

Price and Service Transparency Costs Information Bringing or defending claims for unfair or wrongful dismissal in the Employment Tribunal

Clients of ebl miller rosenfalck work with us because they have received a personal recommendation from one of our clients or via our respected professional networks, or because of the leading reputation of our specialist employment team for our work with domestic or overseas employers, or for senior executives.

When you instruct the ebl miller rosenfalck employment team you are paying for our expertise, experience, and strategic advice. We represent both employers and senior executives and that experience allows us to add value at all stages of the tribunal process, including for commercial negotiations. For our international clients, our bi-lingual employment lawyers (French, German and Danish) can add further value by explaining UK employment law concepts and procedures which may not exist in their home jurisdiction.

We wish to be as clear as reasonably possible regarding the range in potential costs that you may incur if you instruct ebl miller rosenfalck to represent you in bringing, or defending, a claim in the Employment Tribunal for unfair dismissal or wrongful dismissal in the Employment Tribunal in England & Wales, and we provide this information to help you make your decision on which law firm to instruct. We also go further to explain the methods of funding employment tribunal litigation and the alternatives to litigation.

A: Methods of funding Employment Tribunal litigation

It is imperative that at an early stage, before embarking on any litigation, that you consider how you might be able to fund your matter. There are several sources of funding and we set out some below for you to consider.

Senior Executives: If you are a senior executive claimant you should check to see if you have the benefit of legal expenses insurance (known as LEI). This type of insurance may be included in your household contents or buildings insurance policy, or you may have purchased it as additional cover.

If you do have LEI then you should check what the wording of the policy says about how you are able to request funding for your case. The usual process is to notify the insurer of the situation – with as much detail and supporting documents as they request – to enable them to decide whether you are entitled to cover. Their analysis may involve considering the time from when the incident (e.g., the dismissal) occurred and when you notified them. They will also consider the prospects of success of your proposed claim, or request an advice from us about your prospects of success. Terms of insurance policies vary, but usually an insurer will not agree to provide cover unless your claim – or an analysis of each potential individual claim – has a prospect of success which is greater than 51%.

Employees may also be able to obtain free advice from their Trade Union (if they are a Union member), or from ACAS, legal support clinic, the Citizens Advice Bureau, or from a lawyer acting on a pro-bono basis.

Employers: If you are an employer defending a claim then you should check the terms of your office insurance policy to establish if that includes legal expenses insurance (known as LEI) for defending claims in the Employment Tribunal.

If you do have LEI then you should check what the policy says about how you are able to request funding in your case. The usual process is to notify the insurer of the situation – with as much detail and supporting documents as they request – to enable them to decide whether you are entitled to cover. Their analysis may involve considering the time from when the incident (e.g. the dismissal) occurred and when you notified them. They will also consider the prospects of success of your proposed defence to a claim. Terms of insurance policies vary, but ordinarily an insurer will not agree to provide cover unless your

defence to a claim – or an analysis of each potential individual defence to a claim – has a prospect of success which is greater than 51%.

If your insurer does agree to cover the legal fees of your claim they may – initially – insist that you use their panel solicitors. You – as the policy holder – have the right to instruct whichever law firm you wish to represent your business, and if you feel strongly that you would like to instruct another firm – such as ebl miller rosenfalck – then you should inform your insurer. We can then review the terms that your insurer suggests and discuss this further with you to ensure that the hourly rates offered by your insurer are aligned with our hourly rates and the seniority of the fee earners, and if there is a difference then we discuss with you about how we can bridge that gap.

Transparency from the start

We provide all clients with a letter of engagement (known as an LOE) together with our terms and conditions, in which we provide you with details of the likely costs in stages based on the likely number of hours which maybe required. Rarely is it the case that two litigious matter are alike – both in terms of facts, background and legal arguments. The more information you give us at the outset, the more accurate our indication of costs will be.

For a claim of ordinary unfair dismissal or wrongful dismissal by an employee we will wish to ascertain the following preliminary information

- Background – including details of the employee's role and details about the business of the employer
- Details of the employee's length of service – to establish if the employee had the necessary two year's continuous service in order to bring a claim for ordinary unfair dismissal.
- Details of the method of dismissal – to establish if a correct procedure was carried out.
- A copy of the contract of employment or service agreement of the employee and the staff handbook – to review contractual entitlements, and provisions for the manner of dismissal.
- The date of dismissal – to establish if you the employee is within the statutory deadline to bring a claim.
- Details of what monies were paid to the employee on termination of employment – to establish if the employee has a claim for wrongful dismissal – or another claim (not included in this note) for an unlawful deduction from wages claim.
- Correspondence – We would need to consider all the relevant correspondence between the employee and the employer.
- We would also need to discuss the likelihood of the employee securing another paid role elsewhere. This is important as compensation is calculated on the basis of losses, and the employee's loss (and thus the value of any potential claim) may be low if they have already secured another role.

