

Charging fees in the Employment Tribunals and the Employment Appeal Tribunal – Initial Equality Impact Assessment

1. Introduction

- 1.1 The Ministry of Justice is consulting on a proposed policy change to introduce a fee charging regime into the Employment Tribunal (ET) and the Employment Appeal Tribunal (EAT). There are over 60 different types of claims that can be made to ET and which can be the subject of an appeal to the EAT which include discrimination, equal pay and unfair dismissal. We are proposing that all types of claims and appeals are subject to a fee with appropriate safeguards to protect access to justice for individuals on low incomes. This Equality Impact Assessment accompanies the government consultation document and Impact Assessment.
- 1.2 This is an initial equality impact assessment where only preliminary conclusions are reached. We will look to improve our evidence base and understanding of the equality impacts of the proposals during the consultation period and provide a further equality impact as part of our response to consultation.
- 1.3 As a result we welcome your views on our initial assessment and have provided a series of questions for your consideration, which we hope you will consider and provide us with your comments.

2. Equality duties

- 2.1 Under the Equality Act 2010 section 149, when exercising its functions, Ministers and the Department are under a legal duty to have ‘due regard’ to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
 - Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and
 - Foster good relations between different groups.
- 2.2 Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
- 2.3 MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and where a potential disadvantageous effect is identified how that is either mitigated or justified by reference to the objectives of the policy. MoJ records its fulfilment of its duties by completing an Equality Impact Assessment (EIA).

3. Summary

3.1 We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

3.2 Our initial assessment is that the introduction of fees proposed in either Option 1 or Option 2 are not directly discriminatory within the meaning of the 2010 Act as they apply equally to all claimants irrespective of whether or not they have a protected characteristic or whether they have a particular protected characteristics; there is no less favourable treatment because of a protected characteristic.

Indirect discrimination

3.3 Our initial assessment, based on the limited information available, is that the introduction of fees proposed in either Option 1 or 2 is unlikely to amount to indirect discrimination under the Equality Act 2010. This is because the Government considers that proposals, if implemented, would be likely to be a proportionate means of achieving a legitimate aim.

3.4 Both options have the aim of transferring a proportion of the cost of running the employment tribunals from the taxpayer to those who use the service and can afford to pay. Option 2 has the additional aim of seeking to provide business with greater certainty over their maximum liability of award by asking claimants to specify if their claim is above or below a threshold amount, which again is considered to provide a legitimate aim. We have insufficient information to determine the precise impact of this aspect of the proposal.

3.5 However, in coming to the initial view that the measures are likely to be proportionate the Government has, in particular, taken into account the following:

1. The application of the remissions policy which will protect access to justice for those on low means;
2. The provision for the tribunal to order that fees are reimbursed by the unsuccessful party;
3. The availability of a free alternative form of dispute resolution via Acas and;
4. The setting of fees below full cost recovery (with the exception of the Level 4 fee in option 2).

3.6 This means that notwithstanding that the proposals may have a financial impact on individuals or groups of individuals, either proposed fee option when taken as a package of measures, will not deny access to justice or the opportunity to reach an agreed settlement for individuals who fall within the meaning of the Equality Act 2010.

Discrimination arising from disability and the duty to make reasonable adjustments

3.7 We do not consider there to be a risk of discrimination arising from disability and duty to make reasonable adjustments within the meaning of the Equality Act as a result of these proposals.

Harassment and victimisation

3.8 We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

Advancing equality of opportunity

3.9 It is possible that these proposals impact on the duty to advance equality of opportunity if potential claimants with protected characteristics are put off from taking forward discrimination cases due to the introduction of fees.

Fostering good relations

3.10 We have considered this objective but do not think it is of particular relevance to the proposals.

4. Potential differential impacts from the analysis of the available evidence

4.1 Although clear conclusions are difficult to draw from the available data, we have identified in particular potential differential effects in respect of age, marriage, gender, disability and race in four situations.

1. The proposal to charge fees to users set out in either Option 1 or 2 (see 'Aims & Objectives of the policy' below) will have a financial impact on some individuals with protected characteristics (as well as others), notwithstanding the existence of the remission scheme for those in households entitled to benefits or on low incomes.
2. The Assessment recognises that there may be some deterrent effects, for example on some discrimination claimants who are unable to claim full remission because they have higher levels of income
3. The proposal to charge different levels of fees for different jurisdictions in both Option 1 and 2 has the potential to have a greater financial impact on those claimants who are seeking to resolve a dispute for more complex cases, e.g. those involving sex discrimination or equal pay that are more likely to involve women (in Option 1) and where there is the potential for a 'high value' award, e.g., in discrimination cases and particularly those involving race or disability (in Option 2)
4. The proposals, under Option 2, to charge one fee at higher levels (namely level 4 at approximately full cost recovery) for claims that seek unlimited awards has the potential to increase this financial impact further, and may also have other non-financial impacts e.g. in terms of influencing individual's decisions over how much of an award to claim for.

4.2 Whilst there are some implications of the proposals on the Equality Act 2010 protected characteristics groups in seeking access to justice, these will impact on different equality groups differently insofar as they have varying income profiles. It is accepted that as some of the equalities groups are disproportionately represented in lower income brackets, they would therefore be disproportionately affected if it were it not for the remissions scheme which mitigates the effects on those with the lowest incomes and ensures that no one is denied access to justice through the introduction of fees.

- 4.3 Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the Government is satisfied that it is right to consult on the options for the introduction of fees.
- 4.4 This is our initial assessment and we would like further information to determine the precise impacts of options 1 and 2. We will use the consultation period to look to improve our evidence base and understanding of the equality impacts and provide a further equality impact assessment as part of our response to consultation.
- 4.5 As part of our consultation comments on the specific questions at the end of the Equality Impact Assessment are particularly welcome.

Outline of policy

5. Background

- 5.1 The ET and EAT are currently fully funded by the taxpayer. Users are not required to make a financial contribution for using either the ET or EAT. This change would transfer at least some of the annual cost from the taxpayer to the user.
- 5.2 The annual number of claims lodged at the ET has risen considerably since the mid-2000s, driven largely by an increase in the number of multiple claims (i.e. claims involving a number of claimants) submitted. The total number of ET claims accepted in 2010/11 was 218,100, which was over twice the number accepted in 2004/05, according to figures published by HM Courts and Tribunals Service.
- 5.3 Some of the reasons underlying this upward trend are known. The number of claims alleging unfair dismissal appears to be related, with a time lag, positively to inflows into unemployment.¹ This implies that the economic effects of the 2008-09 recession would have contributed to an increase in this ET claim type in any event.
- 5.4 Changes in Britain's employment law have a direct influence on the number of claims received by the ETs. For instance, the number of age discrimination claims has risen from around 970 in 2006/07 to 6,800 in 2010/11 following the creation of new statutory rights². Specific workplace disputes can also have an impact on the volume of claims, for example, pending a ruling by the European Court of Justice, a multiple claim with over 10,000 claimants alleging a breach of the Working Time Directive was submitted every three months by claimants in the airline industry.

