Which issues would you most highlight to someone new to your country?

Squire Patton Boggs

Compared with many countries, the United Kingdom has a relatively flexible labour market. However, increased domestic and EU-derived regulation in this area, together with a wealth of case law, means that those setting up operations in the United Kingdom should seek specialist assistance to ensure that their relationships with employees are harmonious and legally compliant.

What do you consider unique to those doing business in your country?

Squire Patton Boggs

Employers and employees in the United Kingdom have a considerable degree of freedom to agree terms of employment.

Is there any general advice you would give in the employment area?

Squire Patton Boggs

Nothing specific.

Are there any noteworthy proposals for reform in your jurisdiction?

Squire Patton Boggs

The UK government remains committed to removing red tape in order to relieve the burdens on businesses. It has commissioned an independent review into modern employment practices that will cover issues such as zero hours contracts and the ‘gig economy’ (eg, the use of atypical – such as fixed-term – workers). The likelihood of material substantive change is small in the short to medium term.

What are the emerging trends in employment law in your jurisdiction?
There is an ongoing focus on achieving equal pay for women, principally via the introduction of statutory gender pay gap reporting from April 2018.

In June 2016 the United Kingdom voted to leave the European Union. The process of negotiating an exit is likely to take some time and it is not yet clear what effect – if any – Brexit will have on EU-derived UK employment legislation. Until the United Kingdom leaves the European Union, it remains subject to EU laws. Substantial alterations thereafter are unlikely.

What laws and regulations govern the employment relationship?

The Employment Rights Act 1996 is the principal statute governing the employment relationship. Key rights covered by the act include:

- the right to a written statement of employment particulars;
- the right not to be unfairly dismissed;
- redundancy rights;
- the right to a minimum notice period;
- the right not to have deductions made from wages; and
- protection against dismissal or detrimental treatment on the grounds of certain protected activities or statuses.

Other key legislation includes:

- the Equality Act 2010, which covers discrimination and equal pay rights;
- the Working Time Regulations 1998, which regulate working time and paid holidays;
- the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 2015, which cover the national minimum wage and the national living wage;
- the Transfer of Undertakings (Protection of Employment) Regulations 2006, which govern the transfer of employees in business transfers and service provision changes (including outsourcing); and
- various statutes dealing with rights for new parents.

Who do these cover, including categories of worker?

The legislation covers employees, workers and self-employed contractors. There is a further employment status – 'employee shareholder’ – though it tends to be used in limited circumstances.

An ‘employee’ is an individual who has entered into or works under a contract of employment (Section 230(1) of the Employment Rights Act 1996).

A ‘worker’ is an individual who has entered into or works under a contract of employment or any other contract – whether express or implied, and (if it is express) whether oral or in writing – whereby the individual undertakes to do or perform personally any work or services (Section 230(3) of the Employment Rights Act 1996). The term therefore includes, but is not limited to, employees.

A self-employed person is generally in business on his or her own account and provides services to clients of his or her business.

The definitions vary between statutes. For example, the definition of "employment" under the Equality Act 2010 is broad and covers employees, workers and some self-employed individuals.
**Are there specific rules regarding employee/contractor classification?**

_Squire Patton Boggs_

Whether an individual is an employee, a worker or a self-employed contractor is a question of both law and fact. The UK courts have developed a number of tests to determine an individual’s employment status. It has become clear that in order for a contract of employment to exist, two particular factors must be present:

- mutuality of obligation between the employer and the employee (i.e., the employer must be obliged to provide work and the employee must be obliged to accept and perform the work); and
- an obligation on the individual to provide the work personally (i.e., he or she cannot provide a substitute).

Ultimately, all facts of the particular case must be considered to determine whether the individual is an employee. Certain factors point towards an individual being an employee (e.g., where the business deducts tax and national insurance from the individual's remuneration directly) or genuinely self-employed (e.g., where the individual pays his or her own tax and national insurance).

Both the employment tribunals and the tax authorities have the ability to reclassify a relationship from contractor to employee in appropriate cases.

**Contracts**

**Must an employment contract be in writing?**

_Squire Patton Boggs_

While a comprehensive written contract of employment is advisable, it is not a legal requirement. However, all employees are entitled to receive, within two months of starting employment, a written statement setting out certain prescribed particulars concerning their employment. These include:

- the names of the employer and employee;
- the date on which employment started;
- details of pay and pay frequency;
- place and hours of work;
- holiday and holiday pay entitlement;
- job title or a brief description of the work; and
- disciplinary and grievance procedures.

