Employment Tribunals:
A practical guide for claimants starting a claim in the Employment Tribunal

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Leigh Day
Everyone has a right to justice
and for their voice to be heard
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Introduction

This brief guide provides information on submitting your claim to the employment tribunal and the fees you have to pay, how, when and where. It also provides information on when you may not have to pay all or part of the fee, and how to apply for a fee waiver (known as ‘remission’).

It covers the following:

» Submitting your employment tribunal claim

» What fees you have to pay, and how and when to pay

» When you may be entitled to remission of fees, and how and when to apply

» What to do if your claim is rejected

» Costs

» Obtaining assistance and funding your claim

This is not a comprehensive guide to the employment tribunal system or what claims you can bring, so you should take advice on your employment rights; see Obtaining assistance and funding your claim, below. You should also read the employment tribunal guidance leaflets on making a claim, fees and remission carefully before starting as the detail is not reproduced here. You can also obtain advice from the employment tribunal public enquiry line on 0845 7959775.

The Advisory, Conciliation and Arbitration Service (‘Acas’) Helpline (08457 474747) can be contacted to discuss options in light of your circumstances, including informal resolution. Information on employment rights at work can be accessed at www.acas.org.uk/helplineonline.

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Authors: Emma Satyamurti and Nick Webster.
Our expertise and experience

Leigh Day has one of the UK’s largest dedicated teams of specialist employment and discrimination lawyers.

- We only represent claimants. We never represent defendants;
- We won employment team of the year 2013;
- We are very client focused; our aim is to achieve the best result in the most cost effective way and this is shown by our client feedback;
- Where appropriate we assist clients to negotiate themselves, whether to keep their job or to get an exit package; we are behind them every step of the way;
- We are very experienced in negotiating good deals for our clients, most of whom do not want to incur the costs, uncertainty or stress of litigation;
- For clients who want to litigate we fight hard, leaving no stone unturned, and are not afraid of the opposition, however powerful;
- We are willing to test the law to its limits, as shown by our successful landmark equal pay challenge;
- We are experienced in all courts from tribunals to the European Court.
- We have extensive knowledge on the process of bringing a claim to the Employment Tribunal and have a solid understanding of the fees and remission system introduced in the Tribunals on 29 July 2013.
- Our employment team is made up of leading experts recognised by our peers and independent guides to the legal profession.
Our commitment to you

At Leigh Day, every client’s case is unique. We recognise that taking legal action can be a frightening step into the unknown. Our role is to act as your experienced guide through the process. Our aim is to conclude your claim swiftly and professionally on the best terms possible.

Our service to you is built on a number of key principles:

**Listening and communication**
We take great care to listen to you and understand your circumstances. We try to explain the legal process in a straightforward way without legal jargon, and keep you fully informed of the progress of your claim.

**Providing a personal service**
We pride ourselves on our excellent relationships with our clients. We combine outstanding legal advice with support, understanding and compassion.

**Tailoring a team to meet your needs**
We recognise that a combination of skills is needed to succeed, so we tailor a team to meet the requirements of each case, whether it is to be pursued individually or as part of a group.
Submitting your claim

Types of claim
There are many different types of claim that can be brought in the employment tribunal including:

- Unfair dismissal
- Discrimination e.g. on grounds of age, disability, sex, pregnancy/maternity, sexual orientation, race, religion/belief
- Equal pay
- Breach of contract or unlawful deduction of wages
- Detriment or dismissal for whistle-blowing

It is best to concentrate on your main claims and those for which you can claim the most compensation (such as unfair or discriminatory dismissal). If in doubt, take advice.

You can find further information on our [website](#).

When do I have to issue my employment tribunal claim?
For most employment claims you have 3 months less one day from the treatment or act about which you are complaining, e.g. if the last date of your employment was 12 June, an unfair dismissal claim must be lodged on or before 11 September. In equal pay claims you usually have 6 months less one day from the end of the particular contract.

In some circumstances you can ask the employment tribunal to extend the time limit, for example if you were very ill so could not act sooner, but it is best not to take that risk if it can be avoided.
Early Conciliation

What is Early Conciliation (EC)?
As of 6 May 2014, it is not possible to start a claim in the Employment Tribunal unless you have first gone through the Early Conciliation process (EC). (There are limited exceptions to this; see below.)

