

Employment Law Guide 2010

Winston Solicitors LLP

Introduction

Welcome!

This free guide gives you a brief introduction to issues such as workplace disciplinary procedures, the grievance process and how to make an Employment Tribunal claim. The Guide also includes some very useful online links and resources.

This information is not widely available in such detail without paying expensive legal fees or signing up for online DIY services that are not solicitor led.

Our services are completely managed and controlled by employment solicitors.

We hope you enjoy reading our Guide and that the information provides some assistance to you if you are having difficulties at work.

What this guide includes

Contents

- ▶ Disciplinary procedures and how to cope with them
- ▶ Grievances and how to handle them
- ▶ Employment Tribunal information
- ▶ Useful links and resources

Disciplinary procedures

The information provided in this guide relates to people classified as “employees”. For example, you may not be deemed to be an employee if you are an agency worker or self employed. If you are unsure about your status, please contact one of our specialist Employment Solicitors.

We spend most of our time in the workplace and usually the time we spend there is trouble free. However, if your Employer is concerned or unhappy about your work, they may look to take disciplinary action against you.

Examples of why they may be concerned or unhappy about your work may include:

- ▶ the standard of your work.
- ▶ or your behaviour at work.
- ▶ the employer may also be concerned about the level of absence you have had from work.

Whether the disciplinary action is justified or whether it has been carried out in an appropriate manner is something that needs to be considered.

Before formal disciplinary action is taken

Your Employer may speak to you on an informal basis to try and resolve any concerns they may have about you. For example, your line manager may ask to have a one on one meeting with you discuss a concern.

TOP TIP!

If this happens, try and stay calm and keep the conversation between you and your line manager as informal as possible.

- ▶ **Do take keep a detailed record of the date, time and details of the meetings including the outcome.**

Your Employer is not obliged to discuss matters with you informally. Instead, they may decide to take disciplinary action by following their disciplinary procedure especially if the matter is serious. In this instance, the first time you may become aware there is an issue when you receive a letter inviting you to an investigation meeting or a disciplinary hearing.

Formal disciplinary action

When you become aware of the fact that you are going to face disciplinary action, you should check what your Employer's formal disciplinary procedures are. You should be able to find these in:

- ▶ Your company handbook
- ▶ HR or personnel manual
- ▶ Intranet site

- ▶ Employment contract
- ▶ Any other documentation applicable to your employment

If there is a documented formal disciplinary procedure, then both you and your Employer should follow it.

Whether there is a written disciplinary procedure or not, the Advisory, Conciliation and Arbitration Service (ACAS) have produced a Code of Practice for Disciplinary and Grievance Procedures (the “Code”). To view a copy of the Code, please visit ACAS’s website at www.acas.org.uk.

The Code provides practical guidance to employees and employers and sets out the principles for dealing with disciplinary and grievance practices in the workplace.

