

Factsheet 70 ● October 2011

Dealing with disputes at work

About this factsheet

This factsheet is aimed at older people who are in work and covers information on dealing with a dispute with an employer, including taking legal action. It is usually best to attempt to resolve a dispute informally, but it helps to know about the formal procedures to follow if this doesn't work.

This factsheet only gives an overview of the procedures; there are details of where to get advice on your individual situation in section 7. For general information on your rights at work see Age UK's Factsheet 4, *Rights at work*.

The information given in this factsheet is applicable in England. Different rules may apply in Wales, Northern Ireland and Scotland. Readers in these nations should contact their respective national offices for information specific to where they live – see section 9 for details.

For details of how to order other Age UK Factsheet and information materials go to section 9.

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1 Recent developments

- The default retirement age has been abolished with effect from 1 October 2011. From this date, there is no longer a retirement age provided by law and no-one can be retired at the age of 65, unless subject to a notice received before April 6 2011. Employers will still be able to include a retirement age in employment contracts, which employees will then have a choice whether to accept the terms or reject the offer of employment.
- The Government has announced changes to the law relating to Unfair dismissal, namely that from April 2012, the period of qualification before a claim is filed is to be increased from one to two years. Also, a filing fee of £250.00 and a hearing fee of £1000.00, to be introduced for the first time with effect from April 2013.
- The Employment Appeal Tribunal has decided - in the case of *Ayodele v Compass Group Plc*, that an employer who issues a notice of retirement has a duty to properly and sincerely consider a request to remain in employment beyond retirement and if it fails to do so, it may be liable for damages for unfair dismissal.
- The Government is currently considering changes to rules permitting time-off for workers to engage in Union activities.
- The Government recently announced that the dual discrimination provision in the Equality Act will not be implemented.

2 Raising a grievance with your employer

If you have a complaint or concern about the way your employer is treating you, you can try to resolve it by raising it with your manager informally. If you are not satisfied with the outcome, you can raise a formal grievance. A grievance still involves trying to resolve things internally, and is not the same as taking legal action against your employer.

A grievance could cover things like:

- Not being given a statutory or contractual right, e.g. not being given enough time off, or not being paid the correct amount of sick pay
- A concern about working conditions, such as excessive workload or safety procedures not being followed

- an issue with bullying.

Some complaints will be about things that are unlawful, in which case if you are not satisfied with the outcome of the grievance, you could start legal action in an employment tribunal. But your complaint does not have to fall within the jurisdiction of a tribunal for you to raise a grievance. You can raise a grievance about any complaint or problem that you want addressed.

2.1 The Acas Code of Practice on bringing a grievance

Acas (the Advisory Conciliation and Arbitration Service) has a Code of Practice on disciplinary and grievance procedures that employers and employees should follow in dispute situations. The following is the suggested procedure for dealing with a grievance; it should be seen as best practice guidance, rather than a series of legal requirements (except where indicated relating to the statutory right to be accompanied to meetings).

- Put your grievance in writing. This should set out the nature of your complaint. You should give or send this to a manager. If your complaint is about your manager, you can send your grievance to a different manager in the organisation if there is one.
- The employer should arrange a meeting with you to discuss your grievance and, in particular, to give you a chance to explain the problem and what you think should be done about it. This meeting should be held without unreasonable delay.
- You should be allowed to bring someone to accompany you to the meeting; this could be either a colleague or a trade union representative. If your complaint is about a statutory or contractual right your employer *must* allow you to be accompanied.
- Following the meeting, your employer should respond to your grievance in writing, setting out what if any action they are going to take. You should get the chance to appeal if you are not happy with the outcome.
- If you wish to appeal the decision, you should put the reasons for this in writing without unreasonable delay.
- A meeting should be held to discuss your appeal, and again you have the right to be accompanied at the meeting. The decision on the appeal should be given to you in writing without unreasonable delay.