The purpose of EC is to encourage parties in dispute to resolve their differences without resorting to litigation. Its introduction is part of the government’s drive to reduce the costs of the justice system, but may also prove a valuable opportunity for individuals to avoid the stress, uncertainty and expense of legal proceedings.

The EC process is run by the Advisory, Conciliation and Arbitration Service (Acas) who will help the parties to reach agreement where possible. This service is free and confidential.

How does the process start?
The EC process starts when the would-be claimant fills out an EC form. You can find the EC form here https://ec.acas.org.uk, or hard copies are available from Acas. The form is simple to complete. Certain basic information must be provided, such as your and your employer’s contact details, otherwise your form will be rejected. You can submit the form online, or by post, or you can telephone Acas and they will fill in the form for you. If there is more than one potential respondent (employer or person you are claiming against), you will need to complete separate forms for each one. It is important to get the potential respondent(s)’ name right, otherwise you may be prevented from bringing a claim later, if EC fails.

What happens after I submit my EC form?
After you submit the form you should receive initial contact from Acas within two working days. They will check the details on your form, find out from you what the dispute is about, and explain how EC works. You should then receive a call from an Acas conciliator (normally within a further working day), who will explain next steps and ask if you want to proceed with EC. Only if you do will the conciliator contact your employer, again normally within about one working day.
Early Conciliation

What if EC is successful?
If EC is successful, Acas will help you and your employer record what has been agreed in a form known as a COT3. This will bring the dispute to an end. Your employer may ask you as part of this agreement to sign away your right to bring claims against them, in which case it is a good idea to seek legal advice.

What if EC is unsuccessful?
At the end of the EC period (see below), or sooner if it becomes clear that EC will not succeed, Acas will issue an EC certificate. This will contain a unique EC reference number. You will need to quote this number if you decide to start a claim in the employment tribunal, so keep it safe.

The EC certificate will be sent to you, and to your employer if Acas has contacted them during the EC process. The sending of the certificate is the final stage of the EC process. Once you have received the EC certificate you will be free to lodge a tribunal claim. Please note that if you do not correctly quote the EC unique reference number on your claim form, the claim will be rejected.

What if I don't want to negotiate with my employer, or they don't want to negotiate with me?
As soon as either party says they do not want to engage with or continue with EC, the process comes to an end. If this happens, Acas will issue an EC certificate (see above).

How long does EC last?
The normal period for EC is one month. (It will end earlier if either party says they do not want to continue with EC, of if the Acas conciliator thinks that a settlement will not be achieved.) This can be extended by 14 days, but only once. However, the parties can continue to use Acas even after the EC period has finished.

Does EC affect the time limit for bringing a claim?
The normal time limit for bringing most employment claims is three months minus one day from the relevant event. However, during EC, the time-limit clock is paused. The clock starts ticking again when you receive, or are treated as having received, the
Early Conciliation

EC certificate. If the EC certificate is emailed to you, you are deemed to receive it the same day. If it is posted then you are deemed to receive it within the normal postal delivery time.

This means that the period of time for which EC lasts (counting from the day after you start the EC process to the day you receive the EC certificate) is added onto the normal time limit, so you don’t have to worry about running out of time if EC fails. For example, if your normal time limit is 15 August 2014 but you start EC on 31 May and receive an EC certificate on 30 June, the period 1 June – 30 June will not count when calculating your time limit. The time limit will therefore be 14 September (15 August plus 30 days).

There is also a special provision that means that you will never have less than one month to bring a claim after you receive the EC certificate. This is to avoid a situation where EC starts just before your normal time limit runs out, and there would therefore not be enough time for you to put in your claim once EC ends if the negotiations are not successful. Please note that if your normal time limit has already run out before EC starts, you will not benefit from any extension of time by participating in EC (although your claim will not become more out of time during EC).

What if I have a representative?
You must complete the EC application but you can ask Acas to then contact your representative (if you have one) to discuss your claim. You do not have to involve your representative if you do not wish to.

Are there situations when EC is not required?
Yes, there are a few situations where you can bring a claim even if you have not completed the EC process first. For example, if you are one of a number of claimants in a group action and one of the other claimants has already complied with the EC process, you do not need to. If your employer has already contacted Acas about the dispute, again you do not need to. EC also does not apply when your claim form includes certain types of excepted claim. But most employment claims are not excepted. Please note that if you do not use the EC scheme you will not get the above extension of time to bring a claim.
Claim forms

Where can I obtain the claim form?
You can obtain the claim form by clicking here. The form changed on 29 July 2013.