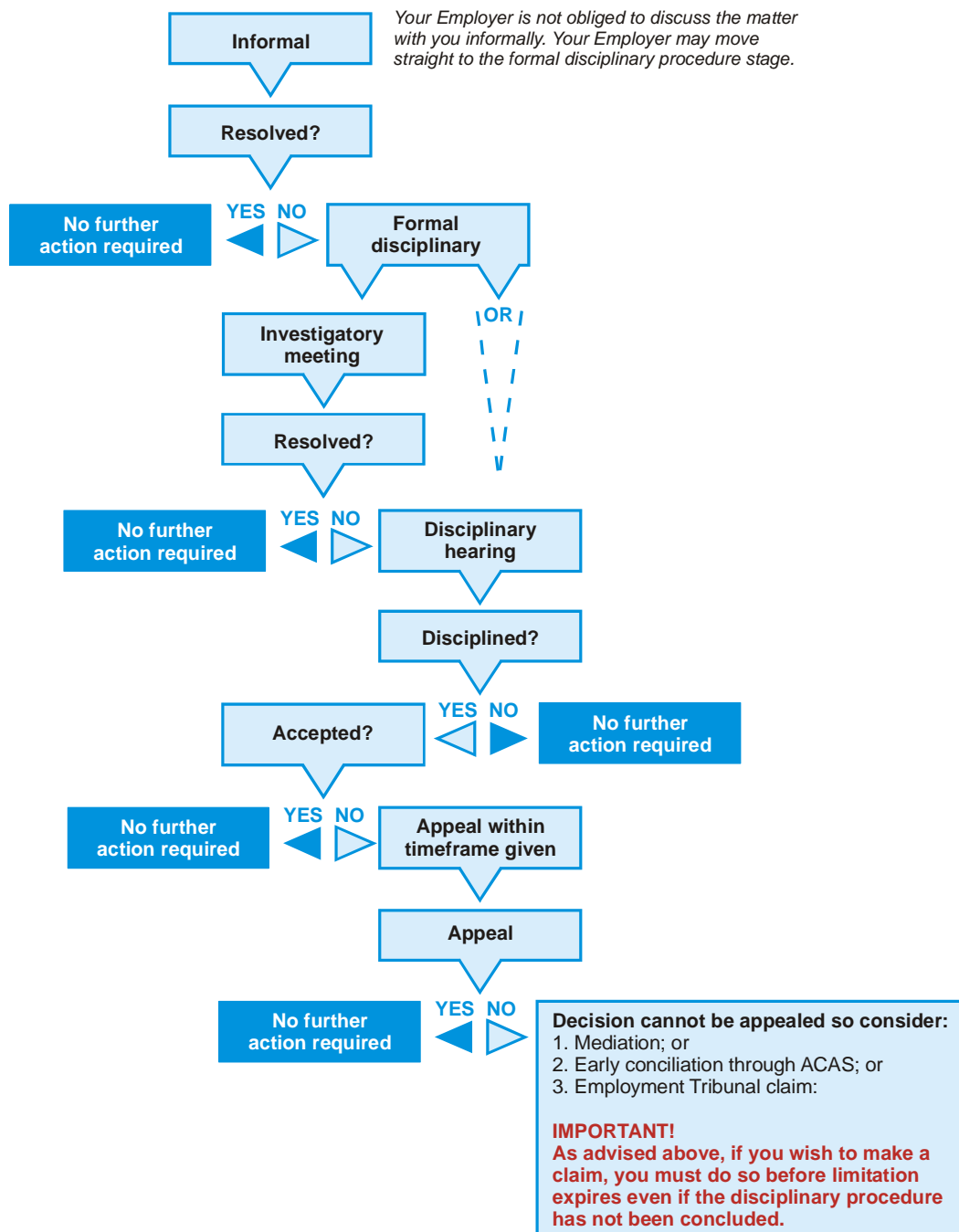
See our flowchart overleaf to view a summary of the disciplinary process.

Disciplinary procedure flowchart

This is a basic flowchart showing you how the disciplinary procedure should be conducted.

IMPORTANT!

If you are wishing to make an Employment Tribunal claim, you must do so before limitation expires even if the disciplinary procedure has not been concluded as otherwise you may be time barred from making a claim. **You have 3 months from the date of your dismissal to lodge a Tribunal claim**



Dealing with grievances at work

As we spend a large amount of time at work, it is important that we are happy and our time spent there is trouble free. As workplaces are made up of a range of people with unique personality traits, it is inevitable that there may be personality clashes or other issues which can then impact on the working environment and our working lives.

If the matter cannot be resolved between ourselves or informally with the assistance of management, then we need to consider making a formal complaint i.e. raising a grievance, so that the problem can be addressed at a more senior level and then hopefully resolved.

Sometimes the thought of raising a grievance is a daunting task, not knowing what to say and how to word your complaint to ensure that your employer is aware how upset you are, without simply thinking that you are complaining for no reason.

The information in this guide relates to employees who are raising a grievance. Remember, as discussed above not all workers are deemed to be employees.

