

THE RESOLUTION OF EMPLOYMENT DISPUTES IN ENGLAND, WALES AND NORTHERN IRELAND AND SCOTLAND

- 1 There is no formal Labour Court in the United Kingdom. Labour issues are dealt with either by the High Court or the Employment Tribunals.
- 2 The Employment Tribunal is the main forum for resolving employment disputes; it is usually made up of a legally qualified Judge, and two paid lay members, one formally from the employer's side and one from the employee/worker's side, though all are now appointed by an independent body following consultation. The first line of appeal is to the Employment Appeal Tribunal, which is also a tripartite court presided over by a High Court or Circuit Judge, and thereafter through the two stages of the general appellate court system.
- 3 The Employment Tribunal generally deals with individual rather than collective rights. An application for an injunction by a trade union or employer would be made to the High Court.
- 4 The principal jurisdictions of the Employment Tribunal are: unfair dismissal (including transfer of undertakings claims), discrimination claims, (presently, sex, race, disability, sexual orientation, religion^[1], and age), and a number of contractually based rights such as claims for unpaid wages, holiday pay and notice pay – an employer has a limited right to bring a counter-claim. These contractual claims are usually dealt with by a Judge sitting alone.
- 5 There is an absolute qualifying period of twelve months employment to bring most claims of unfair dismissal; the tribunal has to decide the reason for dismissal (there are five main potentially fair statutory reasons for dismissal (capability, conduct, redundancy, retirement, or some other substantial reason for dismissal – e.g. a reorganisation), and whether the dismissal was reasonable. However there are an increasing number of categories of unfair dismissal which do not require a qualifying period and which are automatically unfair e.g. dismissal for pregnancy, trade union activities, whistle-blowing and raising health and safety matters.
- 6 For other claims there is no qualifying period. But there is a time limit of three months, from the date the complaint arose, for the presentation of all claims.
- 6 In unfair dismissal cases, and other contractually based claims, the power to extend time is limited to whether it was reasonably practicable to

present the claim in time. In discrimination cases time may be extended if it is just and equitable to do so.

- 7 Most cases are determined by an oral hearing. Most hearings are completed in a day or less. However, discrimination cases and TUPE cases frequently take days or weeks.
- 8 There is provision for pre-hearing directions by the Judge, which is increasingly being used to clarify cases and to save time. However a Judge is not formally entitled to conciliate or mediate between the parties, but can seek to encourage settlement at any stage. However a pilot is currently being run to explore the possibility of mediation.
- 9 Applications must be in writing, on a prescribed form. The defence too must be in writing on a form. There are interlocutory powers to define issues and require the exchange of relevant information. There is no court fee. There are powers to order a substantial sum in costs, but orders are not common and do not automatically follow the event.
- 10 A party may appear in person or be represented by anyone, friend, trade union official, lawyer or licensed employment consultant. Lawyers appear in a minority of cases. There is no state legal assistance for parties.
- 11 In theory the primary remedy for unfair dismissal is re-instatement, but this occurs rarely; compensation may be awarded up to a maximum of currently £63,300, plus a relatively small basic award which is determined by age and length of service.
- 12 There are various categories of special award in unfair dismissal cases but there is no limit to compensation in discrimination cases.
- 13 The judgment should normally be given orally at the end of the hearing with ex tempore reasons followed by a short written judgement. However, a party may request full written reasons of the judgment within a prescribed time.

14 ^[1] Northern Ireland has had this jurisdiction for some time.