



## Understanding our work and our fees

### Defending an unfair dismissal or wrongful dismissal claim

Q: Are wrongful dismissal claims and unfair dismissal claims the same thing?

A: No. Wrongful dismissal and unfair dismissal are two entirely different concepts, but people often mistakenly use the expressions interchangeably.

A wrongful dismissal is a dismissal which is in breach of a term of the employment contract. There is no length of service required for a breach of contract claim, which can be brought either to the County Court or High Court or, where the claim arises out of or is outstanding on termination of employment and its value does not exceed £25,000, to an Employment Tribunal.

Wrongful dismissal occurs most commonly where you dismiss an employee without notice or with insufficient notice under the contract of employment. Compensation awarded usually equates to the value of the employee's pay and benefits during the period of notice that the employee would have been given, had the contract been terminated lawfully.

Wrongful dismissal claims are commonly brought where an employee has been dismissed without notice or pay in lieu of notice for gross misconduct and the employee disputes that it was gross misconduct (and so they should have been paid notice). They are also common in constructive unfair dismissal cases, where an employee resigns with immediate effect in response to a fundamental breach of the employment contract by the employer, but can then treat themselves as having been dismissed by the employer. If they resigned without notice, then the unfair dismissal claim will usually also include a claim for wrongful dismissal and a claim for notice entitlement and any other benefits that would have been payable during the notice period.

For this reason, the costs of defending a wrongful dismissal claim can vary significantly. If it is simply a failure to pay the correct notice entitlement, then to deal with a claim could take as little as 5-15 hours of work to produce the ET3 (the defence form in Employment Tribunal proceedings), a small bundle of documents and a witness statement i.e. £1625-4875 plus VAT (£1950-5850 inc VAT), with barrister's costs in the region of £1,000-2,000 plus VAT (i.e. £1200-2400 inc VAT)\*. If it is an argument over whether there is eligibility for a notice payment at all i.e. there is a dispute as to whether there was an act of gross misconduct, then the costs of pursuing a claim may be more substantial, and virtually identical to the cost of pursuing an unfair dismissal claim (as the facts and issues to be considered will be largely the same). See below.

Q: What is unfair dismissal, then?

A: The right not to be dismissed unfairly, on the other hand, is a statutory rather than a contractual right. The determination of whether a dismissal is fair or unfair is dependent on:

- your reason for dismissal (and whether or not it was one of the potentially fair reasons for dismissal that are allowed: misconduct, poor performance, ill health, redundancy, statutory ban, or for some other significant reason);
- whether or not you acted reasonably in treating this reason as sufficient to justify dismissing the employee; and whether or not you followed a fair procedure.

Except in specific circumstances, an employee must have a minimum of two years' continuous service to qualify for the right to bring a claim of unfair dismissal, which can be brought to an employment tribunal only, not the County Court or High Court.

Compensation is made up of a basic award (usually the same as a statutory redundancy payment), and a compensatory award, which takes into account future loss of earnings and other losses caused by the dismissal – and which is ordinarily limited to £93,878 or one year's gross pay (whichever is the lower). It is unusual to achieve a maximum award, unless it has been impossible to find other employment or paid work quickly.

Q: If I successfully defend the unfair dismissal claim, will I recover my legal fees as well?

A: No. In the vast majority of cases, you will not be awarded costs, even if you successfully defend it. You will therefore have to factor in the cost of defending any action to see whether it is going to be commercially worthwhile. If the employee's claim is of a low value (for example they have found other work within a few weeks of having been dismissed), the costs of defending a claim could outweigh the amount of compensation you might have to pay to settle the claim quickly on a commercial basis. You should check to see if you have any other means of funding the defence of a claim – whether through legal expenses insurance cover or through any organisation that you may be a member of.

The circumstances in which you can recover costs are very limited in the Employment Tribunal, and for that reason, the starting point is that you should always anticipate funding any defence of a claim, unless you have alternative insurance cover, or similar.

Q: Do you take employment cases on a "No Win, No Fee" arrangement?

A: No. You may be able to find other claims handlers or solicitors who may, but we do not when it comes to Employment Tribunal claims.

Q: What might it cost me to defend an unfair dismissal claim?

