








Comparison of Unfair Dismissal

The termination of employment is a particularly contentious area of employment law. While the principles behind unfair dismissal in GB (NI differs from the rest of the UK) and ROI are quite similar, there are key differences when it comes to submitting a claim for unfair dismissal. Employers across both jurisdictions should familiarise themselves with the different processes and the various forms of redress available to employees and workers.

We have summarised some of the key differences below:

	 GB	 ROI
 Statutory Protection	Employment Rights Act, 1996	Unfair Dismissal Acts, 1977 - 2015
 Adjudicating Body	Employment Tribunal Appeals are dealt with by the Employment Appeal Tribunal	Workplace Relations Commission ("WRC") Appeals are dealt with by the Labour Court
 Conciliation/ Mediation	Claims for unfair dismissal must first be referred to Acas for early conciliation ("EC"). If no agreement can be reached during EC, or the parties do not wish to conciliate, the claimant can then submit a complaint to the Employment Tribunal. Settlement may be negotiated at any stage of the proceedings thereafter.	Optional/ voluntary mediation or conciliation available at any stage.



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Time Limits

3 months minus 1 day from the effective date of termination (the day of the summary dismissal, or the last day of a notice period).

The time limit is extended by the number of days spent in ACAS EC up to a maximum of six weeks.

The tribunal may extend the time limit further if:

- it was not reasonably practicable for the claimant to present the claim within the time limit (including an extension from EC); and
- the claim was raised "within such further period as the tribunal considers reasonable".

6 months from date of dismissal, which can be extended to 12 months for reasonable cause.


Qualification

Two years' continuous service (subject to 22 "automatically unfair" reasons for dismissal e.g. whistleblowing or for asserting a statutory right).

The Employment Rights Bill, which is expected to come into effect in Autumn 2026, will remove the qualifying period subject to the completion of a probationary period. The maximum length of the probationary period, and the steps required to dismiss during the same, will be set in a statutory instrument.

One years' continuous service with the employer, subject to the following exceptions:

- Trade union membership or activity;
- Pregnancy, giving birth, breastfeeding or any matters connected with pregnancy or birth;
- Availing of rights to maternity leave, adoptive leave, paternity leave, parental leave, carer's leave, parent's leave, force majeure leave, or the national minimum wage;
- Making a protected disclosure.



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Burden and standard of Proof

Employee must show that the employer dismissed them, either expressly or constructively.

Once dismissal has been established, the employer must show, on the balance of probabilities, that the dismissal was for one or more potentially fair reasons:

1. Capability (by reference to skill, aptitude, health or any other physical or mental quality) or qualifications;
2. Conduct;
3. Redundancy;
4. Continued employment would breach a statutory restriction or duty; or
5. Some other substantial reason justifying the dismissal.

Once a potentially fair reason has been established, the burden of proof to show the dismissal was fair in all of the circumstances is neutral. The standard of proof is also on the balance of probabilities.

If the claim is for an automatic unfair reason and the employee had less than two years' service, the burden of proof is on the employee to show the dismissal was for an automatically unfair reason before the burden shifts to the employer to show a potentially fair reason for dismissal.

Employer must show that the dismissal was fair or that there were substantial grounds justifying the dismissal.

The balance of probabilities test is also applied. The five fair reasons are similar as follows:

1. Capability;
2. Competence;
3. Conduct;
4. Redundancy ;or
5. Other substantial grounds justifying the dismissal.

In constructive dismissal, the burden of proof is on the employee.



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Steps in Process

1. ACAS EC is completed
2. Claimant lodges claim (ET1)
3. Tribunal receives the claim, sifts and issues a notice of claim to the respondent (ET2)
4. Respondent(s) to respond to claim within 28 days of the ET2 by submitting an ET3
5. There may be a public preliminary hearing if a jurisdictional issue is raised. Private preliminary hearings for case management are common for claims for automatic and constructive unfair dismissal.
6. Both parties required to disclose documents relevant to the case.
7. Witness statements exchanged in England and Wales. Statements are only exchanged in Scotland if they are ordered.
8. Evidence given by cross examination only in England and Wales. Witnesses in Scotland give evidence in chief and are then cross-examined. All tribunals require evidence to be given under oath or affirmation.

1. Complainant lodges WRC complaint.
2. Submissions and supporting documentation to be submitted 15 working days in advance of a hearing
3. No discovery process in Irish system. Documents often obtained by Complainant using subject access request.
4. No witness statements required.
5. Full hearing in public and parties named in decision. Hearings on preliminary issues can be sought but the adjudication officer exercises discretion whether to grant an application.
6. Evidence given under oath or affirmation.



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Reinstatement , Reengagement and/or Compensation

Compensation: currently capped at £115,115 (or 52 weeks' pay if less) unless the claim is for automatic unfair dismissal due to whistleblowing or related to health and safety;

Usually consists of a basic award (based on age, length of service and capped weekly pay), a statutory award for loss of the right to claim unfair dismissal (around £500) and a compensatory award (based on the financial loss caused to the employee).

Claimants are required to take reasonable steps to mitigate their losses by searching for work.

The tribunal has the discretion to reduce compensation if it is just and equitable to do so (usually if the dismissal was procedurally fair but the claimant would have been dismissed in any event) or for contributory fault (i.e. the claimant's conduct contributed to their dismissal).

Reinstatement , Reengagement and/ or Compensation

Compensation: Compensation is not capped at a specific figure. A maximum of 104 weeks' remuneration is available but it is limited to financial loss; if no such loss has been suffered, the maximum award is 4 weeks' pay.

Weeks' pay: employee's normal weekly remuneration

Complainants are required to take reasonable steps to mitigate their losses.

Compensation can be reduced by the WRC for failure to mitigate loss or where they believe the Complainant contributed to their own dismissal.



Acas Code of Practice on disciplinary and grievance procedures under the Trade Union and Labour Relations (Consolidation) Act 1992

Failure to comply may lead to an increase/ decrease of compensation by a maximum of 25%.

Industrial Relations Act, 1990, Code of Practice on Disciplinary Procedures (Declaration) Order, 1996

No uplift equivalent.



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Costs

Employment Tribunal may make an award for costs against either side, but awards are rare.

A costs order or preparation time order **must** be made against a respondent where both of the following apply:

- final hearing was postponed or adjourned because the respondent failed, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed, or of comparable or suitable employment; and
- claimant had informed the respondent, at least 7 days before the full hearing, that they were seeking reinstatement or reengagement.

A costs or preparation time order **may** be made where it is found that:

- a party, or their representative, has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the bringing/ conducting of the proceedings, or a part thereof; or
- any claim made in the proceedings by a party had no reasonable prospect of success.

Costs are dealt with either on the papers following an application or in a separate hearing.

Costs are not awarded in the WRC or Labour Court.

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