FREE LEGAL ANSWERS™

Volunteers Handbook

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1. About LawWorks

LawWorks is the operating name of the Solicitors Pro Bono Group. We are a charity, and our aim is to enable access to justice through supporting and developing the contribution of legal pro bono. With support from the Law Society of England and Wales, we encourage, facilitate and celebrate pro bono across the solicitor profession and at law schools in England and Wales.

There are a number of key strands to our work to support and facilitate pro bono:

- we support a growing network of around 300 local independent pro bono advice clinics across England and Wales. We work with lawyers, advice agencies, charities and others to establish or develop new clinics, and provide ongoing information and support, training and resources, for clinic volunteers and coordinators;

- our Not-for-Profits Programme facilitates the provision of free legal advice for smaller charities and not-for-profit organisations, supported by volunteer lawyers from LawWorks' members;

- our Secondary Specialisation Programme supports the development of more 'in-depth' pro bono in areas of social welfare law. This currently includes an unpaid wages project and 'Voices for Families', with the charity Together for Short Lives, supporting parents and carers of children with life-limiting conditions;

- we support collaborative projects including: Pro Bono Connect: a project which facilitates barristers and solicitors working together on pro bono cases; the Domestic Abuse Response Alliance and IP Pro Bono.

- we have online tools and digital platforms including 'Free Legal Answers' and the Pro Bono Portal UK (with Justice Connect, an Australian access to justice charity).

In addition to encouraging and supporting pro bono delivery, we also work to address barriers to justice and to provide a 'policy voice' for pro bono - for example, working to address regulatory and other barriers to pro bono volunteering, and working with our members and others to influence policy on legal aid and other aspects of access to justice.

More information can be found at: www.lawworks.org.uk.

2. About Free Legal Answers

2.1 The aims of Free Legal Answers

Free Legal Answers is an online platform where people on low incomes can describe a legal problem or ask a legal question and receive pro bono legal advice. With a focus on early/initial legal advice on civil law matters.

Free Legal Answers is managed by LawWorks and facilitates the giving of one-off legal advice from volunteer lawyers to clients, through an intuitive platform designed to allow lawyers and clients to have an open dialogue. Where further advice or support is required, outside of that specified above, clients are referred to other advice organisations (see link below).

https://freelegalanswers.org.uk/OtherHelp

2.2 Free Legal Answers Eligibility

To be eligible, members of the public wanting to ask a legal question must:

- Be on a low to modest income. This is based on minimum income standards which vary by the size and type of household;
- Be in a civil law area covered by Free Legal Answers;
- Not already have a lawyer helping with their legal problem;
- Be over 16 years old; and,
- Live in England or Wales.

To be eligible to volunteer, lawyers must:

- Be 2 years PQE
- Have a current practicing certificate
- Apply the Pro Bono Protocol standards.

However, as long as the registered (and verified) solicitor meets these requirements, others can take part in researching and drafting an answer to a legal question/problem – e.g. supervised law students, paralegals and trainees. The key issue is that the information and advice then provided via the website is approved and submitted by the registered solicitor.

2.3 Key Contacts

Free Legal Answers Administrator: freelegalanswers@lawworks.org.uk.

3. Service Standards

We owe a duty to provide a competent and professional service to all clients we advise. Whilst our service is free, it should be done to the highest standards and by no lesser standard than that of paid legal work. Free Legal Answers Volunteers are encouraged to sign the Pro Bono Protocol. The Pro Bono Protocol is endorsed by the Law Society of England and Wales, Bar Council of England and Wales and the Chartered Institute of Legal Executives, and this governs the standard of care which is given to clients at Free Legal Answers. (For more information see the pro bono protocol at https://www.lawworks.org.uk/why-pro-bono/what-pro-bono/pro-bono-protocol)

Free Legal Answers and participating solicitors are subject to the professional rules and disciplinary procedures of the Solicitors Regulation Authority (SRA). All participants must therefore comply with all applicable professional obligations.

We also ask all lawyers participating in Free Legal Answers to have some familiarity (but not in-depth knowledge) about potential eligibility for legal aid. LawWorks believes it important to try and signpost people to legal aid if this may be applicable. There are introductory resources about legal aid in the 'Resources' section on the Free Legal Answers platform.

The 'Resources' section also includes other information and links to resources which may be helpful for participating solicitors.

Please also see **Appendix 1** of this handbook which provides advice templates/factsheets for the common legal issues frequently encountered by users of Free Legal Answers. The aim of the templates/factsheets is to aid volunteer lawyers to provide advice on a range of legal issues, including those that are outside of a lawyer's particular specialism.

4. Supervision and Quality Assurance

As part of Free Legal Answers' commitment to quality, clients have the right to give both feedback on Free Legal Answers and to make complaints. Complaints shall be dealt with under the Complaints Procedure Both complaints and client feedback will be reviewed at least annually by LawWorks.

If you are made aware of *any* expression of dissatisfaction or complaint or notice of a claim from an FLA client, either directly (i.e., outside the FLA platform) or via the FLA platform, you must immediately (and, in any event, no later than ten (10) days after the complaint/claim is first intimated) provide LawWorks' administrator with the details, including: the date received, the complainant's/claimant's name and address (if known), the dates of the communications on LawWorks' Free Legal Answers, and the grounds for the complaint/claim.

While participating lawyers can respond to questions anonymously (and usually do so), the name and details of participating lawyers will be provided by LawWorks to users should a complaint be intimated or made to LawWorks or the Solicitors Regulation Authority or the Legal

Ombudsman (the SRA has indicated its approval of this approach). This approach is consistent with the SRA Code of Conduct for Solicitors, RELs and RFLs and is consented to by agreeing to this Lawyer Agreement.

5. Confidentiality

All information given by clients, or by other parties in connection with their case, shall be treated as confidential by Free Legal Answers staff and volunteers. No information may be given to a third party outside of Free Legal Answers without the client's prior consent. If you believe it would be beneficial to the client to discuss the client's question further, you must bear in mind at all times your duty of confidentiality to the client and must endeavour not to reveal the client's name or other details enabling identification of the client to anyone outside of Free Legal Answers. At all times you must observe solicitors' professional conduct obligations in respect of Free Legal Answers clients.

Breach of confidentiality shall be taken very seriously, and may be considered an act of gross misconduct by staff or volunteers, leading to the termination of paid or voluntary work with the Free Legal Answers.

Confidential information may only be revealed:

(i) to the extent you or your supervisor believes necessary to prevent the client or a third party committing a criminal act which they believe is likely to result in serious bodily harm; or

(ii) in certain circumstances involving children, where the client (who may or may not themself be the child concerned) reveals information indicating continuing sexual or other physical abuse against a child but refuses to allow any disclosure, you must consider whether the threat to the child's life or mental or physical health, is sufficiently serious to justify a breach of confidence to an appropriate authority.

If there is an identified need for further contact after the session, the client should usually be referred to another service. Please remember you are acting as advisors of Free Legal Answers and not as representatives of your respective law firm.

Advice provided by volunteer lawyers via the Free Legal Answers Project will be provided by lawyers acting as volunteers for LawWorks and not in their capacity as employees, consultants or in any other capacity in connection with a law firm or other business or entity, including an un-regulated business or entity.

6. Insurance

Advice and information provided by lawyers through the Free Legal Answers website is insured by professional indemnity insurance held by LawWorks. The insurance is limited to liability for claims that are made in relation to the legal advice provided through Free Legal Answers.

7. Guidance for Advisors

7.1 Advising the Client

Participating lawyers will be able to review the legal questions being asked, before choosing which questions (if any) to answer.

Users will not know the name of the lawyer who answers their question(s) unless the lawyer chooses to provide it. Generally, we suggest that lawyers refrain from providing their personal details. Lawyers who do provide their details should be aware of the possibility of users contacting them directly. Upon receipt of any direct communication from a user outside the FLA platform, lawyers should immediately inform the site administrator and insist upon users reverting to communicating via the FLA platform, subject only to LawWorks' site administrator granting permission to communicate outside the FLA platform.

Advice provided outside the FLA platform will **not** be covered by LawWorks' policy of insurance.

Please note that you will only be providing one-off advice and assistance, with very limited personal follow up. The clients may not have the requisite legal knowledge to fully convey the question they seek an answer to. Volunteers are not limited to a single response, so in these circumstances, volunteers should use the dialogue box to gather additional information or context from the client.

7.2 Areas of Law Covered by Free Legal Answers

At present, Free Legal Answers accepts questions relating to the follow areas of law:

- Employment
- Housing
- Family
- Consumer

In a bid to have their questions submitted, clients may submit a question not covered by Free Legal Answers but categorise it as such. In these circumstances, clients should be advised that an answer cannot be provided at this time and be signposted to alternative services (link below):

https://freelegalanswers.org.uk/OtherHelp

7.3 Jurisdiction Issues

Many of the questions we receive from clients, relate to housing and tenancy issues. Due to the devolution of powers to Wales specifically pertaining to housing, advice needs to reflect

the law of this jurisdiction. **If the client's location is not clear from the question, volunteers should seek to confirm jurisdiction prior to providing advice.**

7.4 Are There Any Urgent Matters to Deal With?

It is always essential to work out whether any steps need to be taken urgently. Obvious examples are where the client is facing court proceedings, or has a claim and proceedings need to be started within a certain time limit.

Clients can include a deadline on their question. Free Legal Answers operates a flag system:

Red flag – older than 10 days or pending legal deadline

White flag with red outline – older than 5 days

If the client is facing legal proceedings, they will need to be referred to another agency or to find solicitors (link below)

https://freelegalanswers.org.uk/OtherHelp

If the client has a claim, consider the limitation period.

You may need to consider what immediate action can be taken to postpone legal action, eviction etc. to give time for your client to get more specialised help.

7.5 Submitting Your Advice

There are two options for submitting advice. Volunteers can either submit advice using the dialogue box, or volunteers can type up the advice in a separate document and upload this to the message thread. Uploading the advice in a separate document is preferable for the client as they are able to download/ print/ forward the advice.

If you are typing the advice in a separate document and uploading it to the message, please ensure no confidential information is included in the document as it will be saved on your device.

8. Conflict of Interest Policy

The client's name and the opposing party will be provided to the lawyer so that the lawyer can ensure that they do not answer a question if there is a concern that they or their employer might be at risk of or have an actual conflict of interest.

We take a pragmatic approach to avoiding conflicts arising out of our involvement at Free Legal Answers. With this in mind, every volunteer must follow the following guidance to minimise the risk of a conflict:

- If any volunteer of Free Legal Answers recognises that there is a potential or actual legal conflict, in the sense that their firm has prior involvement in the particular matter (or a

related matter) for the other party or the other party is a current client of the firm, the volunteer should decline to provide advice.

- We should also avoid advising a client in relation to the interpretation of legal documents where there is a real risk the firm might have prepared them for a firm client.

9. When Further Advice is Needed

9.1 Follow up questions from client

Free Legal Answers is an initial advice service only. If a client has posted a question to Free Legal Answers more than twice in relation to the same matter, tell them we are unable to help further and refer them on if possible. If, after providing the client with advice, a follow-up question is posted within the message thread, it is the volunteer's discretion whether to provide the client with a further response.

Where further help that goes beyond initial advice is needed, clients should be referred to an appropriate agency or solicitor.

9.2 Help from Volunteer's Firm

Representation will be limited to providing an answer through the FLA website and will not involve any continuing representation of the client beyond the act of providing such an answer. Lawyers shall provide one-off legal advice services to a client without expectation by either the lawyer or the client of an ongoing relationship or representation in the matter or question. Such one-off advice may include more than one response from a participating solicitor concerning a question or matter, for example following receipt of further information form the client about it.

However, there may be circumstances where a solicitor or firm/in-house team wish to take a case further, beyond the stage of initial legal advice. In those circumstances, we ask that LawWorks first be contacted with this request. Subsequently, should a case be taken on, this will no longer be covered by LawWorks' professional indemnity insurance.

Advice provided outside the FLA platform will not be covered by LawWorks' policy of insurance.

10. Acting in the Client's Best Interests

This is the golden rule of professional conduct.

Free Legal Answer's purpose is to provide high quality assistance and advice to clients but within the constraints of the volunteer time commitment. If it is apparent that a client needs help beyond the remit of Free Legal Answers, offer the client the option of referral to advice

agencies better able to provide the help needed. In the interests of clients, you must not give advice beyond your level of competence or outside the scope of Free Legal Answers.

Also, always remember that Free Legal Answers aims to empower its clients, not to make them dependent. In practice, this will happen in different ways. Some clients will seek information on their rights, or advice on the best course of action to take in their circumstances. Other clients may be unable to act fully in their own interests, either because their problem has progressed and needs a specialised legal response, or because of crises in their lives affecting their ability to act. Referring clients to agencies or solicitors able to take action quickly may put the client in the best possible position quickly, though the choice on what action to take always remains with the client.

11. Tips for Lawyers using Free Legal Answers

The following tips will hopefully help to make your experience of using Free Legal Answers a positive one:

1. **FAQs** – we recommend that volunteers read the FAQ section on Free Legal Answers (in the blue toolbar at the top of the dashboard) once registered.
2. **Notifications** – Lawyers can choose how often they want to receive notifications and what kind of notifications they prefer. To do this, select the 'Notifications' tab on the dashboard, click on the red icon in the table to change them to ticks on the categories that the volunteer wishes to receive notifications on. By clicking on the text in the column marked 'Mode', volunteers can decide if they would like daily or weekly notifications, or every time a new case is added.
3. **Searching & filtering questions** - questions are searchable by area of law and by date so volunteers can quickly filter to see oldest or newest questions and only view questions for a particular area of law. The 'kind of problem', 'issue with' and 'subject' headlines along with the preview function are tools to help lawyers quickly decide which questions they would like to review and answer.
4. **Resources** – we recommend that volunteers look at the 'Resources' section (in the blue toolbar at the top of the dashboard) which includes information and links to useful resources regarding legal aid and the relevant legal areas covered by FLA.
5. **Jurisdiction issues** - individuals from both England and Wales can submit a question. Volunteers should be aware that some areas of law, particularly housing law, are devolved in Wales. It is therefore important that volunteers ensure they confirm the client's geographic area and have an adequate understanding of the law in the client's geographic area.
6. **Contacting the FLA administrator –** Lawyers can contact the FLA administrator at any time if they have any concerns about a question or if there are any technical issues with the website. To contact the FLA administrator, use the purple 'Notify the site administrator about this question' button. Examples of concerns about a question could include:

- The question is in the wrong category
- The client may be ineligible
- The person is asking a question on behalf of someone else
- The question may be a criminal question
- The question is likely eligible for legal aid
- The question is not suitable for the nature of the service (eg: not suitable for brief, initial advice).

