

## Filling in a Schedule of Loss form after unfair dismissal

When you've been dismissed and have started (or want to start) a claim for unfair dismissal in the Employment Tribunal, you'll need to fill in a document called a 'Schedule of Loss'.

### What is an unfair dismissal?

To be able to claim unfair dismissal you **must**:

- 1) Be an employee (not just a worker, or a self-employed person);
- 2) Have been employed continuously by your employer for a minimum of two years.
- 3) Have been dismissed by your employer.
- 4) Establish that the decision to dismiss was unfair 'in all the circumstances', which will include how reasonable the employer's behaviour was and the process by which they dismissed you.

The Employment Tribunal ('Tribunal') will not decide whether the dismissal was unfair based on whether or not they would've dismissed you, but rather if the dismissal was within a range of responses the employer could take, given the circumstances.

If you have less than two years' service with your employer at the time of your dismissal, then you **might** still be able to claim unfair dismissal if your dismissal was automatically unfair.

### What is an automatically unfair dismissal?

You may have been dismissed for a reason that is **automatically unfair**. Such reasons include (but are not limited to) being dismissed because you:

- Asked for flexible working;
- Are a part-time employee, or because you complained about being treated differently to full-time employees;
- Applied for maternity, paternity and adoption leave, or for any reason related to such leave;
- You are entitled to Working Tax Credits, or tried to enforce a right to Working Tax Credits;
- Made a protected disclosure of information about wrongdoing in the workplace (commonly known as 'whistleblowing');
- Took action related to a health and safety issue;
- Insisted on your right to be paid the National Minimum Wage.

If you're dismissed for an automatically unfair reason, you **don't** have to show that the decision was unreasonable or otherwise unfair.

## If I want to bring a claim to the Employment Tribunal, what should I do first?

Before you bring a claim to the Tribunal, you need to **inform ACAS first** ([click here](#)). This is a **legal requirement before you can bring a claim**.

If you don't do this, your claim will usually be **rejected**, which may mean you can't bring a claim at all if the time to do so expires in the meantime.

If you and your former employer agree, then ACAS will facilitate a mediation process known as 'Early Conciliation'. This provides a chance to resolve the issue between you and your employer before making a claim.

## When can I make an unfair dismissal claim?

An unfair dismissal claim **must** be made to a Tribunal **within 3 months** of being dismissed, and **you must inform ACAS** that you want to bring a claim **before this time limit expires**.

You will then have some additional time to bring a claim, based on when you contacted ACAS and how long you spent in Conciliation (a maximum of six weeks). You will always have a **minimum of one month** from the date you receive your ACAS certificate to bring a claim.

The claim form you need to submit is known as an ET1. You can submit a paper form, but it's easier and quicker to do so using the [online ET1 form](#). There is no fee to pay to start a claim and usually you don't have to pay your employer's costs if your claim is unsuccessful.

## What is a Schedule of Loss form?

If you bring a claim for unfair dismissal, you need to tell the Tribunal what remedies you're looking for should you win. In short, this involves asking the Tribunal to order that your employer do something: this can include requiring your employer to take a specific action (such as reinstating you), but will usually mean ordering the employer to pay you a sum of money.

You need to calculate the amount of money you're seeking and to show these calculations to the Tribunal in a document known as a 'Schedule of Loss'. Please see more details on this below.

## Why do I need to fill one in?

The Tribunal will usually **order you** to fill in a Schedule of Loss after you've presented your claim form. You'll usually be given a **deadline** by which you need to do this, but it's best to do it **as soon as possible**.

If the facts change after you've submitted your Schedule of Loss, or you realise you've made a mistake, then you can change it later.

On the Schedule of Loss, you **must** indicate how much money you think that you're owed and how much compensation you believe you should get. You can ask for compensation, for example, for wages lost because of time spent out of work, but you can't ask for compensation for the stress caused. You also can't usually claim for the costs of bringing the claim (such as the cost of instructing a solicitor or barrister).

## When should I fill in a Schedule of Loss?

It is a good idea to do your Schedule of Loss early and, if possible, to at least do a rough version **before you start your claim**.