**Are any terms implied into employment contracts?**

_Squire Patton Boggs_

In addition to terms agreed between an employer and employee, certain terms will be implied into the employment relationship. An 'implied term' is a term which the parties are taken to have agreed upon either because it is necessary to give business efficacy to the contract (i.e., it is necessary to make the contract workable), through custom and practice or through the conduct of the parties themselves.

Certain terms are implied into every contract of employment. These include the employee’s duty to:

- serve the employer faithfully;
- obey lawful and reasonable orders; and
- exercise reasonable skill and care.

Employers have a duty to:

- pay wages and provide work;
- provide a safe system of work; and
- not destroy the relationship of trust and confidence between the employer and employee.
Are mandatory arbitration/dispute resolution agreements enforceable?

No – mandatory arbitration or dispute resolution agreements are not enforceable on public policy grounds.

How can employers make changes to existing employment agreements?

As a general rule, an employee’s terms and conditions of employment can be changed or varied only if he or she agrees. Some employment contracts contain a right for the employer to make limited changes to the terms and conditions, but the employer must act reasonably when seeking to do so.

As a matter of practice, employers will usually seek the employee’s consent to any changes. If an employee is unwilling to agree to a change in his or her terms and conditions, the employer can affect the change by serving notice in accordance with his or her existing terms and conditions of employment and then offering to re-engage the employee on the new terms and conditions of employment. Under this approach, if 20 or more employees are affected by the proposed changes, an employer must consult on a collective basis prior to making any dismissals.

Is a distinction drawn between local and foreign workers?

No – but foreign workers must be lawfully entitled to work in the United Kingdom. An employer will commit an offence and be liable for a civil penalty if it employs a person aged 16 or over in the United Kingdom who does not have the right to work in the United Kingdom and to carry out the work in question. Employers can establish a ‘statutory excuse’ (defence) against a civil penalty (which can be up to £20,000 per illegal employee) by checking specified documentation which shows that the employee is allowed to work in the United Kingdom in the role in which he or she is employed. A statutory excuse cannot be relied upon if the employer is knowingly employing someone illegally or has reasonable cause to believe that an employee does not have the lawful right to work in the United Kingdom. Employers will usually include a warranty from the employee in the employment contract that he or she is entitled to work in the United Kingdom, and should also make this a pre-employment requirement.

What are the requirements relating to advertising positions?

Employers use various channels to advertise job positions, including social media, but should ensure that they do not discriminate as part of the advertising process. A job applicant can bring a claim against a potential employer for:

- discrimination in the arrangements made for recruitment;
- discrimination in the terms of employment offered;
- discrimination as a result of a refusal or deliberate failure to offer employment; or
- harassment.

Background checks

What can employers do with regard to background checks and inquiries in relation to the following:

**(a) Criminal records?**

**United Kingdom**

**Squire Patton Boggs**

While criminal records checks are not normally mandatory, pre-employment screening is mandatory for people to be employed in a ‘regulated activity’ – broadly involving work with children and provision of health and other care. Subject to certain exceptions (including individuals working in regulated positions, such as within financial services), a person who has been convicted of a criminal offence but does not re-offend during a ‘rehabilitation period’ (which depends on the offence and sentence imposed) is entitled to treat himself or herself as having a clean record (ie, the conviction is ‘spent’).

**(b) Medical history?**

**United Kingdom**

**Squire Patton Boggs**

Under the Equality Act 2010, it is unlawful for employers to ask questions about health and disability before making a job offer – with some limited exceptions. Employers can ask candidates information about their health (eg, to complete a pre-employment health questionnaire or to attend a medical examination) after a job offer has been made. However, employers should consider whether this medical information is necessary.

**(c) Drug screening?**

**United Kingdom**

**Squire Patton Boggs**

Drug screening (whether as part of the recruitment process or during employment) is permitted, but can be undertaken only with the individual’s explicit consent. The use and application of drug tests should be justified, necessary and proportionate. Drug tests are therefore more common in safety-critical sectors such as transport or construction, or for roles where drug abuse risks compromising the integrity of the individual or position, or the recruiting organisation (eg, public sector roles such as police officers).

The Information Commissioner’s Office (an independent body set up to uphold information rights in the United Kingdom) makes a number of recommendations in relation to drug testing – including, given the intrusive nature of the tests, that employers undertake and document an impact assessment.

