

EMPLOYMENT TRIBUNAL: UNFAIR AND/OR WRONGFUL DISMISSAL

At Paris Smith we provide prompt and practical advice both to employees and employers for bringing and defending claims for unfair or wrongful dismissal.

- “Wrongful dismissal” is a claim by an employee that their employment was terminated in breach of contract, for example because their employer failed to give them (or pay them for) the required period of notice of termination.
- “Unfair dismissal” is a claim that can be made by certain employees that their employer acted unreasonably in terminating their employment.

The information below is a general indication of the costs involved in bringing or defending claims of wrongful or unfair dismissal before an Employment Tribunal. However, we will always endeavour to provide you with a specific estimate of costs, based on the particular circumstances of your case.

Where prices are given below as 'plus VAT', VAT will be charged in addition at the prevailing rate, which is currently 20%.

Our fees:

- Simple cases:

We offer a fixed fee for simple cases. We define a simple case as a case which will take one or two days to be heard in the Employment Tribunal. The length of the case is determined by a number of factors, including the complexity of the issues involved and the number of likely witnesses.

For simple cases, we offered a capped fee of £8,000 plus VAT and disbursements for a one day case, and £10,000 plus VAT and disbursements (or expenses) for a two day case. These capped fees are for where the solicitor with conduct of your case is not a partner. Where a partner has conduct of your case then the capped fee is increased by an additional £2,000 plus VAT.

These capped fees are inclusive of counsel's fees in the event that it is decided that counsel should be instructed for the final hearing.

Further information on the disbursements (or expenses) which are likely to be payable are outlined below.

Further details of our capped fee can be found [here](#).

- Medium complexity cases: £15,000 to £30,000

Again, we assess the complexity of the case by reference to the likely length of the hearing. We would assess a medium complexity case to be a case listed for between 3 and 5 days in the Employment Tribunal.

In addition, a case can become more complex if other claims are being brought in addition to simply an unfair dismissal claim or a wrongful dismissal claim. For example if a discrimination claim is also being brought this can make the case more complex, and as a result the final hearing of the case can take longer. More

information on the factors which can determine the complexity of the case is outlined below.

Also, sometimes the Employment Tribunal can list a preliminary hearing to determine a particular point before a case is allowed to proceed. For example only employees can bring a claim of unfair dismissal. Therefore if it is unclear whether an individual is an employee, the Employment Tribunal may list a preliminary hearing to decide this issue. Where such a preliminary hearing is listed this is likely to mean that the case is a medium (or even a high) complexity case, rather than a simple case.

- High complexity cases: £30,000 plus VAT upwards.

Note it is not possible to specify an upper costs limit on highly complex cases.

The actual complexity of the case, and therefore the actual fees, will depend upon a range of factors. Factors that could make a case more complex include:

- Complex or disputed issues of law or fact;
- Multiple, disputed, allegations by either party;
- Numerous witnesses giving evidence on either side;
- A claim for a large sum of money even if the claim is otherwise “simple”;
- A large volume of documents;
- Amending a claim or defence;
- Having to provide further written particulars about the claim or defence;
- Dealing with complex preliminary issues (for example (a) whether the claim was brought in time or (b) whether the Claimant was disabled);
- Attending and preparing for preliminary hearings;
- Making or defending applications to the Employment Tribunal;
- Defending claims that are brought by unrepresented Claimants;
- Making or defending a costs application;
- Allegations of discrimination which are linked to the dismissal;
- If there is a mix of corporate and personal liability.

The basis for our charges

The costs estimated above are based:

- (a) on our many years experience of dealing with claims before Employment Tribunals;
and
- (b) our current hourly rates. We calculate our fees based on hourly rates for different grades of fee earner depending on their experience and/or seniority within our firm. Details of our current hourly rates are available upon request.

Other expenses

- Employment Tribunal fees: currently there are no fees payable by parties to Employment Tribunal claims. However the government has indicated that fees may be introduced in the future.
- Out of pocket expenses: you will be charged for any disbursements (or expenses) we incur on your behalf.

Common disbursements (or expenses) we may incur on your behalf include photocopying charges and Companies House searches. Photocopying is charged at 20p per copy. The overall charge for photocopying will therefore depend upon the size of the bundle, and whether we (or the other side) are ordered by the Employment Tribunal to produce the bundles for the hearing.

The above can also include out of pocket expenses that we may incur in dealing with your case, for example:

- Travelling costs;
- Car parking charges;
- Subsistence;
- Couriers fees;
- Hotel charges (where an overnight stay is required)

Unless there are exceptional circumstances, we will always endeavour to agree any out of pocket expenses with you before incurring them.

- Barristers fees: we may consider it appropriate (or more cost effective) to instruct a barrister (or “Counsel”) to represent you at the hearing of the Employment Tribunal claim. If so, we will always endeavour to agree Counsel’s fees with you in advance of the hearing. Counsel’s fees can vary depending on a number of factors including:
 - the seniority and experience of the barrister;
 - the complexity of the case;
 - the amount of preparation time required by the barrister; and
 - the length of the hearing.