What is a grievance?

Put simply, a grievance is a complaint. If you are having a problem at work (for example, you are unhappy with something that you have been asked to do as part of your job), you are concerned about an issue that has arisen at work (for example, the terms of your contract of employment have been changed) or you wish to make a complaint about a colleague or a

manager (for example, you feel that you are being bullied by a colleague or a manager) then you can raise a “grievance”.

Raising a grievance is putting your problem, concern or complaint to your Employer informally first (by perhaps having a private word) or if that fails, in writing and for them to then investigate and hopefully resolve your grievance.

TOP TIP!

First of all, consider what the problem is and work out whether your Employer is at fault. Do not simply assume that they are behaving unreasonably. Your complaint may be able to be resolved easily without the need to raise a formal grievance. For example:

1. If you have not been paid – check whether your colleagues have been paid, then check with your bank or the payroll department to see if there is any reason to explain the delay.
2. If your holiday request is refused – question whether you have given enough notice or whether you are requesting leave when a number of other people are also off work.

Who can raise a grievance?

Whether you are a full time or part time employee, you can still raise a grievance.

Things to do before raising a grievance

Before raising a formal grievance, you should first confirm that your complaint is not simply a misunderstanding.

If you decide that there is a real problem, the first thing you should try to do is try and resolve the problem, concern or complaint informally.

You could look to have a meeting with your line manager, personnel department, colleagues or trade union to discuss the matter and explain what you would like to happen to resolve the problem, concern or complaint.

TOP TIP!

If the informal procedure is not documented in writing, you should look to keep a diary of events so you have a record of who you have spoken to, when you spoke to them, what was discussed and what was the outcome.

If it is not possible to resolve informally, then you have to consider whether you wish to raise a formal grievance.

TOP TIP!

If you do not have a copy of your Employer's written grievance procedure, then ask for a copy (if they have one).

Raising a grievance

Understandably, you may be concerned about raising a formal complaint with your Employer for fear of repercussions. Legally, your Employer should not dismiss you or subject you to any detriment for raising a grievance; however, as many employers (especially smaller organisations) tend to take any complaints as personal attacks, you may find that the working environment becomes strained. In such circumstances, it is even more important that you keep a record of any key dates and events in case the matter proceeds to an Employment Tribunal.

If you believe that you have been left with no other option than to raise your grievance formally, you should do this by using your Employer's formal grievance procedures.

You should be able to find these in:

- ▶ Your company handbook
- ▶ HR or personnel manual
- ▶ Intranet site
- ▶ Employment contract
- ▶ Any other documentation applicable to your employment

There is a legal obligation on your Employer to tell you of the name of the person you need to raise your grievance with and how you should raise your grievance. If there is a written grievance procedure, then both you and your Employer should follow it.

Whether there is a written grievance procedure or not, the Advisory, Conciliation and Arbitration Service (ACAS) has produced a Code of Practice for Disciplinary and Grievance Procedures (the “Code”). To view a copy of the Code, please visit ACAS’s website at www.acas.org.uk.

The Code provides practical guidance to both employees and employers and sets out the principles for dealing with disciplinary and grievance practices in the workplace.

If your Employer fails to follow the Code, that does not make them automatically liable to a claim.

If, however, you made a claim in the Employment Tribunal, the Tribunal will take the Code into account when considering a relevant case and can adjust any award made by up to 25% where there has been an unreasonable failure to comply with the Code.