What information must I include on the form?
• Your name, address and date of birth
• Your employer’s (also known as the respondent) name and address; you should use their registered address, which can be found for free at Companies House if they are a limited company.

You must also include the address where you worked, which may not be the employer’s registered address.

If, in a discrimination claim, you wish to bring a complaint against an individual as well as your employer, you must ensure you include all names and addresses.

Salary and compensation/remedy
• Details of your salary and benefits, such as private health insurance, car allowance, pension contribution etc; you will be required to provide evidence of your salary, such as pay slips, bank statements, a log book or P45, at a later date in the proceedings.
• The compensation and remedy you are asking the employment tribunal to award, such as compensation for unfair dismissal and/or discrimination. The tribunal can make a declaration of discrimination and/or recommendation that, for example, the employer allow flexible working or make a reasonable adjustment.
Claim forms

What should I include in the details of complaint?
You should include the key facts, in chronological order, which give rise to your claim, such as why you say you have suffered discrimination or been unfairly dismissed. In discrimination cases you may include events that occurred previously as background if these support your main claim.

Top tips
• Concentrate on your main claims which will give rise to compensation
• Set out the facts in chronological order but keep the details of your complaint concise; remember the claim form is not a witness statement
• Give dates for what happened wherever possible
• Do not leave the employment tribunal asking “Why is this relevant?”
• You do not need to set out the legal provisions in any detail unless you are comfortable doing so
• Additional claims can sometimes be added late, generally only with the employment tribunal’s permission, but it is best to avoid this by considering all the claims at the beginning
How to submit a claim form

**Online**
You can download the claim form [here](#). You will have 20 minutes to complete each section of the form and therefore it would be best to complete a hard copy in the first instance. You are also limited to 150 lines for the particulars of your claim, however you can submit these details in a separate word document.

**Post**
You can send the claim form to the Employment Tribunal Central Office (England & Wales), PO Box 10218, Leicester, LE1 8EG (there is a different address for Scotland).

**By hand**
You can hand deliver your claim form to a designated employment tribunal office, please click here to find your local office.

You cannot submit your claim form by email or fax.

Please note that in all cases, unless you are applying for a fee ‘remission’ (waiver), you must pay a fee at the same time as lodging your claim. If you don’t, your claim will be rejected.
The fee system

One of the most fundamental changes to employment law for a decade is the introduction of employment tribunal fees which are payable for all claims lodged on or after 29 July 2013.

Appeals to the Employment Appeals Tribunal lodged on or after 29 July 2013 also attract fees.

Please note that this booklet only covers fees for individual claimants. If you are making a claim as part of a group, the rules are different.

What will I have to pay fees for?
You have to pay two main tribunal fees: one to issue (start) your claim and one for the main hearing (trial). This booklet focuses on the issue and hearing fees.

What are the issue and hearing fees for my claim?
This will depend on the type of claim(s) you are bringing. There are two levels of fee: those applicable to ‘Type A’ claims, and those applicable to ‘Type B’ claims. A full table of the different Type A claims can be found by clicking here. If your claim is not a Type A, it will be a Type B. For example, if you are claiming you have been unfairly dismissed, resigned your position as a result of your employer’s conduct or have been discriminated against, you will have to pay Type B fees.

The fees are:

• Type A issue fee is £160, and the hearing fee is £230
• Type B issue fee is £250 and the hearing fee is £950

What if my claim form includes more than one claim?
You will only have to pay one issue fee and one hearing fee. If you have a Type A and B claim you pay the higher Type B fee in each case. Equally, if you are bringing more than one Type A claim or more than one Type B claim, you only need to pay one Type A / Type B issue fee and hearing fee.
How to pay fees

How do I pay my issue fee?
You have three options for paying your issue fee, which must be paid at the same time as the claim form is submitted.

Online
If you submit your claim form online then you will be directed to complete an online payment.

Post
If you are submitting your claim form by post then you must make payment by cheque or postal order to be enclosed with the form.

In person
If you are hand-delivering your claim form to a local designated employment tribunal office you must pay the fee at the same time by cheque or postal order.

Can I pay over the phone?
No you will not be able to pay over the phone.