7. **Requesting further information from a client** - clients may not have the requisite legal knowledge to fully convey the question they seek an answer to. Volunteers are not limited to a single response, so in these circumstances, volunteers should use the dialogue box to gather additional information or context from the client.
8. **Involvement of others in research & drafting** – although there are specific eligibility criteria for volunteer lawyers, remember that others can take part in researching and drafting an answer to a legal question/problem – e.g. supervised law students, paralegals and trainees as long as the information and advice then provided via the website is approved and submitted by the registered solicitor.
9. **Detail of answers** – some questions will only require a brief answer (eg: telling the client they need to complete a particular form) and some answers will require more detail. It is therefore hard to give general guidance about how detailed an answer should be. The most important point is that volunteers must not give advice beyond their level of competence or outside the scope of Free Legal Answers.
10. **Uploading answers as an attachment** - some volunteers prefer to type their answers in Word and then attach them as a pdf (rather than using the reply field in the question). This makes it easier for lawyers to copy and paste things and add links. Please, however, note the earlier comments about not saving confidential client information on a personal device.
11. **Template answers** - The same type of questions often come up (eg: tenancy deposits and standards of repair). Some lawyers prepare and keep a number of template answers which can be easily adapted and therefore questions can be answered quite quickly.
12. **Anonymity** – one of the advantages of Free Legal Answers is that lawyers do not need to provide their name to the client if they do not wish to. Generally, we suggest that lawyers refrain from providing their personal details. Lawyers who do provide their details should be aware of the possibility of users contacting them directly. Upon receipt of any direct communication from a user outside the FLA platform, lawyers should immediately inform the site administrator and insist upon users reverting to communicating via the FLA platform, subject only to LawWorks' site administrator granting permission to communicate outside the FLA platform.

13. **Reminding clients of the limitations of the service & other sources of help** – although the client user agreement clearly sets out the limitations of Free Legal Answers, clients do not always read this or fully understand what it means. Therefore at the end of drafting an answer to a question, some lawyers choose to remind clients that they will have no further involvement with the case, can't provide ongoing advice, casework or representation. Free Legal Answers has an 'other places to find legal help & information' section for clients so a lawyer may wish to remind the client about that.
14. **Further questions from a client** - Free Legal Answers is an initial advice service only. If a client has posted a question to Free Legal Answers more than twice in relation to the same matter, a volunteer should tell them we are unable to help further and refer them on if possible. If, after providing the client with advice, a follow-up question is posted within the message thread, it is the **volunteer's discretion** whether to provide the client with a further response.

Appendix 1 – templates/factsheets

This appendix includes advice templates/factsheets for the common legal issues frequently encountered by users of Free Legal Answers. The aim of the templates/factsheets is to aid volunteer lawyers to provide advice on a range of legal issues, including those that are outside of a lawyer's particular specialism.

Thank you to lawyers at Baker McKenzie for volunteering their time and expertise to put together the templates.

Topics covered are:

Housing

- Breaking a lease
- Eviction defence
- Disputes with neighbours
- Disrepair
- Lease changes
- Excluded occupiers, roommates, lodgers

Family

- Traveling or moving with children abroad
- Resolving marital property
- Child contact arrangements
- The divorce process,
- Unmarried separations

Employment

- Unfair dismissal
- Withholding of wages
- Discrimination and harassment
- Right to work

Consumer rights

- Warranties and guarantees
- Quality of goods and services
- Small claims process

Breaking a Lease

Key points to consider before providing advice

- Type of tenancy agreement and whether it contains a break clause;
- nature of landlord and/or relevance of property manager;
- type of tenant: sole, joint or other (e.g., social tenant);
- reason(s) for breaking lease; and
- any surrounding circumstances.

Practical guidance

- Always tell the tenant not to abandon the property without providing proper notice or gaining the landlord's permission. Doing so may result in further costs if the landlord obtains a court order to recover outstanding rent monies and any court costs.
- Before breaking a lease, tenants should be advised to secure alternative housing on the assumption that a landlord might grant the request.

FIXED TERM TENANCIES

A fixed term tenancy agreement, typically an assured shorthold tenancy agreement, is a contract so relevant statutes and contract law principles apply.

- **Break clause:** if the lease contains a break clause, a tenant can follow the process outlined in the agreement. This may specify a minimum notice period, if any, that the tenant must give the landlord when doing so. This applies if a tenant lives alone or with joint tenants who also wish to break the lease. However, if the other joint tenants wish to remain, the tenant cannot rely on a break clause. For fixed term tenancy agreements with joint tenants, all tenants must agree to serve a notice under a break clause and surrender the tenancy, unless the agreement specifies otherwise.
- **Automatically terminating tenancy:** there is no automatic right to terminate a lease. If the lease contains a break clause but stipulates the time period in which it can be triggered, the tenant must wait for those conditions to take effect. If there is no break clause or the time-restrictive conditions apply, the tenant should be informed that the lease can only be broken if both parties agree.
- **Negotiate to surrender:** the tenant can negotiate with the landlord to surrender the tenancy early. A tenant's approach to negotiation with the landlord will vary based on their individual circumstances but their request will need to be justified in some way. This might include problems with the property manager or property itself, for example, when a landlord has failed to conduct repairs[1]; or if there were a significant change in the tenant's financial position which would impact ongoing rent payments indefinitely.

[1] Please refer to the 'Disrepair in rented accommodation' fact sheet for more information.

- As a first step, the tenant should write to the landlord and/or agent outlining the reason(s) for the request and any additional information when doing so, for example, if the tenant has found a potential replacement tenant.
- The tenant should be informed that if the landlord agrees to end the tenancy early, the landlord may require an early termination fee, the surrender of the deposit or that the tenant continues paying rent until a new tenant moves in or a replacement tenant is found. The tenant can try and negotiate these elements as well.
- If the landlord agrees to let the tenant surrender the tenancy, the tenant should ensure that a "**Deed of Surrender**" is signed by both parties. This officially ends the tenancy agreement with the landlord and should outline any conditions attached to the surrender, including the termination date. This can be written by the tenant but must: **i)** clearly state that it is a deed; **ii)** specify the tenancy; **iii)** be signed by the landlord and tenant(s); and **iv)** have signatures witnessed.
- If there are **joint tenants** who want to remain at the property, the tenant should try to surrender the tenancy and have the landlord re-grant tenancy to the remaining tenants and/or a replacement tenant.

- **Small claim for breach of the Consumer Protection (Amendment) Regulations 2014 ("the Regulations"):** the Regulations amended the Consumer Protection from Unfair Trading Regulations 2008 and grant tenants specific remedies for unfair trading practices, including the right to unwind a contract.
  - **Process:** the landlord should be contacted by letter/email (templates available: Word/OpenDocument) and asked to voluntarily unwind the contract within 90 days of the tenancy start date. If the landlord fails to do so, the tenant can bring a small claim for breach of the Regulations instead.
  - **Risk profile:** the tenant should be informed of the associated risks with this option. An unsuccessful claim may mean that the tenant pays the landlord's legal costs, other court fees and rent payments, which remain due until the lease is unwound.

PERIODIC TENANCIES

A **contractual periodic tenancy** is a rolling tenancy with no fixed end date. An assured shorthold tenancy becomes a periodic tenancy at the end of the fixed term unless **all parties** agree to another fixed term. **Statutory periodic tenancies** arise by default if a tenant remains in the property after the last day of the tenancy, statute (section 5(3) of the Housing Act 1988).

- **Agreement:** the tenant and landlord can agree to end a periodic tenancy on a specific date. If agreed, this should be documented in writing. This is not possible in cases involving joint tenants where some tenants wish to remain as all parties must agree to end the tenancy.
- **Notice to quit:** the tenant can serve notice to quit on a landlord to end a periodic tenancy. The notice must be **i)** in writing; **ii)** give the right amount of notice; and **iii)** end on the correct day. It is critical that the tenant complies with the specific format to be valid. The minimum notice period depends on whether rent is paid weekly (at least 4

weeks) or monthly (at least 1 month). The tenancy agreement may specify a longer notice period. A valid notice to quit cannot be withdrawn.

- **Joint tenants:** the tenant should be informed that if **joint tenants** are involved, a joint periodic tenancy can end if only one tenant gives valid notice to quit.
- **Serving notice to quit:** the tenant should check the tenancy agreement for a notice clause. Otherwise, the tenant should use registered post or recorded delivery; it can also deliver the notice personally but should get proof of delivery. The address for service should be listed in the tenancy agreement; otherwise, the tenant should contact the landlord's agent to obtain this.
- **Email service should not be used** unless the tenancy agreement expressly states notice can be emailed or the tenant has proof that the landlord has agreed to accept notice by email.

Eviction Defence

Disclaimer: This fact sheet should only be used for the purpose of providing advice to tenants living in rented housing in England. This is because the rules on eviction / possession are different for Wales, Scotland and Northern Ireland.

- In general, the eviction process can be broken down into the following steps:

    1. The landlord serves a (valid) eviction notice on the tenant;
    2. The landlord commences court proceedings;
    3. A court hearing takes place;
    4. The landlord applies for a warrant for possession;
    5. The county court bailiff / High Court Enforcement Officer carries out an eviction.

- Under the Protection from Eviction Act 1977, it is a criminal offence for a landlord to evict a tenant unlawfully (i.e. without following the correct procedure).

- It is also a criminal offence for the landlord to:
    - harass the tenant with the intention of getting them to leave the property;[2]
    - use or threaten violence against a tenant in order to gain entry to the property.[3]

- This means that a landlord usually has to commence court proceedings in order to evict a tenant.[4]

- For social housing tenants: social landlords must follow the Pre-Action Protocol for Possession Claims by Social Landlords. Amongst other things, this protocol requires the social landlord to try to resolve issues with tenant rent arrears without going to court.

Step 1: Serving the notice

- Type of notice: In most cases, the landlord must serve a notice in the prescribed form. The correct notice depends on the type of tenancy and the ground (if any) that the landlord wishes to rely on. Please see below for a list of some of the most common tenancies:

Landlord	Common tenancy	Notice
• Private landlord • Housing association	Assured tenancy	S.8 notice
	Assured shorthold tenancy	S.8 notice or S.21 notice
• Local authority (e.g., council)	Secure periodic tenancy (aka 'lifetime tenancies')	Notice seeking possession (specific requirements for ABS ground)
	Introductory tenancy	No prescribed form; however, certain criteria must be met

[2] Protection from Eviction Act 1977.
[3] Criminal Law Act 1977.
[4] Note: the landlord does not need to go to court in order to evict: (a) an excluded tenant (e.g., a lodger who is living with the landlord); or (b) a licensee. However, they can still be guilty of an criminal offence for using or threatening violence (see above).

- To work out what kind of tenancy the tenant has, you should check this tenancy status checker.
- Grounds: Usually, the landlord will have to give a reason (or a ground) for ending the tenancy. For example, under a s.8 notice one of the commonly used grounds is Ground 8:
  - Ground 8 will be satisfied if the tenant owes at least 2 months' rent both (i) at the date when the landlord served the notice; and (ii) at the date of the eviction court hearing.[5]
- However, under a s.21 notice (aka 'no fault eviction notice'), the landlord does not need to give a ground for eviction.
- Notice period: In the notice, the landlord must give the tenant the correct period of notice. You can check the amount of notice they have to give here: notice periods checker.
- Failure to follow the above steps will affect the validity of the landlord's notice.
- The validity of the landlord's notice can be affected by other factors. In particular, please see here: s.8 notice and s.21 notice.
- For social housing tenants: Depending on the type of notice and/or landlord's policy, the tenant can request a review of the landlord's decision to evict them. The review process is separate to the court process and should be commenced after receiving a notice. Please see here for further details (including deadlines).

Step 2: Commencing court proceedings

- Upon issuing a notice, the landlord will likely have a certain amount of time in which to commence court proceedings.[6] If they landlord is out of time, then the notice will lapse and a new notice must be served in order to bring court proceedings.
- Once the tenant receives the court papers, they should prepare a defence and/or counterclaim using either Form N11R or Form N11B. The tenant should file this with the court within 14 days of receiving the court papers.
- At this point the tenant should do the following:
  1. Provide details of their present circumstances;
  2. Put forward a defence; and
  3. (If necessary) put forward a counterclaim against the landlord.
     - Common counterclaims include:
       i. Disrepair in the property[7] (this can be used to reduce amount of rent arrears); and/or
       ii. Discrimination[8] (please see here).
- If there is a dispute on the facts, then the tenant should prepare and submit a witness statement to support their side of the story.
- Please see here for further advice on how to prepare a defence: Challenging an eviction - Citizens Advice; and Shelter Legal England - Possession proceedings process.

Step 3: Court hearing takes place[9]

- At the court hearing, the tenant will have the chance to explain why they want to stay in their home. If they have prepared a witness statement, they will give evidence under oath.
- After hearing the case, the court will normally take one of the following actions:
  - Dismiss the landlord's case (e.g. if the landlord has not followed the correct procedure);

[5] Please see here for the grounds for local authority tenancies: Understanding the possession action process: A guide for social rented tenants in England.
[6] Broadly speaking, the length of time depends on the type of tenancy and notice being served.
[7] Please refer to the 'Disrepair in rented accommodation' fact sheet for more information.
[8] Please refer to the 'Discrimination and harassment' fact sheet for more information.
[9] Note: If the landlord has served a s.21 notice, then they can use the court's accelerated procedure. Under the accelerated procedure, the court will normally just issue a possession order without having a hearing.

    - Order eviction in favour of the landlord (aka an 'outright possession order');[10] or
    - Make a suspended possession order.[11]
- S.8 notices: If the landlord is relying on Ground 8, then it is essential for the tenant to reduce their rent arrears below 2 months' by the date of the hearing. This is because the court must give the landlord possession of the property if Ground 8 is satisfied (see previous page).[12]
- Appeals: If the tenant is unhappy with the outcome, then they can appeal the court's decision. However, the tenant can only appeal on points of law (not fact). Please see here for the appeals procedure.

Steps 4 & 5: Carrying out an eviction

- The landlord can apply to the court to get a warrant for possession if:
    1. The tenant has not left their home by the date given in the outright possession order; or
    2. The tenant is in breach of the terms of their suspended possession order.
- If granted, then a county court bailiff or High Court Enforcement Officer (HCEO) will enforce the warrant and carry out the eviction.
- The county court bailiff / HCEO must give the tenant at least 14 days' notice before the eviction date. At this stage, the tenant may still be able to apply to the court to stop eviction (using Form N244).[13]

[10] The order will state when the tenant has to leave the property by. This is usually 14 or 28 days from the date of the hearing; however, the court can grant longer in cases of extreme hardship.
[11] A suspended possession order will enable the tenant to stay in their home, provided that they keep to certain conditions (e.g. paying rent arrears).
[12] Please see here: How to deal with rent arrears - Shelter England.
[13] Note: however this will not be possible in certain circumstances (e.g. if the landlord has obtained an outright possession order on Ground 8 for a s.8 notice): Can private tenants stop the bailiffs - Shelter England.

Disputes with Neighbours

Overview

Common disputes with neighbours include (but are not limited to) issues regarding noise, antisocial behaviour, boundaries, shared walls (also known as 'party walls') and hedges / trees.

Steps you can take[14]

1. **Keep records**

   Keep detailed notes of the issues and the steps you have taken to address them. These records may be useful if you decide to take further action.

2. **Talk to your neighbour**

   You may be able to resolve the dispute by communicating with your neighbour. If you do not want to approach them in person, you could write or call them.

3. **Complain to your neighbour's landlord (if applicable)**

   If your neighbour is a tenant, speak with their landlord to attempt to resolve the dispute. The landlord could be a private landlord, housing association or the council.

4. **Consider mediation**

   A mediator is an impartial person trained in resolving disputes. There may be a fee involved but mediation is likely cheaper than taking legal action.