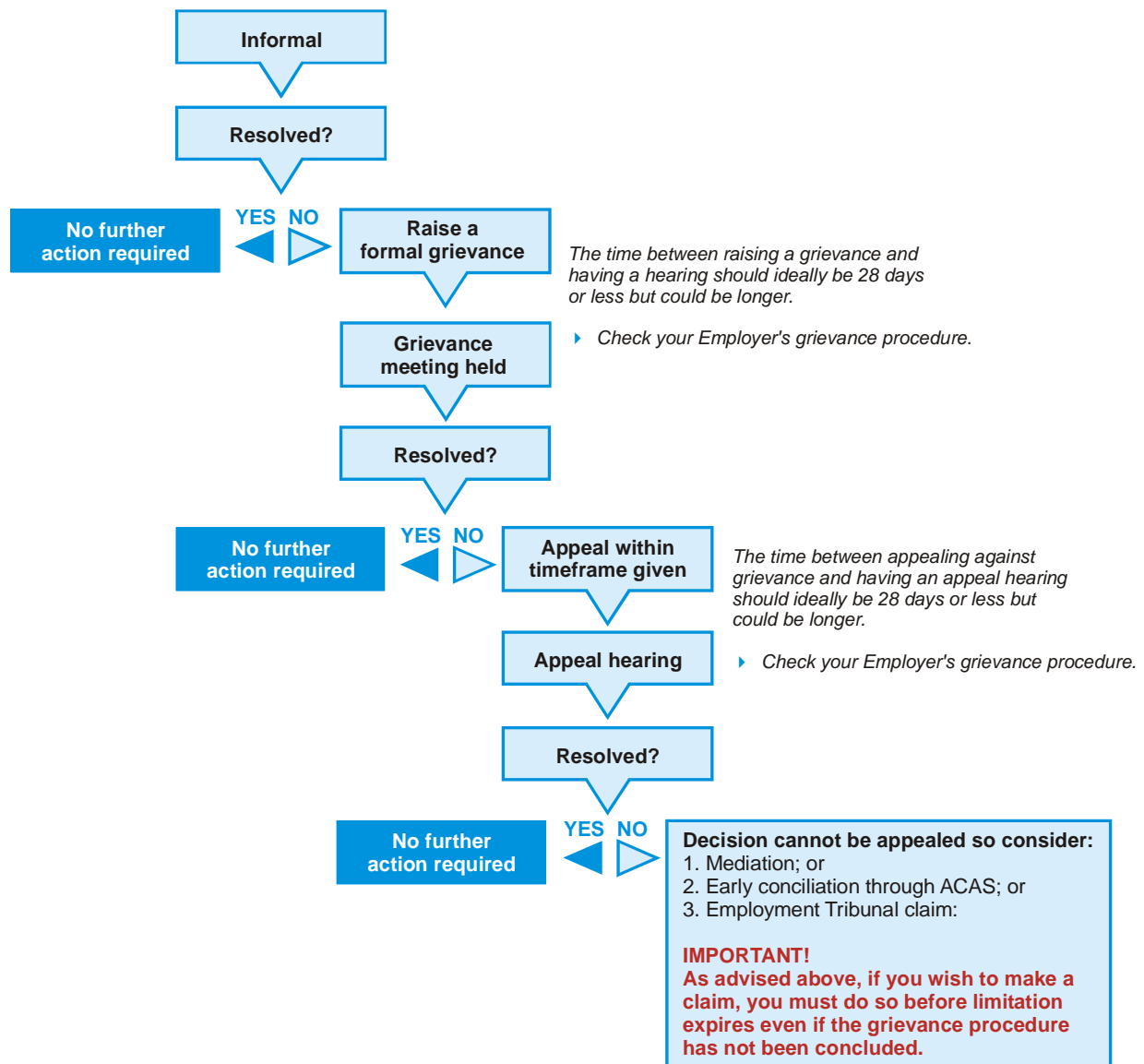
See our flowchart overleaf to view a summary of the grievance process.

Grievance procedure flowchart

This is a basic flowchart showing you how the grievance procedure should be conducted.

IMPORTANT!

If you are wishing to make an Employment Tribunal claim, you must do so before limitation expires even if the grievance procedure has not been concluded as otherwise you may be time barred from making a claim.