How do I know if my issue fee has been accepted?
You will receive notice of acceptance of your claim from the employment tribunal if you have paid the correct fee. Alternatively, you will be told that you have paid an incorrect fee (i.e. Type A, when Type B applies) and given a date by which to make the correct payment. If you do not make that payment by the specified date your claim will be rejected.
What happens if I do not pay my hearing fee?
If you do not pay your hearing fee or make an application for remission (see below), the tribunal will send you a notice telling you the date by which you must pay the fee or make a remission application. If you do not comply with this, your hearing will not proceed and your claim could ultimately be struck out (If this happens, you can apply to have your claim reinstated - see below). It is therefore vital that you take a careful note of when the fee is payable, and ensure that you are able to make payment or ready to make a remission application.

Do I get my tribunal fees back if I win my claim?
Not necessarily. If you are successful, you can ask the employment tribunal to order the respondent to reimburse your fees but it will be at the employment tribunal’s discretion to make that order.

If you settle your claim prior to the hearing, but after you have paid the hearing fee, you will not have this reimbursed by the employment tribunal. You should therefore try to obtain the respondent’s agreement to pay this as part of the settlement. Similarly, if you pay to issue your claim and it is later struck out, you will not have your issue fee reimbursed.

Can I avoid having to pay the tribunal fees?
You can apply to be exempt from paying a tribunal fee in full or part. This is known as remission and is covered in the next section.
Remission (waiver) of fees

What is remission?
Remission is a process by which you can apply to be exempt from paying all or part of a tribunal fee.

As a claimant, you can apply for any tribunal fee to be remitted. Each tribunal fee requires a separate remission application on each occasion as your circumstances may have changed; just because you receive remission of your issue fee does not mean you will receive it for the hearing fee. Eg You might be out of work when you issue your claim, but have started a new job by the time your hearing fee is payable.

When and how can I apply for remission?

• **Issue fee** – if you are submitting your claim by post or hand, it must be accompanied by your remission application and all the necessary evidence (see What evidence do I need?, below). If you are submitting your claim form online, you must tick the box on the form to say that you wish to apply for remission, and then post your remission application and evidence to the Employment Tribunal Central Office (England & Wales), PO Box 10218, Leicester, LE1 8EG.

• **Hearing fee** – you will receive notification from the employment tribunal of the date by which your hearing fee is payable. You should ensure you have the remission application completed and all supporting evidence ready to be sent by the specified date. If you do not pay or submit a remission application, the tribunal will send you a notice specifying a further date by which you must pay or make a remission application, failing which your claim could be struck out. (If this happens, you can apply to have your claim reinstated – see below.)

• If you apply for the judgment in your claim to be reconsidered you must pay a fee of either £100 or £350 (depending on whether your claim is Type A or Type B – see above), or apply for remission.
Am I eligible for remission?

Introduction
For all tribunal fees payable on or after 7th October 2013, eligibility for remission is assessed on your household disposable capital and your household gross monthly income. If your disposable capital is equal to or in excess of the capital threshold for the applicable fee payable, you will not be eligible for remission unless exceptional circumstances apply, regardless of your monthly income which will not be assessed. If your disposable capital is less than the threshold, your disposable monthly income will then be assessed to see if you are entitled to full or partial remission of the fee.

If you have a partner their capital and income as well as yours is usually taken into account. In assessing both your household disposable capital and your household disposable monthly income. This is why it is referred to as “household” capital and income. A partner is someone you live with as part of a couple, regardless of whether you are married or in a civil partnership. If your partner is away from home by force of circumstances, for example because they are in prison, in hospital, or working abroad, their capital and income still counts in assessing your eligibility for remission. The only circumstances in which a partner’s income will not be included is if they are treated as living separately and apart from you.
Am I eligible for remission?

I. Disposable capital test

There is a sliding scale of disposable household capital thresholds depending on the amount of the fee you are applying to have remitted. The scale can be viewed [here](#). If your household disposable capital is below the applicable threshold, and you provide the correct evidence (see What evidence do I need to include with my remission application? below), you will pass the household disposable capital test of the remission assessment and proceed to being assessed on your household gross monthly income.

Any employment tribunal fee is unlikely to exceed £1,000, for which the applicable capital threshold is £3,000. If your household disposable capital is £3,000 or more, you will not be eligible for remission at all, irrespective of your household income or entitlement to benefits. You will therefore have to pay the tribunal fee in full unless exceptional circumstances apply (see Exceptional circumstances, below).

If you or (if applicable) your partner are aged 61 or over, you will meet the disposable capital test if your household disposable capital limit is less than £16,000, regardless of the amount of the fee to which your application relates.