2.2 What happens if you don't follow the Code of Practice?

It is no longer a legal requirement for you to put your grievance in writing and wait 28 days before starting a claim at the employment tribunal. You can submit a tribunal claim without having submitted a grievance but you would be expected to have followed the procedure in the Code first. If your claim is successful and you have unreasonably failed to follow the guidance in the Code (see section 2.1) the tribunal could decide to reduce any compensation they award you by up to 25%.

2.3 Grievance Procedure for a complaint of discrimination

Where you believe you have been discriminated against, there is a procedure laid down for you to follow, before a claim can be filed. Specifically, you would need to fill and send a form, known as discrimination questionnaire. This form is in two parts, one to be filled by you detailing the behaviour your complaint refers to and the second part enables your employer respond to the acts you have complained about.

This questionnaire is in addition to the Acas procedure described above, which is the minimum standard an employer should follow in dealing with a grievance.

This procedure is provided for by the Equality Act 2010 and the form can be found on and downloaded from the Equality and Human Rights Commission website- www.ehrc.gov.uk, key in "Taking a discrimination case" into the search engine on the top right hand side of the page and you will be directed to the form download link.

3 Disciplinary procedures

Employers should have disciplinary procedures in place to deal with any concerns about misconduct or poor performance. The procedures should comply with principles set out in the Acas Code of Practice.

3.1 Disciplinary procedures under the Acas Code of Practice

Again this is best practice rather than a legal requirement but an employer's failure to comply with the Code can be taken into account by a tribunal (see below).

- Your employer should set out in writing the reasons why they are considering taking disciplinary action against you. You should be given this information along with details of a meeting to discuss this.
- You have a statutory right to be accompanied at a disciplinary meeting by a colleague or union representative.
- Following the meeting, your employer should let you know, in writing, what disciplinary action, if any, they plan to take. You should be given the right to appeal against the decision.
- If you wish to appeal, you should put your reasons in writing to your employer, who should then arrange a further meeting with you. Again, you have a statutory right to be accompanied at the appeal meeting.
- You should be informed in writing of the outcome of the appeal as soon as possible after the meeting.

If the employer has unreasonably failed to follow the Code, an employment tribunal can take this into account when deciding relevant cases. The tribunal can also increase the amount of compensation awarded to the employee by up to 25%.

3.2 Disciplinary action

The Acas Code suggests that an employer who decides to take disciplinary action for misconduct or poor performance should give a written warning in the first instance and then a final written warning if there is a further act of misconduct or performance does not improve within a set timescale. If the issue is sufficiently serious it can be appropriate for an employer to go straight to a final written warning.

3.3 Dismissal

If the misconduct is so serious that it amounts to gross misconduct, the employer can dismiss the employee without notice, and without any prior warnings. In cases of gross misconduct a fair disciplinary procedure following the principles set out in the Acas Code should still be followed.

The employer does not have to follow the Code if the reason for the dismissal is redundancy or the end of a fixed-term contract.

For information about when a dismissal might be unlawful, see Age UK's Factsheet 4, *Rights at work*.

4 **Compromise agreements**

Disputes between employers and employees can be settled with a compromise agreement. The employee agrees to give up their right to take legal action against the employer in return for financial compensation. Employers often offer compromise agreements to employees who have resigned or been dismissed, as a way of avoiding legal action being taken against them.

A compromise agreement is only valid if the employee has had independent advice from a qualified person and the adviser has signed the agreement. Employers will often agree to make a contribution to the cost of obtaining legal advice.

5 **Taking a claim to the employment tribunal**

If you think your employer has acted unlawfully, for example by denying you a statutory or contractual right, by discriminating against you, or by unfairly dismissing you, and you have been unable to resolve this through informal or formal dispute resolution procedures, you can submit a claim to the employment tribunal.

5.1 **Time limits**

There are very strict time limits for filing a claim at the employment tribunal. For most claims, the time limit is three months from the date of the event being complained of. If for instance, you are dismissed on 19 May 2010, you are required to file your complaint by 18 August 2010. For redundancy payment claims and equal pay claims the time limit is six months. The Tribunal will very rarely accept a claim filed outside the time limit, so it is absolutely important that you file within the applicable time limit.