Employment Tribunal claims

There are various different types of claims that can be brought within the tribunal system, examples of potential claims include:

- ▶ Unfair Dismissal
- ▶ Constructive Dismissal
- ▶ Sex Discrimination
- ▶ Disability Discrimination
- ▶ Sexual Orientation
- ▶ Gender Assignment Discrimination
- ▶ Race Discrimination
- ▶ Religion or Belief Discrimination
- ▶ Age Discrimination
- ▶ Unpaid Wages
- ▶ Equal Pay
- ▶ Unpaid Redundancy Pay claims etc
- ▶ Wrongful Dismissal

Please note that this is not an exhaustive list and there are also a number of other Employment Claims that can be brought in the Employment Tribunal, for example, TUPE claims, part-time worker regulations etc.

Should you bring an Employment Tribunal Claim?

If you are considering bringing an Employment Tribunal Claim, you are likely to be in a position where you feel that you have been in some way treated unfairly by your current or previous Employer.

Although there are rare circumstances when large sums of money are awarded by the Employment Tribunal, it is more often the case that any compensation will be modest. Therefore it is important that you have a **realistic expectation** of the effect that bringing a Tribunal Claim can have on you and how it can cause you to be linked to your Employer long after the employment relationship has ended.

You must be sure that your Claim is one that can be brought in the Employment Tribunal. For confirmation of whether your Claim can be heard, you can visit the Employment Tribunal website www.employmenttribunals.gov.uk and check the jurisdiction list or call the Tribunal's public enquiry line to confirm that your complaint is one that they can deal with.

You should consider the following factors before deciding whether or not to bring a Tribunal Claim:

- ▶ *What are your chances of success?* It is often easy to be over-optimistic about your own case. You can contact one of our specialist Employment Solicitors to assess your Claim and advise of the likely prospects of success of your Claim <http://www.jobrights.co.uk/>.
- ▶ *Can you cope with dealing with your Claim?* Although the Tribunal system is set up for individuals to bring their own claims and represent themselves, there are still legalistic procedures that have to be followed and this can often be daunting, especially when the other party are represented.
- ▶ *Will there be any repercussions for bringing a Claim?* This question relates to both financial and emotional repercussions.

