

If you're involved in bringing an unfair dismissal claim, you'll need to know how your compensation will be worked out by the tribunal, assuming that your claim is successful. This leaflet explains the different factors that the tribunal will take into account when deciding how much you should receive.

Compensation for unfair dismissal

Compensation for an unfair dismissal claim is made up of two components:

- n a basic award – calculated like a redundancy payment – which is based on age and length of service. The current maximum is £8,100 (as of February 2004)
- n a compensatory award – based on the actual financial loss that can be attributed to your employer. This award carries a maximum of £55,000 (as of February 2004)

The compensatory award can vary, but is based on the loss that you can prove you suffered because your employer dismissed you. Your loss will be the difference between what you would have earned (including overtime, bonuses, pension and any other benefits) and any new income that you earn or receive after your dismissal.

The loss will be calculated up to the date of the hearing of your case, and there will normally be an allowance for a period of future loss as well, if you haven't already found another job that pays roughly the same.

The tribunal will certainly expect you to do everything you can to reduce (or 'mitigate') your loss by getting other work. It will also take into account

any social security benefits and other income that you may have received.

Proving your loss

Whether or not your case gets as far as the tribunal (for instance, it might be settled before the hearing), it's very important that you can prove that you have done everything possible to seek other work and are still doing so, if you haven't already found a job.

And remember – if you have found work that pays less than you were earning before, you may be compensated for the difference, as well as getting something extra for future loss. But, again, it's important that you can show that you have done everything you can to get work at the same salary as your previous job.

You can also claim the expenses involved in looking for other work – such as the cost of stationery, stamps, phone calls, bus and train fares and interview expenses. You can even claim removal costs if you have to move house to take up a new job.

If you had a company car that you could use for private purposes, particularly if your old employer paid for maintenance costs and petrol, you may be able to claim for that as well. And you can also claim the costs of setting up a new business in some circumstances.

Recording your income

Since your compensation will be based on your loss, you have to keep a record of any income that you received during the period since your dismissal.

So, you have to record any income such as:

- n the salary from another job, including temporary or part-time work
- n any tax rebates or any social security benefits (except child benefit or other benefits which you

were receiving at the same rate prior to your dismissal)

- n and the income from any new business that you may have set up since you were dismissed

Factors that may affect your award

Loss of Pension Rights

If you were a member of a pension scheme in your old job, but now find yourself in an inferior scheme (or none at all), you may be able to claim for this.

Talk to the solicitor dealing with your case to find out whether you can or not (see point 5).

Ill-health

If you can't work because of ill-health, you usually can't claim for this unless you were entitled to be paid under your ex-employer's sick pay scheme. In exceptional cases, you might also be able to claim for any loss if you can prove that your ill-health was caused as a result of being dismissed, though this is very difficult to do.

Redundancy

If you are made redundant, any extra redundancy pay you receive in addition to the amount that you're entitled to by law will be deducted from your compensation award.

And your award may also be reduced if the tribunal finds that you would have been made redundant soon after the dismissal anyway.

Contributory conduct

If you are dismissed for misconduct, the tribunal may reduce your award by a certain percentage if it finds that you contributed to your dismissal.

Intervening act

If you get a new job but give it up voluntarily or are dismissed or made redundant, then any losses you

incur after losing the new job will no longer be the fault of your ex-employer. This won't apply, however, if the new job was clearly temporary.

Starting a new business

If you decide to start a new business, your ex-employer may argue that you have failed to mitigate your loss because you didn't look for another job.

However, if you can show that other opportunities were not available to you (perhaps because of damage to your reputation), and/or you have drawn up a 'business plan' which shows that your business idea is potentially profitable, then you may be able to be compensated for an initial period (see point 4).

Difficult job market

If you are still unemployed or are earning less than you did by the time your case is heard, the tribunal will normally estimate your future loss at between six months and a year.

The same period is normally also used for settling your case. It will be up to you to provide information or evidence for the tribunal if you want more than that (see point 5).

WHAT YOU SHOULD DO

1. Looking for work

Register with employment agencies

Register with all the employment agencies in your areas.

If you are a member of a particular trade or profession, make sure that you also register with any specialist agency or trade association which may be able to notify you of vacancies or put you in touch with possible employers.