The date from which the time limit is calculated will vary, depending on the type of claim you are making. For instance, the time limit for a dismissal claim will be calculated, from the date your employment ends, while the time limit for a discrimination claim or claims related to non-payment of wages or for holiday pay, will be calculated from the date of the act of discrimination, or when your employer failed to make the payment.

It is important to mention that the Government has announced an intention to increase the qualifying period for bring claims for Unfair dismissal from one to two years by April 2012.

Where your complaint is about a series of acts, the time limit will be calculated from the date of the last in the series of acts complained of.

5.2 **Completing the ET1**

A claim must be started by completing a tribunal application form (ET1). This can be obtained from any employment tribunal or filled in online at www.employmenttribunals.gov.uk. You can also order a form by phoning the employment tribunals enquiry line on 0845 795 9775.

If possible, you should get advice on filling in the form as it is important to include all the relevant information. However, if time is running out, you shouldn't delay completing and submitting it.

It is important to use the correct form and fill in all the details properly. This is because the Tribunal will reject an improperly filled form, or a claim filed using the wrong form and the resulting delay could, where the form is filed close to the time limit, result in the claim being rejected for failing to comply with the applicable time limits.

You should read the guidance notes that go with the form before you complete it, or the guidance notes on the website, if filing online. State exactly what you are claiming, for example direct age discrimination, unfair dismissal, or unauthorised deduction from wages. You should include all the relevant information to support what you are claiming, keeping it clear and concise, and sticking to facts rather than giving your opinion.

The completed ET1 should be sent to the local employment tribunal for the area where you work, or worked. You can get the right address by calling 0845 795 9775. You should keep a copy of your completed ET1 and check that the tribunal has received it if you don't receive confirmation.

5.3 How much will it cost?

You can represent yourself at the employment tribunal, without any legal assistance. However, if possible, you should seek legal advice before starting a claim. There is very limited legal aid available for employment law advice and this does not cover the cost of legal representation at the tribunal. Usually even if you win your claim the other party will not be ordered to pay your legal costs.

This means that if you use a solicitor or a barrister you will almost certainly have to pay their fees yourself. You may be able to do this under a type of 'no win, no fee' arrangement. Usually this will mean you pay a percentage of any compensation you are awarded to your solicitor. You should make sure that you fully understand the agreement before you accept this.

Whilst the Tribunal does not currently charge fees for filing Claims or other administrative costs, the Government has just announced its intention to introduce filing fees of £250.00 and Hearing fees of £1000.00.

Also Legal costs are not awarded for unsuccessful claims; however, the Tribunal has a power to award costs up to £10,000 if a claim is unreasonable, or if either you or your employer conducts the proceedings unreasonably. For example, where a person files a claim, knowing the facts to be false and merely seeking to spite an employer, or where an employer unreasonably delays the proceedings by deliberately failing to produce relevant evidence or information to the tribunal.

The tribunal has wide powers to decide what amounts to unreasonable conduct, for which it may choose to award costs. It is thus, very important that you bring a claim in good faith and follow the directions of the tribunal diligently.

6 Settling a claim

If you submit a tribunal claim an Acas officer will be assigned to your case. Acas has a duty to try to reach a settlement between the parties, without the need for a tribunal hearing. They have an independent, impartial role and cannot give legal advice in this situation.

When considering whether to accept an offer to settle the claim, you should get advice on your chances of success if the claim did go to a hearing, as well as how much you are likely to be awarded in compensation. You should take into account the uncertainty involved in a hearing. You can never predict how the evidence will come out, or how the tribunal will interpret it, no matter how strong you think your claim is. Some people choose to accept an offer of compensation lower than they would expect to be awarded in a tribunal, in return for the certainty of a settlement.

7 Getting legal advice

You may be able to obtain free advice and representation from a local law centre, Citizens Advice Bureau or a similar advice agency. Some universities and colleges run schemes where law students offer advice under supervision from their tutors.