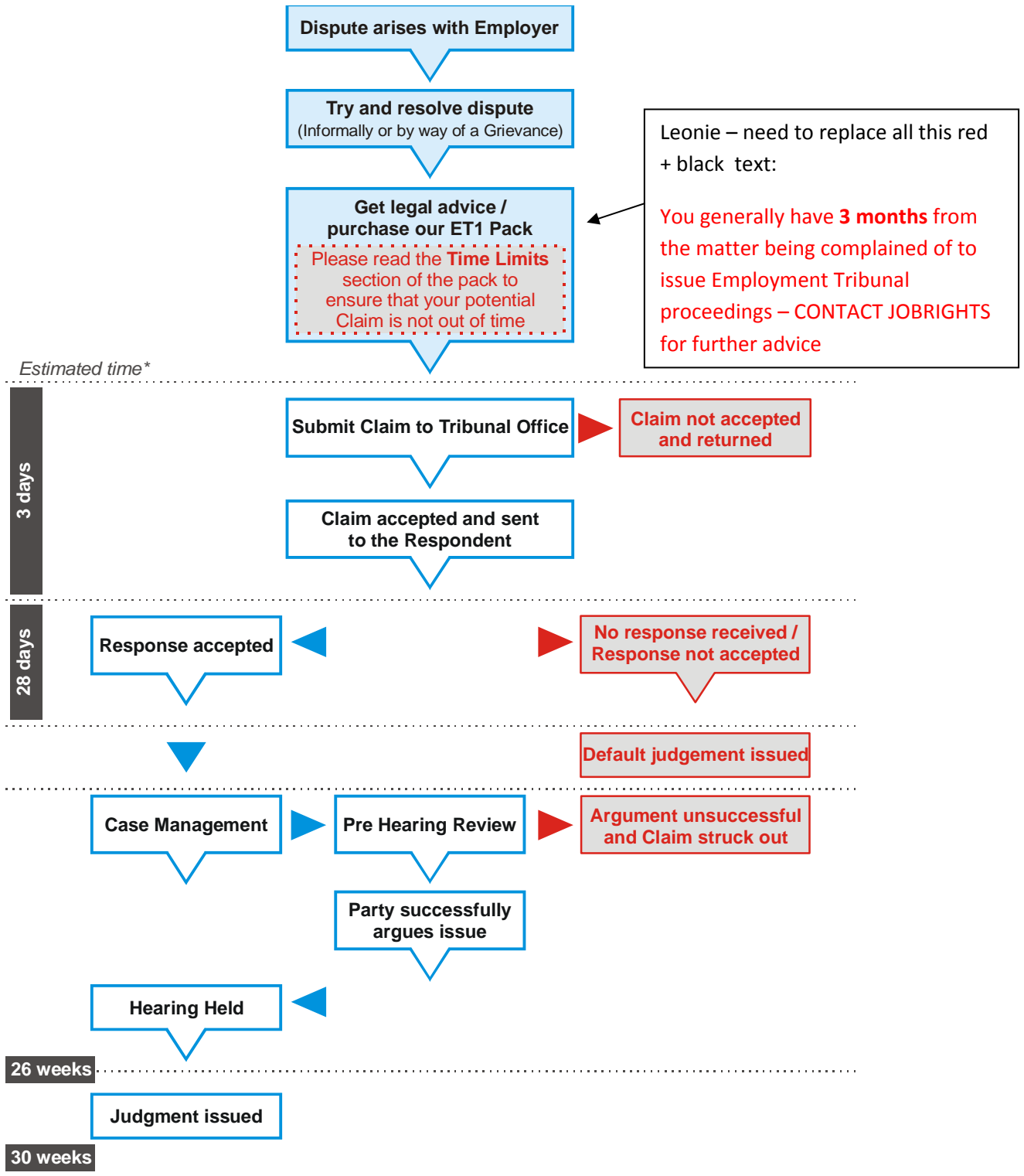
Although it does not cost anything to issue proceedings in an Employment Tribunal, if your Claim is deemed to be unreasonable or the Tribunal find your entire Claim to be misconceived, you may have a costs order made against you by the Tribunal.

It is also important to assess the emotional cost that issuing a Claim may cause.

In any Claim, you will have to consider the events surrounding the termination; consider all the associated documentation in detail; write a statement; draft the Claim to the Tribunal; read and comment on your Employer's Response; correspond with your Employer or their legal representative and then ultimately undergo cross-examination at the hearing and listen to your Employer justify their reasons for the way they treated you.

Most cases rarely conclude in less than 6 months (following the issue of proceedings). You therefore inevitably have to re-live any unfair treatment that you underwent for a period of many months or in certain cases, years.

Employment Tribunal process



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You generally have **3 months** from the matter being complained of to issue Employment Tribunal proceedings – **CONTACT JOBRIGHTS** for further advice

*NB. Please note that the above time frames are guides implemented by the Tribunal and there is no guarantee that your Claim will follow this strict time frame.

It is highly likely that your case will take longer to conclude than stated above.