A: This is dependent on numerous factors and because of this, it is very difficult to give generic prices without knowing about the case and what issues are involved. It will also depend on how many documents there are, how many of the issues are accepted or disputed, how many witnesses may need to be called by you and the employee to argue the case, and also how many days the Employment Tribunal hearing will last for. There may be case management hearings and if the matter proceeds to a full hearing in front of an Employment Tribunal Judge, the likelihood is that you will need to pay for a barrister to represent you, too. All of these will impact on the likely costs of defending a claim.

Q: What are the stages in a tribunal claim and what might those stages each cost?

A: The stages in an unfair dismissal claim are usually fairly standard, but the costs in each case will vary considerably. Time is charged on an hourly rate and the partners and consultant in our Employment team all charge the same rate of £325 plus VAT (VAT charged at 20% so £390 inc VAT) per hour.

We have attempted to differentiate between a 'simple' case and a 'complex' case and give potential ranges of what sort of costs you might encounter – but we will advise you of what

the overall costs will be and will be able to be more accurate once we have a better idea of your case. A simple case is one where the legal issues are relatively straightforward and there is little factual dispute; where there is a small core bundle of documents of less than 50 pages and you are the only witness.

A complex case is one where:

- there are multiple factual disputes
- a large number of documents which provide a conflicting view and where multiple witnesses will need to be called to prove your case
- it is necessary to make or defend applications to amend claims or to provide further information about an existing claim
- you are defending claims that are brought by litigants in person
- you are defending a costs application
- complex preliminary issues such as whether there is a disability (if this is not agreed by the parties), or whether claims have been brought in time
- there are a number of witnesses and documents
- it is a more 'uncommon' type of case – for example an automatic unfair dismissal claim; a whistleblowing claim or similar
- allegations of discrimination are linked to the dismissal

The costs outlined below are indicative only. Cases can settle at any stage, and the vast majority can be settled before tribunal proceedings even become necessary.

In many cases, you can help us by providing us with a written chronology of events, and a bundle of relevant documents.

1. *Taking initial instructions, reviewing the papers and advising you on merits and likely compensation (if the claim succeeds)*

The likely costs will depend on how detailed the background is. Some disputes arise over a matter of a few weeks; some have developed over long periods of time, from months to years in extreme cases. The cost therefore depends on how long it takes us to go through the relevant issues and documentation in order to consider the background. Even in a basic case, we are likely to need 2-4 hours of time to take initial instructions and read through the paperwork (i.e. £650-1300 plus VAT or £780-1560 inc VAT). In a complex case (one where there are a number of live issues and significant documentation to be read), it is quite possible that 5+ hours of time may be needed to take initial instructions (i.e. starting from £1625 plus VAT or £1950 inc VAT).

2. *Entering into ACAS pre-claim conciliation (EC) where this is mandatory to explore whether a settlement can be reached*

The time needed for this step will vary on whether the employee is willing to engage in the EC process or not. If they are not, then the whole process could take as little as 1-2 hours of time (i.e. £325-650 plus VAT or £390-780 inc VAT). If they are prepared to engage and negotiate, then the EC process could require 5-10 hours of work to conclude a settlement through agreement (i.e. £1625-3250 plus VAT or £1950-3900 inc VAT).

3. *Reviewing the ET1 and preparing the ET3*

In a simple case, as little as 3-4 hours work may be needed to read the ET1 and complete the ET3 (i.e. £975-1300 plus VAT or £1170-1560 inc VAT). In a complex case, this could take in the region of 5-10 hours of work (i.e. £1625-3250 plus VAT or £1950-3900 inc VAT),

or potentially (in the most complex of cases), it may be more cost effective to have a barrister draft the ET3 (and their costs would be agreed with you in advance of the work being undertaken by them).

*4. Exploring settlement and negotiating settlement throughout the process and considering and updating likely losses*

Sometimes there is little or no negotiation (especially if the employee has not engaged in the ACAS EC process); sometimes the parties remain willing to try and resolve matters through negotiation throughout the process as a whole. The strength or weakness of a case will often be revisited at varying stages. In a simple case, over the lifetime of a case, this could be 3-5 hours work (i.e. £975-1625 plus VAT or £1170-1950 inc VAT). In a complex case, this could take 5-10 hours of time (i.e. £1625-3250 plus VAT or £1950-3900 inc VAT).

*5. Preparing for (and attending) a Preliminary Hearing*

This is most likely in a complex case. A great deal will depend on the issue to be determined, but the likely overall costs could be 7-12 hours of work (i.e. £2275-3900 plus VAT or £2730-4680 inc VAT) and Counsel's fees in the region of £750-1000 plus VAT (i.e. £900-1200 inc VAT)\*, depending on whether the matter is listed for a half day or a full day.

