

# ‘Only 3% of whistleblowing claims are successful at hearing’: lies, damn lies and statistics; or what we can understand of success rates from the Tribunal statistics

---

By [Joseph England](#)

3PB Barristers

*The following has been written by [Joseph England](#), the author of [NHS Whistleblowing and the Law](#), a handbook providing a practical and comprehensive study of the law of whistleblowing both within and outside the NHS.*

In September, two sets of Tribunal statistics were published that provide a breakdown of different types of claims and what percentage conclude through different outcomes (e.g. ACAS settlement, success at hearing, etc). The figure that only 3% of whistleblowing claims are “successful at hearing” is worth greater analysis to understand what this really means.

The data can be found [here](#). The quarterly statistics are recent and provide data up to June 2023 but the information is limited because it is not broken down by jurisdiction, instead providing overall numbers of total claims issued with some further broad breakdown. The most recent information comparing different types of claims is for the 2020-21 year and can be found from the Main Tables (table ET3) at the above link or [here](#).

The data tells us that in the 2020-2021 year (understood as April to April), 1961 whistleblowing claims were made (understood to include detriment as well as dismissal claims) and only 3% are classified as “successful at hearing”. However, this figure sits alongside the total breakdown of whistleblowing claims:

- Successful at hearing: **3%**
- Where default judgment issued in claimant’s favour: **1%**
- Conciliated by ACAS: **33%**
- Withdrawn (including settlement other than by ACAS): **28%**
- Unsuccessful at hearing: **10%**
- Dismissed at a preliminary hearing: **2%**
- Struck out: **10%**
- Dismissed under rule 27: **1%**
- Dismissed following withdrawal: **11%**
- Discontinued in some other way: **1%**

‘Only 3% of whistleblowing claims are successful at hearing’: lies, damn lies and statistics; or what we can understand of success rates from the Tribunal statistics

By Joseph England – 2 October 2023

What this tells us is:

- 1/3<sup>rd</sup> of all claims are settled through ACAS
- Approximately 2/3rds of whistleblowing claims are settled through some means (assuming, as is likely, that a high percentage of claims withdrawn are done so because of settlement)
- Of the claims that do not settle and reach trial, approximately 1/4 are successful.

A comparison to other types of claims by success rate at trial adds interest and usefulness:

- The 'successful at hearing' percentage for all claims is 8%. Whistleblowing's 3% is amongst the lowest, joined by claims including disability and race discrimination at 3% and only above age discrimination and 'other' at 2%.
- Similarly, the 'unsuccessful at hearing' percentage for all claims is 5%. Whistleblowing's 10% is amongst the highest, only lower than claims for race discrimination and religion and belief discrimination at 12%.
- The percentage of whistleblowing claims settled is higher than the average and amongst the top. Taking just the percentages for ACAS settlement and withdrawn (including settlement) claims, the figure for all claims is 47%, whistleblowing's is 61%, pregnancy discrimination (including unfair dismissal) is 67%, disability discrimination is 65%, sexual orientation discrimination is 63%, age discrimination is 60% and race discrimination is 56%.

What this tells us beyond these figures is something practitioners will want to consider against their own claims and experience of how claims conclude:

- It is clear that many claims of all different types end up settling and although some would highlight the merit of claims forcing that outcome, others may feel it represents the commercial reality of a 'costs free' jurisdiction where the default is that employers are unlikely to recover their legal fees and time spent dealing with a claim regardless of its outcome. The fact that whistleblowing claims as well as some discrimination claims are amongst the highest of claims likely to be settled may represent employers' desires to keep such claims out of public scrutiny, but again could reflect the commercial reality of what are often the longer and therefore more expensive types of claims.
- Whistleblowing and discrimination claims that make it to trial have a higher than average chance of failing. Some may say this shows the inherent difficulties in the legislation, in proving that such complex and often 'non-overt' behaviours have

occurred and that the stronger claims would have already been settled. Others may feel this shows the prevalence of such claims being made without their being good prospects of success.

Finally, those interested in the subject of whistleblowing may find it useful to see the House of Commons Library publication, “Whistleblowing and Gagging Clauses”. Released on 31 August it, “covers legal protections for workers who whistleblow at work, as well as attempts to silence workers using settlement agreements” and can be found [here](#).

2 October 2023

**This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the [3PB clerking team](#).**



**Joseph England**

*Barrister*

*3PB Barristers*

020 7853 8055

Joseph.england@3pb.co.uk

3pb.co.uk