



## BRIEFING PAPER

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# Legal advice and help in employment matters

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## Summary

This note provides information about sources of legal advice and representation in employment law matters.

Legal advice should ideally be given by a suitably qualified person with professional liability insurance. There are many places where it can be obtained free of charge. Where appropriate, the employer's disciplinary or grievance procedure should be invoked prior to initiating legal proceedings. If dismissal has already taken place enquiries should be made as to whether there is an internal appeal process. If an employer's internal appeal process is exhausted without success the employee may decide to issue a claim in an employment tribunal. There are strict time limits for this. In general, claims will not be accepted beyond three months following the event which gave rise to the claim

# 1. Introduction

In the event of a workplace dispute, the employer's disciplinary or grievance procedure should be invoked in the first instance. If dismissal has already taken place enquiries should be made as to whether there is an internal procedure offering an appeal from this decision. The Advisory, Conciliation and Arbitration Service guidance document, [Rights at work - Discipline grievances and dismissals](#), outlines employment rights in relation to disciplinary and grievance procedures.<sup>1</sup> General employment rights advice may be sought either from Acas or one of the organisations detailed in this note.

Where an employer's internal procedures do not resolve a workplace dispute, the dispute may lead to a claim in the employment tribunal. In the majority of these cases one party, normally the employee, will not be represented; a so-called "litigant in person" (ie a person who represents himself in court).<sup>2</sup> The Ministry of Justice's employment tribunal statistics record that, in the period 01 April 2011 to 31 March 2012, there were 186,300 claims accepted by employment tribunals.<sup>3</sup> Research carried out by the Department for Business, Innovation and Skills in 2008 showed that 46% of claimants used a representative to help with their case, indicating that most claimants go unrepresented.<sup>4</sup> More recent research has stated that due to reductions in legal aid the number of litigants in person is likely to increase "on a considerable scale".<sup>5</sup>

When they were originally set up, employment tribunals, then known as "industrial tribunals", were intended to provide "an easily accessible, speedy, informal and inexpensive procedure" for resolving employment disputes.<sup>6</sup> They were intended to be used by litigants in person. However, whilst tribunals still aim to be accessible to litigants in person, the reality is that procedural and substantive legal points may elude or confuse an unrepresented litigant. Therefore, if an employment dispute has led to the possibility of a claim in a tribunal, the parties may wish to obtain legal advice and possibly representation; this note provides information about where such advice and representation can be obtained, the funding of it and the time limits within which employment tribunal claims may be made.

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<sup>1</sup> Acas, *Rights at work - Discipline grievances and dismissals*, April 2009

<sup>2</sup> BIS, *Findings from the Survey of Employment tribunal Applications 2008*, March 2010; Ministry of Justice, [Litigants in person: a literature review](#), June 2011

<sup>3</sup> Ministry of Justice, [Employment tribunals and EAT Statistics, 2011-12](#), 20 September 2012, p5

<sup>4</sup> BIS, [Findings from the Survey of Employment tribunal Applications 2008](#), March 2010, p45

<sup>5</sup> Civil Justice Council, [Access to Justice for Litigants in Person \(or self-represented litigants\)](#), November 2011, p8, para 15

<sup>6</sup> *Royal commission on Trade Unions and Employers' Associations 1965-1968: Report*, Cmnd 3623; (1968), para 578

## 2. Funding and time limits

### 2.1 Funding

As a result of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) civil legal aid is no longer available for either advice or representation in employment law matters, except in discrimination claims under the [Equality Act 2010](#).<sup>7</sup> This means that, in employment matters that do not involve discrimination, persons who wish to enlist the services of legal professionals such as solicitors and barristers may have to pay privately. However, there are many sources of free legal advice and it may be possible to obtain free representation.

Another way in which parties can access legal services for tribunal proceedings is through conditional fee agreements.<sup>8</sup> This allows lawyers to operate on a “no win no fee” basis. 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.

### 2.2 Employment tribunal time limits

Most legal claims are subject to defined time limits within which the claim must be brought. A failure to observe the relevant time limit will generally lead to a claim being “time-barred”; ie the claim cannot be made.