Stages in a wrongful dismissal or ordinary unfair dismissal claim

The precise stages involved in a wrongful dismissal or ordinary unfair dismissal claim vary according to the circumstances. However, we set out below a summary of the key stages of a claim.

- Taking your initial instructions, reviewing the papers and advising you on merits and likely compensation (this is likely to be revisited throughout the matter and subject to change).
- Entering into pre-claim conciliation with ACAS where this is mandatory to explore whether a settlement can be reached.
- Preparing claim (known as an ET1) or response (known as an ET3).
- Reviewing and advising on claim or response from other party.
- Exploring settlement and negotiating settlement throughout the process.
- Preparing or considering a schedule of loss.
- Preparing for (and attending) a Preliminary Hearing. In some cases, there may be the need for several Preliminary Hearings.
- Exchanging documents with the other party and agreeing a bundle of documents.
- Taking witness statements, drafting statements and agreeing their content with witnesses
- Preparing bundles of documents.
- Reviewing and advising on the other party's witness statements.
- Agreeing a list of issues, a chronology and/or cast list.

- Preparation and attendance at the Final Hearing, including instructions to Counsel.

How long will the claim in the Employment Tribunal take to resolve?

How long it will take depends on a variety of factors, including the availability of the Employment Tribunal to hear your case. The Tribunal service is currently experiencing a backlog of cases. For a straightforward case of ordinary unfair dismissal and or wrongful dismissal the process might take 8 - 16 months, but it could be considerably longer, depending on the position taken by the other party. For example, if you are a claimant bringing a claim and you are provided with 25 boxes of disclosure documents then you could make an application to the Tribunal for additional time to consider the documents to be able to prepare for the hearing. If you are an employee or employer bringing or defending a claim and you have been advised that the other party may not have reasonable prospects of success then you can make an additional application to the Tribunal – in an effort to try to strike out aspect of their claim or defence.

There are some stages in the procedure where you feel confident enough to carry that part without the input of lawyers. That could include, for example, preparing witness statements or reviewing disclosure documents. Whilst it can create some difficulties in defining the scope of a retainer with any client if this does occur, we are always keen to engage in dialogue with our clients to find the best solution for you.

Hourly rates

Our legal fees will vary according to the complexity of the case and the hourly charge out rate of the member of the employment team dealing with your case. If we agree to base our legal fee on the hourly rate of the member of the team handling your matter, our legal fee will reflect the time it takes for the relevant person to complete all stages of the matter. The hourly rate will vary depending on the seniority of the team member and any additional requirement for supervision time by a more senior fee earner (if relevant).

The currently hourly rates for our team (for English law matters and excluding VAT) are as follows:

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| • | Partners | £480-520 |
| • | Senior Associates | £380 |
| • | Associates | £320 |

For example, if the hourly rate applied for one of our partners is £480 and the work for a specific stage – such as preparing first drafts of witness statements - takes 10 hours the legal fee for that stage will be £4,800 (Excluding VAT).

In addition, the following disbursements:

- VAT payable (currently 20% in the UK)
- Counsel's fees – plus VAT on those costs
- Travel costs – for example travel to and from the Employment Tribunal and any preparatory meetings, or conferences with Counsel at your office or at barrister's chambers
- Photocopying (preparing bundles)

Attendance at a Tribunal Hearing is calculated on the basis of hourly rates of the team member. Therefore, there would be a cost of £3,840 per day (excluding VAT), based on one partner attending the hearing for an 8-hour day.

Generally, we would allow 2-3 days for a basic ordinary unfair dismissal and wrongful dismissal claim depending on the complexity of your case. If matters are more complex (for some of the examples set out above), or there are likely to be a high number of witnesses to give evidence during that period – and the subsequent costs – would be higher.