**What counts towards a household’s disposable capital?**

Household disposable capital is the value of every resource of a capital nature belonging to you and (if applicable) your partner at the date of your remission application, and includes the following:

- Capital held in savings accounts, ISAs, bonds, trust funds or any other fund (if accessible to you / your partner); stocks, shares; capital financial products (such as derivatives); all forms of redundancy payments received; second homes; any jointly held capital; any type of capital held outside the UK.

The full list of what constitutes a household’s disposable capital can be found [here](#) and should be reviewed before making an application for remission.
Am I eligible for remission?

Is there anything that doesn’t count towards household disposable capital?

In calculating your household disposable capital you can disregard any capital that is “treated as income” or deemed “excluded capital”.

Capital treated as income includes the following:

Any sums paid regularly to you or your partner, such as payments made under an annuity.

Excluded capital includes the following:

Property which is your main or only home; the value of any funds or other assets held in trust where you (or your partner) is a beneficiary but is not entitled to any capital advances; a payment made as a result of a determination of unfair dismissal by an Employment Tribunal, or by way of a settlement of a claim for unfair dismissal; capital held in any personal or occupational pension scheme.

The full list of what constitutes excluded household capital can be found [here](#) and should be reviewed before making an application for remission.

How do I calculate the value of non-money capital?

You must firstly establish how much money each resource of a capital nature owned by you and (if applicable) your partner would fetch if sold. You can then deduct a) 10% from this sale value (for expenses you would incur if you surrendered the capital), and b) the amount of any debt secured against the capital.

For example, if you own a second home worth £100,000, which has a mortgage of £90,000 secured against it, once 10% for sale expenses has been deducted, the value of the property for the purposes of the remission application would be £0.

Will capital held abroad be taken into account?

Yes. If the capital held abroad could be transferred into the UK its value will be what it would realise if sold in that non-UK country. If the capital could not be transferred to the UK, its value will be what it would realise if sold in the UK.
Am I eligible for remission?

Will capital in which I have an interest be taken into account?
The full value of all capital owned by you and (if applicable) your partner is taken into account unless it is excluded capital (see above).

If you jointly own capital with anybody other than your partner, your share in that capital must be included in your household disposable capital (unless it is excluded capital). It will be presumed that you hold an equal share in that capital with the other owner(s) unless proven otherwise. For example, if you jointly own a property worth £100,000 with three others, your presumed share will be £33,333.33 unless you can prove otherwise.

Can I deprive myself of some of my capital in order to obtain fee remission?
You or (if applicable) your partner must not deliberately deprive yourself of capital for the purpose of securing entitlement to remission, for example by giving a large amount of money to a friend. If you are found to have been deliberately untruthful in the amount of capital you declare, this could result in criminal proceedings against you. However, if you (or your partner) use capital to pay a debt, or to purchase everyday goods or services, this will not be counted as depriving yourself of the capital.
Am I eligible for remission?

*My household disposable capital is equal to or in excess of the applicable capital threshold - can I still apply for remission?*

No. If your household disposable capital is equal to or in excess of the threshold for the applicable tribunal fee, you will be ineligible for remission regardless of your income or benefit entitlement. You will therefore have to pay the tribunal fee unless there are exceptional circumstances (see below).

II. Gross monthly income test

If your household disposable capital is below the applicable threshold you can continue with the remission application and your gross monthly income is assessed. You will be entitled to full or partial remission if you are i) in receipt of a specified benefit (known as ‘Remission 1’), or ii) your household gross monthly income is below a certain amount (known as ‘Remission 2’).

a) Remission 1 – full remission based on receipt of specified benefits

If you have passed the household disposable capital test, you will automatically receive full remission of the fee if you are in receipt of, and can provide the correct evidence for (See What evidence do I need to include in my remission application?, below), any of the following:

Income-based Employment and Support Allowance, Income Support, Income-based Job Seeker’s Allowance, State Pension guarantee credit, or Universal Credit with gross annual earnings of less than £6,000.

b) Remission 2 – full or partial remission based on gross monthly income

If you pass the disposable capital test but are not in receipt of any of the specified benefits listed under Remission 1, whether you are entitled to any remission of the fee will depend on your household gross monthly income. Your partner’s income is also taken into account for these purposes, as is the number of any financially dependent children you or your partner have.
Am I eligible for remission?

