribunals including remote working of the judiciary and tribunal staff and remote hearings, tribunal users are likely to experience longer waiting times between the start of a claim and its conclusion. In some cases this is significant and can add

up to a year to the timescales referred to above. We shall do our best to advise clients on a case by case basis as to how their individual case is likely to be affected.