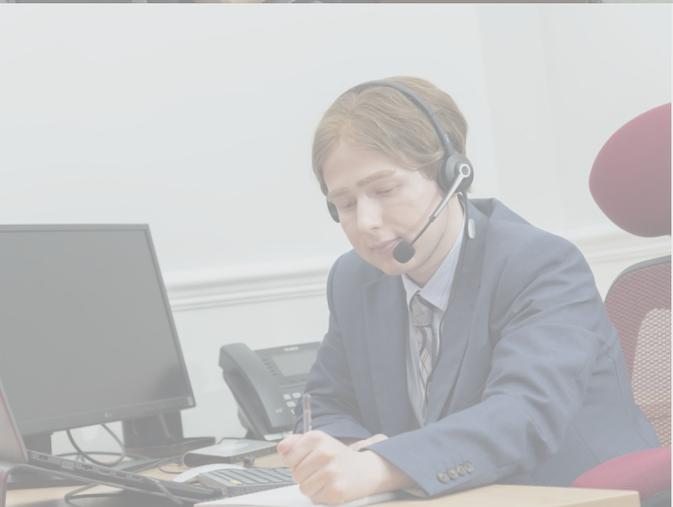


# MAKING A CLAIM FOR UNFAIR DISMISSAL DUE TO DISABILITY DISCRIMINATION



SPENCER SHAW

SPECIALIST EMPLOYMENT LAW & LITIGATION SOLICITORS



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# INTRODUCTION

If you have been dismissed and feel it was due to a disability you have, it can be difficult to know what to do next.

Employment law claims can seem daunting, but that shouldn't stop you from getting a fair resolution. If you choose to instruct us, our solicitors will be here to guide you through the process and help you make decisions.

This guide will answer some of your questions about unfair dismissal to help you to understand what you can do about it.

# HAVE I BEEN UNFAIRLY DISMISSED?

You may have a claim if you have been dismissed without a legally fair reason. This is different to a common-sense judgement of fairness.

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Legally fair reasons include

- Misconduct
- poor performance
- redundancy
- that the law would be broken if your employer continues employing you
- lack of capability through ill health
- 'some other substantial reason'

Even if your employer had a fair reason to dismiss you, it must have been a reasonable response and they must have followed a fair procedure.

It can be difficult to understand whether your dismissal was fair on the grounds of capability through ill health, or if it was unfair due to disability discrimination. This will depend on factors such as whether your

ill-health is legally a disability and whether your employer has considered reasonable adjustments to support you in doing your job, as they are obliged to under the Equality Act 2010. This is a complex area of law that can easily be misunderstood. An experienced employment law solicitor will be able to advise about how the law applies to your situation and whether your dismissal was fair or discriminatory.

Every case is different, so it might be difficult to understand how general advice applies to your claim. It is wise to seek legal advice about your specific circumstances so that you can make well-informed decisions.

If your employer breached the terms of your employment contract when dismissing you – for example, not giving you the correct notice – you may have a claim for wrongful dismissal. This is different to unfair dismissal – get in touch for advice on wrongful dismissal.



# HAVE I BEEN DISCRIMINATED AGAINST ?

If your employer treated you less favourably than others because of your disability then you may have been discriminated against.

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You will need to determine whether your condition is classed as a disability under the Equality Act 2010. The law defines a disability as a physical or mental impairment which has a long-term and substantial adverse effect on your ability to carry out day-to-day activities. Even if you may not consider yourself as 'disabled' in the common use of the term, you could be protected if you meet this definition.

Simply having a protected characteristic under the Equality Act does not make your dismissal unfair. The less favourable treatment must be because of your cancer to allow a claim for discrimination. Usually, discrimination will be shown by comparing the claimant to an employee without a disability.

There are a few ways your dismissal could be discriminatory:

**Direct discrimination:** where you are less favourably treated because of your disability. For example, you are dismissed after telling your boss about your

disability. To be able to bring a claim for direct discrimination, your employer must know of your disability.