**(d) Credit checks?**

**United Kingdom**

**Squire Patton Boggs**

Credit checks should be carried out only where they are relevant to the position for which an applicant has applied (eg, where the position involves giving financial advice) or where financial difficulties could expose the employee to risks of bribery or other security risk.

**(e) Immigration status?**
Prior to allowing a job applicant to start work, employers should take the following steps to check whether he or she has the right to work in the United Kingdom:

- Require the job applicant to produce original documents from List A or B, indicating that he or she has the right to work in the United Kingdom;
- Check that the features of the documents meet the requirements set out in List A and B, that they appear to relate to the job applicant and that they are not forgeries; and
- Take copies of the original documents and certify them as true copies of the original documents (the individual certifying the documents must clearly sign, write his or her name and state the date on which the copy was taken).

Although it is not a legal requirement to check and retain copies of such documents, by doing so employers are provided with a statutory excuse (defence) against liability for a civil penalty for illegally employing a migrant worker. Copies of such documents should be kept for the duration of the person’s employment and for two years thereafter. However, an employer that checks and retains copies of documents confirming a worker’s right to work will not have a statutory excuse if it nonetheless knowingly employs an illegal migrant worker or has reasonable cause to believe that an employee does not have the lawful right to work in the United Kingdom.

(f) Social media?

This is permitted, but only where the screening is for a specific and good reason and is not arbitrary. The extent of the screening must be necessary and proportionate to achieve that reason. Employers using social media sites as part of a recruitment process should let candidates know this, and should explain what form these checks will take and why they are considered necessary. Candidates should ideally also be given an opportunity to comment on any information obtained via such checks if it may negatively influence the decision to offer them a job.

(g) Other?

If the position involves giving financial advice or if financial difficulties could expose the employee to risks of bribery or other security risk, a prospective employer may wish to check whether a county court judgment has been issued against the individual. A county court judgment is a judgment issued by the UK county courts when someone has failed to pay money that he or she owes.

Wages and working time

Pay

Is there a national minimum wage and, if so, what is it?

The national minimum wage (NMW) applies to all workers aged 16 to 24 years old. The national living wage (NLW), introduced in April 2016, applies to workers aged 25 and over. The NMW rate varies depending on the age of the worker and whether he or she is in training. For example, the NMW for 21 to 24 year olds is currently £6.95 per hour. The NLW is currently £7.20 per hour.

Are there restrictions on working hours?
The Working Time Regulations 1998 restrict workers from working more than 48 hours per week, averaged over a 17-week period. Employers are entitled to ask (not require) their workers to consent in writing to opt out of the 48-hour weekly working limit, provided that the workers then have the right to cancel the opt-out agreement by giving at least seven days’ (up to a maximum of three months’) notice.

### Hours and overtime

#### What are the requirements for meal and rest breaks?

The Working Time Regulations 1998 provide workers with a minimum uninterrupted 20-minute rest break where the working day exceeds six hours. Workers are also entitled to 11 hours’ uninterrupted rest per day and 24 hours’ uninterrupted rest per week (or, at the employer’s request, 48 hours’ uninterrupted rest per two weeks).

#### How should overtime be calculated?

The employer determines the payment and rate of any overtime. A common rate is time and a half on working days and double time on weekends and bank holidays.

#### What exemptions are there from overtime?

Not applicable. The more senior the role, the less likely it is to carry payment for overtime working.

#### Is there a minimum paid holiday entitlement?

The Working Time Regulations 1998 provide for an entitlement for full-time workers of 5.6 weeks’ paid holiday per year. The entitlement may include public and bank holidays – normally eight per year in England and Wales. Entitlement is pro-rated for part-time workers.

#### What are the rules applicable to final pay and deductions from wages?
Deductions from wages are permitted if:
- they are required by statute (e.g., deductions for income tax) or a relevant provision in the worker's contract; or
- the worker has signified in writing his or her agreement or consent to the making of the deduction.

Payslips given to employees must include details of the amount and purpose of any deductions from wages.

Record keeping

What payroll and payment records must be maintained?

United Kingdom

Squire Patton Boggs

Pay As You Earn is Her Majesty’s Revenue and Customs’ (HMRC) system to collect income tax and national insurance contributions from employment. Employers must record and report their employees’ payments and deductions to HMRC on or before each payday.

Itemised pay slips must be given to employees at or before the time at which wages are paid, and must include, among other things, details of gross and net wages.

Family and medical leave

What is the position in relation to family and medical leave?