   To find mediation services, you could take the following steps:
   - England and Wales: contact the Civil Mediation Council[15]
   - Scotland: contact the Scottish Mediation Network[16]
   - Your council or housing association could assist you if they provide mediation services[17]

5. **Complain to the council**

   Note that this information applies to England only.
   You can make a complaint to your council if the dispute relates to a statutory nuisance[18]. A statutory nuisance is a nuisance covered under the Environmental Protection Act 1990[19]. Issues may include, for example, noise, artificial light and accumulation of rubbish.

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[14] See the following resources for further information:
- https://www.citizensadvice.org.uk/housing/problems-where-you-live/complaining-about-your-neighbour/
- https://www.gov.uk/how-to-resolve-neighbour-disputes

[15] https://civilmediation.org/?r=7046&wcm_redirect_to=post&wcm_redirect_id=7046
[16] https://www.scottishmediation.org.uk/
[17] https://www.gov.uk/find-local-council
[18] https://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints and https://www.gov.uk/how-to-resolve-neighbour-disputes/complain-about-noise-to-the-council
[19] https://www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-nuisances-england-and-wales

If the council finds that a statutory nuisance is taking place, they will issue an abatement notice notifying the person responsible of steps they must take in respect of the nuisance.

6. **Contact the police**

   If your neighbour is breaking the law (or you suspect that they are), you should contact the police.

   Issues could include threatening or violent behaviour or harassment (including, for example, because of sexuality, religion or ethnic background)[20].

   If the crime is ongoing, **call 999**.

   Call 101 to report a crime that has already taken place.

7. **Take legal action**

   If the steps above do not work, you could take legal action.

   However, it is important to note that this may be an expensive option given that you will likely have to pay court fees[21] and also potentially solicitor fees.

   Citizen's Advice[22] or a law or advice centre may provide free legal advice.

   There are government resources available to assist you with finding legal representation[23].

What can a solicitor assist with?

Some of the issues a solicitor can help you with include (but are not limited to) the following:

1. **Obtaining a court order under Section 82 of the Environmental Protection Act 1990**[24]

   As mentioned above, this applies to England only.

   If your local council cannot assist with the statutory nuisance, you can make a complaint directly to the magistrates' court under section 82 of the Environmental Protection Act 1990.

   If the court decides that you have enough evidence of a statutory nuisance, it will issue a summons for the person responsible to attend a court hearing. You will have to attend the hearing to give evidence.

   While it is not necessary to instruct a solicitor, you can if you wish to do so.

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[20] Please refer to the 'Discrimination and harassment' fact sheet for more information.
[21] Court and tribunal fees - GOV.UK (www.gov.uk)
[22] Contact us - Citizens Advice
[23] Find legal advice and information: Find a legal adviser - GOV.UK (www.gov.uk)
[24] See these local council websites which provide further information of the steps: Statutory nuisance - Taking your own private action | Rochford Council and Private action (eden.gov.uk)

If the court finds in your favour, they will make an order which will require the person responsible to stop causing the nuisance. The order may also prohibit or restrict the nuisance from reoccurring.

2. **Party Wall etc Act 1996**[25]

Note that this act applies in England and Wales only.

In England and Wales, you must provide your neighbour with notice before performing building work near or on your shared property boundary or 'party wall'[26].

The Party Wall etc Act 1996[27] sets out a framework for preventing and resolving disputes in this area.

[25] Preventing and resolving disputes in relation to party walls - GOV.UK (www.gov.uk)
[26] Party walls and building work: Overview - GOV.UK (www.gov.uk) and Preventing and resolving disputes in relation to party walls - GOV.UK (www.gov.uk)
[27] Party Wall etc. Act 1996 (legislation.gov.uk)

Disrepair

Practical advice

- **Withholding rent payments:** Tenants should always be advised to continue paying rent, even if a landlord has failed to conduct repairs. Tenants should be reminded that withholding rent payments may entitle the landlord to start possession proceedings so the tenant risks facing eviction[28].

- **Lease agreement:** If possible, review the tenant's lease agreement to see if any express terms address notice, repairing obligations, quiet enjoyment and standards of repair.

- **Moving out during repairs:** the landlord cannot force a tenant to move in order to make repairs unless the tenant agrees to do so, likely on the basis that the landlord will pay for this. Before a tenant agrees to temporarily move out, they should ensure the terms and conditions for doing so. However, if repairs are significant and the tenant cannot access parts of their home for a period of time, the landlord is not legally required to provide alternative accommodation unless the lease says so or the landlord and tenant reached an agreement.

- **Rent deductions:** Tenants can try and negotiate a rent deduction if their access to or within the property is impacted during the repairs, but the landlord is not obligated to grant one[29].

LANDLORD'S REPAIRING OBLIGATIONS

1. **Section 11, Landlord and Tenant Act 1985 ("LTA 1985"):** the landlord (private, council or housing association) is legally responsible for the majority of repairs required in a tenant's home. Once the landlord has received notice, he must conduct the repairs in a reasonable time frame. The landlord's statutory repairing obligations include:
    - electrical wiring;
    - gas pipes and boilers;
    - heating and hot water;
    - chimneys and ventilation;
    - sinks, baths, toilets, pipes and drains; and
    - the structure and exterior of the property, including walls, stairs and bannisters, roof, external doors and windows.

2. **Contractual repairing obligations:** always check the agreement because a landlord may have specific or further repairing obligations to comply with, for example, to replace faulty appliances such as dishwashers or fridges. When reviewing the lease, note that a landlord cannot contract out of its statutory repairing obligations (s.12 LTA 1985).

3. **Fitness for human habitation – the Homes (Fitness for Human Habitation) Act 2018:** landlords must ensure that a property is fit for human habitation at the start of and for the duration of a tenancy (s.9A LTA 1985). This means that the property must be safe, healthy and free from things that could cause the tenant serious harm; it does not need to be "uninhabitable" to meet these criteria. Most tenancies require that a

[28] Please refer to the 'Eviction defence' fact sheet for further information.
[29] Please refer to the 'Lease changes' fact sheet for further information.

property is fit for human habitation, including councils, housing associations and private rentals, but this does not apply to lodgers, temporary housing or license agreements.

The law states that a property is unfit to live in if one or more hazards at the property were so bad that it would be unreasonable to expect the tenant to live there. Section 10 LTA 1985 includes hazards which qualify and 29 further hazards which are included in the Housing Health and Safety Rating System (s.2 Housing Act 2004). The most common hazards tenants encounter include:

- repairs;
- damp and mould;
- rats, mice and other pests;
- gas and electrical safety;
- fire safety issues;
- ventilation;
- lack of heating;
- structural disrepair; and
- facilities for preparing and cooking food.

Tenants may have multiple issues present, which will increase the likelihood that the property is unfit. Tenants should be informed that the property is only unfit if the hazards make it unsuitable to live there even if they have no choice but to stay at the property in those conditions. In other words, a landlord can argue the property is habitable because the tenant *chooses* to live in those conditions. However, whether it is deemed such is based on the court's determination.

Once a tenant notifies the landlord and/or agent that repairs are required, the landlord and/or agent must conduct repairs within a "**reasonable time**" of receiving notice. What is reasonable will depend on the nature and severity of the repair(s) required and how these are the affecting the tenant(s). Repairs are considered urgent if they place tenants at risk of serious harm. This may be greater if tenants include vulnerable and older people, children or individuals with health and mobility problems. A tenant should notify the landlord if they believe the letting agent is not addressing the issue or if the tenant suspects the landlord has not been informed.

4. **Section 4, Defective Premises Act 1972** ("**DPA 1972**"): landlords also have an implied duty to ensure tenants are kept reasonably safe from defects caused by the landlord's failure to maintain and repair the property. Relevant defects are defined in section 4(2) DPA 1972 and there is extensive case law covering all manner of defects.

   In practice this can be applied to many disrepair disputes. In brief, the landlord's obligation to conduct maintenance or make repairs arises if the landlord knows or should have known about the relevant defect. The key issue is whether the landlord took reasonable steps in all circumstances to ensure the tenant was kept reasonably safe. "All circumstances" is fact-specific to the tenant's situation but would include any harm caused by inadequate inspections.

   Tenants **do not** have to give the landlord notice of the relevant defect. The tenant must show **i)** that there was a relevant defect at the property; **ii)** that the landlord should have known about it; and **iii)** the landlord failed to take expected steps to keep the tenant safe. For example, if there were broken windows at the tenant's property, the landlord should be aware of this as the court would expect him to have conducted an inspection or instructed a third party to do so.

FAILURE TO CONDUCT REPAIRS

Practical remedies

- **Contact the council:** a tenant should complain to the local council's **private rental team** if a landlord and/or agent fails to acknowledge or conduct repairs. This is critical if a tenant believes the disrepair is a serious threat to their health or other tenants. The tenant should request an inspection (*note: there are templates available*). It should include the tenant's address, the landlord and/or agent's name; when the repairs were requested; the details of the repairs required and how the landlord's failure to act is negatively affecting the tenant.

  If the problems are severe, the council will likely refer the tenant to the **environmental health team** who can conduct its own inspection and/or instruct the landlord to conduct the necessary repairs; give the landlord legal notice to conduct the works and/or fine the landlord. Note that this is not possible for social tenants if the local council also acts as landlord because it cannot take action against itself.

  - **Evidence:** before contacting the council, the tenant should be advised to gather all evidence relevant to the repairs and severity. This should include emails, call records, and photos demonstrating the level of disrepair. If possible, the tenant should be advised to compile a short chronology which reflects key issues and lack of engagement.

  - **Request an appointment / email:** some councils accept complaints and requests by email which can be found on your local council's website. Alternatively, a tenant may be able to request an appointment by visiting their local council office to report the problem and/or plan for a site visit.

  - **Follow up:** councils are incredibly busy so the tenant should be warned that persistence is required. A tenant should try to set reminders to follow up with council officials if they have not received any response.

- **Complain to an Ombudsman:** the tenant's avenue for complaint depending on the type of landlord or property professional they are dealing with.

  - **Housing Ombudsman Scheme:** all housing associations and local housing authorities (councils) must belong to this scheme. A tenant can submit a formal complaint online if their landlord is a member. Some private landlords can be voluntary members which tenants can also check by searching the register.

  - **Private sector landlords:** currently, private landlords are not required to belong to any redress schemes. However, this should be monitored on an ongoing basis as the Government introduced the Renters (Reform) Bill in 2023 which represents a radical overhaul of the private rental sector and would introduce a mandatory Landlord Redress Scheme for all residential landlords. It is worth checking if the landlord belongs to the National Residential Landlords Association ("**NRLA**"), in which case a tenant can submit a complaint as failure to address disrepair is a breach of the NRLA's Code of Practice.

- **Property managers and estate agents:** the Government mandates that estate agents, letting agents and property managers belong to either **The Property Ombudsman** ("**TPO**") or Property Redress Scheme ("**PRS**"). Private tenants who deal with property managers will need to confirm which scheme the business belongs to and then submit a complaint online (TPO portal/PRS portal). Before making a complaint, the tenant must have complied with the respective complaints process which includes exhausting the in-house complaints procedure.

- **Conduct the repairs:** a tenant can make the necessary repairs themselves and then look to recover those costs from the landlord in exchange for a rent deduction or refund. This is an appropriate remedy if the repairs are urgent, minimal or inexpensive. However, tenants should be warned against making expensive or complex repairs. If they do, there is a risk that the landlord could challenge the amount of rent withheld and take action against the tenant for non-payment. The tenant's agreement may also contain a clause which prevents a tenant from conducting repairs and/or doing so in exchange for a rent deduction.

Legal remedies

- **Formalities - Pre-Action Protocol for Housing Condition Cases ("the Protocol"):** before lodging any legal complaint against the landlord, the tenant must first comply with the Protocol. The protocol sets out steps which the court expects both parties to have followed before progressing to legal action. The Protocol should be used if the landlord is in breach of its statutory repairing obligations under LTA 1985 or DPA 1972, claims from breach of contract (implied and express) and common law nuisance and negligence claims. You should outline the process for the tenant, identify timelines they need to adhere to and point out that if the tenant does not comply and proceeds with its claim, the court can impose costs and other sanctions for doing so.

- **Court orders:** the tenant can apply for a court order requiring "**specific performance**" so that the landlord conducts repairs required by the lease agreement. If necessary, an application for a "**mandatory injunction**" can be made simultaneously to cover any repairs which fall outside the lease.

- **Small claims:** tenants can bring a claim in the County Court against their landlord for damage connected to disrepair, typically by claiming breach of contract and/or negligence. Tenants should always be advised of the risks associated with this course of action, including costs, time constraints and the suitability of their claim.

Lease Changes

Types of tenancies

Most people will have what is called an 'assured shorthold tenancy' (sometimes referred to as an 'AST'). If your landlord is a private landlord or housing agency, your tenancy started on or after 15 January 1989, this property is your main accommodation and the landlord does not live in the property – you have an assured shorthold tenancy.

The following advice will apply to tenants in assured shorthold tenancies, however if you have a different type of tenancy, other rights or restrictions may be applicable in addition to or instead of the ones listed here. If one of the points in the list applies to you, you are not in an assured shorthold tenancy:

- it began or was agreed before 15 January 1989
- the rent is more than £100,000 a year or the rent is less than £250 a year (less than £1,000 in London)
- it's a business tenancy or tenancy of licensed premises
- it's a holiday let
- the landlord is a local council

You can use Shelter England's tenancy checker to understand what your tenancy type is.

Changes to tenancy agreements

A tenancy agreement can normally only be changed if both you and your landlord agree. If you both agree, the change should be recorded in writing, either by drawing up a new written document and setting out the terms of the tenancy or by amending the existing written tenancy agreement and reflecting on the change necessary.

Your landlord might charge a fee for changing your tenancy agreement, however this fee can only be charged if you have asked for the change in the lease. If your landlord asked for the change, they can't charge such a fee. If your landlord charges you for a change you didn't ask for, you can ask for the money back or you might be able to complain about them to your local council.

A verbal agreement can also be changed. The change will usually be verbal too. In the case of a dispute, the following can be evidence of change:

- written proof of the change - for example, an email or text message
- there were witnesses to the new agreement
- both parties have acted on the change - for example, by paying and accepting a new rent

Rent increase

Your landlord can't increase your rent whenever they like or by any amount. If you disagree with your rent increase the best thing you can do is talk to your landlord and try to reach an agreement to pay a lower rent. If you can't reach an agreement you can challenge the increase.

If you wish to challenge a rent increase, it is advisable to do it before the rent increase starts. If you make the first payment of the new rent, your landlord will usually be able to treat this as an acceptance of the new rate and you won't be able to challenge it.

Depending on the type of tenancy you have, your landlord must follow set rules. Check what type of tenancy you have.

You'll usually be given an 'assured shorthold tenancy' (see above). If this is the case, your landlord can increase your rent based on something called 'market rates'. This is the average cost of similar properties in your local area, so you can check the rental prices around your area (using property search websites) to get an idea of the average prices of similar properties close to you.

Fixed-term tenancy

If your fixed term tenancy (running for a set period such as a 1 year contract) agreement allows your rent to be increased before the fixed term ends, it has to say when and how it will be done. This is known as having a 'rent review clause'. Your landlord can't increase your fixed term has not come to an end and there is no such rent review clause. You can contact your nearest Citizens Advice for help if this has happened.

