



## Legal advice and help in employment matters

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This note outlines the various options open to an individual who needs legal help or advice when there is the existence or possibility of contentious legal proceedings over an employment dispute. Legal advice should ideally be given by a suitably qualified person with professional liability insurance. There are many places where legal advice can be obtained free of charge. Some of these can be found in the list given at the end of the note. The employer's disciplinary or grievance procedure should be invoked in the first instance and if dismissal has already taken place enquiries should be made as to whether there is an internal procedure offering an appeal from this decision. ACAS offer services to any person who wants help in resolving a work related problem. It is important to bear in mind that there will be a time limit for lodging an application with an employment tribunal.<sup>1</sup> Information about making a claim in an employment tribunal, and the form "ET1" needed to start a claim can be found on the employment tribunals website.<sup>2</sup> New Claimants in Northern Ireland should apply to the Industrial Tribunals and Fair Employment Tribunal, Northern Ireland.<sup>3</sup>

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<sup>1</sup> Employment Tribunal Enquiry Line: 0845 7959775

<sup>2</sup> Employment Tribunals Website: <http://www.employmenttribunals.gov.uk/default.asp>

<sup>3</sup> Northern Ireland: <http://www.industrialfairemploymenttribunalsni.gov.uk/>

## **A. Resolving problems early**

ACAS have a network of telephone help lines giving free help and information about any work problem at any time.<sup>4</sup> There is a general commitment to problem solving at an early stage. In negotiation and dispute resolution, ACAS focus on achieving a long term effective solution. The organisation also runs many workshops and seminars throughout the country.<sup>5</sup>

There are a number of organisations which provide free legal advice and if necessary representation in employment tribunals. Details of some of these are given below. Access to some of these services tends to be concentrated in London, although there are law centres and citizens advice bureaux all over the country.

Since October 2004 when the *Employment Act 2002 (Dispute Resolution) Regulations 2004* SI No.752 came into force, employees will not normally be able to make a claim to an employment tribunal unless they have raised a formal grievance with the employer in writing and then completed an in-house statutory grievance procedure. Time limits for making applications to an employment tribunal will be extended to allow a reasonable time for these procedures to complete. Employees will also be entitled to the benefit of a minimum standard formal disciplinary procedure before they are dismissed. A dismissal could be automatically unfair if the employer dismisses an employee without going through the required disciplinary procedure. Employment tribunals must adjust awards by a minimum of 10% (up to a maximum of 50%), either up or down in cases where there has been a failure by employer or employee to abide by the new rules.

## **B. Representation in Employment Tribunals**

### **1. Solicitors**

The Law Society offers assistance to people who want to engage a solicitor specialising in employment law. There is a telephone information service and an online search service, details of which are given below.

### **2. Lay representatives**

There is no restriction on rights of audience in tribunals and parties may choose whomever they want to represent them or they can represent themselves. Lay consultants often appear as representatives and the tribunal service publishes guidelines for lay representatives on how to conduct themselves at hearings. Bar school students are also encouraged to take on cases through the Free Representation Unit as a way of gaining advocacy experience.<sup>6</sup> The position of non-legally qualified advisers giving legal advice generally, particularly in relation to

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<sup>4</sup> Main ACAS Helpline: 08457 47 47 47

<sup>5</sup> <http://www.acas.org.uk/>

<sup>6</sup> FRU website: <http://www.fru.org.uk/>

employment law matters, was considered in the Blackwell Report.<sup>7</sup> The report, commissioned by the Lord Chancellor in 1999, concluded that restricting representation was not advisable but did suggest that the trade unions should publish a code of practice for lay advisers and take a more proactive role in representation of their own members.

### **3. Legal aid**

Employment tribunals are intended to be accessible to those who are representing themselves so the basic rule is that civil legal aid will not be available except for appeals. However, legal help is sometimes available in appropriate cases from a variety of sources. This may or may not include representation at a contested hearing. On 1 April 2000 legal aid was replaced by “legal help” which covers advice and “help at court” covering representation in court. This would cover appeals to the EAT and cases involving an employment contract claim pursued through the courts instead of the tribunal system. As in the past with legal aid, these are means tested services and are now administered by the Legal Services Commission which replaced the Legal Aid Board.<sup>8</sup> The service is known as the “Community Legal Service”.<sup>9</sup>

Although the Legal Service Commission does not provide financial help for representation before employment tribunals, solicitors can give limited free advice under what was formerly known as the “Green Form” scheme. This is available to those with low disposable income and low savings or capital and generally covers drafting and correspondence in relation to the claim, but not representation in the hearing.