United Kingdom

Squire Patton Boggs

Maternity leave

Pregnant employees are entitled to take 26 weeks’ ordinary maternity leave followed by 26 weeks’ additional maternity leave (i.e., up to 52 weeks in total). Women are required by law to take two weeks’ compulsory maternity leave immediately after childbirth (four weeks in the case of factory workers).

Subject to her length of service and having average earnings at or above (currently) £112 per week, a woman will be entitled to up to 39 weeks’ statutory maternity pay. The first six weeks of statutory maternity pay are payable at 90% of average weekly earnings. The last 33 weeks are payable at a flat rate (currently £139.58) or the 90% rate if that is lower.

All terms and conditions continue during maternity leave, apart from those relating to remuneration. After maternity leave, a woman generally has the right to return to the same job on the same terms and conditions, or a suitable alternative role or similar terms and conditions if that is not reasonably practicable. A woman whose role is made redundant while she is on maternity leave has a right to be offered any suitable alternative vacancy which then exists within the employer or any associated employer.

Paternity leave

Eligible employees are entitled to take one or two consecutive weeks’ paternity leave per pregnancy. An employee is eligible if he or she:
- is the biological father of the child or the mother’s husband, co-habiting partner or civil partner;
- has or expects to have responsibility for the child’s upbringing; and
- has been continuously employed for at least 26 weeks by the end of the 15th week before the expected week of childbirth.

Provided that the employee has average earnings at or above (currently) £112 per week, statutory paternity pay is payable for a maximum of two weeks at the lower of 90% of average weekly earnings or at the flat rate set by the UK government (currently £139.58).

All terms and conditions continue, apart from those relating to remuneration, and the employee generally has the right to return after his or her leave to the same job on the same terms and conditions.

Adoption leave

An employee is eligible to take adoption leave if:
- he or she has been matched with a child for adoption by an approved adoption agency; and
- he or she has notified the agency that he or she agrees to the placement and the date of placement.
If an employee is adopting a child as part of a couple, then only one person is eligible to take adoption leave. The other person may be eligible to take paternity leave.

All employees have a right to take up to 26 weeks' ordinary adoption leave followed by up to 26 weeks’ additional adoption leave (ie, up to 52 weeks in total).

All terms and conditions continue during the adoption leave, apart from those relating to remuneration. After adoption leave, a person generally has the right to return to the same job on the same terms and conditions, or similar terms and conditions if that is not reasonably practicable.

Subject to the length of service and average earnings at or above (currently) £112 per week, a person will be entitled to up to 39 weeks’ statutory adoption pay. The first six weeks of statutory adoption pay are payable at 90% of average weekly earnings. The last 33 weeks are payable at a flat rate (currently £139.58) or the 90% rate if that is lower.

**Shared parental leave**
Employees are eligible to take shared parental leave in connection with the birth of a child if:

- they are the child’s mother or father or other partner of the child’s mother; and
- both parents satisfy certain eligibility requirements.

‘Partner’ for these purposes means spouse, civil partner or someone living with the child’s mother in an enduring family relationship who is not a relative. The parent who wants to take shared parental leave must satisfy the ‘continuity of employment’ test and his or her partner must satisfy the ‘employment and earnings’ test. Adopters have similar rights to take shared parental leave.

Up to 50 weeks’ leave can be shared between the parents – this is the 52 weeks of maternity/adoption leave, less the compulsory first two weeks (or four weeks in the case of factory workers) post-birth/adoption, which must be taken by the mother/primary adopter.

Depending on when the shared parental leave is taken, shared parental leave pay is the lower of 90% of average weekly earnings or the flat rate, which is currently £139.58

**Parental leave**
Eligible employees have the right to take up to 18 weeks’ unpaid leave per child. Only certain terms and conditions continue during parental leave (eg, the employer’s implied obligation of trust and confidence). On returning to work after parental leave, an employee will generally have the right to return to the same job on the same terms and conditions as he or she would have had if he or she had not been away.

**Time off for dependants**
There is a statutory right to take reasonable time off to care for a dependent where necessary – essentially, to deal with unexpected family or carer emergencies. Whether the leave is paid is at the discretion of the employer.

**Sick leave**
Eligible employees who are unable to work due to illness or injury for four or more consecutive days are entitled to up to 28 weeks’ pay in any period, or series of linked periods, of incapacity. Statutory sick pay is currently £88.45 per week.
The United Kingdom provides statutory protection for whistleblowers at work under the Public Interest Disclosure Act 1998. Specific obligations apply in certain regulated industries, including healthcare and financial services.