This is important because:

1. It allows you to understand what your claim is really worth. This way you avoid overestimating what you can ask the Tribunal for. It allows you to have a more **realistic sense of what your claim will achieve**, which might affect your decision to bring a claim at all.
2. A lot of settlements take place without needing to bring a claim. It's a lot **easier to negotiate a settlement if you know what your claim is worth**. It also makes it easier for your employer to understand the risk they are taking by not settling if they know what you intend to ask the Tribunal to order if you're successful. Think about it like buying a car: you might not pay the price on the sticker, but you need the sticker there to know where to pitch your offer. The principle is the same here. Settlements can also include things that the Tribunal cannot award, such as an agreed written reference for you to give to potential employers in the future.

Remember that the Schedule of Loss is your way of saying **how much your claim is worth**: it needs to be clear about what you're claiming, and on what basis, so that your former employer and the Tribunal understand what you want if you win, and what legal and factual questions need to be decided to calculate any compensation.

## What do I need to show in the Schedule of Loss form?

A Schedule of Loss in an unfair dismissal case has two core parts: the 'basic award' and the 'compensatory award'.

Type of award	
Basic Award	Compensatory Award
<p>The basic award is calculated by reference to a formula based on age, length of service (up to a maximum of 20 years) and a week's gross pay (capped at £544 from 6<sup>th</sup> April 2021).</p>	<p>The compensatory Award <b>may</b> include:</p> <ul style="list-style-type: none"> <li>● Past Losses (Loss of earnings, Pension, Job seeking expenses)</li> <li>● Future Losses</li> <li>● Loss of Statutory Rights</li> <li>● An uplift for your employer's failure to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures</li> <li>● Your employer's failure to provide a written statement of terms and conditions.</li> </ul> <p>The amount you can ask for will depend on the circumstances of your claim.</p>

## How do I figure out my Basic Award?

Your basic award is worked out based on how much you earned per week before tax (known as gross pay) and how long you worked for your employer.

Depending on your age, you get between half a week's gross pay and 1.5 weeks' gross pay per complete year served.

To work out how much your Basic Award will be, **add together:**

- 1.5 weeks' pay for each complete year of employment when you were 41 or over;
- 1 week's pay for each complete year of employment when you were between the ages of 22 and 40 inclusive'
- Half a week's pay for each complete year of employment when you were below the age of 22.

## Can my Basic Award be reduced for any reason?

Yes, there are several reasons why your award can be reduced, including:

- You've already received a redundancy payment (in which case you won't be eligible for the Basic Award).
- If it's believed you contributed to your own dismissal, for example if you committed an act of misconduct, or refused to engage in the dismissal process (known as contributory fault). These are common in conduct dismissals.
- You unreasonably refused an offer of reinstatement.

## How do I figure out my Compensatory Award?

### 1. What are Past Losses?

Past Losses are losses experienced from the end of your employment to the date of your final hearing. If you don't know when your final hearing will be, then use the current date and update the Schedule of Loss when you have a final hearing date.

Your compensatory award is not based on a loss of rights, but on **financial losses suffered**. The general principle is that the compensatory award should put you in the position financially that you would have been in had you not been dismissed.

You can include:

- Any payment that is paid as part of the basic salary (for example, a car allowance or rolled-up holiday pay);
- Bonuses and any anticipated increase in salary, even if you're not contractually entitled to them;
- Pension contributions made by your employer;
- Contractual benefits you were receiving;
- Other non-contractual benefits, if you could reasonably expect to receive them.

Note that **you must deduct any money earned from new employment** from your past losses. For example, if you have earned £1,000 from temporary work since your dismissal, then you must deduct that from your past losses.

Where you've found new permanent work after your dismissal, and are employed at the time of your final hearing, then the Tribunal will not pay you for lost wages for any weeks that you were earning more than you would have received at your previous employment. So, for example, if the Tribunal hearing is 50 weeks after your dismissal, and you found a better-paying job 25 weeks after being dismissed, then you will not be paid for the remaining 25 weeks.