Some people may have legal expenses insurance, which could cover the cost of a tribunal claim, perhaps as part of a household insurance policy. You should contact your insurer to find out if your claim may be covered. You can find more information about getting legal advice and representation in Age UK's Factsheet 43, *Getting legal advice*. If you are being represented at an employment tribunal you should ensure that any paid representative has the legal authority to act on your behalf. A friend can represent you as long as they are doing so on an unpaid basis, and not acting in the course of a business.

Any representative acting in the course of a business, for example a claims management company, must be authorised under the Compensation Act 2006. Not-for-profit advice agencies and charities are exempt from the need to be authorised, as are barristers, solicitors and legal executives.

You can check if a company is authorised, or make a complaint, by contacting the Claims Management Regulation team at the Ministry of Justice.

8 Useful organisations

Acas (Advisory Conciliation and Arbitration Service)

Acas aims to improve employment relations by supplying information, advice and training, and working with employers and employees.

Tel: 08457 47 47 47

Website: www.acas.org.uk

Advice UK

The membership network for organisations that give advice; they can help put you in touch with the right one to help you.

Tel: 020 7469 5700

Website: www.adviceuk.org.uk

Citizens Advice Bureau

National network of free advice centres. Depending on available resources may offer benefits check and help filling forms.

Tel: 020 7833 2181 (for local contact details only – not telephone advice)

Website: www.adviceguide.org.uk

Claims Management Regulation Team – Ministry of Justice

From April 2007 it became an offence for those offering claims management services for profit to operate without authorisation or an exemption. You can now check if providers are authorised and report complaints and concerns about companies working inappropriately. The Ministry of Justice has produced a guide called *Claims management regulation – what you need to know*.

Tel: 0845 450 6858

Website: www.claimsregulation.gov.uk

Community Legal Advice

The information resources of the CLA (see below) offering free, confidential and independent legal advice for residents of England and Wales, has now been absorbed into the Governments Directgov web portal. However the telephone number is still valid

Tel: 0845 345 4 345

Website: www.direct.gov.uk and key in “Community Legal Advice” into the search menu at the top of the page.

Legal Adviser Finder

The Legal Services Commission has provided a web information resource called Legal Adviser Finder to enable the public find providers of Legal advice-, which provides a searchable directory of Legal Advisers and Solicitors, offering legal aid services.

Tel: 0845 345 4 345

Website: <http://legaladviserfinder.justice.gov.uk>

Employment tribunals

Independent judicial bodies that determine disputes between employers and employees over employment rights: the website provides information about their procedures and making or responding to a claim. The Employment Tribunals websites have been closed and resources transferred into the Ministry of Justice website.

Tel: 08457 959 775

Website: www.justice.gov.uk Key in “Employment Tribunal” into the search engine on the top right hand side of the webpage.

Equality and Human Rights Commission (EHRC)

The EHRC Disability Helpline provides information and advice about all aspects of the Disability Discrimination Act.

Tel: 08457 622 633, textphone: 08457 622 644

Website: www.equalityhumanrights.com

Law Centres Federation

Law Centres are not-for-profit legal practices that give free legal advice and representation to disadvantaged people in the UK. Their site can help you find Law Centre near you. The LCF does not give advice directly to the public. If there is no Law Centre in your area, you can visit Legal Adviser Finder <http://legaladviserfinder.justice.gov.uk> (see above).

Website: www.lawcentres.org.uk

9 Further information from Age UK

Age UK Information Materials

Age UK publishes a large number of free Information Guides and factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, issues employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

Age UK Advice

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

Website: www.ageuk.org.uk

In Wales, contact:

Age Cymru: 0800 169 65 65

Website: www.agecymru.org.uk

In Scotland, contact:

Age Scotland: 0845 125 9732

Website: www.agescotland.org.uk

In Northern Ireland, contact:

Age NI: 0808 808 7575

Website: www.ageni.org.uk

Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and taking calls at Age UK Advice on 0800 169 65 65.

you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

Legal statement

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Together they have formed Age UK, a single charity dedicated to improving the lives of people in later life. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

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