¹ The "Employment Tribunal and EAT Statistics 2009/10" publication (www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/tribs-et-eat-annual-stats-april09-march10.pdf) states that: "There were 126,300 jurisdictional claims associated with unfair dismissal, breach of contract and redundancy, which is 17% higher than for 2008/09 and 62% higher than in 2007/08, and likely to be a result of the economic recession."

² The Employment Equality (Age) Regulations 2006 took effect in October 2006.

5.5 The ET was originally intended to be a last resort mechanism to resolve disputes between employers and employees and the Government, has, in the *Resolving Workplace Disputes* consultation made clear its intention to further encourage use of alternative methods of dispute resolution. For example, the Advisory, Conciliation & Arbitration Service (Acas) offers an alternative to the ET for resolving workplace disputes. The service is voluntary, provided free of charge and both parties must agree to the process, which involves an independent Acas conciliator discussing the issues with both parties in order to help them reach a better understanding of each other's position and underlying interest. The impartial conciliator encourages the parties in dispute to come to an agreement between themselves, thus avoiding the time and expense of contesting the issue in an ET. Acas conciliated settlements (known as COT3s) are legally binding and commit parties to an agreed course of action.

6. Aims and objectives for the policy

6.1 The main policy aim for the introduction of fees is to transfer a proportion of the cost of running the ET and EAT from taxpayers to users. The policy objective is to require those users to pay an appropriate fee where they can afford to do so in order to have their workplace dispute resolved through the ET and EAT process.

6.2 The introduction of fees into the ET and EAT is part of a wider Government review of Britain's employment laws being led by BIS that is designed to encourage employers and employees to work together to resolve workplace disputes outside of a tribunal.

6.3 In line with government policy generally, the main policy objective is to:

- recover a proportion of the cost of the ET and EAT service from its users who can afford to pay.

6.4 The options under consideration are:

Option 0 – To continue with the existing approach, that no fee is charged and that the ET and EAT are funded in their entirety through general taxation.

Option 1 – To introduce a fee charging structure where:

- the person who brings proceedings or seeks an order initially pays the relevant fee;
- all types of appeals and all parts of the process are subject to fees payable in advance;
- a full or partial fee remission is available to those on low incomes;
- a power for the tribunal to order the unsuccessful party to reimburse the fees paid by the successful party; and
- fee levels are initially set at a level to recover less than the full costs of the ET and EAT taking into account fee remissions.

Option 2 (for ET only) – To introduce a fee charging structure built upon many of the same features as Option 1, but which also:

- Requires the claimant to choose whether to seek an award value above or below £30,000;

- Requires the claimant to pay a higher fee to bring a claim in which an award of £30,000 or more is sought;
- Prevents the tribunal from making an award above £30,000 where the claimant has chosen to limit any award value to less than this amount through the payment of an appropriate fee; and
- Provides guidance and support to ensure that claimants can assess whether to make a claim for more or less than £30,000.

Option 2 has the additional policy objective of:

- Providing business with greater certainty over their maximum liability of award, by asking claimants to specify if their claim was above or below a threshold amount; and
- encourage claimants to make a more informed judgement about the value of their claim and hence narrow the gap between an individual's expectation of what they can 'win' and their actual entitlement, leading to a more satisfactory outcome for claimants and respondents.

6.5 The consultation seeks views on Options 1 and 2 and a summary of the fee levels and of these options can be found in Annex B of this Equality Impact Assessment.

7. Rationale

7.1 The Government considers it appropriate that the taxpayer should not continue to fund in its entirety the employment tribunal process without some contribution to the costs from those who are actually using the service to bring a claim or an appeal and can afford to do so. Parliament has already approved the principle of fee-charging in the form of the Tribunals, Courts and Enforcement Act 2007. This created the statutory power to prescribe fees in tribunals.

7.2 The Government therefore believes that there is a legitimate aim to introduce fees for claimants and, in certain circumstances, respondents. The proposals are designed to be a proportionate response to this aim with fees set initially to recover less than the full cost (with the exception of the level 4 fee), the availability of a remissions scheme, an alternative form of free dispute resolution via Acas and the power of the tribunal to order the unsuccessful party to reimburse the successful party.

7.3 The employment tribunal is similar to a civil court in that the cases heard before the tribunal are disputes between private parties. Employees and employers who are in a workplace dispute have the choice to resolve the matter between themselves through discussion or mediation or through free Acas conciliation – and many do so. Table 1 (Annex A Evidence Base) shows that in 2009-10, 31% of employment tribunal jurisdictional complaints disposed of were settled through Acas conciliation. For further details on calculation of fee levels, recovering costs and fee collection see Annex B.

8. Outcomes for the policy

8.1 The intended effects are to:

- Ensure that all users who can afford a fee or make a contribution do so, whether they are bringing the claim as an individual or as part of a multiple claim; and
- Improve the effectiveness and efficiency of the current system by encouraging employers and employees to resolve workplace disputes as early as possible.

8.2 The additional intended effects of Option 2 are to:

- Encourage claimants to assess their expected award values (above or below the £30,000 threshold); and
- Improve claimant expectations on the likely level of awards.

8.3 These latter two effects would arise as a result of the fees structure and of the underlying guidance and assistance that would be provided to claimants to enable them to assess their claims.

8.4 The aim is to transfer some of the cost of the tribunal's business to the users, generating a fee income each year by the end of financial year 2013/14 under Option 1. Primary legislation is required to implement Option 2 so this option would not be able to be fully introduced until 2014.

8.5 Our proposals aim to introduce fees that will be straightforward to use for both our service users and the tribunal. We believe that these proposals will protect access to justice through the introduction of a remissions system. The major impacts are a transfer of cost from one group (taxpayers) to another (users) and to reduce demand for tribunal proceedings, other things being equal.

9. Methodology and evidence sources

9.1 At present HM Courts and Tribunals Service does not have a standard approach to collecting customer diversity data. Data have been collected in some jurisdictions but not in others. However HM Courts and Tribunals Service is currently considering options to ensure diversity data is collected.

9.2 The potential impact of the introduction of fees for claims to the ET and the EAT on equality groups cannot be easily assessed as comparative data for a 'before and after' scenario is not available as fees are not currently charged. Therefore we have no authoritative information on the price elasticity of demand (i.e., the extent to which demand varies with respect to price alone) or, indeed, the other structural drivers of demand that would enable reliable forecasts of Options 1 and 2.

9.3 In the absence of specific evidence and comparable data we have based our initial screening and policy development on two main areas:

1. We have developed a model to try and assess the likely impacts of introducing a fee which has produced a wide range of outcomes / scenarios for consideration (see the Impact Assessment). This model suggests a range of reductions in the number of claims and appeals received compared to a notional base case. The model is, however, unable to robustly identify any specific drivers or behaviours behind the anticipated reductions or which of our service users will be impacted.
2. To understand more around the potential drivers and behaviours of claimants as a result of the introduction of fees in the ET and the EAT we have looked at academic studies produced for equality organisations and equality impact assessments and reports published by other areas of Civil Justice where there is a client base or process that is broadly comparable.