Your landlord can increase your rent if you sign a new tenancy agreement when your fixed term ends. Your new rent must be included in your new agreement or your landlord needs to tell you about the new rent amount before you sign the agreement. If they just tell you the new amount, also ask for it in writing.

If your fixed term has ended there is no specific clause telling you what will happen at the end of the fixed term period and you continue to rent, your landlord needs to give you a notice (called Section 13 Notice) before they can increase your rent. Be mindful that even if there is a rent review clause, your landlord will still need to send you a Section 13 Notice.

If your fixed term has ended and there is a specific clause telling you what will happen at the end of the fixed term period and you have a rent review clause, your landlord will usually not need to service a Section 13 Notice. However if there is no rent review clause in this scenario, your landlord will still need to use a Section 13 notice to increase your rent.

The amount of notice your landlord must provide you depends on the length of your tenancy period.

Length of your tenancy period	Minimum notice you have to be given
1 year	6 months' notice
Between 1 to 11 months	One period of the tenancy
Less than 1 month	1 month's notice

Periodic tenancies

If you have a periodic tenancy (rolling on a week-by-week or month-by-month basis), your landlord can just increase your rent by reaching an agreement with you. Your landlord must get your permission if they want to increase the rent by more than previously agreed and the rent increase must be fair and realistic, which means in line with average local rents. If you didn't agree that your rent could be increased during your tenancy, your landlord can only

increase your rent by using a Section 13 Notice. Your landlord can only use a section 13 notice to increase your rent every 52 weeks. The amount of notice they have to give you will be the same as the notice for fixed term tenancies.

You might have agreed with your landlord when you started your tenancy that your rent could be increased at a certain point. In this case your landlord can increase your rent in the way you agreed - this could be verbally or as your tenancy agreement says.

You can also see Citizens Advice to check if you can get help with your rent. See also Shelter England for rent changes in periodic tenancies.

If you disagree with your rent increase you can try to agree a new amount with your landlord or challenge it by appealing to a rent tribunal before the increase takes place.

Disability support

If you or someone you live with have a disability, the Equality Act 2010 may provide you with certain rights called 'reasonable adjustments'[30]. These can be changes to policies, practices or terms of your agreement. They can also mean providing extra equipment or support - the law calls this auxiliary aids. See Citizens Advice for more information regarding asking for adjustments in tenancy agreements in cases of disability.

[30] Please refer to the 'Discrimination and harassment' fact sheet for further information.

Excluded Occupiers, Roommates, Lodgers

Excluded Occupiers

An excluded occupier is someone with limited rights to remain in a property. An excluded occupier's right to live in a property often is based on a contract or the landlord's permission (e.g. lodgers and people living rent-free with family or friends).

You are likely to be an excluded occupier if:

- Your landlord lives at the property, and you share any of the accommodation (such as a kitchen, bathroom or living room); or
- You do not pay any rent for your accommodation; or
- You live in a hostel or refuge; or
- You are living in your accommodation for a holiday.

Excluded occupiers are only entitled to reasonable notice before being asked to leave and a court order is not required for them to be evicted.

If you rent a room in your landlord's home and share living space with them such as the bathroom or kitchen, then you might be what's commonly known as a **lodger**. Further, if you're a lodger, you're probably also considered an excluded occupier which will mean you have very few legal rights. You can find guidance about your rights as a lodger on GOV.UK.

You must make sure the rent is paid, otherwise your landlord could try to evict you[31]. Your agreement will normally state:

- how much the rent is
- what it includes
- who it should be paid to
- when it should be paid
- how it can be increased[32]

If you pay your rent weekly, your landlord must give you a rent book which is a document used by your landlord to keep record of all the rent payments you make. However, this doesn't apply if you pay for meals as part of your rent - this is known as 'paying board'. If you don't pay rent weekly or don't have a rent book, it's best to keep proof of your rent payments - for example, using bank statements or receipts.

Types of Agreement with the Landlord

There are 2 types of agreement you might have with your landlord - you'll either have an 'excluded licence' or an 'excluded tenancy'.

- You probably have an excluded licence if your agreement doesn't give you exclusive access to any area in the property and your landlord can go wherever they like.
- You probably have an excluded tenancy if you have exclusive use of your own room that your landlord isn't allowed to enter. You'll still share other living space with them.

[31] Please refer to the 'Eviction defence' fact sheet for further information.
[32] Please refer to the 'Leave changes' fact sheet for further information.

If you have an excluded tenancy, you have more rights around repairs than if you have an excluded licence. If you have an excluded licence, your landlord doesn't have the repair responsibilities that are set out in the Landlord and Tenant Act 1985 because it only applies to tenancies. However, your landlord should still take steps to make sure your home is safe and that you won't be injured because of the condition of your home.

Does your landlord need a possession order to evict you?
If you are an excluded occupier, your landlord doesn't need a possession order from the court in order to evict you; they can simply ask you to leave, but they could choose to obtain a court order as well.

Evicting you peaceably
As long as your fixed-term agreement has come to an end, or you've been given notice to leave on your periodic agreement, your landlord can evict you peaceably. For example, they can change the locks while you are out. If your landlord uses, or threatens to use, physical force against you to evict you, they might be committing a criminal offence and you should contact the police.

Living with Housemates as a Tenant

If a housemate is not paying rent or energy bills
If you have an individual tenancy, you're only responsible for your own share of the rent. Your landlord cannot ask you for money if a housemate does not pay their share. But if you have a joint tenancy with your housemates then you as an individual can be held responsible for all the rent.

If you and your housemates are responsible for paying the energy bills you should ensure that you pay your agreed share and keep a record of this. If your name is on a bill and someone fails to pay their share, you will usually have to pay the whole bill and try to get the money back from your housemate.

If you pay your landlord for energy
You don't have to pay the energy supplier as well as paying your landlord for energy supply. Therefore, should a supplier contact you requesting payment, tell the supplier that you're not responsible for paying the bill. They should send the bill to your landlord instead. If you're not sure whether your rent covers energy bills, check your tenancy agreement. If you don't have a copy of the tenancy agreement, ask your landlord for a copy.

Living in a house in multiple occupation (HMO)
Many people in shared houses or flats live in houses in multiple occupation (HMO). If you live in an HMO, your landlord has extra legal responsibilities and may need a licence for the property. You'll usually be living in an HMO if you live with several people who aren't part of your family. If you live in a HMO the landlord must also make sure your home meets certain safety standards. For example, if you live in an HMO your landlord must keep shared areas clean and repair faulty gas and electrical appliances, so your home is kept safe.

Complaining about a Landlord

If your landlord isn't looking after your home properly you should complain to get the problem sorted out. In the first instance, discuss the issue calmly with your landlord to try and resolve

it. Explain what the problem is and ask them to fix it. You can find your landlord's name and contact details (including their address) on your tenancy agreement or your rent book. Alternatively, you could ask the letting agent or property manager to share these details, which they are obliged to do.

If speaking to your landlord does not help the situation, you can make a formal complaint to your local council who can help with complaints about:

- repairs that cause a risk to your health and safety not being done (e.g. faulty electrical wiring not being fixed)[33]
- illegal eviction
- harassment
- dishonest or unfair trading behaviour

[33] Please refer to the 'Disrepair in rented accommodation' fact sheet for further information.

Traveling or Moving with Children Abroad

Law, regulations and cultural norms vary widely between countries, so it's important to understand the differences between your country of residence and the one you're moving to, ahead of making the move. As a first step it would be useful to contact the appropriate embassy or consulate who can share relocation information with you. Some of the areas you might need to consider, and research include:

- Passport and visa requirements
- Education options for children
- Shipping possessions and pets
- Medical insurance
- Living costs
- Pension options
- Local tax obligations

School Considerations

Give as much notice as possible to your child's school or childcare provider of your intention to leave the country. Be aware that many private schools have a notice period during which you must inform them of these changes — after this period you may be charged.

Choosing a school curriculum with maximum international transferability, one that is recognized by education systems across the world, can help ease the transition of integrating into the new school (and re-integrating into the home country in the future). A growing number of schools based overseas follow the English National Curriculum, which may be more familiar to your children and a great help should they wish to return home to further their education.

UK Tax Considerations

Ahead of moving overseas, you will need to notify HMRC, the UK tax authority, because your tax obligations will change. Ensure that you have checked your HMRC tax status using the Statutory Residence Test — you may still be required to pay UK tax. A P85 form notifies HMRC that you are leaving the country and helps ensure that you'll be taxed appropriately in the UK.

If you own a UK property and plan to let it out, any income remains taxable in the UK even when you are UK non-resident. However, if your intention is to renovate your property and then sell it shortly afterwards, the tax implications are very different. Any profit made on selling is likely to be charged as income tax based on your income tax band, rather than attracting capital gains tax which is charged on the sale of assets.

Moving abroad with children as a single (divorced or separated) parent

Custody agreements arranged during divorce proceedings or agreed by a Court will often restrict a parent's permission to unilaterally take a child out of the country without the second parent's permission if that second parent has parental responsibility (details of parental responsibility linked here). You will therefore need to ensure that your relocations plans comply with existing agreements or court orders. [34]

A letter from the person with parental responsibility for the child is usually enough to show you've got permission to take them abroad. You might be asked for the letter at a UK or foreign

[34] Please refer to the 'Child contact arrangements' fact sheet for more information.

border, or if there's a dispute about taking a child abroad. The letter should include the other person's contact details and details about the travel plans.

In England, it is a criminal offence to take a child out of the country without the proper permission. If you commit a wrongful removal the matter can be referred to the police and parents are frequently prosecuted for this offence. Being found guilty carries the risk of a prison sentence. There is also a risk that your child may be taken from you and handed to the other parent or to another suitable relative until the possible return of the child and/or future care has been resolved. It is advisable that you consult with an experienced family lawyer as a divorced or separated parent wishing to relocate with your children.

You'll need to apply to a court for permission to take a child abroad if you don't have permission from the other person or people with parental responsibility. When seeking court approval to relocate with your children, you must be prepared to provide information on:

- The proposed accommodation for the children, its suitability and cost
- Proposed schooling arrangements
- How the parent seeking to relocate with the children will provide financially
- Proposals for maintaining contact between the children and other parent
- The reasons for the proposed move

When a child is taken abroad without the required permission

If the consent of the other parent (that has parental responsibility) or court order is not forthcoming, then a parent can still move abroad but can only do so without the child. If a parent moves abroad with a child without first obtaining the other parent's agreement or a UK court order giving permission for the child's relocation – that could child abduction which is a criminal offence and could lead to the child being brought back to the UK under the Hague Convention.

If you suspect that your child's other parent wants to take the child abroad to live without your prior agreement or a court order which grants permission to take the child abroad to live, then you can apply to court for a prohibited steps order to prohibit the parent from taking the children out of the UK. Any breach of such an order would have consequences for the parent who removes the child. It is advisable that you engage child custody solicitors to assist with the process. It is vital that the evidence of the proposed move is assessed before making the court application but in urgent cases child law solicitors can act fast to get an order to stop the child's removal.[35] Other practical steps which you may want to consider include:

- Calling the police on 999 if you think your children will be taken out of the UK in the next 48 hours. The police can issue a 'port alert' which will stop them being taken out of the UK.[36]
- Obtaining your child's passport.
- Speaking to the police and making a detailed statement for the record.
- Contacting HM Passport Office and ask them to surrender or not grant a passport to the child. They may want to see a court order but can surrender a passport if you're an unmarried mother wishing to object.

[35] OTS Solicitors: https://www.otssolicitors.co.uk/news/can-my-ex-take-my-child-to-live-in-another-country/
[36] Citizens Advice: https://www.citizensadvice.org.uk/family/making-agreements-about-your-children/your-ex-partner-is-taking-your-children-without-consent/

If your child has already been relocated by their other parent without your consent or a court order, and you want your child to return to the UK, as a matter of priority, you should check whether your child is in either a Brussels IIa or a Hague Convention country (the conventions under which countries ensure that children are returned to the country where they usually live as quickly as possible). You can apply for their return via the central authority in England and Wales: the International Child Abduction and Contact Unit. You should make this application immediately. If 12 months have elapsed, it is likely to be more difficult for the child to be returned as they may be settled in their new environment.

If your child is in a country that is not part of one of these international conventions, then it may be more difficult to secure their return. You may have to start court proceedings in the country where your child has been abducted to or come to an agreement with the other parent. In this instance it can be beneficial to speak to the Foreign and Commonwealth Office for advice. The Child Abduction Unit can provide practical help when dealing with authorities in non-Convention countries.

Resolving Marital Property

Agreement outside of court is the most amicable and affordable way to resolve marital property. There are several ways this can be done.

Mediation

A mediator can help you and your ex-partner agree on how to split money and property, without taking sides. Mediation can be quicker and cheaper than asking a court to decide. A mediator can also decide that mediation is not right for you (for example, if there's been domestic abuse and you need to go to court instead). Although you don't have to try mediation, if you later go to court, you will usually have to show that you attempted it.[37]

To get started you must attend a mediation information assessment meeting (MIAM), unless there was domestic violence in the relationship. A MIAM usually costs about £120. If you need more mediation sessions, they cost more and fees vary depending on where you live. You do not need to attend a MIAM if there as domestic violence in the relationship. It's important that you and your ex-partner are honest when you talk about your finances. If your ex-partner later finds out you tried to hide something from them, any agreement you make might not be valid. Everything you say in mediation is confidential.[38]

At the end of mediation, you'll get a document showing what you agreed. This agreement is not legally binding. If you want a legally binding agreement, you need to draft a consent order and get a court to approve it. But, having a document from mediation is a strong starting point for drafting a consent order.

Consent Order

The simplest and least expensive way to divide property during a divorce is through a financial agreement. This helps to avoid uncertainty. To make the financial agreement legally binding, a consent order will need to be drafted by the parties. This consent order should lay out how assets are going to be divided.

The following formalities should be completed:

- The agreement should be signed by the parties, two photocopies taken and a court fee paid[39]
- A statement of information form and a notice of an application should be completed

The court can then be asked to approve the order. This can be done when divorce is applied for or any time after, and it will take effect after the final order is given in the divorce.[40] A judge will consider whether the consent order is fair, and approve it if so without a hearing. If they think it is not, they may request changes.

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[37] Money and property when you divorce or separate: Getting a financial agreement - GOV.UK (www.gov.uk)
[38] Citizens Advice: Using mediation to help you separate
[39] Family Court Fees: Family court fees (EX50) - GOV.UK (www.gov.uk)
[40] Please see 'Divorce Process' factsheet for more information.

Absence of agreement

The law in this area is very fact sensitive, and in the absence of agreement it is difficult to precisely calculate what either party will receive. When approaching resolution, you should first identify whether any of the available assets will likely be treated as 'non-matrimonial property' or 'matrimonial property', as this will help to determine the strength of each spouse's claim to it.

Matrimonial and non-matrimonial property

Matrimonial property will be that which was acquired, other than through gift or inheritance, by the endeavours of one or both parties during the marriage. If the property is treated as 'matrimonial', both parties to the divorce will have a strong claim to an equal 50% share in it under the 'sharing principle'. Note that some caselaw suggests that where matrimonial property is a 'non-family asset', which has never been pooled for the benefit of the marriage but always kept separate, the court may order that the contributing party can retain it.

Non-matrimonial property will be property which was:

- Acquired by one spouse *before* the marriage date
- Acquired by one spouse during the marriage, by a *gift or inheritanc*e from an external source, without any contribution from the other

This will likely be retained by the party who acquired it, subject to the principles and exceptions.