Full remission
If your household gross monthly is equal to or below the following applicable thresholds, and you provide the correct evidence (What evidence to include, see below), you will be entitled to full remission of your tribunal fee:

<table>
<thead>
<tr>
<th>No of children</th>
<th>Single</th>
<th>Couple</th>
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<tbody>
<tr>
<td>0</td>
<td>£1,085</td>
<td>£1,245</td>
</tr>
<tr>
<td>1</td>
<td>£1,330</td>
<td>£1,490</td>
</tr>
<tr>
<td>2</td>
<td>£1,575</td>
<td>£1,735</td>
</tr>
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The above thresholds increase by £245 with each additional child.

If your household gross monthly income exceeds the applicable threshold you will not be entitled to full remission, but you may still be eligible for partial remission.

Partial remission
For every £10 of your income that exceeds the applicable household gross monthly income threshold, you will have to pay £5 towards your tribunal fee up to the full amount of the fee. For example, if you are single, with no children, and have a household gross monthly income of £1,405, you will be £320 over the applicable threshold (£1,085) and will therefore have to pay £160 towards your tribunal fee or the full amount of the fee if this is less.

If your household gross monthly income exceeds a specified cap (there are different caps depending on whether you have a partner and / or how many children you or your partner have), you will not be entitled to any remission at all.

If your household gross monthly income exceeds the applicable threshold by £4,000 or more, you will not be entitled to remission. For example, if you are single and have no children, you will not be entitled to any remission if your household gross monthly income exceeds £5,085, and you will therefore have to pay the full tribunal fee. You can see all the income caps [here](#).

What form do I need to use to apply for remission?
You must complete [Form EX160](#) and provide all the evidence required (see What evidence to include, below). It would be wise to keep a photocopy of the form and evidence, and send the application and evidence by recorded delivery (keeping a copy of the receipt).
What evidence to include

What evidence do I need to include with my remission application?

General

If you are part of a couple, you must provide evidence showing that you live at the same address as your partner (unless you are living apart due to force of circumstances). This must be in the form of an official original document such as a utility bill, that shows your status, full names, titles and address.

If you or your partner have any financially dependent children, you must provide evidence of those children. This must be in the form of either i) evidence of child benefit showing how much benefit is received and how many dependent children you have; or ii) a Universal Credit award notification showing the amount of the child or childcare element of your Universal Credit and how many dependent children you have; or iii) a bank statement or other record showing evidence of child maintenance payments and how many dependent children you have. The rules are detailed, so please review page 19 of the H M Courts and Tribunals Service (HMCTS) guidance here for further information.

i. Household disposable capital

You do not have to provide any evidence of your household’s disposable capital but will have to sign a statutory declaration confirming that the value of your household disposable capital stated in your remission application is true. In cases of doubt, the tribunal Delivery Manager can request evidence of your household disposable capital.

ii. Gross monthly income

a) Remission 1 – full remission based on receipt of specified means-tested benefits

You must provide an original letter confirming receipt of the benefit issued by Job Centre Plus / Department for Work and Pensions. It must show your title, full name, address and confirm that you are currently receiving the benefit, and be dated within a month of the remission application.
What evidence to include

For State Pension guarantee credit, the letter must be from the Pension Service / Department for Work and Pensions and the Assessed Income Period should cover the current financial year.

b) Remission 2 – full or partial remission based on gross monthly income

You and (where applicable) your partner must provide bank statements for the 3 months prior to your remission application. In addition to the bank statements you must provide the following:

**Paid employment:**

You must provide your most recent original wage slips from all your jobs as follows.

- Paid monthly: last month’s wage slip but no more than six weeks old
- Paid weekly: last full month of wage slips no more than six weeks old
- You must also give information about any money you receive from cash-in-hand work.

**Self-employed:**

You must provide your most recent tax return (Self Assessment), and either your most recent HMRC Self Assessment Tax Calculation or other proof of current income.

**Both paid and Self-employed:**

In addition to the above, regardless of your working status, you and (where applicable) your partner must provide evidence of the following:

- Rent you receive from any property, and how often you receive it.
What evidence to include

- If you receive any income from stocks or shares, current statements or certificates detailing how much you receive and how often you receive it.
- If you are in receipt of a pension, other than state pension guarantee credit, a current statement/letter confirming your pension payment(s).
- If you receive child benefit, a benefit entitlement notice/letter no older than 1 month prior to the date of your remission application.
- If you receive child maintenance, how much you receive, and how often you receive it (i.e. a letter from the Child Support Agency, a Court Order or any informal agreement you have reached with the other party).
- If you receive any other income, from any other source, how much you receive, and how often.
- Other benefits: If you receive any benefit payments other than those listed here (page 20) or the specified benefits under Remission 1 (see above), you must provide a benefit entitlement notice or letter dated within the last month preceding your remission application, confirming how much you currently receive and how often.