*6. Considering Tribunal generated case management orders*

This is likely to be 30 minutes to 1 hour of time in a simple case (i.e. £162.50-325 plus VAT or £195- inc VAT). In a complex case, where multiple applications may be needed, then 2-5 hours of time could be necessary (i.e. £650-1625 plus VAT or £780-1950 inc VAT). In some cases there may also be a need for a case management hearing which would further increase the costs. The costs will depend on whether this is dealt with by telephone or whether attendance at a Tribunal is required and the costs could range between 2-4 hours of work (i.e. £650-1300 plus VAT or £780-1560 inc VAT).

*7. Exchanging documents with the other party and agreeing a bundle of documents*

In a simple case, this could involve 2-4 hours of work (i.e. £650-1300 plus VAT or £780-1560 inc VAT). In a complex case, this could take 4- 10 hours of work (i.e. £1300-3250 plus VAT or £1560-3900 inc VAT).

*8. Preparing a counter schedule of loss*

In a simple case, this could take 1 hour of work (i.e. £325 plus VAT or £390 inc VAT). In a complex case, this could take 2-6 hours of work (i.e. £650-1950 plus VAT or £780-2340 inc VAT) and if there is a complex pension calculation, Counsel may be involved.

*9. Preparing bundle of documents*

Once the documents are agreed, 1-2 hours may be needed to check the bundle, depending on the number of documents within it (i.e. £325-650 plus VAT or £390-780 inc VAT).

*10. Taking witness statements, drafting statements and agreeing their content with witnesses and exchanging them*

This depends on the number of witness statements that are needed and the amount of evidence that needs to be included to deal with the issues. In a simple case, it may take 2-4 hours to draft and finalise your statement (i.e. £650-1300 plus VAT or £780-1560 inc VAT). In a complex case, this could take up to 10 hours of work per statement (i.e. up to £3250 plus VAT or £3900 inc VAT).

#### *11. Reviewing and advising on the other party's witness statements*

This will be dependent on the number and length of statements received. In a simple case, where there is likely to be one statement from the employee, then 2-3 hours work may be necessary (i.e. £650-975 plus VAT or £780-1170 inc VAT). In a complex case, where there may be multiple and lengthy statements, then this could easily be 3-5 hours of work, and possibly more (i.e. starting from £975-1625 plus VAT or £1170-1950 inc VAT).

#### *12. Agreeing a list of issues, a chronology and/or cast list*

A list of issues is unlikely to be called for in a simple case. In a complex case, Counsel would ordinarily draft this and the cost could be in the region of £600-£1000 plus VAT (i.e. £720-1200 inc VAT)\*.

#### *13. Preparation and attendance at Final Hearing, including instructions to Counsel*

Counsel is commonly instructed, given that this is the most cost effective way of being represented at your hearing. Instructions to Counsel will usually take in the region of 1-2 hours in a simple case (i.e. £285-570 plus VAT or £342-684 inc VAT) and 2-3 hours in a complex case (i.e. £570-855 plus VAT or £684-1026 inc VAT). Counsel's fees for attendance will usually be in the region of £2500 plus VAT for a hearing that lasts 1-2 days (i.e. £3000 inc VAT) and £10,000 plus VAT for a 5 day hearing (i.e. £12,000 inc VAT)\*.

#### *14. Advising on appeal*

Counsel would ordinarily undertake this if they attended the hearing – circa £600-£1500 plus VAT (i.e. £720-£1800 inc VAT)\*.

Q: What if there are other claims aside from unfair dismissal – for example there is a claim of discrimination?

This is likely to increase the amount of work that would have to be undertaken, as the issues need to be identified and the evidence assessed.

Q: How long might it take?

The time that it takes from taking your initial instructions to the final resolution of your matter depends largely on the stage at which your case is resolved. If a settlement is reached during ACAS pre-claim conciliation, your case is likely to take 2-4 weeks. If your claim proceeds to a Final Hearing, your case is likely to take 6-12 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.

*Please remember that all details of our fees and disbursements will be given to you, as well as our terms and conditions, prior to the commencement of any work on your behalf. Gotelee is very proud of the Price Promise on fixed fee work which means no surprises.*

*\*Counsel's fees may be higher depending on the level of experience of Counsel/if Counsel has taken silk.*