9.4 An earlier proposal to introduce fees in ET in 2001 highlights some of the concerns there are in relation to the introduction of fees to the Employment Tribunal. Fees were proposed in the 2001 consultation “Routes to Resolution”³ but, unlike many of the other proposals, fees were not taken forward. The summary in the response showed that two-thirds of respondents opposed the charging regime, while the Confederation of British Industry supported the proposal which it considered would provide a valuable source of funding and bring the ET into line with civil courts. It and others agreed that charging for claims and hearings would encourage more disputes to be resolved in the workplace. However, others including the Trade Unions Congress considered that there would be a significant deterrent effect to low paid workers, particularly where the monetary value of the claim was small, despite the proposal to remit fees for those on benefit or unable to pay. A number of employers considered that it was unacceptable for tribunal respondents to pay a fee to attend a hearing.

10. Evidence Base - Fee Levels

10.1 Fees for public sector services are charged in accordance with HM Treasury guidelines⁴. Fee levels depend on the cost of the service and the norm is to look for full cost recovery but no more. This means that the cost in the form of fees passed onto the user should be representative of the cost of the service as far as that can be ascertained. To achieve this both options use the type of claim as a basis for the fee levels because initial evidence shows that some types of claims are likely to use far more tribunal resources (in terms of staff and the judiciary) than others.

10.2 Under Option 1 all fees are set at less than full cost recovery. Under Option 2 all fees are less than full cost recovery other than the fee for claims in excess of £30,000 where there is almost full cost recovery. On 2009/10 caseload and costs, it is estimated that the fee levels proposed for employment tribunals would achieve under Option 1 approximately 33% of the total cost, although this percentage includes the fee revenue that is not collected due to the remissions system. The equivalent rate of cost recovery under Option 2 would be around 40%.

³ www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf

⁴ [Managing Public Money - HM Treasury](#)

- 10.3 We are consulting in Option 1 on the introduction of fees that will, for single claimants in the tribunal, be determined by the nature of the claim made and stage reached in proceedings. For multiple cases, the fee payable will be determined by the nature of the claim, the stage reached in proceedings and the number of individuals within the multiple. In Option 2 the fee would depend on the type of claim and the value of the award sought by the claimant.
- 10.4 Careful consideration has been given to the process for collecting fees to ensure that our collection process, covered later in this Equality Impact Assessment, does not drive up costs and necessitate a higher level of fee.
- 10.5 In our modelling, we have not been able to accurately forecast the impact of introducing a fee where there was none before. However, there is some past evidence that the level of fees is not the overriding factor when deciding to make an application. To the extent that the experience of the civil court fee-charging is a guide, evidence from a 2007 MoJ study on the impact of fees in the England and Wales civil court system⁵ stated that:
- “Individuals feel that cost played a minor role in their initial decision-making process (ranked 8th from a list of 9 factors) in terms of whether to take a matter to court. In this study factors relating to obtaining a satisfactory result or outcome were the major influences on deciding to take a case to court, particularly in family cases.”
- 10.6 However, we have assumed that the introduction of fees in tribunals where none previously existed is likely to have a greater and different type of impact than in the courts where fees have been for a long time.

11. Analysis

- 11.1 We consider that the following groups could be affected by the policy proposal to introduce fees:
- Claimants – typically at least one employee or ex-employee, although an employer in a small minority of cases;
 - Respondents – typically the employer⁶;
 - Appellants – individuals or employers who choose to appeal an ET decision;
 - HMCTS – the organisation that administers the ET and EAT;
 - Taxpayers – the ET and EAT are entirely subsidised by taxpayers at present;
 - Lawyers – claimants and respondents sometimes make use of legal advice and representation and
 - Advisory, Conciliation & Arbitration Service (Acas) – the publicly funded organisation which offers an alternative to the ET process in that Acas provides a free dispute resolution service to employers and employees.
- 11.2 The particular impact of using the type of claim as one of the basis for the fee levels and in Option 2, using the value of the claim on those taking forward discrimination cases is also discussed since by definition all discrimination claimants have protected characteristics which will form grounds for their complaint.

⁵ Ministry of Justice Research Series 4/07 “*What’s cost got to do with it? The impact of changing court fees on users*” www.justice.gov.uk/publications/research280607.htm June 2007

⁶ The employee would be the respondent where an employer chooses to make a counterclaim (which would only happen in breach of contract complaints).

12. Impact on claimants

- 12.1 In ET most claimants are individuals who are either an employee or ex-employee. Claims can be made by individuals (single claims) or as a group (multiple claims). As the bulk of the fees are initially borne by the claimant we consider that the main equality impacts will be upon individual employees (claimants) who bring a claim. The tribunal will have the power to order that the unsuccessful party reimburse the fees paid by the successful party so that the cost is ultimately borne by the party who caused the system to be used.
- 12.2 It should be noted that where claimants are represented by a trade union, a no win no-fee lawyers (more likely in multiple cases) or receive legal advice paid by household insurance we believe that there are no equality impacts on individual claimants because they would not normally have directly incurred fees. But there could be an indirect impact if such representatives are less willing to take forward cases where a successful outcome is doubtful. We will use the consultation period to gather evidence about how likely this outcome would be.
- 12.3 Due to the nature of the proposals included in this consultation, any impact on different groups will primarily be financial. Data on the general demographics and income of the population of England and Wales from The Department for Work and Pensions⁷ has enabled an assessment of the potential impact of the proposals on different groups. We are aware that the demographics of the general population could differ from those who will be liable to pay ET and EAT fees; further information on demographics of users of these tribunals will be gathered at consultation stage.
- 12.4 In order to identify the groups most likely to be affected by the introduction of a fee we have looked at the published employment tribunal statistics for the period 1 April 2009 to 31 March 2010 and in some case over the last 3 or 5 years and the Survey of Employment Tribunal Applicants (SETA) 2008 (see Annex D).
- 12.5 It is clear that there is income disparity between different parts of the population. The research above gives us an indication of the groups that, due to their lower average incomes, may be disproportionately affected in general by the introduction of fees. However, the fee remission scheme (described below) is available to all those who are in receipt of prescribed state benefits, or whose gross annual or monthly disposable incomes fall below certain levels. For this reason we do not anticipate that the proposals have any equality impacts on the low income groups; however, we will use the consultation period to gather further evidence which will help to inform the final EIA.
- 12.6 However, there is the potential that the proposed changes would in fact have a larger impact on those individuals with particular protected characteristics who are middle income earners and who would not be eligible for a full fee remission. Where a higher proportion of individuals with particular protected characteristics compared to the adult-working population are middle incomes earners, we have the potential for differential impact.
- 12.7 Where we have the data, three comparisons will be made:

⁷ Source: Households Below Average Income (HBAI) 1994/95-2009/10
http://research.dwp.gov.uk/asd/index.php?page=hbai_arc

- a. Whether those with a protected characteristic are more likely to be employed than not and therefore have need to access an ET;
- b. Whether those with a protected characteristic have a lower household income than others in the population and would therefore be eligible for remission or whether a higher proportion have a middle income than average for the working population and may potentially be impacted negatively with the introduction of charging; and
- c. The characteristics of those using ET.

13. Age

Whether more likely to be employed

13.1 According to the Office of National Statistics Annual Survey of Hours and Earnings⁸ both the young and those over 65 are most likely to be economically inactive (either because they have not yet, or only just, started or have retired from full time employment). This means that they are less likely to be users of the tribunal. People of working age are more likely to be employed and to be users of the ET and EAT.

