

UNDERSTANDING THE COST OF ADVICE AND LITIGATION



SPENCER SHAW

SPECIALIST EMPLOYMENT LAW & LITIGATION SOLICITORS



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INTRODUCTION

We understand you may be concerned about the cost of legal advice and representation. It's something we're very conscious of as a firm, so we try to be as clear as possible about legal costs.

This guide is for clients beginning or considering litigation work with us. It will help you to understand the work we do

for you and how we charge for our work. It will hopefully help you see the value in the work we do and help you to keep control of your costs and budget for your claim.

If you have any questions arising out of this guide, please don't hesitate to contact us.



WHAT DOES LITIGATION INVOLVE?

Litigation is the legal process for resolving a dispute in the Employment Tribunal or the Civil Courts.

Our litigation work concentrates on employment disputes in the Employment Tribunal (Tribunal) and related cases in the civil courts (High Court and County Court).

Most employment claims are heard in the Employment Tribunal, but contractual disputes, breaches of restrictive covenants and equal pay disputes may be heard in Civil Court.

Broadly, we split litigation work into two types: advice and representation.

ADVICE FROM US

Advice is a stand-alone piece of work to inform and guide you about what the law says, how it applies to your circumstances, whether you have a case and, if so, how strong the case is.

Advice may lead to litigation, but you are not obliged to pursue litigation if you decide it is not in your interests. Advice from us will help you to make this decision. If you do decide to pursue your claim, the work done on the advice will be helpful in your case.

The preparation of our advice to you may involve getting an opinion from a barrister (also known as a counsel), depending on the nature of the problem and how technical it is. There is more information about barristers' charges later in this document.

REPRESENTATION BY US

As your representative, we will guide you through each step of proceedings, manage the paperwork, liaise with the other side, support you in gathering evidence and represent you at the tribunal hearing.

If court or tribunal proceedings are issued, the case will go (broadly) through the following stages:

- Attempting to resolve the matter through Early Conciliation with ACAS and by direct contact with the other side
- Preparing the claim and lodging it with Tribunal
- Dealing with the response
- Preliminary Hearing to decide the issues in question and the steps necessary to prepare the case for hearing
- Complying with instructions given by the judge
- Exchanging relevant documents between parties and preparing an agreed bundle of documents for the Final Hearing
- Preparing and exchanging witness evidence
- Preparing for the Final Hearing
- The Final Hearing
- Settlement discussions, which may take place at any point throughout the process

This list isn't exhaustive and other steps may be necessary.

You will be given more detailed information about each step and what is involved as the case progresses.

“I was very much impressed and appreciated the way in which it was dealt with by those concerned. I was immediately put at ease, given good advice without the jargon and with empathy.”

S



CAN I AFFORD TO MAKE A CLAIM?

This is the first question many clients ask us. Our estimates and budgets will help you answer the question.

You should never exceed your ability to pay. Litigation has risks and even cases with high prospects of success can fail. You must be prepared that you may not recover the money you spend on the case.

THE ECONOMICS OF A CASE

If your claim is successful, you will likely be awarded compensation. However, the court will not order the other side to pay your costs and expenses.

This may seem unfair but it is intended to protect Claimants. Although you will not recover your costs, you will not (apart

from in exceptional circumstances) be ordered to pay the other side's costs if you lose.

We strongly recommend that you only pursue your case if you have a good prospect of achieving compensation that reasonably outweighs your costs. We will advise on the strength of your case and the potential compensation to help you make this decision.

[Find out more about how compensation is awarded on our website.](#)

LEGAL EXPENSES INSURANCE

This document is aimed at privately paying clients. However, we also work with clients who have Legal Expenses Insurance (LEI), as part of their home insurance policies or perhaps as a stand-alone policy.

If you have LEI, your insurer may cover your legal costs if they believe you have a reasonable chance of winning. It is always worth checking to see if you have this kind of cover.

