



# SPENCER SHAW

SPECIALIST EMPLOYMENT LAW & LITIGATION SOLICITORS



## 5 Key Questions About Making an Unfair Dismissal Claim

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# 5 Key Questions About Making an Unfair Dismissal Claim

If you have been dismissed and feel it was unfair, 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.

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 for unfair dismissal if:

- ***You were dismissed without a legally fair reason.***

This is different to a common-sense judgement of fairness. Legally fair reasons include misconduct, poor performance, lack of capability through ill health, redundancy, that the law would be broken if your employer continues employing you, or 'some other substantial reason'.

- ***Dismissal was not a reasonable response in the circumstances***

Even if your employer had a potentially fair reason, dismissal must still have been a reasonable response. This will depend upon the facts of your case. For example, if you were dismissed for being a few minutes late (a type of misconduct), even though it was the first time you had been late, this is likely to be unreasonable.

- ***Your employer did not follow a fair procedure.***

For example, you were accused of misconduct, but your employer did not properly investigate the matter or give you a chance to be heard and put your side of the story.

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.

In most cases, to make a claim of unfair dismissal you need to have been continuously employed by your employer for two years. There are exceptions to this which a solicitor can explain to you.



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.

## What are my options?

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. We can help you to understand your options and support you, to assist you in deciding the best way forward.

You could choose:

- ***To take no action***

You may have done something wrong and think that 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 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 here.](#)

- **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?

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.

## 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.

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**

Your potential compensation depends upon your salary and your losses. If your claim goes to the tribunal and 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 to compensate for the time you were, or are likely to be, unemployed, limited to the equivalent of one year's gross pay. Your compensation may be reduced if the tribunal feels you contributed to your dismissal or have not tried hard enough to find another job.

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. 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.

A solicitor experienced in working with employers 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. 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 a little as a £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.

## 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. We make the law simple for you.

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 are experienced working with both employees and employers, so we understand your employer will want to achieve and how to get the best outcome for you.

**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.*

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**Get in touch**

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