**Indirect discrimination:** Where your dismissal relates to a policy or practice which has the effect of treating employees with a disability less favourably than others. It doesn't matter whether your employer intends to discriminate, it is the effect of the policy that's important. There may be times that indirect discrimination can be justified, for example where the policy is proportionate or necessary.

**Victimisation:** If you were dismissed because you enforced your rights, or your employer believed you intended to. This could include if you brought a legal claim under the Equality Act or gave evidence at proceedings.

An experienced employment law solicitor can help you to understand how the law applies to your personal circumstances.

# WHAT ARE MY OPTIONS ?

We can help you understand your options to help you decide the best way forward for you.

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You might be worried you'll end up committed to a lengthy and expensive process. However, not all claims go through the full claims process – many are settled long before then.

Generally, your options are:

## **To take no action**

You may believe you have done something wrong and think there is little point in considering a claim, or you might feel that a clean break from your employer is best. However, it is sensible to seek legal advice to see whether you have a claim and what exactly you might stand to gain if you make a claim. You have a limited time to make a claim so if you later change your mind, it may be too late. Even if the advice is that your dismissal was fair, you will know exactly where you stand and not be left doubting whether you should have taken action.

## **Conciliation**

Almost all claims to an Employment Tribunal must go through a process of Early Conciliation with ACAS (the Advisory, Conciliation and Arbitration Service) first. This can lead to a settlement of the issue

without the need for formal proceedings.

## **Make a claim to an Employment Tribunal**

If you cannot resolve the issue in conciliation, you may choose to make a claim to the tribunal. This is similar to a court: both sides will put their argument, and witnesses may give their account of what happened. The panel will then decide whether you were unfairly dismissed and whether the other side must pay you compensation. [Find out more about employment tribunals.](#)

## **Negotiate a settlement with your employer.**

A settlement can be made at any point up to the tribunal hearing. Your employer may be more co-operative once they see that you are determined and that you have a good case. Both sides may need to make compromises but, by avoiding a full tribunal claim, you save time and money and give both parties more control over the outcome.

You should seek advice swiftly, so that you have time to consider your options and make decisions without rushing.

# HOW LONG DO I HAVE TO MAKE A CLAIM?

You will only have a limited time after your dismissal to make a claim. The tribunal rarely considers historic cases.

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A claim must be made, in almost every case, within three months of the date that your employment terminates, including the date of termination as day 1. If you miss the deadline, it is extremely difficult to make a claim after that.

Once you've begun the process, your deadline to make a claim will be adjusted to allow for Early Conciliation (the mandatory

procedure that must be followed before a claim can be started). Find out more about the tribunal process on our website.

It will take time to organise your thoughts and structure your claim. You should seek advice early so that you have time to consider your options and present a strong case. [Find out more about timing your claim](#)



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# WHAT OUTCOME COULD I HOPE FOR?

What you can expect from your case will vary depending on the circumstances, how willing your employer is to engage, and whether your case goes to a tribunal hearing or gets settled beforehand.

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If you and your employer are willing to reach a settlement, you can focus on what is important to you both. You may not be able to get everything you want in a settlement, so you should think ahead about what is most important to you.

## **Compensation**

If your claim goes to the tribunal, your potential compensation depends on what you have lost in earnings, notice pay, benefits, pension payments and so on.

If your claim for unfair dismissal is successful, you will receive a basic award based on your weekly pay, your age, and the length of time you have worked for your employer (almost identical to a statutory redundancy payment). You will also receive a Compensatory award of up to one year's gross pay to compensate your loss of earnings for the time you were, or are likely to be, unemployed.

If the tribunal finds that your dismissal was discriminatory, the Compensatory award will be uncapped and may exceed one year's gross earnings. You may also receive additional damages including injury to feelings, aggravated damages, and interest.

The tribunal also has the power to reduce your compensation based on your behaviour - for example, if your conduct contributed to your dismissal or you haven't done enough to find a new job. Legal advice will help you to understand what the tribunal expects of you, so that you don't harm your case.