If you find new employment, but at a lower wage than your old job, then your past losses for the weeks in which you are working for your new employer will not be your entire wage, but will be the difference between your old wage and your new, lower wage. For example, if you spent 25 weeks unemployed, and 25 weeks earning £50 per week less than in your previous job, then your past losses will be 25 weeks at full pay, and then 25 weeks at £50 per week.

## 2. How can I claim job seeking expenses?

Job seeking expenses can be included as part of your Past Losses. To do this, you need to **explain** what your job seeking expenses have been. For example:

*'I attend the Job Centre weekly for which my travel costs are £1.50. I have attended four job interviews which incurred travel expenses of £15.00. I have also incurred expenses for buying local newspapers and for postage costs. I wish to claim a sum of £50. I can provide evidence of both my efforts to find work and the costs of doing so.'*

It is important that you **look for work after your dismissal**, as your compensatory award can be reduced if the Tribunal does not think you have made sufficient efforts to find new employment (known as a 'failure to mitigate').

You need to be able to **prove this**, and to prove that you have spent the money you are claiming for seeking new work. This means that you should be applying for jobs regularly and keeping copies of applications, rejection letters, travel costs, and any other payment you make as you look for new work. If you set up your own business following your dismissal, you can also claim for the cost of doing so. Again, you will need to provide evidence of these costs.

## 3. How can I claim Future Loss of earnings?

Your Future Loss is the amount you **expect to lose after the final hearing date**. You can include net loss of earnings and pension loss.

To claim Future Loss of earnings, you need to **explain why** you're likely to remain out of work on the Schedule of Loss form. For example:

*'I estimate that this loss will continue for a period of [ ] months. Although I am a skilled worker, the local job market is difficult and I am unable to travel extensive distances to work because I have to care for my disabled son in the evenings while my wife is at work. The average period of unemployment for a skilled worker in my area is [ ] months. However, given the restriction about my hours of work, and the fact I was sacked for gross misconduct, I submit it is likely to take me longer to find work than the average worker.'*

## Can my Compensatory Award be reduced for any reason?

Yes, there are many reasons why your award might be reduced, including:

- Where you have failed to mitigate your loss (see the section on Job Seeking Expenses above).
- Where you've received notice pay, but were dismissed before the end of your notice period.
- If you're thought to have contributed to your own dismissal. For example, if you committed an act of misconduct, or refused to engage in the dismissal process (known as contributory fault). These are common in conduct dismissals.
- Where you were dismissed through an unfair process, but the Tribunal thinks that a fair process would have led to your dismissal anyway (known as a *Polkey* reduction). These are common in redundancy and conduct dismissals.
- You have received benefits during any period of unemployment.

## Are there limits to what I can claim?

Unfortunately, yes. You can **only claim for losses suffered due to your dismissal**. You can't usually claim for injury to feelings compensation (as is possible in discrimination cases).

There are also caps to the compensation you can receive, both in terms of weekly pay (set out above), and in the total amount of your compensatory award, which is usually subject to a **'statutory cap' of £89,493 or 52 weeks' gross pay**, whichever is the lower.

## What is compensation for Loss of Statutory Rights?

Because you need to work for a new employer for more than two years before you can gain a general protection from unfair dismissal, you're entitled to claim compensation for losing the statutory right not to be unfairly dismissed.

You're also entitled to compensation for the fact that you have lost your right to a minimum notice period that is longer than one week.

It's usual to **claim £350-500** for both of these, known as compensation for loss of statutory rights.

## How do I know if my employer has failed to follow the ACAS Code and how does it affect my compensation?

ACAS has produced a Code of Practice on disciplinary procedures, which is intended to be a **minimum standard**, but is **not** legally binding on employers. Where employers depart from it without good reason, you are entitled to ask the Tribunal to increase your compensatory award on a percentage basis.