Claim Job Seekers Allowance

If you are potentially entitled to Job Seekers Allowance you should apply straight away.

If you receive it, keep copies of all the documents that you have to keep for Job Seekers Allowance, including records of all the jobs you have applied for and other efforts to find work.

Keep a record of all jobs applied for and/or obtained

Keep a list of all the jobs you apply for, including the date you applied and the outcome. If you have any newspaper adverts or correspondence concerning these jobs, keep these as well as your application and any rejection letters.

Training courses

Keep a record of any training courses you apply for or attend in relation to seeking new work.

Starting a new business

See 4 below.

Record details of:

- n all the employment agencies that you have registered with
- n your registration for Job Seekers Allowance
- n all your efforts to find work

- n all part-time, temporary and permanent jobs obtained
- n training courses you applied for or attended

Keep copies of all relevant correspondence and documents.

2. Recording income

You need to keep detailed records of any income you receive from any new job/s including pay slips.

And if you receive a tax rebate or any social security benefits, other than Child Benefit or benefits that you were already receiving at the same rate before you were dismissed, keep records and copies of all relevant documents and correspondence.

Record details of income received and keep copies of all relevant correspondence and documents.

3. Recording expenses

Keep a record of all the expenses involved in looking for other work, such as the cost of stationery, stamps, phone calls, bus and train fares and interview expenses and even removal costs if you were required to move house to take up a new job.

Record details of expenses in looking for work and copies of all receipts, bills, tickets and any other relevant documents.

4. Starting a new business

If you are thinking about starting a new business you should be able to show that you have taken advice from an organization such as an enterprise body. You should also write a business plan to help prove that this was a reasonable decision in your efforts to 'mitigate' your loss.

You should keep a record of all of the costs involved in starting the new business, as well as the income and expenditure associated with running the business. If you have an accountant, ask them to do this for you. Otherwise keep your own records.

Record details of income and expenditure associated with the new business. Keep copies of all relevant correspondence and/or documents including any 'business plan'.

5. Other relevant information you may need

Loss of pension rights

If you were a member of a pension scheme in your old job, but now find yourself in an inferior scheme (or none at all), you may be able to claim for this.

This is a very complex area and the solicitor dealing with your case will be able to tell you what information you will need to prove any loss.

Loss of company car

If you wish to claim for the loss of a company car, you will need to record information about car values and running costs, available from good motoring organisations.

Difficult job market

If you can't find new work and want to be compensated for more than the usual six months to a year, you will have to show that you are very unlikely to get a job or to get one at the same pay. This might be because of your age or the state of the job market.

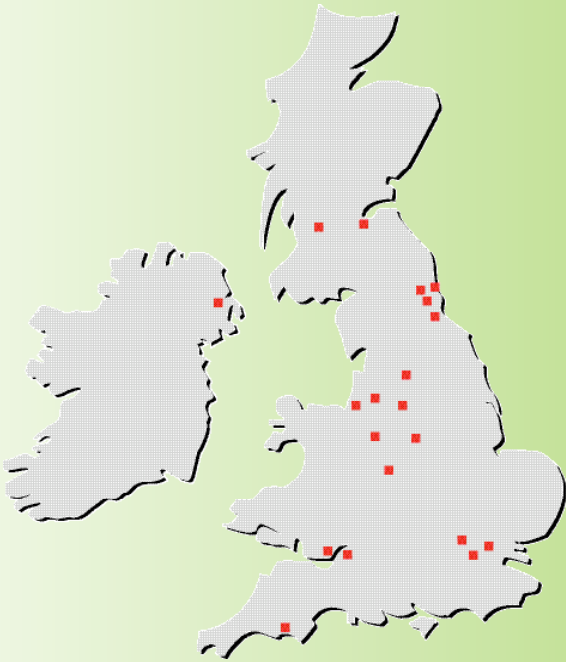
You can get this evidence from an employment consultant's report, but you would have to commission it. Or there are figures available from sources such as Age Concern about the job market for older workers. Also your trade union may be able to help if you are in a particular trade which is going through a bad time.

Keep copies of all relevant correspondence and documents concerning pension rights; loss of company car; difficult job market; or any other relevant issue.



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LEVELS OF COMPENSATION For Unfair Dismissal



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