Our likely costs for bringing or defending claims for ordinary unfair dismissal or wrongful dismissal only (not including any other aspects of a claim)

- **Simple case** (where a junior member of the employment team has day to day conduct of the

- case, with some supervision from a Partner): £17,500 - £29,000 (excluding VAT).
- **Medium complexity case** (where a mid-level member of the employment team has day to day conduct of the case, with some additional support from junior members of the team, and with some supervision from a partner): £29,000 - £60,000 (excluding VAT).
- **High complexity case:** (where a partner of the employment team has day to day conduct of the case, and which will require support from a mid-level member of the employment team; with some additional support from junior members of the team): £60,000 - £150,000 (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, or if there is a strike out application.
- Defending claims that are brought by litigants in person.
- Where there are more than one Claimant who is bringing a claim against the employer
- Where there is more than one defendant.
- Where an individual or corporation is based overseas.
- Where more than one person is giving instructions or liaising with us.
- Making or defending a costs application.
- Complex preliminary issues such as whether the claimant is disabled (if this is not agreed by the parties), or on a unique point of law.
- The number of witnesses and documents.
- If it is an automatic unfair dismissal claim e.g., if you are dismissed after blowing the whistle on your employer.
- Allegations of discrimination which are linked to the dismissal.
- If expert witnesses are involved – such as medical experts giving evidence on whether a person has a disability; or a handwriting expert.
- If another HR investigation is involved.
- If there are related proceedings – such as proceedings by a regulator, or third party, such as the Information Commissioners Office; or on going civil or criminal proceedings or an investigation.

Disbursements

Disbursements are costs related to your matter that are payable to third parties. We handle the payment of the disbursements on your behalf (after you have provided us with monies on account for those disbursements prior to them being paid) to ensure a smoother process.

It is usual for Counsel's clerk (the individual at the barrister's chambers who organises their diaries and agrees the level of fees) to agree that a retainer fee be incurred in advance of the tribunal hearing, so that they are paid a fee even if the matter settles before the hearing takes place.

Once the preparatory work has been completed then it is usual that the barrister's clerk will seek to agree a "*refresher fee*" for each day of the Tribunal Hearing. Counsel's fees are estimated between £950 to £1,800 per day (excluding VAT) - depending on experience of the barrister – it will be considerably more if a Queen's Silk (QC) was instructed to represent you or your business - for attending a Tribunal Hearing.

These fees vary from matter to matter and can on occasion be significantly more than the ranges given above. We can give you an accurate figure once we have sight of your specific documents and we have discussed the full background with you.

Our legal fees assume that:

- a. This is a standard matter and that no unforeseen matters arise including for example (but not limited to) the matters referred to above, and/or the preparation of additional documents ancillary to the main litigation.
- b. The litigation is concluded in a timely manner and no unforeseen complication arise.
- c. All parties to the transaction are co-operative and there is no unreasonable delay from third parties providing documentation.

Grand Total estimate

By adding the following you will get a good idea of the grand total of the funds that you will need to bring or defend a claim for ordinary unfair dismissal or wrongful dismissal.

- Legal fees
- Disbursements
- VAT

Alternatives to Litigation in the Employment Tribunal

Litigation in the Employment Tribunal is expensive when compared to other methods of dispute resolution such as mediation, judicial mediation (a service offered by the Employment Tribunal service), conciliation (via ACAS) or direct negotiation between the employer or senior executive.

At the start of any matter which may become contentious (meaning that the parties may wish to litigate their position) we advise on the various options by which you can seek to resolve the matter.

Types of Employment Tribunal claims that the ebl miller rosenfalck employment team advise upon

The scope of this note is limited to cases of ordinary unfair dismissal and wrongful dismissal. It is very rare that one would have a claim for just ordinary unfair dismissal and or wrongful dismissal. Tribunal claims often include other aspects such as discrimination; unlawful deductions from wages; holiday pay for example.

Often the cases that we are instructed on are high value discrimination and/or whistleblowing cases (which are often complex and require several members of the team to work on the matter – which increases the time and costs involved), cross border litigation, or matters of critical importance to a company, or a matter which is likely to set an important legal precedent. We do not usually act in employment tribunal litigation where the potential value of the matter is less than £100,000.

Further details of the experience of our team can be found in the employment section of our website and the individual LinkedIn profiles of our team members. Our website, and the personal LinkedIn profiles of our team, also include client testimonials and recommendations.

There are also other related matters – which might not be the focus of the litigation itself – such as a dealing with a request for data under the Data Protection Act 2018. It is possible that there may also be parallel litigation in other jurisdictions such as the County or High Court – as there are limits on the amount of compensation that can be claimed in the Employment Tribunal. If you do require assistance, for example, with bringing or defending a claim for injunctive relief in the High Court then we can also assist you with this, in conjunction with our dispute resolution team.

For further information please contact:

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The material in this guide is provided for general purposes only and does not constitute legal or other professional advice. This guide is not an estimate of costs. It is only indicative of the range of likely costs for the specific types of claims referred to. Appropriate legal advice should be sought for your specific circumstances and advice taken.

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