The issue of limitation is complicated by the fact different time limits apply to different types of claim. However, the vast majority of employment law claims, eg claims for unfair dismissal, are subject to a **three month** time limit, measured from the date of the event which gave rise to the claim (eg the dismissal). An employment tribunal will only consider a claim brought outside this time limit in restricted circumstances.

Appeals of employment tribunal decisions are subject to different time limits. In general, this is six weeks from the date judgment was sent to the parties.<sup>9</sup>

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<sup>7</sup> [Schedule 1, Part 1, paragraph 43](#)

<sup>8</sup> See *Conditional Fee Agreements Order 2000, SI 2000/823*

<sup>9</sup> Ministry of Justice website, [Appeals guidance - Employment Appeal Tribunal](#) (accessed 8 June 2017)

## 3. Sources of employment rights advice

### 3.1 Solicitors and barristers

The Law Society offers assistance to people who want to engage a solicitor specialising in employment law. A searchable database of solicitors is available [here](#).<sup>10</sup>

Barristers are generally “instructed” by a solicitor, which means the client deals primarily with the solicitor, and the solicitor asks the barrister to provide detailed legal advice and representation. Clients do not normally deal directly with barristers. However, some barristers take on “public access” work. This means they accept work directly. An online directory of public access barristers is available on the Bar Council’s website, [here](#).<sup>11</sup>

For further information on finding solicitors and barristers see the House of Commons Library standard note: [Legal help: where to go and how to pay](#).<sup>12</sup>

### 3.2 Trade unions

Trade unions often provide legal advice and representation for their members. The union representative at a given organisation should be able to advise members on the services that the union provides.

Some unions offer a 24-hour helpline, although these are usually reserved for legal advice on non-work-related matters. As a general rule, union workplace representatives act as gatekeepers to the union’s employment law services.

### 3.3 The Advisory, Conciliation and Arbitration Service

The [Advisory, Conciliation and Arbitration Service](#) (Acas) is a non-departmental public body funded largely by the Department for Business, Innovation and Skills (BIS). Its main function is to provide employers and employees with advice with a view to heading off employment disputes. As part of this, Acas operates a free, impartial and confidential helpline which provides information on employment rights. They also publish authoritative guidance on a wide range of employment issues, available [here](#).<sup>13</sup>

Full details of the helpline are available on the Acas [website](#).<sup>14</sup> The telephone contact details:

- 08457 47 47 47

<sup>10</sup> Find a law firm, Law Society website (accessed 8 June 2017)

<sup>11</sup> The Bar Council website, [Public Access](#) (accessed 8 June 2017)

<sup>12</sup> Jacqueline Beard, [Legal help: where to go and how to pay](#), House of Commons Library Standard Note SN03207, 19 July 2012

<sup>13</sup> Acas website, Advice and guidance (accessed 8 June 2017)

<sup>14</sup> Acas website, Contact us (accessed 8 June 2017)

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- Monday-Friday, 8am-8pm; Saturday, 9am-1pm

### 3.4 Pay and Work Rights Helpline

The Pay and Work Rights Helpline is a government-funded confidential helpline which provides free advice on government-enforced employment rights. It deals mainly with:

- National Minimum Wage rights;
- working for an employment agency;
- working time regulations;
- agricultural workers' rights;
- working for a gangmaster (an agent who finds work in agriculture).

Further information about the helpline is available on the [GOV.UK website](#).<sup>15</sup> The contact details:

- Telephone: 0800 917 2368;
- Textphone: 0800 121 4042;
- Monday to Friday, 8am to 8pm; Saturday, 9am to 1pm.

### 3.5 Equality and Human Rights Commission and Equality Advisory Support Service

The [Equality and Human Rights Commission](#) (EHRC) is a non-departmental public body, established under the *Equality Act 2006*, sponsored by the Government Equalities Office. It has a statutory mandate to challenge discrimination and protect and promote human rights. It publishes authoritative guidance these issues, available on its [website](#).<sup>16</sup>

The EHRC used to run an equality law helpline, although this closed in 2012 following a withdrawal of public funding.<sup>17</sup> The Equality Advisory Support Service (EASS) replaced the EHRC helpline as of 1 October 2012.<sup>18</sup> It provides free advice on equality law issues.