YOUR COST ESTIMATE

In estimates we usually give a range, based on the time we believe it will take to complete the work.

For advice or an opinion, we will gather the relevant information and give an estimate of the cost, based on the time it will take for a solicitor to assess the information, apply legal knowledge and give advice. We will provide the estimate with our terms of business, which you will need to sign before we can begin work.

For litigation we will prepare a detailed estimate of the work likely to be involved to conclude the matter, breaking it down into stages.

Cases do not always go the full distance as settlements are common. However,

you will be told the likely cost to take your case through the full legal process. This is partly because settlements cannot be guaranteed. It is also helpful in negotiations for you to understand the costs you could avoid by settling.

We rarely give fixed fees because of the fluid nature of employment disputes, and because there are factors outside of our control. For example, the documents involved may be unusually lengthy or complex, new evidence may come to light, or your instructions might change as the case progresses.



SETTING A BUDGET

We will set a budget to monitor costs, based on our estimated cost of proceedings. We will tell you when we are close to the budget limit.

Sometimes factors out of our control mean the work cannot be completed within the original budget. If so, we will give you a revised budget for further work to be done, and get your written agreement before exceeding the original budget.

We also provide advice on how to make the best use of your solicitors time and manage your budget.

PAYMENT ON ACCOUNT

It is our policy to take a payment on account before beginning work and as the budget limit is reached. Payments on account go in the firm's client account and remain the client's money until an invoice is sent.

In part this is to help with our financial planning and budgeting. But it also means we can be sure that you are able to meet the fees you are incurring. We want you to work within your means. With payment on account you are more in control of your spending.

We won't exceed a payment on account without good reason and without notifying you first.



“Good and
effective service,
clear and upfront
about all
arrangements
and costs.
Thank you.”

Jean

HOW DO WE ESTIMATE THE TIME AND WORK INVOLVED?

Every case is unique and the cost of doing the work will depend on its features, facts, and circumstances.

Factors that will affect the estimate include:

The number of witnesses: The more witnesses involved, the more work is there is collecting, reading and analysing statements. The tribunal or court hearing will also take longer if there are a lot of witnesses.

The complexity or rarity of the points of law involved: If the point of law is particularly complex or is not commonly disputed, your solicitor may need more time to research and assess how it applies to your circumstances.

The type of claim: For example, discrimination cases tend to be factually dense, involving multiple incidents and witnesses, and the law is not easy to interpret or apply. There may be disputes about what happened and whether the conduct or incident amounts to discrimination. Final hearings can be listed for several days or even weeks. Constructive dismissal cases regularly involve several witnesses and several key points of dispute.

The number of documents involved: This varies from case to case, as does the length and complexity of those documents.



HOW LEGAL CHARGES ARE CALCULATED

We try to be as clear and transparent as possible about costs you will incur.

HOURLY RATE

We charge for the work we do according to the time it takes, applying an hourly rate. Our hourly rates are based on a blend of experience, expertise, and seniority. You can find our current hourly rates [on our website](#) or in your Client Care Letter.

We charge in six-minute units, valued at 10% of the hourly rate. For example, a phone call lasting 18 minutes will be charged as 3 units or 30% of the hourly rate. Work is rounded up to the next six-minute unit. For example, a piece of work lasting 34 minutes would be rounded up to 36 minutes, or 6 units.

We use a digital case-management system to record time as the work is done, rather than being logged from memory. A copy of the ledger can be produced showing the amount of work done and an explanation so you can see what the charge is for.

We work collaboratively within the firm, so more than one solicitor or other fee earner may be involved in your matter. Usually this is because another lawyer has particular experience that is useful on certain points. This could also happen if there are developments on your case whilst the solicitor dealing with it is away.

Legal Executives and Paralegals (who are legally qualified, but not as solicitors) may support the solicitor preparing your case. Their hourly rates are less than for solicitors and so it is economically beneficial for them to complete some tasks.