Principles

If any of the following factors are present in your case, this may justify the sharing of property that meets the definition of 'non-matrimonial property' outlined above:

Need: First, you should identify and calculate a 50% share of the matrimonial property, using the definition above. If one party's needs cannot be met with that 50% without recourse to the non-matrimonial property, then that party may have a claim for a share. For example, investment properties acquired solely in the name of one party will not be shared unless the other party demonstrates that their needs cannot be met without the proceeds of sale of that property.

Relationship length: Caselaw suggests a party to a longer marriage will have a greater claim to non-matrimonial assets.

Value and nature of the property: If property represents a modest contribution to overall assets, many years ago, and has no sentimental value, less weight will be attached to the fact it is 'non-matrimonial'.

Mingling: If non-matrimonial property has been intermixed with matrimonial property, then less weight is attached to the fact it is non-matrimonial property and it may be shared.

Compensation: If there are any relationship generated disadvantages, they may be compensated.

Equality: It is important to note the lack of hard rules. Per The Matrimonial Causes Act 1973, all circumstances will be considered by the court. The proper approach in a normal case is to apply the sharing principle to matrimonial property, splitting it 50%, and then the court will consider whether overall the balance is appropriate. The awards made however are entirely at the court's discretion, and there is no certain calculation which can be applied at the outset in the absence of agreement.

Main matrimonial home

Special treatment is given to the main matrimonial home, if you have identified one. This will be property which the spouses occupy or have occupied as their home, and it will be treated as matrimonial property irrespective of how it was brought into the marriage. Both parties will have 'home rights' of occupation until a court orders otherwise in divorce proceedings.

Home in joint names

The parties should try to agree whether they will sell the house and agree a split of the proceeds, or whether one of them wishes to remain and buy the other out. If they cannot agree, the court will make an order as to what will happen to the home.

Home in single name

The party not on the title deeds ('B') may be able to show a beneficial interest in the matrimonial home owned by the other ('A'). For example, where A and B had an implied or epress agreement between them on ownership. Alternatively, B could argue that they suffered a detriment because they relied on A's assurances[41].

A Matrimonial Homes Rights notice should be obtained whilst marital property is being resolved if one party is not on the title deeds, so that if the other party attempts to sell the house a purchaser will be notified of their interest.

References:

Money and property when you divorce or separate: Getting a financial agreement - GOV.UK (www.gov.uk)

Divorce And Property Owned Before Marriage | Divorce-Online

Occupation rights for sole owners and their married or civil partners - Shelter England

Living together and marriage: legal differences - Citizens Advice

Proceedings for financial orders: matrimonial and non-matrimonial property: general principles | Practical Law (thomsonreuters.com)

Proceedings for financial orders: matrimonial and non-matrimonial property: inherited, pre-acquired and post separation assets | Practical Law (thomsonreuters.com)

Property considerations in proceedings for financial orders on divorce | Practical Law (thomsonreuters.com)

[41] Proprietary Estoppel | Proprietary Estoppel Claims | Mullis & Peake (mplaw.co.uk)

Child Contact Arrangements

If your relationship ends and you have a child, you will need to agree with your ex-partner where your child will live and how much time they spend with each of you. This is called making 'child arrangements'.[42]

Child arrangements are usually an **informal agreement**, but it may help to write them down. You will only need to go to **court** if there has been violence or abuse in your relationship, or you cannot agree.[43]

Background

What is contact?

After a decision is made about where your child will live, *contact* is the time the non-resident parent (the secondary carer) spends with the child.[44]

Contact between a parent and child can be direct, or, in other words, face-to-face, which can include contact during the day or overnight. Contact may also be indirect, which can include telephone conversations, Face Time, e-mails, letters, and gifts.

Who has a right to contact and how much contact?

Contact is primarily the right of the child and not of the parent or any other person. Therefore, parents do not have an automatic right to contact. However, it is expected that where parents have separated, the parent the child lives with allows a reasonable amount of contact with the other parent. Contact should only be restricted where it is necessary to protect the child's welfare. In fact, unless proven otherwise, the presumption is that the involvement of both parents in the life of the child is in the child's best interests.

There is no set amount of time that a parent should have contact with their child, and this will vary based on surrounding circumstances.[45]

The Out of Court Route: Child Contact Arrangements

When you are agreeing where your child will stay, you should also work out how you'll keep in touch with them when they're staying with your ex-partner. If you move away from your child, agree how you will keep up contact. You could ask your ex-partner to split travel costs or meet you somewhere with the child.[46]

Contact with your ex-partner

If you can, you should also agree a way to keep in touch with your ex-partner in case of emergencies. If you do not wish to speak directly to each other, you could agree to email, text or choose a friend that you can speak to each other through.[47]

Write down your agreement

You should write down what you've agreed - this is called making a parenting plan. It will be useful to refer back to this in the future if you can't remember what you agreed or something isn't working. Make sure both you and your ex-partner have a copy. You can change your plan together at any time.[48]

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[42] Source: Making child arrangements - Citizens Advice
[43] Source: Making child arrangements - Citizens Advice
[44] Source: Contact - childlawadvice.org.uk
[45] Source: Contact - childlawadvice.org.uk
[46] Source: Making child arrangements - Citizens Advice
[47] Source: Making child arrangements - Citizens Advice
[48] Source: Making child arrangements - Citizens Advice

Getting help without court involvement

If you need more help agreeing child arrangements, you can go to mediation. It's much easier and cheaper than going to court for help. A mediator is someone who will try to help you reach an agreement together.[49]

Alternatively, you can use a child contact centre, which is a safe place where your child and your ex-partner can meet or have 'contact'. This might help if you don't want to see your ex-partner or would like someone else to be there when the contact happens.[50]

If your arrangements aren't working

You can try to sort out something different by yourselves, or go back to mediation at any time to try to sort out disagreements. Even if you keep going back to mediation, it'll probably still be cheaper than going to court.

If you and your ex-partner have tried and failed lots of times to agree, you'll need to go to court for a decision that you'll both have to stick to.[51]

The Court Route: Child Arrangements Order and Child Contact Order

There are different types of court order, and the type that you need depends on what you have been able to agree on.

Child Arrangements Order

Any parent or other person who wishes to try and resolve contact disputes is required to attempt mediation prior to making an application to court for a Child Arrangements Order. A Child Arrangements Order is a legally binding order made under S.8 Children Act 1989 that sets out a child's living and contact arrangements (including who shall have contact with the child, how often it will be, and how long it will be).[52]

Child Contact Order

A Child Contact Order enforces the person with whom the child resides (the primary carer) to allow contact with someone else (a secondary carer). Contact Orders make it a legal obligation that the primary carer allows either direct (visits, overnight stays etc.) or indirect (telephone, letters etc.) contact with a secondary carer.[53] The Court will decide on whether direct or indirect contact is appropriate.[54]

A Child Contact Order cannot be made in respect of children over 18 years old. Any Child Contact Order made will apply until the child turns 16 years old. In all contact matters those able to apply are the child's parents or step-parents, those with Parental Responsibility and the child's Grandparents.[55]

Note that a 'Child Arrangements Order' replaces a 'Child Contact Order' – parents with a 'Child Arrangements Order' do not need to apply for a Child Contact Order, as contact will be covered in the Child Arrangements Order [56]

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[49] Source: Making child arrangements - Citizens Advice
[50] Source: Making child arrangements - Citizens Advice
[51] Source: Making child arrangements - Citizens Advice
[52] Source: Contact - childlawadvice.org.uk
[53] For more information on short and long term trips abroad with children, please see the 'Travelling Abroad with Children' factsheet.
[54] Source: Child Contact Order | Ringrose Law Solicitors
[55] Source: Child Contact Order | Ringrose Law Solicitors
[56] Source: Making child arrangements if you divorce or separate: If you cannot agree - GOV.UK (www.gov.uk)

Legal Aid

Legal aid can help with the costs of mediation if you meet the financial requirements. Legal aid can help with the costs of going to court where there is evidence of domestic abuse or child abuse.[57]

[57] Source: Contact - childlawadvice.org.uk

The Divorce Process

On 6th April 2020, the Divorce, Dissolution and Separation Act 2020 ('2020 Act') came into force which reformed the divorce process to remove the concept of fault when requesting a divorce. This is also known as 'no fault divorce.' As of 6th April, a spouse can make a divorce application to the court without having to prove any fault or separation which has caused their marriage to break down irretrievably. The practicalities of the reforms are set out below.

- If you want to end your marriage, you can apply for a divorce. If you want to end your civil partnership, you can apply for a dissolution. The process is the same for both.
- You don't need to give a reason to get a divorce or dissolution.
- You and your partner only need to make 1 application between you. You can send the application from:
    - both of you together - called a joint application
    - just you or your partner - called a sole application

- In general, the divorce process can be broken down into the following steps:[58]
    1. Check if a divorce can be filed;
    2. Decide whether to make a joint or sole application;
    3. A court hearing takes place;
- It normally takes at least 7 months to get a divorce. This is the same for joint and sole applications.

Check you can get a divorce

You can get divorced in England or Wales if all of the following are true:

- you've been married for over a year
- your relationship has permanently broken down
- your marriage is legally recognised in the UK (including same-sex marriage)

Decide whether to make a joint or sole application

- You must decide whether you want to make a joint application with your partner or whether you want to apply on your own.
- A joint application can be made if both of the following apply:
    - you both agree that you should get a divorce

you're not at risk of domestic abuse

Making a joint application with your partner

- You will need to decide if you want to apply online or by post. Your partner needs to use the same application method.
- You'll both have to separately confirm that you want to continue with the divorce application at each stage of the process.
- If your partner stops responding, you'll be able to continue with the divorce application as a sole applicant.

[58] In addition, you might need to consider how to divide your marital property or how child-sharing arrangements will work. Please see the 'Resolving Marital Property' or 'Child Contact Arrangements' factsheets for more information.

- If you want to apply for help with paying the divorce fee, both of you must be eligible to qualify.

Applying for a divorce on your own

Make a sole application if either of the following apply:

- your partner does not agree you should get a divorce; or
- you do not think your partner will cooperate or respond to notifications from the court

You will need to confirm you want to continue with the divorce application at each stage of the process.

<u>Decree Nisi and Decree Absolute (Conditional Order / Final Order as under the 2020 Act)</u>

A Decree Nisi or a Conditional Order issued by the Court when all legal and procedural requirements of the divorce process have been met. The Court essentially confirms that they do not see any reasons as to why you cannot get a divorce.

A Decree Absolute or Final Order is a document which is issued by the Court and it confirms conclusion of the divorce.

Apply for a Decree Nisi or Conditional Order:

- You can apply for Decree Nisi via an online portal on the gov.uk website (links are below). There is also the option to send an application by post. The application can be found on gov.uk website.
- You can only apply for a Decree Nisi or conditional order once a response to the divorce application has been provided by your partner confirming that they do not contest the divorce. You must also wait 20 weeks before making the application (this is only if the divorce process began after April 2022).
- A judge will then look at the application and decide whether or not to issue a Decree Nisi or conditional order. If approved, the Court will send a Certificate of Entitlement to both parties which sets out your entitlement to a divorce.
- You will need to wait (6 weeks) after it's been granted before applying to finalise your divorce.

Apply for a Decree Absolute or Final Order:

- This is an order which finalises your divorce.
- You can apply for a Decree Absolute online via an online form on gov.uk (links are below). There is also the option to send an application by post. The application can be found on gov.uk website.
- The court will check whether the application has met the time requirements (i.e submitted 6 weeks after the conditional order has been granted) and that there is no other reason not to grant the divorce.
- Once these two points are confirmed, the court will issue a final order or Decree Absolute
- If you are a sole application and have not applied to have your divorce finalised, then your partner can apply for the Decree Absolute. The condition being that they would have to wait an additional 3 months on top of the 6 weeks, before applying.

Application for a Decree Nisi: Get a divorce: Apply for a conditional order or decree nisi - GOV.UK (www.gov.uk)

Application for a Decree Absolute: Get a divorce: Finalise your divorce - GOV.UK (www.gov.uk)

Unmarried Separations

From a practical perspective, it is easier for unmarried couples to separate compared to their married counterparts. You don't have to take any legal action to separate, you can simply move out and say you are no longer in a relationship.

However, couples who are unmarried do not enjoy the same rights upon separation as married couples, and the financial claims available to either party may be limited to claims in relation to respective shares in jointly held property, shared finances or children from the relationship. Legally, the duration of the relationship is irrelevant and longevity does not confer any additional rights on either party. Contrary to popular belief, the concept of a 'common law marriage' simply does not exist in our legal system.

Given the absence of any rights or claims upon separation, save for those in relation to property, shared finances and children, there is little legal protection at the end of an unmarried relationship. No claims can be made of an income nature, in contrast to claims upon divorce where income, assets and pensions are divisible between the separating couple. This can leave clients in an uncertain position or in financial difficulty.

What to do when you separate
The law terms couples who lived together but are unmarried as 'cohabitees'. If you live together, there are some practical measures you should consider taking, namely informing relevant bodies of your separation.

This could include:

- Landlord of housing office.
- Council tax office.
- Mortgage lender.
- Utility companies.
- Tax office.

Separation Agreements
Many couples around the UK decide to visit a solicitor to draft a separation agreement which details how they will divide shared money, property and child arrangements moving forward. This is a written document which can provide a helpful blueprint for how the couple want to navigate their shared responsibilities and assets moving forward.

Financial Claims

1. Claims as a Co-Owner & Cohabitee

Upon separation, the default position is that cohabitees can make claims for their documented share in any jointly-held property.[59] The individual must have made a financial contribution to the purchase of the property to have any claim to a share in it. This is unlike marriage, where a party may still have a claim to a property without having made any financial contributions to the deposit, mortgage or upkeep.[60]

The size and nature of any claims post-separation will depend on how the property was held. There are two ownership structures for jointly-held property:

- Tenants in Common; or

[59] Citizens Advice: Ending a Relationship when You're Living Together.
[60] Please refer to 'Resolving Marital Property' fact sheet for more information.

- Joint Tenants.

Tenants in Common

If you hold the property as Tenants in Common, this means your share is proportionate to the contribution you made upon purchase and any contractual agreement between the other owners.[61] For example, if you contributed 50% of the deposit, you could hold a 50% stake in the property, subject to any alternative agreements. Similarly, if you contributed 25% of the deposit, you will hold a 25% stake in the ownership of the property. This can change over time, for example if you are the sole individual paying the mortgage capital. No credit is given for payments of the mortgage interest.[62] If your relationship has broken down, you do not technically need permission to sell your share of ownership of the tenants in common property. However, it may be impractical to attempt to sell this against the wishes of the other tenant(s) in common.

Joint Tenants

This is a different ownership structure, whereby the ownership of the property is shared in equal amounts between the couple. This remains unchanged over time, irrespective of financial contributions made while owning the property. As a joint unit, the couple will own 100% of this property and split it equally upon its sale.[63]

This ownership structure is also different to 'tenants in common' as it confers a right of survivorship, meaning that if one owner dies, their share in the property passes automatically to the surviving joint tenant, outside of the deceased's estate. If you own a property as joint tenants, and you separate, early consideration should be given as to whether to 'sever' the joint tenancy if you would not wish your partner to inherit your share automatically on your death. You do need permission of the other joint tenant to sell your share in this ownership structure, which can be more difficult after an acrimonious separation.