The Code requires that employers do the following during a disciplinary process:

- Deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of any decisions
- Carry out any necessary investigations, to establish the facts of the case
- Inform you of what the problem is (in writing) and give you an opportunity to respond to the case before any decisions are made
- Allow you to be accompanied to any formal disciplinary or grievance meeting (after you request this)
- Allow you to appeal against any formal decision that's made.

To read the ACAS Code, [click here](#).

You can ask for **up to 25%** of the total compensatory award. How much you should ask for will depend on how bad the dismissal process was; if it was more or less in line with the Code with a few small problems, then you would ask for a smaller uplift than a situation in which you were dismissed without any process at all.

## How do I know if my employer has failed to provide a statement of terms and conditions?

All employees have a right to be provided with a written statement containing basic information on the terms and conditions of their employment. Many employees will have been provided with this and so will not need to ask for this type of compensation. If you have a written contract, this will usually satisfy the legal requirement that you be given a written statement of terms and conditions.

If your employer didn't give you a written statement of your terms and conditions, a Tribunal can award you an **extra two to four weeks' pay, capped at £544 per week** (as of 6<sup>th</sup> April 2021). The maximum figure is updated on 6<sup>th</sup> April each year.



## More information

To inform ACAS you intend to bring a claim and to engage in Early Conciliation:  
<https://tell.acas.org.uk/>

Learn more about the early conciliation service provided by ACAS:  
<https://www.acas.org.uk/early-conciliation>

Online ET1 form to make a claim to the Employment Tribunal:  
[https://www.employmenttribunals.service.gov.uk/apply?\\_ga=2.254790848.916285054.1616410750-1288851270.1614775229](https://www.employmenttribunals.service.gov.uk/apply?_ga=2.254790848.916285054.1616410750-1288851270.1614775229)

Information on redundancy pay by GOV.UK:  
<https://www.gov.uk/redundancy-your-rights/redundancy-pay>

ACAS Code of practice:  
<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures>

Preparing a Schedule of Loss for an unfair dismissal claim by Citizen's Advice:  
<https://www.citizensadvice.org.uk/work/problems-at-work/employment-tribunals-from-29-july-2013/employment-tribunals-valuing-a-claim/compensatory-award/calculating-the-compensatory-award/employment-tribunals-preparing-a-schedule-of-loss/employment-tribunals-preparing-a-schedule-of-loss-for-an-unfair-dismissal-claim/>

Sample Schedule of Loss Form by Citizen's Advice:  
<https://www.citizensadvice.org.uk/work/problems-at-work/employment-tribunals-from-29-july-2013/employment-tribunals-valuing-a-claim/compensatory-award/calculating-the-compensatory-award/employment-tribunals-preparing-a-schedule-of-loss/employment-tribunals-sample-schedule-of-loss/>

Explanation of Unfair dismissal by ACAS:  
<https://www.acas.org.uk/dismissals/unfair-dismissal>

## Legal Advice

If you need free one-off legal advice, you can fill in this form by **Free Legal Advice Centre (FLAC) of Toynbee Hall**:  
<https://www.toynbeehall.org.uk/free-advice/legal-advice/#online-flac-ia-form> or you can email FLAC here: [flac@toynbeehall.org.uk](mailto:flac@toynbeehall.org.uk)

Please know that we do not offer representation or do case work. We provide advice on housing, employment, immigration, consumer, civil matters and more.

If you want to find other free legal clinics or you need representation, please look at LawWorks here: <https://www.lawworks.org.uk/legal-advice-individuals>

## Template Schedule of Loss

Please feel free to use our template Schedule of Loss form if you've not been provided one by your Tribunal. [You can download it here.](#)

The form provides **examples** of reasons and explanations for claiming certain awards. **Please modify these to describe and explain your circumstances.** **Fill in the sections highlighted in yellow.**

## Acknowledgements

*We would like to thank The Bank of New York Mellon for their pro bono support in helping Toynbee Hall's Free Legal Advice Centre undertake this legal education project. We would like to thank them for helping us create this **Filling in a schedule of loss after unfair dismissal** guide to help members of the community with their rights in regard to unfair dismissal, thereby empowering them to understand and exercise their legal rights.*