Some benefits are excluded and you do not need to declare these as part of income.

If you want your original documents to be returned to you, you must request this. For full details of what is required, please refer to page 19 of the HMCTS guide.
Unsuccessful application

What happens if my application for remission is unsuccessful?

There is no provision within the Employment Tribunal Rules or the Courts and Tribunals Fee Remission Order 2013 to appeal against a rejection of your remission application. However, the HMCTS guide to the remission system does refer to an appeal process which allows two levels of appeal against a rejection of a remission application. The appeal process set out in the HMCTS guide is as follows:

a) You must write to the Delivery Manager by the date set out in the Employment Tribunal’s refusal letter explaining why you are not happy with the rejection of your remission application. You must include with the letter any evidence supplied with your original application and any extra evidence in support of your application for remission.

b) The Delivery Manager will then provide their decision on your appeal within 10 working days.

c) If your appeal is allowed and you receive full remission, the Employment Tribunal will process the step that the fee you were seeking remission for relates to; for example lodging your claim or holding a hearing. If you successfully appeal a partial remission application you will be told of how much you must pay and when it is payable. Your case will not progress until you have made the payment to the Employment Tribunal.

d) If your appeal is refused the Delivery Manager will write to you explaining why and you will then be able appeal to the Operational Manager. The Operational Manager’s decision will be final.
Unsuccessful application

Refunds

If you paid a fee at the required time but would have been entitled to full or partial remission if you had provided the necessary evidence, you must be given a refund of the relevant amount if you later provide documentary evidence of your entitlement to remission as at the time the fee was payable. For example, if you have been dismissed you may be entitled to one of the benefits under Remission 1, however it may take some time for your benefit application to be processed. This could mean that you may not yet have the relevant benefit in place by the time you need to lodge your tribunal claim and that you therefore have to pay the fee. If your entitlement to the relevant benefit is later backdated to a date on or prior to the date you paid your issue fee, if you provide appropriate evidence to show that you were entitled to the benefit as at the time of paying the fee, and evidence to show that you paid the fee, you must be given a refund of all or part of the fee (depending on whether you would have been entitled to full or partial remission).

However please note that you only have 3 months less one day from the date you paid your fee to apply for a refund. If you do not apply within this period you will not receive a refund unless there is a good reason why the refund should still be paid (you should not rely on this).
Can my claim be rejected?

There are a number of situations in which the tribunal can reject a claim, including:

a. Where the tribunal does not have jurisdiction to hear the claim or it is not in a form which can be sensibly be responded to;

b. Where it is not on a prescribed form or does not include the employer’s name and address, the tribunal will reject it and send you a notice setting out how to ask for a reconsideration, which must be done within 14 days;

c. Where there is no fee paid or remission application the form will be rejected;

d. If the fee you pay is wrong (a Type A when Type B is payable) amount or the remission application refused the tribunal will send a notice giving a date by which the correct fee must be paid;

How do I apply for reconsideration?

If the employment tribunal has rejected your claim for any reason other than non-payment of an issue fee or lack of a remission application, for this you can apply for reconsideration within 14 days of the rejection notice being sent out.

You must provide the reason why the rejection decision was wrong or rectify any defect identified in your claim. If your claim is reinstated, it may be treated as having been lodged on the date you rectified the defect (rather than the date on which you originally submitted your claim).
Costs

**Will I have to pay my employer’s costs?**
The employment tribunal can order a party to pay some or all of another party’s legal costs or preparation time if either:

- A party or party’s representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing of the proceedings (or part of them) or the way that the proceedings (or part of them) have been conducted; or
- Any claim or response had no reasonable prospect of success; or
- Where a party is in breach of any order or practice direction; or
- Where a hearing has been postponed or adjourned on the application of a party.

Legal costs are payable where the receiving party has the assistance of a person who is a lawyer.

Preparation time is payable where the party is not represented by a lawyer, but is not recoverable for time spent at any final hearing.

A costs order and a preparation time order cannot both be made in favour of the same party in the same proceedings.