Homes held in your partner's name

The information above relates only to jointly-held properties. If the property is held in one name, there is often little legal recourse to asserting ownership in that property.

It is only possible if:

- you made a direct financial contribution to the mortgage capital of the property; or
- you agreed with your partner that you would have an interest in the property and you relied on this to your detriment; or
- your partner had assured you that you would be entitled to a share in the property and your relied on this to your detriment.

Unless your financial contribution can be proved and/or your intentions were documented, it can be time consuming and costly to prove that you have rights to the family home when the property is in your partner's sole name.

2. Housing Rights in Rented Property

If the property is rented, the rights that you have will depend on whether or not you are a named tenant. If you share the tenancy, you will both share equal rights to remain in the home.

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[61] Co-ownership and severing a joint tenancy: Tenants in common, *Practical Law UK*.
[62] *Ibid.*
[63] *Ibid.*

However, if one member of the relationship has been violent, you can apply to the court to exclude them from the home. This right is available even if they are the sole tenant.[64]

3. Claims in relation to Children

If you are the biological parent of a child but unmarried, only the mother of the child has full parental rights, unless:

- you jointly registered the birth of the child on or after 4 May 2006
- you made and registered a Parental Responsibilities and Parental Rights agreement. The agreement does not take effect until registration
- a court has made an order giving parental responsibilities and rights to the father.[65]

Even without parental responsibilities, the father must still support the child financially. If a father is not doing this, you can apply to the court and make a Child Maintenance claim.[66] You can find more information about these process here.

[64] Citizens Advice: Unmarried Separations.
[65] *Ibid.*
[66] Please refer to 'Child Contact Arrangements' fact sheet for more information.

Unfair Dismissal

Key Principles

Employees (as opposed to workers) who have at least **2 years' service** (or 103 weeks' continuous service in some cases) with their employer as at the date of their dismissal, have protection against being 'unfairly dismissal' and may be able to bring claims in the employment tribunal if so.

This may be the case where i) there was no **'fair'** reason to dismiss (see below), ii) the reason was **not sufficient** to justify dismissing / it wasn't reasonable in the circumstances, and / or iii) the employer did not follow a **fair** and reasonable **process**.

There are some cases where there is no minimum qualifying service requirement – see automatic unfair dismissal section below.

Who can claim ordinary unfair dismissal?

1. **Only Employees -** Only employees (not workers etc) are protected from unfair dismissals.[67] That being said, individuals labelled as workers, self employed etc., may be able to challenge status and assert they are de-facto employees. If successful, they could be protected against unfair dismissal and may be able to bring claims accordingly.

2. **2 years' Qualifying Service -**The employee must have been continuously employed for at least two years (but in cases where at least 1 week of notice has not been worked only 103 weeks' service is needed, except in gross misconduct cases where no notice is required)[68]. If they have worked for their employer for less than two years' they may still have a claim for automatic unfair dismissal (see below).

Ordinary unfair dismissal - Employers must have a 'fair' reason for dismissal?

In cases of ordinary unfair dismissal (where employees generally need 2 years' service or more to be eligible), the first hurdle for employers is to demonstrate that the reason for dismissal was a 'fair' reason, meaning the reason for termination would need to fall within one of the following five reasons:

1. **Conduct** – where an employee has behaved poorly, this is also known as misconduct. Examples include: being violent, failed to comply with a reasonable instruction, criminal activity, behaved inappropriately / in an unacceptable manner or gross misconduct (this includes fraud, gross negligence or serious insubordination).
2. **Capability** – where an employee is unable to do their job, their performance is poor or they do not have the right qualifications.
3. **Redundancy** – when an employee's role is no longer needed.
4. **A legal reason** – in cases where an employee can no longer do their job legally, for example, because they have lost the right to work in the UK or they have driving responsibilities as part of their role and they have been banned from driving.
5. '**Some other substantial reason**' – a term used for reasons that are not set out in law but an employer may be able to rely upon to show that they had a good reason for dismissal. Examples include: a fixed-term contract, third party pressure such as a client refusing to

[67] Section 94 Employment Rights Act 1996 ('ERA 1996').
[68] Section 108(1) ERA 1996.

work an employee, or an employee unreasonably refusing to agree to new terms and conditions of employment.

Ordinary unfair dismissal – Employers must act reasonably

As well as needing a **'fair'** reason to dismissal, employers must also act reasonably. Namely, **a fair process** must have been followed (which should be in line with any **company procedure** and in accordance with the **Acas Code on disciplinary and grievances** here where the dismissal is on grounds of conduct or capability), and finally the reason relied upon for the dismissal must be **enough to justify the dismissal**.

Automatically Unfair Dismissals – No Qualifying Service Required

Some dismissals will be automatically unfair irrespective of an employee's length of service – examples of potential automatically unfair dismissals include dismissals on the following grounds:

- Employee has made flexible working request
- Employee is pregnant or on maternity leave
- Employee has tried to assert / requested a legal right at work, for example, to be paid minimum wage or requesting to take statutory family leave (such as maternity / adoption leave etc.)
- Employee has taken action or proposing to take action in respect of a health and safety issue
- Employee has taken jury service
- Employee is a trade union member or representative or taking part in industrial action (such as striking)
- Because of a TUPE transfer (excepts in limited instances)
- Employee has reported wrongdoing ("whistleblowing")

Note - employers *can* potentially dismiss employees in the above protected categories provided it is not the actual reason for the dismissal. For example, a pregnant employee can still potentially be fairly dismissed for gross misconduct providing the conduct was the genuine reason, it was sufficient to warrant dismissal and a fair process was carried out.

Do they need to work in Great Britain?

To bring an unfair dismissal claim, employees must have been working in Great Britain at the time of their dismissal**,** or have a sufficiently close connection to Great Britain. This can be a complex area and depends on particular facts.

Have they been dismissed?

Evidence of dismissal will be required when brining a claim, showing one of the following actions by an employer[69]:

- Termination of contract of employment, with or without notice
- Refusing to renew a fixed-term contract on the same terms
- Allowing a limited term contract to expire
- Constructive dismissal

[69] Section 95 ERA 1996.

If not provided, employees should ask their employer for a written reason for the dismissal (noting employers are only required to provide this to employees with 2 years' service or more).

An employee has generally not been dismissed if:

- They have been suspended
- They resigned by choice
- Termination was by mutual consent
- An employee successfully appealed their dismissal
- The contract was frustrated.

Wrongful dismissal - was their contract breached?

Unfair dismissal is different from 'wrongful dismissal' which is when an employer has breached an employee's contractual terms (e.g. dismissing an employee without giving them a notice period or notice pay or not complying with a contractual disciplinary / capability policy). No minimum service is required to bring a wrongful dismissal claim.

Constructive Unfair Dismissal - Were they forced to resign?

If an employee resigns in response to a fundamental breach of their employment contract by the employer, this might amount to a constructive unfair dismissal. Such fundamental breach could be a single act / omission by employer, or a series of events resulting in a 'last straw' scenario.

Examples include: not being regularly paid the agreed amount without a good reason, being bullied or discriminated against, raising a grievance which is ignored by employer, or making unreasonable changes to working patterns without agreement.

A constructive dismissal is a difficult claim to succeed on – employees would need to show:

i) An actual or anticipatory breach of contract by the employer;

ii) That breach is so serious that it warrants employee resining in response / is the last in a series of incidents justifying resignation (known as a 'repudiatory breach');

iii) Employee must leave in response to the breach and not for any other reason; and

iv) Employee must not delay too long in terminating the contract in response otherwise he / she may be deemed to have waived the breach.

Constructive dismissals will not always be 'unfair' and are difficult claims to succeed on and further advice should be sought if intention is to assert this. In most cases, it is recommended that employees raise their concerns with their employer in the first instance. If after raising their concerns the employee still wishes to resign they should seek further legal advice.

What should an employee do if they believe they have been unfairly dismissed?

They should appeal the decision. Their employer should confirm the process for doing so, and typically such process will be outlined in the company disciplinary policy, but in any event should be conducted in accordance with the Acas Code of Practice noted above.

Time limit for bringing a claim

If the appeal is unsuccessful, employee may submit a claim for unfair dismissal within three months less a day from the 'effective date of termination'. This is either the last day of an employee's notice period or the date the employee was dismissed if there was no notice given.

In some cases employees can apply to the employment tribunal for an order for interim relief pending the substantive hearing. Interim relief applications must be made within 7 days of the effective date of termination.

What if they feel they have also been discriminated against?

If an employee believes they have been unfairly dismissed because of race, sex, any other 'protected characteristic' under the Equality Act 2010 or because they have 'blown the whistle', this may result in claims for discrimination, whistleblowing and / or unfair dismissal, which means compensation if successful could be uncapped.

Remedies:

Potential remedies include reinstatement / re-engagement (though rare in practice), and compensation for financial losses (generally subject to a duty to mitigate such losses) and in most cases subject to an upper cap prescribed by law. If additional claims are brought (for things such as discrimination, whistleblowing etc) additional potentially uncapped compensation could be awarded.

Further legal advice

Employees who are a member of a trade union should contact their union as soon as possible for further support and legal advice.

Employees should also check their home insurance policy to see if they have ‘legal expenses insurance’ which may cover their legal costs.

Withholding of Wages

1. At a Glance

1.1. The Employment Rights Act 1996 (ERA) protects workers from unauthorised deductions from pay.

1.2. Both **underpayment and non-payment** of an employee's wage or salary without their express permission or consent are included within the regulations.

1.3. The protection against unlawful deductions from wages applies to all **workers**, not just employees.[70]

1.4. There is **no qualifying period of service** required in order to bring a claim.

1.5. "Wages" are defined as "any sums payable to the worker in connection with their employment"[71].

1.1.1. Included: bonus (inc. discretionary if awarded and non-contractual), commission, holiday pay, service charges, tips, gratuities, furlough, statutory holiday pay, statutory sick pay, statutory maternity pay, statutory paternity pay, statutory adoption pay, statutory shared parental pay, statutory parental bereavement pay, statutory guarantee payments, payments in respect of any period spent on garden leave, commission which becomes payable after termination of employment (but not commission subject to a prior condition) and payments to which an employee is entitled for time off under Part VI ERA 1996

1.1.2. Excluded: advances of wages or payments under a loan, PILON, expenses, retirement payments inc. pension, redundancy payments, employer's pension contributions, earn-out shares and loan notes.

1.2. Wages must be "properly payable" i.e. payable under the contract of employment or some other legal entitlement (section 13(3) and (4), ERA 1996).

1.2.1. Conditional payments: where the entitlement to wages is contingent upon certain events occurring, and these events do not come to pass, then those wages will not have become "properly payable".

1.3. Only an **actual deduction** can be the subject of a complaint – a threat is not enough.

1.4. **Late payments are still deductions**. However, the tribunal will only order repayment of consequential losses not for repayment of the full sum again.

2. When can wages be withheld?

2.1. It is unlawful for an employer to make a deduction from a worker's wages unless:

a) The deduction is required or authorised by statute (e.g. National Insurance, tax or student loan payments); or

b) The deduction is required or authorised under the contract; or

[70] Section 230 Employment Rights Act 1996 ('ERA 1996').
[71] Section 27 ERA 1996.

c) The worker has given their prior written consent to the deduction[72].

2.2. As always there are exceptions[73], these include:

a) payments due to a statutory authority;
b) deductions due to taking part in a strike or industrial action (depending on the scenario, action short of a strike may or may not be basis for lawful deduction of pay);
c) payments to third parties (e.g. employees' contributions to a pension scheme or trade union dues);
d) deductions made in connection with any disciplinary proceedings held by virtue of a statutory provision;
e) where there has been an earlier overpayment of wages or expenses; or
f) the court has told the employer to take debt payments.

2.3. In addition to the above exceptions, if an employee is absent from work without authorisation or in breach of their contract their wages may be withheld.

2.3.1. Where **pay is received in return for work** (piece-workers and hourly-paid employees with no guaranteed hours), there is no right to wages unless work is actually done, absent any specific agreement to the contrary.

2.3.2. Where **pay is received in return for service** (salaried or weekly wage workers), the courts have drawn a distinction between voluntary and involuntary non-performance of work by the employee. The question is: was the worker ready and willing to serve but unable to do so or did they wilfully refuse? This is not an absolute rule. The court will first decide if there are facts from which a term can be implied.

2.3.2.1. Employees **remanded in custody or subject to bail conditions are unlikely to be entitled to their wages** as they have not been prevented from working by an "unavoidable impediment".[74]

2.4. Deductions lawfully made should not bring a worker's pay lower than the minimum wage except in certain circumstances (e.g. tax and NI deductions, loan repayments, advancement of wages etc).

3. Retail Workers

3.1. If a retail worker in a customer-facing role, employers can deduct from wages to cover any till shortages or stock shortfalls where the deduction is a result of:

a) any dishonesty or other conduct on the part of the worker which resulted in the shortfall; or
b) because of a contractual obligation to ensure that there are no such shortfalls[75]

3.2. Such deductions cannot exceed 10% of a worker's weekly or monthly gross pay however this does not prevent an employer from deducting the whole amount over a number of pay days, it simply limits the rate at which deductions may be made.

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[72] Section 13(1) ERA 1996.
[73] Section 14 ERA 1996.
[74] *Burns v Santander UK plc* [2011] UKEAT/0500/10.
[75] s17(4) ERA1996.

3.3. The first deduction must be made within 12 months of the date when the shortfall/deficiency was established.

4. Notice

4.1. Employers must let workers know, in writing, the reason for the deduction and the amount before the deduction is made.

5. Resolving pay discrepancies

5.1. Workers should first consider how much they think they should have been paid after tax and other deductions, when they should have been paid, and how much they should have received. This information will be contained in a worker's payslip and employment contract.

5.1.1. Final payslips often differ from a worker's usual payslip because of things such as holiday taken, money deducted for training courses, not working the notice period or redundancy pay. Workers should nonetheless get their final pay on the date you are normally paid.

5.2. If a worker believes they have not been paid their full wages, they should raise the issue with their employer first. In most cases, discrepancies are usually misunderstandings and bringing the discrepancy to the attention of their employer will often resolve the matter without issue or dispute.

5.3. If the issue is not resolved informally, the worker should raise it formally – this is known as 'raising a grievance'.

5.3.1. If their employer has a grievance policy, they should follow the procedure in the policy. If there is no such policy or set procedure, they should raise the problem as soon as possible with the relevant individual(s) (e.g. manager, payroll team or someone in HR).

5.3.2. If a grievance has been raised, employers are obligated to follow a full and fair procedure (in line with the Acas Code of Practice on disciplinary and grievance procedures). Workers can contact the Acas helpline or their trade union for more advice on raising a grievance.

5.4. Concerns can be raised verbally or in writing but in writing (in a letter or email) is recommended so there is a written record of what was raised. If concerns are raised verbally, following up in writing later to confirm what you have discussed is advisable.

5.5. Whether the concern is raised as a grievance (formally) or informally with relevant individual(s), the following should be considered:

a) the amount owed and why (e.g. show the calculations that have been done);
b) what evidence is there of the wages owed (e.g. payslip, employment contract, roster, timesheet or any written agreement regarding pay/hours); and
c) request the employer responds within a specific amount of time (e.g. before the next pay day or within 7 days).