CORRESPONDENCE CHARGES

We make a fixed charge for routine correspondence. We charge 10% of the hourly rate (or one unit) for sending routine letters or emails, and 5% of the hourly rate (half a unit) for routine letters and emails received.

Longer communications, such as setting out a claim in detail or responding to a position taken by the other side, are more time consuming. These will be charged for the time spent, in six-minute units.

EXPENSES

Your ledger will also include expenses incurred (sometimes called disbursements in legal matters). We pass these costs to you as they are, without adding any fees. We therefore have no influence over the rates of expenses but will keep you fully informed.

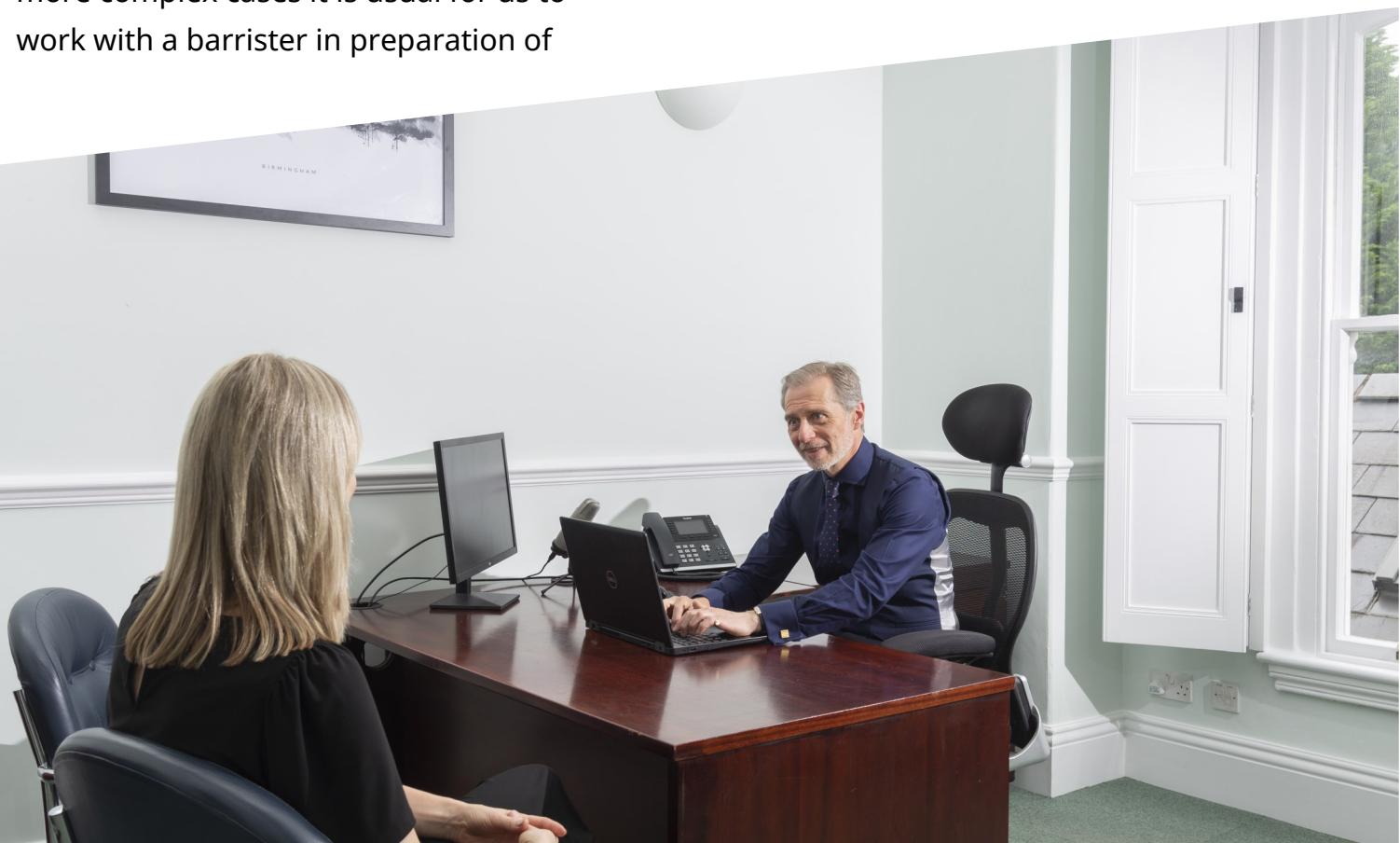
Expenses can include:

Barristers: The most common expense in both Tribunal and Court cases is the cost of a barrister. Barristers are professional advocates with skills in case-presentation and advocacy at Tribunal hearings. In more complex cases it is usual for us to work with a barrister in preparation of

the claim form, and to instruct the barrister to attend Preliminary Hearings (PH) and the Final Hearing (FH). Barristers' fees are usually fixed in advance and will be part of the budget we prepare for you.

Medical reports: Some claims require a medical report. For example, in discrimination cases the report would show how the discriminatory behaviour affected the claimant. The cost for a medical report will depend on the specialism of the doctor preparing the report and the complexity of the medical issue.

Court fees: If your case is heard in the Court you will have to pay Court fees to begin proceedings and as the case progresses. We will tell you the fees if your matter is likely to be heard in the Courts. There are no fees in Tribunal cases



HOW IS TIME SPENT?

There are many steps in a litigated claim. To help you understand what we will be doing for you, here are a few examples of the work that goes in to preparing your case.

Documents: Cases vary in the number of documents involved, but often have several hundred pages of documentary evidence.

Cases can be decided on small but important points referred to or located in documents, and Judges pay close attention to documentary evidence. This means we must also closely evaluate each document.

Unlike reading for entertainment, we must absorb, analyse, and consider all the information contained within a document. We must think about the implications for your matter and how the contents of documents affect your case. We may cross-refer to other documents or cases that have a bearing on your matter. We may take notes for future reference. This takes time.

Telephone calls: Calls can take the place of in-person meetings to save travel time and costs. Often, more ground can be covered in a call than by correspondence and a point can be resolved more efficiently.

We often need to prepare for the call by reviewing documents or correspondence and planning the points we wish to make and what we hope to achieve. After the call it may be necessary to write notes of what was discussed and what conclusions were reached.

Correspondence: In a typical employment case, we will write frequently (by email or letter) to the other side, their legal representatives, ACAS, witnesses, the Employment Tribunal, your barrister, and expert witnesses, among others.

Note: If the organisation of the documents is poor, we will have to spend time putting them into good order. We are happy to do this, but it can cause avoidable expense. It is always helpful if a client can sort documents into an easy-to-follow bundle.



We are also likely to receive a large amount of correspondence which we will have to consider and assess. This may range from short letters dealing with routine points to complex, lengthy communications on the issues in the case which inevitably take time to deal with.

We will also write to you regularly to provide you with information about the case.

It is hard to predict how much correspondence there will be in a matter. Complex cases may involve a large amount of correspondence, whereas simple matters may require very little.

Negotiation: Negotiations can take a good deal of time, but it is time well spent as many cases are settled. You should consider the possibility of settling, as it often makes economic sense.

Negotiations can involve dealing with several parties including your opponent's legal representative, ACAS, and a Conciliation Officer (who acts as a sort of neutral mediator).

Communication through ACAS can greatly increase the chance of reaching a settlement. Direct negotiation with the other side or its legal representative can take place at any stage throughout the process.

Settlement discussions may take place by correspondence, phone call or video conference. We will need to liaise with you during this process, advise you and assess the case from time to time in the light of negotiations.

If you have any questions, please don't hesitate to get in touch to speak to a member of our team.

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