### **4. Equality Commissions**

In discrimination cases, the various equality commissions can provide financial assistance for representation at tribunals, although the following factors may be taken into account in an equality commission’s decision on whether or not to fund a case:

- Whether the complaint falls within the scope of the relevant Act which the particular commission operates under
- The strength of the case
- Whether or not the case meets the commission’s priorities
- Whether the applicant already has, or could have, access to alternative representation
- If the commission believes it is reasonable to expect an applicant to pursue their case without its help
- Whether the applicant is a trade union member and whether the commission feels that the trade union should be advising their members on discrimination claims

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<sup>7</sup> Dept. for Constitutional Affairs: <http://www.dca.gov.uk/civil/blackwell/reportfr.htm>

<sup>8</sup> Qualification levels were changed on 7 April 2003 - see LCD Press Release 107/03 of 11th March 2003 and the *Community Legal Service (Financial) (Amendment) Regulations 2003 SI 2003/650*

<sup>9</sup> Useful website: <http://www.justask.org.uk>

There are proposals to merge the various commissions into a unified Commission on Equality and Human Rights (CEHR). However, at present the relevant equality commissions are:

- Equal Opportunities Commission (sex discrimination <http://www.eoc.org.uk/>)
- Commission for Racial Equality (race discrimination <http://www.cre.gov.uk/>)
- Disability Rights Commission (disability discrimination <http://www.drc-gb.org/>)

## **5. Complex cases**

Hearings in tribunals can involve complex legal issues and might require detailed preparation and effective presentation for a case to have any hope of success. Accordingly, the lack of availability of funded legal assistance in tribunals has led to arguments that this could amount to non-compliance with Article 6(1) of the *European Convention on Human Rights* (right to fair trial). In Scotland only, this has led to an extension of legal aid, since 15 January 2001, to cover complex employment tribunal cases.

## **6. Conditional fee agreements**

Another way in which parties can access legal services for tribunal proceedings is through conditional fee agreements.<sup>10</sup> This allows lawyers to operate on a “no win no fee” or other arrangement. The client may be required to pay a sum up front to cover a costs insurance premium. The most common type of agreement is a hybrid agreement whereby the client pays fees up to an agreed maximum, thereafter a conditional fee agreement is engaged.

## **7. Arbitration**

In tribunal cases, on average 71 per cent of cases are resolved by ACAS. When the case is one of straightforward unfair dismissal and a way forward cannot be found, ACAS have a scheme giving people the choice of confidential arbitration instead of a tribunal.

## **8. Trade Unions**

Many applications in employment tribunals are taken with representation or advice from the employee’s union. In 2001/2002 (year ending October) there were 4,419 new trade union applications.<sup>11</sup> The most common claim was for unfair dismissal. In the same period the TUC reported that 95% of cases they took on were won or settled favourably to their members. In cases which went to a final hearing they reported that 80% of cases were won.<sup>12</sup>

This should be seen in the context of the Employment Tribunal Service figures for unfair dismissal cases in roughly the same period which show that 56% of cases were dismissed and

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<sup>10</sup> See *Conditional Fee Agreements Order 2000, SI 2000/823*

<sup>11</sup> TUC survey *Focus on Employment Tribunals-trade unions trends survey 03/03* May 2003

<sup>12</sup> Ibid.

44% upheld at final hearing.<sup>13</sup> This would suggest that the unions who took part in the survey are generally careful about which cases they take on. Three quarters of the unions said that they only submitted cases or appeals on a lawyer's recommendation.

## C. Useful addresses

**Citizens Advice Bureau:** <http://www.nacab.org.uk/>  
National Association of Citizens Advice Bureaux  
Myddelton House  
115-123 Pentonville Road  
London N1 9LZ

**Law Centres:** <http://www.lawcentres.org.uk/>  
The Law Centres Federation  
Duchess House,  
18-19 Warren Street  
London W1T 5LR  
Tel 020 7387 8570  
Fax 020 7387 8368

**The Free Representation Unit:** <http://www.fru.org.uk/>  
(Croydon, London North and Stratford East employment tribunals)  
1st Floor, 49/51 Bedford Row  
London WC1R 4LR  
Tel: 020 7831 0692

**Bar Pro Bono Unit:** <http://www.barprobono.org.uk/navigate/home.html>  
7 Gray's Inn Square  
London WC1R 5AZ  
Tel: 020 7831 9711

**London Race Discrimination Unit:** <http://www.rdu.org.uk/>  
14 Bowden Street  
London SE11 4DS  
Tel: 0207-793 0378

**Employment Lawyers Association:** <http://www.elaweb.org.uk/>  
P.O. Box 353  
Uxbridge  
UB10 0UN  
Tel: 01895 256972

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<sup>13</sup> *ETS Annual Report and Accounts 2002-2003*

Fax: 01895 256972

**The Legal Services Commission:** <http://www.legalservices.gov.uk/>

Head Office:

85 Grays Inn Road  
London WC1X 8AA  
Tel: 020 7813 1000  
Fax 020 7813 8638

**The Law Society:** <http://www.lawsoc.org.uk/>

Switchboard:

0207 242 1222

Information Services:

0870 606 6575

Solicitors online (to find a solicitor): <http://www.solicitors-online.com/>

Office for the Supervision of Solicitors (Dealing with complaints and regulation):

0845 608 6565

**Industrial Tribunals and Fair Employment Tribunal (Northern Ireland):**

<http://www.industrialfairemploymenttribunalsni.gov.uk/>

Long Bridge House,  
20-24 Waring Street,  
Belfast BT1 2EB

General Enquiries: (028) 9032 7666

Facsimile: (028) 9023 0184