Not all cases make it to tribunal. You may reach an agreement with your employer before the tribunal hearing. If your employer offers a financial settlement, it is likely to be based on what you could receive in compensation at tribunal, but with reductions to reflect the time, cost and risk saved by settling. Such agreements can be negotiated and will include other terms such as confidentiality and agreeing to waive your rights to make claims against your employer. We can help you to negotiate an agreement that suits you.

We can help you to understand what you might be awarded at tribunal, and whether any settlement offered is in your best interests.

[Find out more about how the tribunal awards compensation.](#)

### **Reinstatement**

This may depend on your relationship with your employer. While reinstatement is possible, it is quite rare. If this is important to you, you will need a solicitor experienced at negotiating with employers, who will be able to maintain your relationship with your employer.

### **Clear your name**

You might want an agreed reference, public acknowledgement that you were badly treated, or just the personal satisfaction of being vindicated. It's worth thinking about what matters most here as it may affect your decision whether to accept settlement offers – especially if your employer wants you to agree to keep the matter private.

### **Improvements in the workplace**

You may want your employer to learn from the issue so that nobody else is treated in the way you were. Many employers faced with a genuine claim will reconsider their policies to avoid future disputes.

You're likely to get the best outcome with an experienced Employment Law solicitor representing you. An experienced solicitor will know how to approach the other side, and how to present your case to give you a better bargaining position. A good solicitor will be interested in what you want from your claim and will focus on what is in your best interests practically, emotionally, and financially.

[Find out more about our solicitors](#)



# CAN I AFFORD TO MAKE A CLAIM?

The overall cost will depend on the complexity of the case, the legal issues involved and how far through the process it gets.

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Many cases are either settled or withdrawn before the case reaches the final hearing. An initial review to find out the strength of your claim may cost around £300 to £400.

A simple unfair dismissal case will cost around £5,000-£6,000 to go through the full tribunal process. More complex cases are likely to be in the range of £8,000-£10,000, particularly if the final hearing lasts more than one day. Complicated cases involving substantial amounts of evidence or complex legal arguments are likely to exceed £10,000.

Your solicitor's priority is to resolve the issue in the most satisfactory way. This includes helping you to balance the likely cost of your case against the chances of winning, the possible compensation, and the benefits of early settlement.

You may have Legal Expenses Insurance (LEI) which could cover your legal costs if your insurer believes that you have a reasonable chance of succeeding with your claim. LEI is often provided as an add-on to insurance policies, such as home, building or car insurance. Check your existing policies to see if you have LEI. If so, we are experienced in working with insurers, and are happy to discuss representing you.

## NEXT STEPS

Speak to a solicitor for help to make a confident and informed decision about your next move. A solicitor can explain whether you have a legal claim, and how you could go about pursuing or resolving it. They will

help you to understand the pros and cons of each option, as well as the likelihood of achieving the outcome you want. Contact us to find out how we can help you get the best outcome in your dispute.

# ABOUT THE AUTHOR

I founded Spencer Shaw Solicitors in 2007, following my experience as Partner and Head of Litigation in large firms. I felt that firms were not communicating in the way that best suited the client and I wanted to offer a more tailored service.

I've made sure to keep this philosophy as the team has grown. We understand that a legal dispute can be stressful and upsetting, so as well as great legal advice you will receive excellent service and support.

Our priority is to achieve the best possible outcome for you. That means understanding what you want from your claim and guiding you to make the best decisions to achieve that. It also means providing clear [information on fees](#) so that you are in control of what you spend.

As specialists, Employment Law is the heart of Spencer Shaw Solicitors. Our expert team has a wide range of experience in employment law across a variety of industries. We work with both employees and employers, so we understand your employer will want to achieve and how to negotiate with employers.

Thanks to our focus on quality of service, not quantity of cases, your issue will get the attention it needs, when it needs it.

***Ian Jones***  
***Principal Solicitor***



“More than happy with the advice and guidance. My solicitor explained everything clearly; no jargon, no rushing through things and no making decisions for me. It was great to feel so at ease with discussing something that can become so confusing.”



# SPENCER SHAW

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## GET IN TOUCH

Call us on **0121 817 0520**

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