Household income

13.2 Table 6 (Annex A) shows the quintile distribution of household income by the age of the head of the family, separately for those with children and those without. Over the age of 18 there is a general association between age and disposable income: 80% of individuals in households with children where the head of the household is aged 16-24 years old and 52% of individuals in households without children where the head of the household is aged 16-24 year olds are in the two lower disposable income quintiles compared to 37% of all working-age adults. Where income is low families would be eligible for remission to reduce the impact of the introduction of fees.

13.3 The research above indicates that 24% of individuals in households with children where the head of the household is aged 30-34 years old, and 21% of those in households without children where the head of the household is aged 20-29 years old, are in the middle quintile for disposable income versus 19% of the working population as a whole. A higher proportion of individuals in these groups than in the average for adult working population would be impacted by the introduction of fees due to ineligibility for full fee remission.

Use of ET

13.4 Table 7A (Annex A) confirms that most claimants are aged between 25 and 64. There is a higher proportion in the younger age group (25-44) who are involved with discrimination cases (50% compared to 46%)⁹.

⁸ www.statistics.gov.uk/favicon.ico

⁹ SETA survey 2008

14. Disability

Whether more likely to be employed

14.1 According to the Office of National Statistics labour force survey¹⁰ approximately 50% of people of working age with a disability are in work. When comparing employment rates against non-disabled counterparts the likelihood of employment is 82% for men and 84% for women. Although employment rates are lower than for the non-disabled population their disability may mean that they have more reason to use ET.

Household income

14.2 Table 5 (Annex 1) shows the quintile¹¹ distribution of household income by disability¹² The research shows 52% of disabled working age adults are in the two lower disposable household income quintiles compared to 34% of non disabled working age adults¹³. The data indicate that disabled working-age adults are more likely to be in lower income households and therefore there are potentially more likely to benefit from the proposed remission system based on household disposable income than the non-disabled adults of working-age.

14.3 The general population of disabled people has a similar distribution of disposable income in the middle quintile as the general adult population, so the impact on this group would not differ by income.

Use of ET and EAT

14.4 Table 7A shows that 22% of claimants had a long standing disability or illness at the time of application compared to 40% of those taking forward a discrimination case. Although this is an all encompassing definition of disability among claimants, it gives some indication of the difference in prevalence of disability among claimants.¹⁴ For comparison the prevalence of disability in the adult working population was 14%¹⁵

15. Gender reassignment

15.1 There is no available evidence on household income by gender reassignment. Due to the limitations in the available evidence we are unable to rule out the potential for any differential impact.

¹⁰ [National Statistics Online - Browse by theme - Labour market](#)

¹¹ Quintiles are income values which divide the population, when ranked by income, into five equal-sized groups.

¹² No adjustment is made to disposable household income to take into account any additional costs that may be incurred due to illness or disability.

¹³ Using data from the Household Below-Average Income (HBAI) survey

¹⁴ SETA survey 2008

¹⁵ Calculated from figures in Table 5 from the HBAI survey

16. Marriage and civil partnerships

Household income

16.1 Table 6 (Annex A) shows the quintile distribution of household income for working-age adults by marital status. People, who are married or in a civil partnership are less likely to be in the bottom two income quintiles than those who do not share that protected characteristic. This indicates that these individuals would be less likely to be eligible for remission and if they needed to take a case forward, then they would be more likely to be financially impacted by the introduction of fees than other households.

17. Race

Household income

17.1 Tables 6 (Annex A) show the quintile distribution of household income by the ethnic group of the head of the household. Those in households where the head of the household is from a minority ethnic group are more likely to have disposable incomes in the bottom two quintiles: this percentage stands at 55% for Black/Black British groups, 57% for Asian or Asian British and 50% of Chinese, versus 37% of the working population overall and versus 34% of the White population. These data indicate that adults in a household with an ethnic minority head of household are more likely to be in low income households and therefore more likely to benefit from the proposed remission system based on household disposable income.

17.2 There are fewer middle income households headed by someone from an ethnic background when compared to all working adults and compared to those from White backgrounds, both 19%. The highest proportion was for households headed by someone from an Indian background (17%) and the lowest was for those headed by those from a Pakistani or Bangladeshi background (11%). These data confirm that those with an ethnic background are more likely to benefit from the proposed remission system than people from a non-ethnic background due to their lower income levels.

Use of ET and EAT

17.3 The ethnic background of those using the ET and EAT is as follows:

- 86% White;
- 2% Mixed;
- 5% Asian;
- 5% Black, and
- 2% Chinese or Other¹⁶

¹⁶ SETA - The Survey of Employment Tribunal Applications 2008. See Annex D for more detail about reliability.

17.4 For comparison, the ethnic background of the adult working-age population is as follows:

- 87% White;
- 2% Mixed;
- 7% Asian;
- 3% Black, and
- 2% Chinese or Other¹⁷

17.5 The data show that a slightly higher proportion of people with a Black background make claims compared to the adult working population (5% compared to 3%) while for those with an Asian background the proportion is lower (5% compared to 7%). The proportions claimants with White, Mixed and Chinese/Other ethnic backgrounds matched those in the working-adult population.

18. Religion/Belief

Household income

18.1 There is some evidence to suggest that in the employment field there is a disparity of earnings between Muslims and non-Muslims.¹⁸

Use of ET and EAT

18.2 Table 7A shows the religious background of those using the ET in all cases as follows:

- 53% No religion
- 40% Christian
- 2% Muslim
- 1% Hindu
- 1% Sikh,
- 1% Others
- 0% Jewish
- 0% Buddhist

18.3 For comparison, the ethnic background of the population in England was as follows:

- 20% No religion
- 71% Christian
- 5% Muslim
- 2% Hindu
- 1% Sikh,
- 1% Others
- 1% Jewish
- 0% Buddhist¹⁹

¹⁷ General population figures are from the mid-2009 population estimates, Office for National Statistics. As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only. Working-age for men is 16-64 and for women 16-59 inclusive.

¹⁸ Metcalf, H. The National Institute of Economic and Social Research. 2009. *“Pay gaps across the equality strands: a review”*. (Research Report 14). London. Equality and Human Rights Commission.

18.4 Overall the data show that a lower proportion of claimants had a religion when compared to the population of England (although these two sets of data come from different sources and are not directly comparable but give an indication of the differences. In both cases they are the most recent available).

19. Pregnancy and maternity

Household income

19.1 No data was available on household income and pregnancy.

Use of ET and EAT

19.2 Individuals with this protected characteristic could be adversely affected due to the need to make claims relating to suffering a detriment or unfair dismissal as a result of pregnancy compared to those who had no cause to use ETs. Table 2 in Annex A shows that 1,900 cases were taken forward in 2009/10. However the fees would apply equally to all individuals claiming detriment or unfair dismissal on grounds other than pregnancy, i.e. health and safety.

20. Sex

More likely to be employed

20.1 According to the SETA 2008, 60% of claimants were men which is somewhat higher than the proportion employed in the workforce as a whole (51%), as given in the Labour Force Survey (LFS, Q4, 2008).