6. Bringing a Claim

6.1. If the issues remain unresolved, a claim can be made to the employment tribunal.

6.2. Workers who wish to bring a claim *must* first tell Acas that they will be making a claim. They will then be offered the option of early conciliation by Acas. This is a free service to help them resolve the issue with their employer without going to tribunal which can be a long and costly process.

6.3. If they decide to pursue a claim, they will need to show evidence of what they are owed.

6.4. Claims must be brought within **3 months** of the date of payment of the wages from which the deduction was made or, if no payment was made at all, from the date on which the contractual obligation to the payment arose.

6.4.1. 2 years back payments can be claimed as long as there is less than 3 months between each underpayment or non-payment

7. Remedies

7.1. Remedies include declaration, repayment of the sum unlawfully deducted by the employer, and/or compensation for further financial loss (e.g. bank charges or interest if the deduction causes the worker to become overdrawn).[76]

7.1.1. There is **no upper limit** on the amount that an employment tribunal can order to be paid where there has been an unlawful deduction from wages.

7.1.2. The amount ordered by the tribunal will be **liable to deductions for income tax and national insurance contributions.**

[76] Section 24 ERA 1996.

Discrimination and Harassment

DISCRIMINATION OVERVIEW

The Equality Act 2010 ("**the Act**") is the legal framework which covers discrimination and harassment in the United Kingdom.

Types of discrimination

- **Direct discrimination** occurs when a person is treated less favourably than others because of who they are.
- **Indirect discrimination** is the result of a practice, policy or rule which applies to everyone universally but has a worse effect on certain people, putting that person at a "particular disadvantage".
- **Harassment** occurs when a person is treated in such a way that violates their dignity, or creates a hostile, degrading, humiliating or otherwise offensive environment.
- **Victimisation** is when a person is treated badly or subjected to a detriment because they complained about discrimination or helped another person who was discriminated against.

The Act also makes it unlawful to instruct, cause, induce or help someone to discriminate against, harass or victimise another person, or to attempt to do so when part of a relationship, such as an employment relationship, governed by the Act.[77]

Under the Act, it is illegal to discriminate against someone because of a **protected characteristic** in certain **locations or situations**.

Protected characteristics[78]	**Locations/situations**
• Age • Disability • Gender reassignment • Marriage and civil partnership • Pregnancy and maternity • Race • Religion or belief • Sex • Sexual orientation	• In the workplace • Using public services (e.g. police) / interacting with public bodies (e.g. local counsel) • Using businesses and other providers of services and goods (e.g. train company, shops) • Club or association (e.g. sports clubs) • Housing (e.g. landlords or estate agents)

Liability in the workplace

Employers can be liable for their actions as well as the actions of their employees, agents and third parties (e.g. training providers). Claims can also be brought against the individuals (e.g. managers, colleagues) responsible for the discrimination. If a customer or service user is acting in a discriminatory manner this isn't usually covered by the Act unless the organisation could have prevented it from happening.

[77] Section 11, the Equality Act 2010.
[78] For further information on discrimination related to one of the 9 protected characteristics please see Annex 1.

Defences to discrimination

- **Objective justification:** provides a defence to a rule, policy or practice that would otherwise prove unlawful or where something would otherwise denote discrimination. To rely on the defence, the claim must be in relation to indirect discrimination, direct age discrimination or disability related discrimination. Furthermore, a company or employer must demonstrate that there is a good reason for the rule or policy ('a proportionate means of achieving a legitimate aim'.)
    - the aim must be a real, objective consideration and cannot itself be discriminatory;
    - there is no definition of 'proportionate', but this will entail balancing whether the aim outweighs the discriminatory effects of that unfair treatment; and
    - there cannot be an alternative, more proportionate solution available.

  For example, the role of a firefighter may include an age cap of 45 given the level of physical fitness required for the role, associated risks and consequences of failure. By contrast, an age cap denying people over 45 the ability to pursue technology training opportunities because they are not young enough to grasp the concepts would be unjustified.

- **Genuine occupational requirement ("GOR"):** if a protected characteristic is a job requirement, some jobs can be reserved for people who qualify with that protected characteristic. To be lawful, the **specified characteristic** must be a **key element of the job**. For example, the need for a priest to be male, a domestic abuse counsellor at a women's shelter to be female or an acting role casting a specific ethnicity for authentic purposes (e.g., a white actor to play the role of King Henry VIII).

- **Positive action:** is a defence which means an employer takes action to encourage people from groups of people with protected characteristics who i) have different needs; ii) have a history of being disadvantaged or iii) have a record of low participation. When providing services, positive action includes steps to help those people to participate or overcome their disadvantage. Employers and companies still need to justify the positive action. For example, a company seeking to increase diversity in its work pool may target roles specifically to black or ethnic minorities by reference to internal HR statistics, staff feedback and/or industry recommendations.

- Other exceptions are provided for in the Act including where employers may 'discriminatory' treatment may be allowed if required by statue [79] or for national security[80] for example.

REMEDIES AGAINST DISCRIMINATION

Where a person experiences harassment and/or discrimination will determine how they take action.

Discrimination in the workplace

If a person encounters discrimination or harassment in the workplace they should:

1. Follow their employer's bullying and harassment policy
   This will likely direct the employee to inform their manager or another senior member of staff (e.g. HR). Employees should do so in writing.

[79] Schedule 22 of the EqA 2010, given effect by section 191 EqA 2010.
[80] Section 192, EqA 2010.

2. Report the issue to trade union (if applicable) / contact the Equality Advisory Support Service for advice
3. Document instances of discrimination and collect evidence (if necessary)
4. Make an informal complaint
5. Make a formal complaint (grievance process)
6. Contact Acas for advice and to begin early conciliation
7. Bring a claim in the employment tribunal within 3 months minus a day from the date of the act complained about.
   - Employees may still be able to bring a claim for acts that occurred more than 3 months previously, if they are part of "conduct extending over a period", and the claim is brought within three months of the end of that period.[81]
   - Early conciliation also 'stops the clock' and time limits may be extended where the tribunal decides with would be just and equitable[82] to do so but this is rare.
   - Compensation is nearly always awarded in successful discrimination cases.

Discrimination generally

1. Contact the Equality Advisory Support Service for advice
2. Complain directly to the person or organisation (following their policies / procedures where applicable)
3. Use an alternative dispute resolution process/mediation
4. Bring a civil claim in the County Court (or Sherriff court, if in Scotland)
   Individuals need to make their claims within 6 months less one day of the act they are complaining about.

[81] Section 123(3), EqA 2010.
[82] Section 123(1)(b)), EqA 2010.

ANNEX: DISCRIMINATION IN DETAIL

- **Age discrimination** occurs when a person is treated differently due to their age. This can be a single action or due to a rule or policy and does not need to be intentional to be unlawful.

- **Disability discrimination** occurs where a person is treated worse than another because they have a disability, are suspected to have a disability (**discrimination by perception**) or connected to another person with a disability (**discrimination by association**). A disability is a **physical or mental condition** which has a **substantial and long-term impact** on a person's ability to do normal day to day activities.

  People with disabilities face **two additional forms of discrimination**:

  1. **Failure to make reasonable adjustments** meaning companies and employers must ensure that disabled people can access services and opportunities as easily as non-disabled people. This is based on several factors including the resources available to the organisation or employer; and
  2. **Discrimination stemming from disability** whereby a person might be treated poorly due to something connected to their disability which **only applies if the person** who discriminated **was aware or should have known** the person had a disability and there is no objective justification exemption as to why that treatment was a **proportionate solution**.

     For example, John struggles with a mental health disability and took extended absences at work; he was later dismissed due to ill-health capability. Before dismissal, John was offered a different job and alternative working patterns which he refused. John's dismissal would be objectively justified as proportionate if it achieved the legitimate aim of alleviating the strain placed on his colleagues who compensated by working longer hours due to John's absences.

- **Gender reassignment discrimination** occurs when a person is treated differently because they are transgender. Gender reassignment applies if a person is proposing to undergo, in the process of undergoing or has already undergone a process to reassign their sex. In order to be protected from this type of discrimination, a person does not need to have any medical treatment to reassign their sex.

- **Marriage and civil partnership discrimination** occurs when a person is treated differently because they are married or in a civil partnership which can be between a man and a woman or same sex partners. This does not apply to those who are i) single; ii) living as a couple; iii) engaged or iv) divorced or if a civil partnership was dissolved.

- **Pregnancy and maternity discrimination** occur when a woman is treated unfairly because she is pregnant, breastfeeding or has recently given birth. She must be treated 'unfavourably' which means she has suffered a disadvantage due to the unfair treatment. There is no need to compare that woman's situation to another, she only needs to demonstrate that the treatment is connected to her pregnancy and maternity (and any other reasons). Whether the person discriminating has good intentions is not relevant, for example, if a bartender refuses to serve a pregnant woman alcohol, this is technically discrimination.

- **Race discrimination** occurs when a person is treated unfairly because of their colour; nationality; ethnic origin or national origin. A person can be discriminated against because they belong to a specific racial group which means a group of people who share the same colour, ethnic or national origins. Race discrimination can occur because you are connected with a person in a specific racial group (**discrimination by association**) or because someone thinks you belong to a certain racial group (**discrimination by perception**).

- **Religion or belief discrimination** applies when a person is discriminated against because they belong to an organised religion or religious sect. Courts will determine if something is a religion based on whether there is a clear structure and a belief system in place. Religious beliefs (a person's belief in their religion's principles of faith) are also protected, and these do not need to be observed by all members in a religion, for example, some Christians may wear a cross. Discrimination can occur when the discrimination stems from a person's connection to another person (**discrimination by association**) or because someone suspects a person belongs to a specific religion (**discrimination by perception**).

- **Sex discrimination** occurs if a person is treated unfairly because they are a man or woman (note: this does not include transgender people, see above).

- **Sexual orientation discrimination** results when a person is treated differently because of who they are sexually attracted to including heterosexuals (the opposite sex), homosexuals/gays and lesbians (people of the same sex) or bisexuals (people of both sexes). Sexual orientation discrimination can be direct or indirect. For example, when a company allows gay employees to bring their partners to a work function, but straight employees cannot do the same (direct) or health insurance benefits extend to husbands and wives but not civil partners (indirect). The Act does not apply to other sexual orientations such as pansexuality or asexuality.

Right to Work

4. Right to work status

1.1 This will depend on the individual's immigration status. An individual will automatically have a right to work in the UK if:

a) they are a British or Irish citizen

b) they have pre-settled or settled status from the EU Settlement Scheme - or they've applied and they are waiting for a decision

c) they have a family permit from the EU Settlement Scheme

d) they have indefinite leave to enter or remain in the UK

e) they have right of abode in the UK

1.2 Alternatively, they may have a right to work in the UK if they have a visa with a time limit. This is called having 'limited leave to enter or remain'. The individual will usually have a document which says if they have the right to work - for example, a biometric residence permit.

2. Documentation required to prove "right to work"

<u>Documentation for British or Irish citizens</u>

2.1 If the individual is a British or Irish citizen, they can prove their right to work in the UK with either of the following:

a) a British passport

b) an Irish passport or passport card

2.2 Their passport or passport card can be current or expired.

2.3 If the individual does not have a passport or passport card, they can prove their right to work with one of the following:

a) a UK birth or adoption certificate

b) an Irish birth or adoption certificate

c) a certificate of registration or naturalisation as a British citizen

2.4 The individual must also give their employer an official letter or document from a previous employer or a government agency. For example, they could use a letter from HM Revenue and Customs (HMRC), the Department for Work and Pensions (DWP) or the Social Security Agency in Northern Ireland.

2.5 The letter must show their **name** and **National Insurance number**.

<u>Documentation for other nationals</u>

2.6 If the individual is not a British or Irish citizen, they can prove their right to work with:

a) a share code - they can apply for a share code online[83]

b) their immigration documents[84]

2.7 The individual can choose which option they use. The individual's employer cannot reject an application because the employee gave the employer an eligible immigration document instead of a share code, for example.

2.8 Share Code: To apply for the share code, the individual will need one of the following:

a) their biometric residence permit number

b) their biometric residence card number

c) their passport or national identity card

2.9 Immigration Documents: If the individual is not a British or Irish citizen, they can usually prove their right to work in the UK with one of the following:

a) a current passport with a Home Office 'endorsement' in it – the passport must be current, it cannot be expired;

b) an immigration status document; or

c) an application registration card

2.10 There may be other documents they can use if they:

a) are waiting for a decision on an EU Settlement Scheme[85] application;

b) were given settled or pre-settled status in Jersey, Guernsey or the Isle of Man;

c) are a Ukrainian citizen; or

d) are a frontier worker - a citizen of an EU country, Switzerland, Norway, Iceland or Liechtenstein who lives outside the UK and comes here to work.

For further information on paragraph 2.10 circumstances, please refer to this link.[86]

3. What to expect from an employer

An employer will need to:

a) Physically obtain the original documents[87] as listed in section 2 above;

b) Check that the documents are genuine in the presence of the individual or via an Identity Service Provider; and

c) Securely retain a clear copy of each document (electronically or in hardcopy).

[83] Prove your right to work to an employer: Get a share code online - GOV.UK (www.gov.uk)
[84] Prove your right to work to an employer: Using immigration documents - GOV.UK (www.gov.uk)
[85] Apply to the EU Settlement Scheme (settled and pre-settled status): Overview - GOV.UK (www.gov.uk)
[86] Prove your right to work to an employer: Using immigration documents - GOV.UK (www.gov.uk)
[87] Employers' right to work checklist - GOV.UK (www.gov.uk)

4. Frequently asked questions

Is a National Insurance number on its own sufficient to prove the right to work in the UK?

No. However, it can be sufficient if provided as an official document by a government agency or previous employer together with a compliant UK birth certificate for *List A*[88] purposes. Alternatively, it can be provided in conjunction with a current Immigration Status Document or certificate of registration or naturalisation to obtain a continuous excuse.

Can an employer reject a job applicant because they do not have the right to work in the UK?

Yes.

If an employer is found to be employing someone illegally in circumstances where they do not have the right to work in the UK (or to carry out the specific work in question) the employer is at risk of a civil penalty fine of up to £20,000 for each illegal worker (*section 15, Immigration, Asylum and Nationality Act 2006*).

Can an employer withhold wages if it discovers than an employee does not have the right to work in the UK?

If an employer is not certain that their employee has lost the right to work in the UK then they should conduct a fair investigation, giving the employee the opportunity to demonstrate that they have the right to work.

Suspension during the investigation is unlikely to be appropriate[89]. Even where suspension is appropriate, the employee will remain entitled to receive pay during an investigation into their immigration status unless there is an express contractual right to suspend without pay[90].

Assuming the employee has the right to work in the UK, failure to pay an employee during any period of suspension, in the absence of an express contractual clause to the contrary, would amount to an unlawful deduction from wages[91].[92]

[88] Employers' right to work checklist - GOV.UK (www.gov.uk)
[89] Should an employer suspend an employee where there is uncertainty over their right to work status? | Practical Law (thomsonreuters.com)
[90] Conducting a disciplinary investigation and hearing: overview | Practical Law (thomsonreuters.com)
[91] Unlawful deductions from wages | Practical Law (thomsonreuters.com)
[92] Please refer to the Unlawful Deduction from Wages factsheet for more information

Warranties and Guarantees

Warranties and guarantees add to your legal rights.