The statutory protection provided by the Public Interest Disclosure Act applies not only to employees, but also to workers (which has a wider definition that includes some self-employed consultants and similar). There is no minimum service period for employees or workers to qualify for protection – they are protected from the outset; nor is there a cap on the amount of compensation that can be awarded. Employment tribunals can reduce any compensation awarded in related unfair dismissal or detriment claims by up to 25% if they find that the protected disclosure has not been made in good faith.

### What is the position in relation to:

#### Protected categories

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<th>(a) Age?</th>
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<td>Employees and job applicants are protected against discrimination on the grounds of age under the Equality Act 2010.</td>
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<td>Employees and job applicants are protected against discrimination on the grounds of sexual orientation (sexual orientation) under the Equality Act 2010.</td>
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</table>
Employees and job applicants are protected against discrimination on the grounds of sexual orientation under the Equality Act 2010.

(f) Religion?

Employees and job applicants are protected against discrimination on the grounds of religion or belief under the Equality Act 2010.

(g) Medical?

Medical conditions are not by themselves a protected characteristic under the Equality Act 2010. Certain medical conditions may constitute a disability, which is a protected characteristic under the Act; or may be linked to pregnancy, which is also a protected characteristic.

(h) Other?

Employees and job applicants are also protected under the Equality Act 2010 against discrimination on the grounds of gender reassignment, marriage and civil partnership, and pregnancy and maternity.

Privacy and monitoring

What are employees’ rights with regard to privacy and monitoring?

Employees have a limited right to privacy in the workplace. Employee monitoring (eg, emails, internet activity) is permitted, provided that it is done in a way that is lawful and fair and common.

The key statute for employers to be aware of is the Data Protection Act 1998. The Information Commissioner’s Office, the UK data protection authority, has issued a code of practice that includes guidance on privacy and monitoring in the workplace.

The Information Commissioner’s Office recommends that employers carry out an impact assessment before conducting any monitoring. Employers should also have an IT policy or express provisions in their employees’ contracts of employment setting out the circumstances in which monitoring may be carried out.

To what extent can employers regulate off-duty conduct?
Trade secrets and restrictive covenants

Are there rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

There are no specific rules on protecting social media passwords or on employer monitoring of employee social media accounts. Many employers have social media policies in place which set out what monitoring of social media accounts will take place.

Who owns IP rights created by employees during the course of their employment?

If employees create IP rights during the course of their employment, those rights will generally belong to the employer. However, it is advisable to include express provisions to this effect in the contract of employment.

What types of restrictive covenants are recognised and enforceable?

An employer can restrict an employee’s activities post-employment, provided that the restrictions go no further (in terms of duration, geographical reach and breadth of proscribed activity) than is reasonably necessary to protect the legitimate business interests of the employer.

Typical covenants which have been recognised by the UK courts as enforceable include those seeking to prevent employees from:

- using trade secrets or confidential information belonging to their former employer (confidentiality);
- competing with their former employer for a certain period (non-compete);
- dealing with clients, prospective clients or suppliers of their former employer for a certain period (non-dealing);
- soliciting business from clients, prospective clients or suppliers of their former employer (non-solicitation); and
- poaching ex-colleagues (non-poaching).
Are there any special rules on non-competes for particular classes of employee?

Squire Patton Boggs

No. However, non-compete restrictions are typically the most difficult restrictions to enforce. It is therefore important to ensure that the restriction is limited in its scope and duration. It is usually difficult to enforce a non-compete clause of more than six months’ duration.

Discipline and grievance procedures

Are there specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Squire Patton Boggs

The Advisory Conciliation and Arbitration Service has issued a statutory Code of Practice on Disciplinary and Grievance Procedures which applies to “disciplinary and grievance situations” in the workplace. An employer’s unreasonable failure to follow the code will not result in a dismissal being automatically unfair, but it could result in a tribunal adjusting any award of compensation upwards by up to 25%.

Employers must give employees details of their disciplinary and grievance procedures.

Industrial relations

Is your country (or a particular area) known to be heavily unionised?

Squire Patton Boggs

Less than one-third of UK employees are unionised; union membership is much higher in the public sector than the private sector.

What are the rules on trade union recognition?

Squire Patton Boggs

Most trade union recognition is voluntary. Employers need not recognise trade unions for collective bargaining unless they wish to do so or the trade union initiates the statutory procedure and applies to the Central Arbitration Committee to force the employer to recognise it for collective bargaining purposes. The statutory union recognition process is very detailed and usually takes between three and six months.