**Will I get a warning first?**
The respondent would be expected to write to you warning that they will be seeking costs, with the reason(s) for doing so. This does not mean that if there is no warning, there will be no costs order.

If you do receive a costs warning from the respondent you should consider it carefully and respond explaining why you disagree that you should pay costs. You must not ignore a costs warning as this will go against you at any application for costs.

**How much will I have to pay?**
Potentially all of the costs incurred by the respondent in defending your claim. The party claiming costs should, but does not always, provide a schedule of the costs they are claiming and the employment tribunal will determine whether they are reasonable. The employment tribunal will consider your income but this will not be determinative, i.e. if you have a poor claim and/or have conducted your claim in an unreasonable manner, you cannot plead poverty to escape a costs order.
Costs

What should I do if I decide to withdraw my claim?

If you decide no to continue with your claim, you should first try and agree with the respondent that they will not pursue you for costs, before you withdraw the claim.

Obtaining funding/assistance

There are a variety of options available to you in funding your claim in the employment tribunal. We will not cover the benefits and disadvantages of each, but rather outline some key aspects.

Conditional Fee Arrangements (‘CFA’) or Damages Based Agreements (‘DBA’)

These are commonly referred to as ‘no win no fee’ arrangements. Each agreement is case specific but there are some common practices:

- You will not pay your solicitor’s fees until the case is concluded;
- You will not pay your solicitor’s fees if you lose;
- Disbursements in the case may be met by your solicitors unless you win. This may include the instruction of experts, such as a barrister.
- If your claim is successful you may have to pay a ‘success fee’, as well as your solicitors normal fees. This will be an uplift on your solicitor’s normal fees, or a percentage of your compensation.

Solicitors who offer to represent claimants on such terms will have to initially review your claim to assess the merits and decide whether such an arrangement is appropriate in your case.

Fixed-fees - Some solicitors will offer fixed-fees to assist you in your claim. This will ordinarily be broken down into different stages of the process, i.e. an initial review of your papers and advice on prospects of success, through to preparation of the claim and advice on the response/defence etc. For details on our rates please [click here](#).
Obtaining funding/assistance

**Private hourly rate** - You may be in a position to pay a solicitor their private hourly rate to assist you in your claim. This can vary depending on the firm and the solicitor.

**Legal Expenses Insurance** - You should check your home/contents insurance (and any other insurance policies you have) to see if you have legal expenses cover. If so, you should contact your insurers as soon as possible to ask what cover is available and the terms of this. Some insurance cover may be invalidated if you issue a claim prior to contacting your insurers.

**Trade Union** - If you are a member of a trade union, they may agree to support your claim. A trade union will ordinarily only support your claim if you were a member when the dispute arose. You should contact your union as early as possible to ensure you understand the level of assistance available, and that, as with insurance, you do not do anything which may invalidate union assistance.

**Legal Aid** - From April 2013 legal aid funding is only available for discrimination claims. Even then, funding will only be provided if you are able to clear two hurdles: firstly, establishing that your disposable income is below the current threshold; secondly, that your claim has reasonable prospects of success (i.e. above 50%).

There are only a handful of organisations which provide legal aid assistance and they may not have the capacity to take on your claim, especially at short notice. You should therefore contact the Legal Aid Agency on 0300 200 2020 as soon as possible to establish how you can obtain assistance.

**Voluntary sector/Pro bono**
There are a few pro bono services available including

- Employment Lawyers Association
- Free Representation Unit
- Bar Pro Bono Unit
- Law Centre Federation
- Citizens Advice Bureau
- Charities – such as the Disability Law Service, and Working Families
Emma Satyamurti Solicitor
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Emma Satyamurti is an experienced employment lawyer and litigator. She advises and represents claimants in a wide range of employment claims including discrimination, dismissal, TUPE, whistleblowing and redundancy. She has a particular interest in disability discrimination.

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Nick has experience in working on maternity and pregnancy discrimination, disability discrimination, sex discrimination and race discrimination, unfair dismissal, restructuring, internal dispute resolution, victimisation and whistleblowing. He is experienced in all stages of litigation from commencement to settlement. Nick regularly advises on compromise agreements.

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Elizabeth George is a barrister who specialises in all aspects of employment law and discrimination. She has a wealth of experience in advising and acting for employees in employment tribunals and the civil courts, as well as providing support and training for various NGO’s and campaign bodies.

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