They tend to be useful in circumstances such as:

- If something has gone wrong after the first 6 months of purchasing a product and you want a repair or replacement;
- You bought an item abroad and the manufacturer is based in the UK;
- A trader's gone out of business and there's a problem with the goods or service they provided.[93]

Note: Guarantees and warranties give you added protection when you buy goods or services but it does not replace your consumer rights. Under the Consumer Rights Act you have a legal right to *reject* goods that are of unsatisfactory quality, unfit for purpose or not as described, and get a full refund - as long as you do this quickly.[94] This right is limited to 30 days from the date you buy your product.[95] You however will have further legal rights beyond the right to reject, for up to 6 years if there's a fault.[96]

What is a Guarantee?
A guarantee is a promise by a guarantor acting in the course of their business, to the consumer free of charge, that if goods do not meet the specifications set out in the guarantee statement or in advertising, (a) the consumer will be reimbursed for the price paid for the goods, or (b) the goods will be repaired, replaced or handled in a certain way.[97]

What is a Warranty?
A warranty is a form of guarantee that a manufacturer gives regarding the condition of its product and outlines in what circumstances repairs will be made or refunds and/or exchanges are allowed if the product does not perform as expected or described. [98]

An extended warranty is usually something you will need to pay for and will be valid after the basic warranty has expired, often running for a further 2-3 years. It is similar to a basic warranty but will often cover damage caused by accident or misuse and in some cases even loss or theft.[99] Note that you may also get an automatic 14-day 'cooling-off period' if you signed up for an extended warranty on the phone or online, which means you can cancel and get a refund.[100]

You should have filled in a registration card and sent it back to the manufacturer. If you have not, your guarantee may be invalid – try looking for a contact number on the guarantee, and

[93] Source: Claim using a warranty or guarantee - Citizens Advice
[94] Please see 'Consumer Rights – Quality of Goods and Services' factsheet for more information.
[95] Source: Consumer Rights Act 2015 | Faulty Products | Not Fit For Purpose (consumerrightsuk.com)
[96] Source: Claim using a warranty or guarantee - Citizens Advice
[97] Source: Consumer Rights Act, section 30 subparagraph (2) Consumer Rights Act 2015 (legislation.gov.uk)
[98] Source: Warranties: Consumer Rights Act, extended warranties, and expired warranties - claims.co.uk ™
[99] Source: Warranties: Consumer Rights Act, extended warranties, and expired warranties - claims.co.uk ™
[100] Source: Claim using a warranty or guarantee - Citizens Advice

get in touch. You may also be able to register online. If you cannot find contact details, call the seller or trader and ask for advice.[101]

1. How to make a claim?

Check your paperwork to find out how you can make a claim – the warranty or guarantee could be on your receipt, in an email or given to you as a separate leaflet. The paperwork will also say:

- how long the warranty or guarantee lasts for;
- what you're entitled to (e.g., a refund, repair or replacement).

Look out for the time limit – this will be when the warranty or guarantee expires. It is also prudent to check whether you have to pay postage, packing and transportation costs if you have to send something back.

If you can't find the guarantee or warranty, contact the seller or trader and ask if they have a copy of the manufacturer's contact details.

2. Who can make the claim?

Remember to check the small print. Only the person who bought the item can make a claim, unless your warranty or guarantee uses the phrase "third party rights". Look out for these words if you bought the product second hand or were given it as a gift.

3. What will you need?

When making a claim, you will frequently need:

- proof of purchase (e.g., a receipt);
- details of what the problem with the product is; and
- a photocopy of the warranty or guarantee.

Practical steps to exercising your rights

Note: you may also find it easier to use your legal rights on faulty goods instead, this is usually the case within the first 6 months of purchasing your product.[102] Your legal rights include those outlined above under the Consumer Rights Act, which involve an entitlement to a refund, repair or replacement of a product where something has gone wrong with an item you purchased (this is regardless of whether you have purchased the item new or second-hand).[103] These rights will arise if the item you purchased is broken or damaged, unusable, or does not match what was advertised or described by the seller.

[101] Source: Claim using a warranty or guarantee - Citizens Advice
[102] Source: Claim using a warranty or guarantee - Citizens Advice
[103] Please see 'Consumer Rights – Quality of Goods and Services' factsheet for more information.

Quality of Goods and Services

Consumer Rights Act 2015 (CRA 2015)

Applies to contracts with consumers for the sale of goods and services on or after 1 October 2015

Consumers have several rights in respect of the quality of goods and services, these rights have been adopted from prior legislation the 'Sale of Goods Act 1979' and are provided for under current legislation such as the CRA 2015 and 'The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013' – please see below the key standards and remedies available to consumers:

Goods purchased must be:

Required Standard	What this means?
Satisfactory quality	any goods purchased should not be damaged or defective and be of satisfactory quality.
Fit for purpose	any goods purchased should be able capable of use for those purposes they were supplied for.
Must match description	any goods purchased must match the description, model or sample that was advertised to the buyer when purchased.

Tiered Remedies:[104]

Time Period	Remedy
Within 30 days of buying	within the first 30 days from delivery/possession of the defective goods, the consumer may: a) reject the defective goods and claim a refund; or b) require that the defective goods are repaired or replaced.
After 30 days to within 6 months of buying	after 30 days from delivery/possession of the defective goods, the consumer is no longer legally entitled to a refund, but may: a) require that the defective goods are repaired or replaced; b) if repair/replacements is; (i) not possible; (ii) does not work; (iii) cannot be done within a reasonable amount of time; or (iv) is not provided, the consumer can: a. reject the defective goods and claim a refund; or b. retain the defective goods but receive a price reduction.
After 6 months of buying	after 6 months from delivery/possession, if a good becomes defective the burden of proof is on the consumer to show that the good was defective at the time of purchase/delivery. if the above is established, then the consumer may: a) require that the defective goods are replaced or repaired; or b) claim a partial refund.
*** Within 14 days of buying online**	the right to cancel an order for goods made at a distance (i.e. online) starts from the moment the consumer places an order and ends 14 days from the day the goods are received.

[104] Please refer to the 'Small Claims' fact sheet for more information.

Digital Content

Digital content is subject to the same principals under the CRA 2015 and must meet the three criteria outlined above: (i) Satisfactory Quality, (ii) Fit for Purpose, and (iii) As described. Note, digital content is defined broadly, 'data which are produced and supplied in digital form' and includes software, games, apps and many other digital goods.

If a digital good is defective the consumer may request that these be (i) repaired or (ii) replaced. If repair or replacement is impossible or not performed in a reasonable time period, the consumer can request a price reduction (and although it is not possible to reject a digital good that has been purchased, a price reduction can be up to 100%).

Services purchased must be:

Required Standard	What this means?
Performed using reasonable skill and care	services must be performed to the same standard as other professionals or traders who perform the same/similar to the service purchased.
At a reasonable price	where a price has not been defined from the outset, the service provider must only charge an amount that is reasonable for the service provided.
Within a reasonable time period	where a time period has not been defined from the outset, the service provider must complete the service in a time period that is reasonable in relation to the service provided.

Tiered Remedies:[105]

Circumstances	Remedy
Where re-performance is possible	where a service has not been performed with reasonable care or skill, the consumer can request re-performance of the service (or that part which is defective). re-performance must be carried out at the expense of the service provider within a reasonable period of time and without significant inconvenience.
If re-performance is not possible	if re-performance is not available or not completed in a reasonable time period, the consumer may require a price

[105] Ibid.

	reduction.
*** Within 14 days of entering the service contract**	there is a 14 days cooling period from entering into a service contract in which the consumer can cancel it. A service provider should not start providing the service before this 14 day period has elapsed, unless the consumer has requested this.

Small claims process

1. What is a small claim

Small claims are "simple" cases that do not involve large amounts of money or complicated issues. Usually small claims are for less than £10,000. Examples of small claims include (see also CPR 26.6, which sets out the scope of the small claims track):

A faulty product;[106]

- Poor service or being owed a refund;[107]
- Being owed money for work you have done;
- Personal injury claims; or
- Claims by residential tenants for landlords to carry out repairs or works costing no more than £1,000.

Small claims are allocated to the small claims track of the civil courts system. This is a simplified procedural system. Certain Civil Procedure Rules ("**CPR**") do not apply to the small claims track (see CPR 27.2). The rules and procedure for the small claims track are contained in CPR 27 and PD 27A.

If a claim is factually complicated or requires legal argument, it will generally not be suitable for the small claims track regardless of the financial value.

2. The parties

The party bringing the claim is known as the claimant. The person or company they are bringing the claim against is referred to as the defendant.

Once the court has reached a decision on a claim, either the claimant or defendant may wish to appeal the decision (see section 6 for more detail). In which case, the party appealing the decision is known as the appellant, and the other party is referred to as the respondent.

3. Considerations before starting the claim

Before starting a claim, the first step is to try to solve the problem another way if possible, for example by making a complaint or using mediation. After this, the below should be considered:

3.1 Are you in time?

Claims must be brought within a certain time period from when the event or loss occurred. The relevant time period depends on the specific nature of the claim[108], but the general rule is that the claim must be brought within:

a) Six years for claims relating to contracts; or
b) Three years for claims relating to personal injury.

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[106] Please refer to the 'Quality of goods and services' fact sheet for more information.
[107] Ibid.
[108] Ibid for time limits in claims for contracts with consumers for the sale of goods and services.

There may be exceptions to these periods, so if the limit has passed it may still be worth seeking legal advice.

3.2 Evidence

Good evidence is needed to make a strong claim. What constitutes good evidence will depend on the issue, but it will be key to gather any documents or photographs the claimant has – this may include things such as receipts, letters, photographs, invoices, statements from anyone who saw what happened.

3.3 Cost

Check the cost of making the claim. It may not be worth making the claim if the cost is almost as much as is being claimed.

The claimant will have to pay a fee to make the claim. There may also be other fees to pay as the claim progresses, for example if it goes to court. The court fees can be seen at Gov.uk. If the claimant wins their case, then they may be able to get these fees back from the other side, however, if the claimant loses, they may have to pay the other side's fees (see CPR 27.14).

Claimants on benefits or low income may be entitled to reduced or no fees. This can be checked on Gov.uk.

"Fees" are the amounts that are paid to the court for hearing a case. The claimant may be able to recover these from the defendant if the claimant is successful.

"Costs" refers to a number of other costs associated with making the claim, such as any solicitors' costs. There is limited scope for the claimant to recover costs from the defendant in small claims. See the rules regarding recoverability of costs in the small claims track in CPR27.14 and PD 27AA.

4. Process of making a claim

4.1 Letter before claim

Before starting a claim, the claimant should write a "letter before claim" to the defendant. This formal letter should be submitted even if the claimant has already written to the defendant about the problem. This should include a summary of what has happened and what the claimant wants the defendant to do to resolve the issue, including how much money is being claimed and how this was calculated. The claimant should include a deadline for a reply, which is usually 14 days, and state that they will start court proceeds if they do not get a response. For further detail about what to include, see the Citizens Advice website.

4.2 Claim form / Money Claims service

The next stage is to either:

a) submit an "N1 claim form" (this is also known as the Part 7 claim form and can be downloaded from the Gov.uk website); or
b) make a claim online using the Money Claims service (or Money Claim online).

The Money Claims service can only be used for certain types of claim. For example, the claim must not be a claim under the Consumer Credit Act 1974 nor for personal injury, also, the claimant must not qualify for reduced fees. The full list of conditions is in PD 51R.

If the claim is not suitable for the Money Claims service, it may be possible to pursue the claim through Money Claim Online ("**MCOL**"). There are also restrictions on when this service can be used, which can be found on the Money Claim Online guidance. MCOL is governed by PD 7C.

Both the Money Claims service and MCOL are part of HM Courts and Tribunals Service.

If the N1 claim form is being used, see the Citizens Advice website for guidance. This form requires a statement of the nature of the claim, the remedy sought and a "statement of value" if money is sought. The specific requirements are set out in CPR 16.2 and PD 16.

4.3 Defendant's response

If a claim form or MCOL were used, the Defendant will usually have 14 days to defend or acknowledge service of the claim (see CPR 15). If Money Claims was used, the defendant has 19 days to respond.

If the defendant does not respond within the deadline, the court can decide that the claimant has won. In such instances, the claimant should request "judgment by default" from the court by:

a) requesting a judgment on Money Claim Online if the claim was made online;
b) filling in form N225 if the claim was for a fixed ("specified") amount; or
c) c) filling in form N227 if the claim was for an unspecified amount.

Assuming the defendant responds and defends the claim, a directions questionnaire (Form N180) will be sent by the court to decide when the hearing should take place. If both parties agree that a hearing is not necessary, the judge may decide the claim without one, based on the claim and the defendant's defence (CPR 27.10). In many instances there will not be a hearing, so the directions questionnaire and statement of case are very important since they may be the basis on which the case is decided.

4.4 Correspondence between parties

There are rules on how documents should be sent to the court and defendant (see CPR 6). Email can only be used if the other side agrees to use it. Otherwise, recorded delivery should be used and the claimant should keep a copy of proof of postage. However, where the claim is brought using the Money Claim Online process is used, documents are generally sent online.

4.5 Mediation

The court will ask if the parties want to use its free mediation service to try to resolve the dispute. This should be indicated on the directions questionnaire. The court hearing will still go ahead if the parties cannot agree at mediation.

If the parties do not wish to use mediation, the claim will continue on the small claims track in the court system. There is no penalty for not using mediation, however the costs associated with bringing a claim in court can be substantial, meaning that mediation may be a good option. Small claims mediation generally takes place by phone, and the parties do not speak to each other directly.

5. Court hearing

The court will provide instructions regarding the date and time of the hearing. If a party needs to change the date, this can be requested using the N244 form. This will usually involve a £255 fee.

The court will likely issue instructions ("directions") ahead of the hearing. These must be followed otherwise fees will be incurred and the claim may be dismissed. Directions may request further evidence, such as witness statements, to be submitted which must usually be done at least 14 days before the hearing (CPR 27.4). Guidance on writing a witness statement can be found on the Citizens Advice website.

At the hearing, the judge will have read all the evidence beforehand and may ask the claimant and defendant questions about their cases. The parties may have the opportunity to ask each other questions at the hearing. For suggestions on how to prepare, see the Citizens Advice website.

6. The court's decision

The judge will give their judgment at the end of the hearing. If the claimant wins, they may get the money claimed (including interest), costs associated with the claim, and/or orders for the defendant to take a certain action.

If the claimant loses they may have to pay some of the defendant's costs. Costs on the small claims track are primarily governed by CPR 27.14.

If the claimant wins and the defendant refuses to pay, they can ask the judge to "enforce the court order". There is guidance on this process on the Gov.uk website.

If the claimant loses and disagrees with the decision, they may be able to appeal. This must be done within 21 days of the judge's decision and will likely entail a fee. The claimant must ask the court's permission to appeal, and this will only be granted for an error in law or serious procedural irregularity. Getting legal advice is recommended if a claimant wishes to appeal.

7. Further resources

If a claimant needs help with a small claim they may wish to:

a) Get help from Citizens Advice – they can advise about the case and how much could be claimed;
b) Check if they can get low cost legal help – but note that solicitors' fees may be more than the value of the claim; and

c) Consult the Civil Justice Council's Guide to Bringing and Defending a Small Claim