Timescale:

The process is likely to take up to 12 – 18 months from start to completion. However you should bear in mind:

- that more complex claims are likely take longer to conclude than more straightforward claims;
- timescales can be affected by factors outside our control, including:
 - the efficiency of the Employment Tribunal service (for example in dealing with correspondence or listing your case for hearing);
 - the approach of your opponent;
 - how quickly and efficiently you provide us with your instructions.

Typical steps in bringing claims of wrongful/ unfair dismissal

Please note that not all of the steps below may be relevant to your case.

<u>Step</u>	<u>Services we provide</u>
1. Instruct one of our solicitors	<p>At our initial meeting or discussion, we will talk you through the details of the case on which you are seeking our advice. We may ask you for additional information and/or documentation. At or shortly after this initial meeting or discussion we will advise you as to your options and the merits of the case.</p> <p>We will provide you with a quote, and if you choose to instruct us to proceed, we will send you our terms of engagement letter confirming your instructions and our charges.</p>
2. Pre-claim conciliation	<p>In most cases, an employee will be required to contact the Advisory, Conciliation and Arbitration Service (ACAS) before lodging an Employment Tribunal claim.</p> <p>We will advise you on the merits of using ACAS's free 'Early Conciliation' service and, if you wish us to do so, conduct any negotiations via ACAS on your behalf.</p>
3. Employment Tribunal claim	<p>We will draft your claim or response, seek your approval of the document and lodge it as appropriate with the Employment Tribunal.</p> <p>We will prepare or consider a schedule of loss setting out the compensation being claimed in the case.</p> <p>It may be necessary to request further particulars from your opponent about aspects of their case. If so, we will draft a request for further particulars, serve on your opponent, consider their responses and seek your comments thereon.</p>
4. Ongoing settlement discussions	<p>Even if Early Conciliation has failed the services of ACAS are generally available and, if you wish us to do so, we will continue to discuss with ACAS the possibility that your case may be settled without recourse to a Employment Tribunal hearing. If the case is settled we will advise you about (and if necessary draft) the settlement agreement.</p>
5. Preliminary Hearing	<p>The Employment Tribunal may decide that a preliminary hearing is necessary – for example because there is a preliminary issue of law to be dealt with or because the Employment Tribunal wishes to better understand and identify the issues in your case. If a preliminary hearing is listed by the Employment Tribunal some or all of the following steps may be necessary:</p> <ul style="list-style-type: none">(a) preparation of an agreed list of issues/chronology;(b) preparation of agreed directions;(c) collation of a bundle of documents for use at the preliminary hearing;(d) drafting any witness statements for use at the preliminary

hearing

We will advise you about whether your attendance at the preliminary hearing is necessary and discuss whether we will represent you or whether we recommend the instruction of Counsel.

In some complex cases more than 1 preliminary hearing may be necessary.

6. Directions

It will be necessary for us to comply with any directions issued by the Employment Tribunal. Directions are the procedural steps that the parties must comply with in preparation for the final hearing of your case. Typical actions we will need to undertake as a result of the Employment Tribunal's directions include:

- (a) preparing/ responding to requests for further particulars;
- (b) collating documents relevant to your case;
- (c) disclosing those documents to your opponent;
- (d) preparing / agreeing an indexed and paginated bundle of documents for use at the final hearing;
- (e) preparing a Schedule of Loss or counter-Schedule;
- (f) interviewing you and any of your witnesses who will give evidence at the final hearing;
- (g) drafting, seeking approval of and finalising written witness statements of all your witnesses;
- (h) exchanging witness statements with your opponent;
- (i) considering, advising you about and seeking your comments on your opponents witness statements;
- (j) preparing/ agreeing a list of issues;
- (k) preparing/ agreeing a chronology;
- (l) lodging witness statements, bundles and other relevant documents with the Employment Tribunal in readiness for the hearing.

7. Hearing

Well in advance of the hearing we will discuss with you whether we will represent you at the hearing or whether we recommend that Counsel be instructed. If the latter, we will send a written set of instructions to Counsel together with copies of all relevant paperwork.

Please note that, following the conclusion of the hearing on the merits of your case, there may be a separate hearing to determine the amount of any compensation to be awarded.

8. The Decision

The Employment Tribunal will either issue its decision about your case orally at the conclusion of the hearing or will send its written decision to the parties at a later stage. Following receipt of the Employment Tribunal's decision we will discuss with you the implications of that decision and if necessary advise about your ability to appeal or review the decision.

What is not included:

The fee estimates set out above are in respect of steps 1 – 8 above. They do not include any subsequent work – for example representing you at any appeal or review hearing or advising you about the merits of any such appeal or review.

Our team:

Your case will be managed by a member of our employment team details of whom can be found [here](#).