The EASS [website](#) outlines the type of assistance the EASS can provide:

#### **What do we do?**

Provide information advice and support on discrimination and human rights issues to individuals in England, Scotland and Wales, recognising the constitutional, legal, social and policy differences specifically:-

Advise what the Equality Act 2010 says and how this applies to you

Advise you of options on how you may be able to resolve your issue

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<sup>15</sup> GOV.UK, Pay and Work Rights Helpline (accessed 8 June 2017)

<sup>16</sup> EHRC website, Your Rights publications (accessed 8 June 2017)

<sup>17</sup> EHRC website, Equality Advisory Support Service (accessed 8 June 2017); Government Equalities Office, [Government Equalities Office review of information, advice and support](#) (accessed 8 June 2017)

<sup>18</sup> Ibid; Home Office website, [Equality information, advice and support](#) (accessed 8 June 2017)

Advise you of options for informal resolution and guide you through this process

Assist you further, if you are unable to resolve your issue informally

Help you work out if you are eligible for civil legal aid

Provide support if you are considering making a claim yourself

Assist you in finding local sources of support

#### **What don't we do?**

Provide advice to solicitors and other professional advisers

Provide legal advice

Represent you in any legal proceedings

Advise you on the strength of your case or whether you should bring a claim

Advise you on court/tribunal proceedings once a claim has been issued

Deal with complaints from disabled air passengers and those with reduced mobility, this is dealt with by the Civil Aviation Authority whose details are available on our contacts page

The EASS's full contact details (including email and a webcam portal with advisors able to communicate in British Sign Language) are available on its website. The basic contact details are:

- Telephone number: 0808 800 0082;
- Textphone number: 0808 800 0084;
- Monday - Friday 9am - 8pm and Saturday 10am - 2pm.

## **3.6 Disability Law Service**

The Disability Law Service provides a free advice line for persons who feel they might have been subject to disability discrimination. The advice line can be contacted on:

- 020 7791 9800 (Tuesday to Thursday); or
- 020 7791 9812 (for persons living in Greater London).

## **3.7 Citizens Advice Bureaux**

Citizens Advice Bureaux provide free face-to-face and telephone advice on a range of issues, including employment rights. The Citizens Advice Bureau (CAB) [website](#) states:

If you live or work within their catchment area, your local Citizens Advice Bureau should be able to give you some help with your employment problem or Employment tribunal claim.

Citizens Advice Bureaux provide free, confidential and independent advice from over 3,000 locations including in bureaux, GP surgeries, hospitals, colleges, prisons and courts. Advice is available face-to-face and by telephone. Some bureaux also offer email advice. If you need someone to visit you at home, contact your local bureau to see if they can arrange this.

There might be differences in the help local Citizens Advice Bureaux can give you. Some may be able to give you advice, and

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others may be able to offer you representation. Your local Citizens Advice Bureau will be able to tell you what help it can offer you.<sup>19</sup>

A local CAB can be found by entering a postcode into the form on the bottom of [this](#) page.<sup>20</sup> Although the CAB operates primarily through individual local bureaus it is in the process of rolling out a [national helpline](#).<sup>21</sup> It is not yet available in all areas; in areas where it is not, the caller will hear a recorded message with directions. The number for this is: 08444 111 444.

### 3.8 Law Centres

Law Centres work within local communities and provide free face-to-face legal advice, casework and representation. They specialise in social welfare law, but will generally also cover [employment law](#).<sup>22</sup> A list of local Law Centres is available on the Law Centres Network [website](#).<sup>23</sup>

### 3.9 LawWorks

LawWorks is a charity that provides free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid.<sup>24</sup> It acts as a clearing house to connect eligible individuals with solicitors that are willing to act for them for free.

LawWorks' [website](#) states that it provides assistance through:

- free legal advice clinics;
- help with settling disputes through mediation;
- free casework assistance (ie detailed legal advice on the facts of the dispute).

### 3.10 Public Concern at Work

Public Concern at Work (PCaW) is a charity established in October 1993 which offers legal advice about whistleblowing. It is important that individuals who wish to raise a public interest concern ensure they go about doing so in accordance with the statutory procedure otherwise they may not be protected by whistleblowing law. PCaW operate an advice line, managed by lawyers and subject to lawyer-client privilege (ie confidential). The advice line can be reached on: 020 7404 6609.