Household income

20.2 Table 5 (Annex A) shows the quintile distribution of household income by gender. Eighteen per cent of both adult males and females are in the bottom quintile. 18 per cent of adult males are in the second quintile, compared to 20 per cent of adult females. These data indicate that overall there is little difference in the proportion of adult males and females in lower income households²⁰ indicating that access to remission will not differ by sex on the basis of income. However, there could be variation in this distribution by family type.

20.3 There are slightly more middle income households headed by women than men, 19% compared to 17%, so potentially a slightly higher proportion of women could potentially be required to contribute to any charges under the remission system.

¹⁹ ONS, 'Integrated Household Survey Experimental Statistics, 2009-10', *Statistical Bulletin*, September 2010, Table 2.

²⁰ The HBAI analysis aims to measure the living standards of an individual as determined by household income and is based on the assumption that both partners in a couple benefit equally from household income. The HBAI publication has however stated that research has suggested that, particularly in low-income households the assumption is not always true as males sometimes benefit at the expense of females from household income. The HBAI analysis by gender could therefore understate differences between males and females.

Use of ET and EAT

20.4 Men brought the majority of applications across most jurisdictions. However, Table 2 (Annex 1 Evidence Tables) provides statistics on the nature of employment tribunal claims made in 2009-10 and shows that of the jurisdictional complaints received in that year 37,400 were for equal pay and 18,200 for sex discrimination, 14% of the total number (392,800) of complaints received. 82% of sex discrimination complaints were brought by women²¹ and equal pay complaints can only be brought on the grounds of sex, which are more often women bringing an equal pay claim naming a male comparator who is doing similar work. Consequently, most of these complaints were made by women. It could therefore be argued that the introduction of fees will potentially have a differential impact on those women who claim on these grounds.

21. Sexual orientation

Use of ET and EAT

21.1 Table 2 shows that in 2007/08, 580 claims of discrimination on the grounds of sexual orientation were made, rising to 710 in 2009/10 and falling to 640 in 2010/11 which suggests that those who make claims on these grounds of discrimination group would potentially be adversely affected by the introduction of fees, i.e. by having to pay unless eligible for remission. However, we are not aware of any evidence that suggests that sexual orientation has an impact on income and thus ability to pay.

22. Discussion of basing the fee on the type of claim as well as the potential impact of proposed level 4 fees

22.1 Under both Options 1 and 2 it is proposed that the level of the fee is determined initially by the nature of the claim made. This approach is proposed because case modelling suggests that some types of claims consume considerably greater resources (in terms of staff and judiciary) than others. It is proposed that all claims are allocated into one of three levels, based upon the likely level of resources that a claim is likely to consume. The highest fees are paid at level 3, with the lowest for level 1. Claims brought under discrimination legislation which consume the highest level of resource will be allocated to Level 3, claims of unfair dismissal (which generally consume less resource) will be allocated to Level 2 and claims relating to, for example non-payment of wages will be allocated to Level 1. This means that all claimants bringing claims based on grounds of discrimination and equal pay face higher fee levels when compared to fee levels for other types of claims.

22.2 This approach means that claimants pay a reasonably representative cost that ensures that cases more likely to use resources are charged a higher fee. Under option 1 this is further provided for because fees are payable at two stages in the process namely at issue and hearing.

²¹ SETA survey 2008

- 22.3 Under option 2, (where only has one fee payable at the issue of the claim), if the claimant is seeking an unlimited award under the Option 2 proposals, the issue fee is £1750; and, if they are seeking an award below £30,000, the fee is £600. Together with the low success rate (see Table 1), which could see the tribunal ordering the unsuccessful party to reimburse the fees paid by the successful party, means that claimants not eligible for full remission and therefore able to pay a fee could be further deterred from taking cases forward.
- 22.4 Therefore, the proposal to charge different levels of fees for different jurisdictions has the potential to impact more negatively on those claimants in more complex claims as well as those who are seeking to resolve a dispute where there is the potential for a 'high value' award, e.g. in discrimination cases. However, it needs to be taken into consideration that from the analysis presented above individuals with certain protected characteristics will be more likely than others in the general population to have fees remitted.
- 22.5 Table 7A shows discrimination cases and case brought by all claimants by ethnicity, religion, applicant sex, applicant age and whether the applicant had a longstanding disability or illness at time of application. There is variation in the protected characteristics between these two groups, particularly for sex, where women are 58% of claimants for discrimination cases compared to 40% of all claimants. Table 7B which shows awards under £30,000 and over £30,000 for unfair dismissal, race, sex and disability discrimination as a 5 year average (2005/06 -2009/10) and Table 7C shows awards under £30,000 and over £30,000 for race, sex, disability, religious, sexual orientation and age discrimination as a 3 year average (2007/08 -2009/10). From the ET statistics for 2010-11, 6% of awards in unfair dismissal case were in excess of £30,000; while the figure in discrimination awards was 11%. Table 7D shows the possible fees that would be charged for individuals not eligible for remission.

23. Mitigation and justification

- 23.1 The fee proposals, when taken as a package, mitigate the potential impacts outlined above because of the following factors:
- (i) Introducing fees at a level that will recover less than the full cost of providing the service overall Table 3 (Annex A Evidence base) shows the currently estimated costs of the process together with the proposed fee levels.
 - (ii) The provision of Acas conciliation, which provides an alternative method of resolving workplace disputes, will continue to be funded from public money.
 - (iii) A system of remission based on the receipt of prescribed benefits and household income.
 - (iv) The power of the tribunal to order that fees are reimbursed to the successful party by the unsuccessful party

24. Remissions

24.1 The introduction of fees should not deny access to the employment tribunals for those who cannot afford to pay them. It is therefore proposed that the HM Courts and Tribunals remission system should be extended to the proposed fee structure in employment tribunals.

25. HM Courts and Tribunals Service remissions system

25.1 HM Courts and Tribunals Service provides a fee remission system for users of the English and Welsh civil courts. A system of fee waivers is available to those who would have difficulty paying a court fee and meet the appropriate criteria. An individual may be eligible for a full remission, where no fee is payable, or a part remission, where a contribution towards the fee is required. Anyone who seeks a remission from paying a fee either in full or in part, must apply to do so at the time of making the application or at any time when a fee is due and provide documentary proof of their financial eligibility. There are three types of remissions, follows:

Remission 1 – provides a full remission (i.e. no fee is payable) if the applicant is in receipt of one of the following stated benefits:

- Income Support
- Income-based Jobseeker's Allowance
- Pension Credit guarantee credit
- Income-related Employment and Support Allowance
- Working Tax Credit but not also receiving Child Tax Credit

Remission 2 - provides a full remission (i.e. no fee is payable) if the applicant, and that of their partners gross annual income if they are a couple, is calculated to be not more than the amounts shown in the table below:

Gross annual income with:	Single	Couple
No children	£13,000	£18,000
1 child	£15,930	£20,930
2 children	£18,860	£23,860
If the party paying the fee has more than 2 children then the relevant amount of gross annual income is the amount specified in the table for 2 children plus the sum of £2,930 for each additional child		

Remission 3 - provides a full or part remission (i.e. either no fee or a contribution towards the fee is payable) based on an income and expenditure means test to calculate their (and if applicable their partner's) monthly disposable income:

- No fee payable if monthly disposable income is £50 or less;
- If monthly disposable income is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's monthly disposable monthly income up to a maximum of £50;
- If monthly disposable income is more than £250, an amount equal to £50 plus one-half of every £10 over £200 of the party's monthly disposable income.