What are the rules on collective bargaining?
Almost all collective bargaining is undertaken at company or site level. In particular, in the private sector there are no industry or sectoral collective bargaining agreements covering all workers in that particular industry or sector.

Employers and trade unions usually agree on how the collective bargaining process will operate and what it will cover. However, collective bargaining which results from the statutory union recognition process covers only negotiations on pay, hours and holiday.

Collective bargaining agreements are not legally enforceable between the union and the employer, although some parts may be incorporated into individual contracts of employment (eg, pay, benefits, hours) and can be enforced by individual employees.

**Termination**

**Notice**

**Are employers required to give notice of termination?**

Yes, unless the employer has grounds for dismissing an employee summarily (eg, for gross misconduct).

The period of notice to be given by an employer is normally set out in the contract of employment. If this is less than the statutory minimum notice period, the statutory notice period will apply (one week for every full year worked up to a maximum of 12 weeks). Employees must usually give not less than one week's notice. There is no statutory requirement that notice be given in writing, but this is almost invariable practice and a common contractual stipulation.

**Redundancies**

**What are the rules that govern redundancy procedures?**

Redundancy is a potentially fair reason for dismissal, but it is crucial that an employer follows a fair procedure. The key elements of a fair procedure include:

- a fair selection process (including the use of appropriate selection criteria);
- individual consultation with employees about their proposed selection;
- consideration of alternative employment; and
- the opportunity to appeal.

**Are there particular rules for collective redundancies/mass layoffs?**

Yes. There is an obligation to consult collectively (ie, with trade union or elected employee representatives) where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within 90 days or less.
What protections do employees have on dismissal?

The main protection for employees on dismissal is the right to bring an unfair dismissal claim in the employment tribunal. Unless the dismissal is automatically unfair (e.g., for whistleblowing), an employee must have at least two years’ service in order to bring such a claim.

In order for a dismissal to be fair, it must be for one of the five potentially fair reasons for dismissal set out in Section 98 of the Employment Rights Act 1996 (including conduct, capability and redundancy), and the employer must have followed a fair procedure. A fair procedure will usually entail the employee being allowed to make representations on the proposal to dismiss him or her before the employer makes a final decision to do so. Employees in disciplinary and grievance meetings usually have the right to be accompanied by a colleague or union official.

An employee can also bring a claim for wrongful dismissal if the employer breaches the notice provisions in the employee’s contract of employment or a discrimination claim if the employee claims that the dismissal is discriminatory.

Courts/tribunals

Jurisdiction and procedure

Which tribunals or courts have jurisdiction to hear complaints?

Employment claims are normally dealt with by employment tribunals, but some breach of contact claims may be brought in the county court or the High Court.

What is the procedure and typical timescale?

Claimants (with some limited exceptions) must contact the Advisory Conciliation and Arbitration Service (ACAS) to discuss early conciliation before they can lodge a claim at the employment tribunal.

Claims and referrals to ACAS must be lodged within the relevant timeframe (typically three months) and proceedings started using the prescribed claim form (ET1) and accompanied by the applicable fee.

The employer (respondent) has 28 days from the date on which the tribunal sends out the claim form to file its response (ET3).

An employment judge will review every case on the papers once the ET1 and ET3 have been submitted and can strike out any claims or responses that have "no reasonable prospect of success". A tribunal will normally set out deadlines for disclosing documents, preparing a bundle of documents, exchanging witness statements and so on.

In certain cases (e.g., unfair dismissal claims), an employment judge will hear the case alone. In other cases the matter will be heard by three people sitting together, known as the panel or tribunal. The tribunal will consist of a legally qualified employment judge and two members: one from an employer background and one from an employee background.

A tribunal claim can take between six and 12 months from start to finish.

Appeals

What is the route for appeals?

The main protection for employees on dismissal is the right to bring an unfair dismissal claim in the employment tribunal. Unless the dismissal is automatically unfair (e.g., for whistleblowing), an employee must have at least two years’ service in order to bring such a claim.

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An employee can also bring a claim for wrongful dismissal if the employer breaches the notice provisions in the employee’s contract of employment or a discrimination claim if the employee claims that the dismissal is discriminatory.
It is possible to appeal an employment tribunal decision on a question of law only. The first step is to appeal to the Employment Appeal Tribunal and beyond that to the Court of Appeal and ultimately the Supreme Court.

A court or tribunal can make a reference to the European Court of Justice if it needs to determine a question of European law.