

CASE STUDY THREE

'BRIAN': AN UNREPRESENTED CLAIMANT

Case study compiled by Eleanor Kirk

Brian had help from a CAB solicitor preparing his claim of constructive dismissal against his employer. However, having to represent himself at hearing was an enormous strain, especially given his limited education, severe dyslexia and the stress he was already suffering as a result of the nature of the dispute.

The story

Brian, a man in his early 40s, had worked as a car valet in a car sales yard for more than eight years. During this time, he claimed to have experienced verbal abuse from his immediate manager, the son of the owner. Brian had talked with the owner about the abuse on a number of occasions. This would improve the situation temporarily, but the bullying would resume shortly thereafter. When Brian attended a hospital appointment his manager phoned him, swearing at him and demanding he return to work. Brian collapsed shortly afterwards and was advised by a nurse not to go back to work. Brian resigned from his job. Initially Brian did not intend to seek legal redress for the way he had been treated at work and began looking for new work.

After some reflection, Brian felt that his boss should not be able to get away with forcing him to leave a job that he loved. His wife encouraged Brian to contact Acas, whose representative suggested that he see a solicitor. Brian attended a free initial appointment with a solicitor who told him to submit a grievance letter to his employer and that further free legal information could be obtained from a solicitor at the CAB. Brian had a Gateway interview. He then received a phone call from the employment solicitor at the CAB, who advised him that he needed to wait for a few more weeks before he would be eligible for legal aid, following the loss of his employment. An appointment was then made with the CAB employment solicitor who formally assessed his eligibility for legal aid. Brian was deemed eligible and although he had been nervous about meeting with the solicitor, when it became clear that they were going to take the steps required to progress the claim, he was very happy for her to act on his behalf. Brian was not confident about his ability to communicate effectively in written form, in large part because he is dyslexic. Brian referred to having the assistance of the solicitor as being like a “weight lifting”. Previously Brian had felt “on me own” and like “the walls were coming in on me”.

The solicitor took a detailed account of Brian’s employment problem, teasing out initial evidence and legal arguments for *constructive dismissal*, a term Brian had heard from speaking with the first solicitor, but referred to as ‘compulsive dismissal’ during the appointment at the CABx. The solicitor tried to explain this term, the legal argument required and the general procedures involved in submitting a claim and the legal course of action after that.

When the employer ignored a grievance letter, the solicitor submitted an ET1 form and helped Brian to prepare for his ET hearing. She was not able to represent him at hearing, as legal aid funding would not cover this. The solicitor reassured Brian that judges liked it when a party spoke on their own behalf, but the thought that his employer might be represented by a solicitor filled Brian with dread:

CASE STUDY THREE

‘So, where his solicitor’s going to have these big fancy words and that, I’m going to come out like Mr Joe Bloggs, know what I mean? Who are courts going to listen to?’

The solicitor had prepared some questions for the participant to use but suggested that Brian think of others that he wanted to ask. Brian did not feel confident in this task, but worked with his sister, who was better educated, to prepare these. When reviewed by the CAB solicitor, it became apparent that many were more statements rather than questions or were otherwise inappropriate. The solicitor attempted to prepare the participant for the tribunal by explaining the order of proceedings, how to manage his ‘bundles’ and whom to ask to read out his witness statement, as the participant did not want to do this himself because of his dyslexia. The participant sought clarification on whether he was the claimant or the respondent, not knowing these terms.

Brian was extremely nervous at the hearing. He did not know which documents to hand over to the clerk or how to arrange for the judge to read out his witness statement (as he is dyslexic). Brian did not always understand the questions asked by the judge, nor was he able to provide a detailed account of the verbal abuse he experienced. The employer also represented himself. He was also not always able to follow the protocols required of the tribunal and took an aggressive approach throughout. In his cross-examination of his ex-boss, Brian simply read out the questions which the CAB solicitor had prepared for him. He did not ask further questions when the respondent replied, or interrogate anything he said. In the summing up stage, the respondent, more articulate than Brian, put forward his case against Brian. Exhausted and intimidated, Brian said only a little when the judge asked him if he had anything more to say in summing up his case.

Nevertheless, Brian won his case and was called upon to attend a remedy hearing. The CAB solicitor helped to prepare him for this. In this hearing, the accounts Brian provided for a new business that he had set up were questioned by the employer. The judge awarded Brian £8300, just over half of the amount claimed in his schedule

of loss, being persuaded by some of the arguments by the employer challenging Brian's business accounts.

The employer did not pay up immediately. After the hearing, Brian and his wife were verbally abused and physically threatened by his former boss. Brian went to the police and they visited the respondent, threatening him with an injunction. Brian's car was also vandalised twice. He felt that the employer was "just trying to bully me to drop it all. I don't know. I've had enough". Eventually, Brian got help from the CAB solicitor to utilise the fast track tribunal award enforcement scheme. Technically, legal aid does not cover assistance with the enforcement of awards but the solicitor helped because Brian simply would not have been able to do it himself. A bailiff was sent to the respondents' car sales site and was threatened verbally and physically by the respondent, to such an extent that the police were again involved. With the threat of having some of his stock taken to pay for the award, the respondent wrote a cheque.