25.2 There are also 3 fixed allowances permitted as part of the means test for this criterion:

Partner	£159 ²² a month
Dependant Children	£244* a month per child
General Living Expenses	£315* a month

25.3 For example, a person's monthly disposable income is calculated between £50 and £59.99 they will contribute £12.50 on each occasion that a fee requires to be paid; where the disposable income is calculated between £340 and £349.99, the contribution will be £120. To assist users a table setting out the contributions payable has been created and is provided in Annex C.

The table below shows the contributions currently payable in the HMCTS model.

Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution
£	£	£	£	£	£
50 – 59*	12.50	340 – 349	120.00	630 – 639	265.00
60 – 69	15.00	350 – 359	125.00	640 – 649	270.00
70 – 79	17.50	360 – 369	130.00	650 – 659	275.00
80 – 89	20.00	370 – 379	135.00	660 – 669	280.00
90 – 99	22.50	380 – 389	140.00	670 – 679	285.00
100 – 109	25.00	390 – 399	145.00	680 – 689	290.00
110 – 119	27.50	400 – 409	150.00	690 – 699	295.00
120 – 129	30.00	410 – 419	155.00	700 – 709	300.00
130 – 139	32.50	420 – 429	160.00	710 – 719	305.00
140 – 149	35.00	430 – 439	165.00	720 – 729	310.00
150 – 159	37.50	440 – 449	170.00	730 – 739	315.00
160 – 169	40.00	450 – 459	175.00	740 – 749	320.00
170 – 179	42.50	460 – 469	180.00	750 – 759	325.00
180 – 189	45.00	470 – 479	185.00	760 – 769	330.00
190 – 199	47.50	480 – 489	190.00	770 – 779	335.00
200 – 209	50.00	490 – 499	195.00	780 – 789	340.00
210 – 219	55.00	500 – 509	200.00	790 – 799	345.00
220 – 229	60.00	510 – 519	205.00	800 – 809	350.00
230 – 239	65.00	520 – 529	210.00	810 – 819	355.00
240 – 249	70.00	530 – 539	215.00	820 – 829	360.00
250 – 259	75.00	540 – 549	220.00	830 – 839	365.00
260 – 269	80.00	550 – 559	225.00	840 – 849	370.00
270 – 279	85.00	560 – 569	230.00	850 – 859	375.00
280 – 289	90.00	570 – 579	235.00	860 – 869	380.00
290 – 299	95.00	580 – 589	240.00	870 – 879	385.00
300 – 309	100.00	590 – 599	245.00	880 – 889	390.00
310 – 319	105.00	600 – 609	250.00	890 – 899	395.00

²² The amounts contained in this table for an individual (and couple) are based on the 'Monthly Disposable Income' bands which are used by the Legal Services Commission to calculate how much someone would pay towards their case when assessing Legal Aid.

Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution
320 – 329	110.00	610 – 619	255.00	900 – 909	400.00
330 – 339	115.00	620 – 629	260.00	910 – 919**	405.00

*each range ends with .99p

**the contribution will increase by £5 for every additional £10 over £919

25.4 Our current analysis (see paragraph 4.14 of the Impact Assessment which supports this consultation paper) suggests that under both Options 1 and 2 approximately 10% of employment tribunal claimants would be eligible to Remission 1 and approximately 17% be eligible to Remission 2, both of which provide a full fee remission. Moreover under Option 1 around 55% of the remaining claimants would pay only a proportion of the highest proposed fee of £1250. Under Option 2, where the highest fee is £1750, around 62% of the remaining claimants would be entitled to a part remission.

25.5 A remissions policy broadly in line with that in the civil courts would also be made available to individual claimants who participate in a multiple claim. This would mean that where the details of the claimants were submitted in the one claim form and no claimants in the multiple claim were entitled to a remission, the full fee would be payable. Where a sub-group of claimants in a multiple claim is entitled to a remission, then the remaining claimants in the group would be required to pay the total relevant issue fee. We propose to adopt the same principle when payment of the hearing fee is due – i.e., where a sub-group of claimants is not entitled to a remission, responsibility for payment of the hearing fee would rest with that group.

25.6 The consultation seeks views on what discretion would be needed to ensure that no one claimant in a multiple claim is required to pay more than the comparable single fee.

25.7 Under Option 1, the claimant will pay a fee as a contribution to the cost of administering the claim and, should it proceed to a hearing, the cost of the hearing itself. Under Option 2 the claimant will pay an issue fee at the commencement of the claim.

26. Refunds

26.1 As all cases incur administrative costs, we do not propose to refund the issue fee or, if paid, the hearing fee regardless of the outcome of the claim, including if the claim is subsequently settled or withdrawn as the tribunal will have incurred costs up to that point. This applies to both option 1 and 2.

26.2 Under option 1 for the issue fee, our rationale for this approach is that the tribunal incurs the cost as soon as the claim is made and if a refund were available the cost would have to be borne by the taxpayer. For the hearing fee, our rationale is that payment will act as an incentive to ensure parties consider whether a hearing is necessary and to discuss settlement earlier in the process, thereby changing the behaviour of those who only consider settlement very late in the proceedings or on the day of the hearing.

26.3 The same approach to refunds is adopted under option 2. It is accepted that the fees under Option 2 sees the entirety of the cost of bringing a claim to an employment tribunal front loaded and that therefore the fee levels at issue under Option 2 are higher than those under Option 1. However costs are incurred by HM Courts and Tribunals Service as soon as the claim is presented and if a refund were available the cost would have to be borne by the taxpayer.

27. Conclusion

27.1 The overall assessment in the Equality Impact Assessment is that there are some implications of the proposals on Equality Act 2010 protected characteristics groups in seeking access to justice, in that the introduction of fees may impact people financially and act as a deterrent to bringing a claim. These impacts will affect different equality groups differently insofar as they have varying income profiles. However, this is mitigated by:

- The application of the remissions policy which will protect access to justice for those on low means;
- The provision for the tribunal to order that fees are reimbursed by the unsuccessful party;
- The availability of a free alternative form of dispute resolution via Acas and;
- The setting of fees below full cost recovery (with the exception of the Level 4 fee in option 2).

27.2 As part of our consultation comments on the specific questions at the end of the Equality Impact Assessment are particularly welcome.

28. Stakeholder consultation and engagement

28.1 In considering this initial Equality Impact Assessment and developing our policy proposals we have considered evidence from BIS and Ministry of Justice, as well as academic studies and the published review of historical fee charging within HM Courts and Tribunals Service. The Department for Business, Innovation & Skills (BIS) and the former Tribunals Service published a joint consultation document in January 2011 entitled, "Resolving workplace disputes", which set out proposals for reforming the system of workplace dispute resolution in Great Britain²³.

28.2 We have made a broad comparison between the behaviour that drives the instigation of court cases with the decision to begin employment tribunal proceedings. We will test these assumptions and comparisons through the responses to the questions raised at the end of this EIA and associated consultation.