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<sup>19</sup> CAB website, [What help can I get with a problem at work](#) (accessed 8 June 2017)

<sup>20</sup> CAB website, [Get advice](#), (accessed 8 June 2017)

<sup>21</sup> CAB website, [Get advice](#), (accessed 8 June 2017)

<sup>22</sup> Law Centres website (accessed 8 June 2017)

<sup>23</sup> Law Centres Network website, [Law Centres](#) (accessed 8 June 2017)

<sup>24</sup> LawWorks website (accessed 8 June 2017)

## 4. Representation in employment tribunals

### 4.1 Solicitors and barristers

Either solicitors or barristers can represent litigants at an employment tribunal. For details of how to find a solicitor or barrister see above (section 3.1).

### 4.2 Pro bono representation

Pro bono legal services provide legal advice and/or representation free of charge. Individuals unable to afford to pay for representation at an employment tribunal, but who desire professional assistance, may wish to enlist the help of such services.

A document entitled [The MP's Guide to Pro Bono](#), published by the Law Society, Bar Council and Institute of Legal Executives, provides an overview of some of the main pro bono legal services.<sup>25</sup> The guide states:

This guide has been produced to help members to identify and access pro bono services which may be of help to their constituents. Due to the huge range of activity and variation at a local level, it cannot and does not seek to provide an exhaustive list of all the organisations involved in delivering pro bono. Instead it provides information about the main agencies operating on a national and international basis which broker pro bono work.<sup>26</sup>

The main pro bono service providers that can assist with representation at an employment tribunal are set out below.

#### The Bar Pro Bono Unit

The [Bar Pro Bono Unit](#) (BPBU) provides free legal assistance from volunteer barristers in all areas of law, including employment law, where the individual is unable to pay or obtain legal aid. They do not accept work directly from members of the public, although do accept referrals from MPs. In 2012 a total of 135 cases were referred by MPs to the BPBU.<sup>27</sup>

In order to refer a constituent to the BPBU it is necessary to complete an application form with the constituent. The application and guidance is available on the BPBU's website, [here](#).<sup>28</sup> The documents that must be included with the application in employment cases are set out [here](#).<sup>29</sup> Applications must be submitted at least **three weeks** before help is needed (eg at least three weeks before the date of an employment tribunal hearing).

The BPBU can be contacted on:

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<sup>25</sup> Law Society, Bar Council and Institute of Legal Executives, *The MP's Guide to Pro Bono*

<sup>26</sup> Ibid, p4

<sup>27</sup> The Bar Pro Bono Unit, MP referral statistics 2012

<sup>28</sup> BPBU website, [How do I apply for my client or constituent?](#) (accessed 8 June 2017)

<sup>29</sup> BPBU website, Employment cases (accessed 8 June 2017)

- 020 7092 3960;
- enquiries@barprobono.org.uk.

### The Free Representation Unit

The [Free Representation Unit](#) (FRU) provides free representation in employment tribunals and pre-hearing settlement negotiations. The FRU website states that they take on over 300 employment cases per year.<sup>30</sup>

Advice and representation is generally provided by volunteer law students, often those undertaking the Bar Professional Training Course (ie training to become barristers). FRU only accepts work from referral agencies, including Citizens Advice Bureaux, Law Centres and solicitors. FRU only accepts referrals of employment law matters if a tribunal date has been set and the tribunal is within one hour's travelling time from either London or Nottingham.<sup>31</sup>

For further information on the support FRU provide in employment matters see their website, [here](#).<sup>32</sup>

## 4.3 Self-representation

As noted at the beginning of this paper, in the majority of employment tribunals one party will represent him or herself, and this party will typically be the employee. People who represent themselves in court are referred to as "litigants in person".<sup>33</sup> Litigants in person unfamiliar with legal procedure, advocacy and the law find it difficult to present their case in its best light. The Bar Council has produced [A Guide to Representing Yourself in Court](#), which is intended to assist litigants in person.<sup>34</sup> Pages 35-37 deal with employment tribunals.

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<sup>30</sup> FRU website, [Employment advice](#) (accessed 7 June 2017)

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Master of the Rolls, [Practice Guidance: Terminology for Litigants in Person](#)

<sup>34</sup> The Bar Council, *A Guide to Representing Yourself in Court*, April 2013

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