Helpful Resources

<p>ACAS</p>	<p>www.acas.org.uk</p> <p>Advisory, Conciliation and Arbitration Service (ACAS). Their main aim is to improve organisations and working life through better employment relations.</p> <p>ACAS act as mediators between all parties in an Employment Tribunal Claim. They are automatically instructed by the tribunal once a Claim has been submitted and a response received.</p> <p>ACAS also offer conciliation services to help find solutions to employment situations that both sides find amicable instead of bringing an Employment Tribunal Claim.</p>
<p>Advice Guide</p>	<p>www.adviceguide.org.uk</p> <p>The Advice guide website is the main public information service of the Citizens Advice Bureau (CAB), providing people with round-the-clock access to CAB information on their rights - including benefits, housing and employment, and on debt, consumer and legal issues.</p> <p>Their ultimate aim is to “empower people by providing them with the information they need to solve their own problems and to signpost them to appropriate advice when necessary.”</p>
<p>AdviceUK</p>	<p>www.adviceuk.org.uk</p> <p>AdviceUK is the UK's largest support network for free, independent advice centres</p> <p>They are the membership network for organisations who give advice, and they “can help put you in touch with the right one to help you”.</p>
<p>Age Concern</p>	<p>www.ageconcern.org.uk</p> <p>Their mission is to “promote the well-being of all older people and to help make later life a fulfilling and enjoyable experience.”</p>
<p>Citizens Advice Bureau</p>	<p>www.citizensadvice.org.uk</p> <p>The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities.</p>
<p>Community Legal Advice</p>	<p>www.communitylegaladvice.org.uk</p> <p>Community Legal Advice is a free and confidential advice service paid for by legal aid.</p> <p>They can provide advice through their: telephone helpline, their website, their advice centers and by digital TV.</p>

<p>Directgov</p>	<p>www.direct.gov.uk</p> <p>Is set up by the government to provide free and useful advice on a variety of matters including Employment Rights.</p>
<p>Employment Appeal Tribunal</p>	<p>www.employmentappeals.gov.uk</p> <p>The main purpose of the Employment Appeal Tribunal is to hear appeals for decisions made by the Employment Tribunals.</p> <p>The site provides useful information about the required procedure if you wish to appeal a tribunal judgement; and the necessary forms and guidance on how to complete them</p>
<p>Employment Tribunal Service</p>	<p>www.employmenttribunals.gov.uk</p> <p>The Employment Tribunal hears claims and matters relating to employment. The site provides details of how to contact their helpline and further information about the tribunal procedure. It also provides downloadable Claim forms and further guidance on how to complete the forms.</p>
<p>Equality and Human Rights Commission</p>	<p>www.equalityhumanrights.com</p> <p>Is a statutory body has the responsibility to protect, enforce and promote equality across the seven "protected" grounds - age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.</p> <p>They aim to promote fairness through structural change that benefits people in Britain.</p> <p>The website has links to legislation and recent articles regarding discrimination.</p>
<p>Law Centres Federation</p>	<p>www.lawcentres.org.uk</p> <p>Law Centres are not-for-profit legal practices providing free legal advice and representation to disadvantaged people.</p> <p>There are 56 Law Centers in England, Wales and Northern Ireland, staffed by solicitors and barristers who specialise in areas of civil law including employment, housing, discrimination, welfare benefits, education and immigration.</p>
<p>Office of Public Sector Information</p>	<p>www.opsi.gov.uk</p> <p>Office of Public Sector Information (OPSI) is at the heart of information policy, setting standards, delivering access and encouraging the re-use of public sector information.</p> <p>OPSI provides a wide range of services to the public, information industry, government and the wider public sector relating to finding, using, sharing and trading information.</p>

<p>TAEN (The Age and Employment Network)</p>	<p>www.taen.org.uk</p> <p>TAEN - The Age and Employment Network is an independent not-for-profit organisation, working in strategic partnership with Age Concern and Help the Aged. Their goal is to help remove age barriers to employment.</p> <p>They inform and advocate for effective age management policies to be adopted at all levels – in employing organisations, by individuals and across the labour market</p>
<p>TUC</p>	<p>www.tuc.org.uk</p> <p>The TUC is the “voice of Britain at work. With 58 affiliated unions representing nearly seven million working people from all walks of life, we campaign for a fair deal at work and for social justice at home and abroad.</p>
<p>workSMART</p>	<p>www.worksmart.org.uk</p> <p>workSMART is brought to you by the TUC - the umbrella for Britain's unions.</p> <p>Their aim is to help everyone at work - whether or not they are union members - get a good deal from their working life. They advocate that they are not just there when things go wrong, but also to help you get on, keep well, plan for when you retire, and sort out your career.</p>