²³ www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf

- 28.3 We have identified a number of specific groups, such as the Citizen's Advice Bureau and Discrimination Law Association, who represent the interests of claimants and others including major unions who are involved in the employment tribunal process. Each will receive a copy of the consultation and associated impact assessments and we will encourage their participation, which will inform our final decision on setting the level of fees and the method of collection.
- 28.4 HM Courts and Tribunals Service Equality and Diversity reference group members such as the Royal Association for Disability Rights, Employers Forum on Age, DANDA and others will also be included in the consultation as will local Employment Tribunal office user groups. We also intend to provide and discuss the proposals with the Employment Tribunals National User Groups of England & Wales and Scotland.
- 28.5 We will also develop, introduce and publish the results of a monitoring and review process to establish the actual impact of the introduction of fees on volumes of claims to see if there are any unexpected consequences and act on them appropriately. Analytical Services has been developing a coherent and consistent set of high-level driver-based forecasts of demand linked to detailed agency workload and financial models. We plan to develop models covering the work of the HM Courts and Tribunals Service during 2012/13.

We would welcome feedback on the likely equality impact of either of the options to introduce fees on protected groups within society.

We also would be grateful for feedback on likely equality impacts of the introduction of fees on both low and middle income groups.

Equality Impact Assessment Questions

Q1 – What do you consider to be the equality impacts of the introduction of fees both under Option 1 and Option 2 (when supported by a remission system) on claimants within the protected groups?

Q2 – Could you provide any evidence or sources of information that will help us to understand and assess those impacts?

Q3 – What do you consider to be the potentially positive or adverse equality impacts on employers under Options 1 and 2?

Q4 – Do you have any evidence or sources of information that will help us to understand and assess those impacts?

Q5 - Do you have any evidence that you believe shows that the level of fees proposed in either option will have a disproportionate impact on people in any of the protected groups described in the introduction that you think should be considered in the development of the Equality Impact Assessment?

Q6 – In what ways do you consider that the higher rate of fees proposed in option 2 for those wishing to take forward complaints where there is no limit to their potential award (referred to as Level 4) if successful, will be deterred from accessing justice?

Q7 – Are there other options for remission you think we should consider that may mitigate any potential equality impacts on people with protected characteristics while allowing us to keep the levels of fees charged under either option to the level we propose?

Q8 – Do you consider our assumption that the potentially adverse effects of the introduction of fees together with the remission system will mitigate any possible adverse equality impacts on the groups covered by the analysis in our equality impact assessment to be correct? If not, please explain your reasons.

Q9 – Further to Q8 could you provide any information to help us in understanding and assessing the impacts?

Q10 – Could you provide evidence of any potential equality impacts of the fee payment process described in Annex B you think we should consider?

Q11 – Further to Q10 do you have any suggestions on how those potential equality impacts could be mitigated?

Q12 – Where, in addition to any of the questions that have been asked, you feel that we have potentially missed an opportunity to promote equality of opportunity and have a proposal on how we may be able to address this, please let us know so that we may consider it as part of our consultation process.

Annex A – Evidence Tables

Evidence Base – Statistical analysis

Table 1: Employment tribunal cases disposed of and outcomes by jurisdiction in 2009-2010

		2007/08	2008/09	2009/10			
Total claims disposed		81,600	92,000	112,400			
JURISDICTION MIX OF TOTAL CLAIMS DISPOSED Apr 09 to Mar 10							
Nature of claim	Jurisdictions disposed	Withdrawn		ACAS conciliated settlements		Struck out (not at a hearing)	
		No.	%	No.	%	No.	%
Unfair dismissal	50,900	12,200	24	22,400	44	3,900	8
Wages Act	35,200	11,100	31	9,300	26	3,200	9
Breach of contract	32,100	7,100	22	10,400	32	2,200	7
Redundancy pay	12,400	2,700	22	2,300	19	930	8
Sex discrimination	17,500	10,100	57	3,600	20	2,700	15
Race discrimination	4,500	1,400	30	1,700	38	330	7
Disability discrimination	6,100	2,000	32	2,800	45	430	7
Religious belief discrimination	760	250	32	250	33	83	11
Sexual orientation discrimination	540	160	30	210	40	49	9
Age discrimination	3,900	1,500	39	1,500	39	270	7
Working time	20,500	4,500	22	6,700	33	1,300	6
Equal pay	20,100	14,300	71	2,300	11	3,100	16
National minimum wage	410	100	25	160	37	25	6
All Others	21,900	5,600	25	6,900	31	1,500	7
All	227,000	73,000	32	70,600	31	20,100	9

Nature of claim	Successful at tribunal		Dismissed at a preliminary hearing		Unsuccessful at hearing		Default judgment	
	No.	%	No.	%	No.	%	No.	%
Unfair dismissal	5,200	10	1,200	2	4,500	9	1,500	3
Wages Act	5,000	14	860	2	1,900	5	3,800	11
Breach of contract	5,800	18	520	2	2,300	7	3,700	12
Redundancy pay	3,000	24	140	1	690	6	2,600	21
Sex discrimination	340	2	180	1	560	3	110	1
Race discrimination	130	3	240	5	700	15	60	1
Disability discrimination	170	3	170	3	530	9	60	1
Religious belief discrimination	19	2	64	8	89	12	9	1
Sexual orientation discrimination	27	5	26	5	47	9	10	2
Age discrimination	95	2	110	3	330	9	31	1
Working time	3,600	18	300	1	1,200	6	2,900	14
Equal pay	200	1	110	1	77	0	10	0
National minimum wage	49	12	10	2	47	11	26	6
All Others	4,900	22	670	3	1,300	6	1,100	5
All	28,500	13	4,600	2	14,300	6	16,000	7

The table below shows how the manner of disposal of 1848 appeals disposed of by the EAT in 2009-10.

Nature of disposal	Numbers of cases	% of claims disposed
Rejected as having no reasonable prospect of success	839	45%
Disposed of at hearing	459	25%
Withdrawn	284	15%
Rejected as being out of time	244	13%
Struck out because of failure to comply with orders	22	1%

Table.2: Claims Accepted by employment tribunals from April 2007 to March 2010²⁴

	2007-08	2008-09	2009-10
Total Claims Accepted [1]	189,300	151,000	236,100
Singles	..	62,400	71,300
Multiples	..	88,700	164,800
NATURE OF CLAIM	2007-08	2008-09	2009-10
Unfair dismissal	40,900	52,700	57,400
Unauthorised deductions (Formerly Wages Act)	34,600	33,800	75,500
Breach of contract	25,100	32,800	42,400
Sex discrimination	26,900	18,600	18,200
Working Time Directive [2]	55,700	24,000	95,200
Redundancy pay	7,300	10,800	19,000
Disability discrimination	5,800	6,600	7,500
Redundancy – failure to inform and consult	4,500	11,400	7,500
Equal pay	62,700	45,700	37,400
Race discrimination	4,100	5,000	5,700
Written statement of terms and conditions	5,000	3,900	4,700
Written statement of reasons for dismissal	1,100	1,100	1,100
Written pay statement	1100	1,100	1,400
Transfer of an undertaking - failure to inform and consult	1,400	1,300	1,800
Suffer a detriment / unfair dismissal - pregnancy[6]	1,600	1,800	1,900
Part Time Workers Regulations	600	660	530
National minimum wage	430	600	500
Discrimination on grounds of Religion or Belief	710	830	1000
Discrimination on grounds of Sexual Orientation	580	600	710
Age Discrimination	2900	3,800	5,200
Others	13,900	9,300	8,100
Total	297,000	266,500	392,800

[1] A claim may be brought under more than one jurisdiction or subsequently amended or clarified in the course of proceedings but will be counted only once.

[2] The figures contain 10,000 claims from airline employees that have been resubmitted a number of times.

²⁴ The "Employment Tribunal and EAT Statistics 2009/10" publication
www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/tribs-et-eat-annual-stats-april09-march10.pdf

Table 3. The relationship between the primary jurisdiction and the ET track system is summarised below.

Nature of claim	Track (level)
Unauthorised deductions (Formerly Wages Act)	Short (Level 1)
Breach of Contract	Short (Level 1)
Working Time Directive	Short (Level 1)
Redundancy Pay	Short (Level 1)
Written statement of terms and conditions	Short (Level 1)
Unfair Dismissal	Standard (Level 2)
Redundancy – failure to inform and consult	Standard (Level 2)
Written statement of reason for dismissal	Standard (Level 2)
Written pay statement	Standard (Level 2)
Transfer of an undertaking – failure to inform and consult	Standard (Level 2)
Suffer a detriment/unfair dismissal – pregnancy	Standard (Level 2)
Part Time Workers Regulations	Standard (Level 2)
National Minimum Wage	Standard (Level 2)
Sex Discrimination	Open (Level 3)
Disability Discrimination	Open (Level 3)
Equal Pay	Open (Level 3)
Race Discrimination	Open (Level 3)
Discrimination on the grounds of Religion or Belief	Open (Level 3)
Discrimination on the grounds of Sexual Orientation	Open (Level 3)
Age Discrimination	Open (Level 3)

Table 4. – Full cost of tribunal process in 2009/10 prices*

Fee	Level of fee	Fee at full cost recovery	Proposed Fee
Issue Hearing	ET Level 1	£384	£150
	ET level 1	£1334	£250
Issue Hearing	ET level 2	£348	£200
	ET level 2	£3493	£1000
Issue Hearing	ET level 3	£362	£250
	ET level 3	£5233	£1250
Issue Hearing	EAT	£287	£400
		£3912**	£1200

*The cost of the process is based upon three basic stages, namely issuing the claim, hearing the claim and the work to prepare the claim for hearing, known as the interlocutory work. Therefore, whilst all fees may not be 33% of the cost, overall they achieve this level when considered against 2009/10 costs and volumes of cases.

**This figure includes the cost of a significant amount interlocutory work, much of which is undertaken in the early stages of cases. The fee at full cost recovery in this table does not include the costs of this additional work, which is reflected in the proposed fee.

Table 5: Quintile distribution of income (after housing costs) for individuals, by gender and disability, United Kingdom

Percentage of individuals	Net equivalised disposable household income					All individuals (millions)
	Bottom quintile	Second quintile	Middle quintile	Fourth quintile	Top quintile	
Gender						
Adult male	18	18	19	22	23	23.2
Adult female	18	20	20	21	21	24.5
Disability						
Disabled working-age adults	30	22	19	15	13	5.2
Disabled pensioners	12	28	27	21	11	5.2
Non-disabled working-age adults	18	16	19	22	25	30.9
Non-disabled pensioners	13	25	20	21	21	6.3
All individuals (all ages)	20	20	20	20	20	60.7

1. Percentages may not sum to 100 per cent due to rounding.

2. Income is adjusted, or equivalised, to take into account variations in both the size and composition of the household.

Equivalence scales conventionally take a couple with no children as a reference point. The incomes of larger households are adjusted downwards and the incomes of smaller households adjusted upwards relative to this reference point.

Source: Households Below Average Income (HBAI) 1994/95-2009/10

Table 6: Quintile distribution of income (after housing costs) for working age adults by age and ethnic group of head of family, United Kingdom.

Percentage of Working age adults						
	Net equivalised disposable household income					All working age adults (Millions)
	Bottom Quintile	Second Quintile	Middle Quintile	Fourth Quintile	Top Quintile	
Age of head of family						
With Children						
16-24	55	25	13	6	1	0.6
25-29	34	29	20	11	6	1.3
30-34	21	24	24	20	11	1.8
35-39	21	19	22	20	17	2.7
40-44	19	21	22	18	20	3.1
45-49	19	19	22	20	19	2.3
50-54	20	14	19	21	26	1.1
55+	19	18	17	21	25	0.6
Without Children						
16-19	31	21	18	19	12	1.5
20-24	24	19	21	20	16	3.5
25-29	15	12	21	27	26	2.7
30-34	13	9	13	24	41	1.9
35-39	17	10	13	21	40	1.5
40-44	20	11	16	25	28	1.6
45-49	16	13	16	26	30	2.1
50-54	16	12	17	26	30	2.8
55+	17	15	17	22	29	5.2
Family type and marital status						
Couples	16	16	19	23	27	23.6
Married or Civil Partnership	15	15	19	23	28	18.2
Cohabiting	18	17	20	21	23	5.5
Singles	28	19	18	18	17	12.5
All working-age adults with						
Children	23	21	21	18	16	13.5
Couples	20	20	22	20	18	11.5
Married or Civil Partnership						
Cohabiting	18	18	22	21	21	9.4
Singles	27	27	22	16	8	2.1

Singles	40	28	18	9	5	1.9
All working-age adults without Children	18	14	17	23	27	22.7
Couples	12	12	17	26	34	12.1
Married or Civil Partnership	11	12	16	26	35	8.7
Cohabiting	12	11	19	25	33	3.4
Singles	26	17	18	20	20	10.6
Male	27	17	17	20	20	6.5
Female	25	17	19	20	19	4.1
Ethnic group of head (3 year average)						
White	18	16	19	22	25	32.3
Mixed	30	18	14	17	21	0.3
Asian or Asian British	36	21	14	13	16	1.9
Indian	27	18	17	15	23	0.9
Pakistani and Bangladeshi	48	28	11	8	5	0.7
Black or Black British	35	20	15	17	13	0.9
Black Caribbean	29	20	15	18	18	0.4
Black Non-Caribbean	39	19	16	17	9	0.6
Chinese or other ethnic group	33	17	15	16	18	0.6
All working-age adults	20	17	19	21	23	36.2

Notes:

- 1 Lone parents have not been disaggregated by gender as sample sizes for lone-parent males are too small to allow robust estimates
 - 2 The totals for all working-age adults are shown for the United Kingdom for the latest year and are not three-year average.
 - 3 Percentages may not sum up to 100 per cent due to rounding.
 - 4 Income is adjusted, or equivalised to take into account variations in both the size and composition of the household.
- Equivalence scales conventionally take a couple with no children as a reference point. The incomes of larger households are adjusted downwards and the incomes of smaller households adjusted upwards relative to this reference point.

**Discrimination cases by ethnicity, religion, applicant sex,
applicant age and whether applicant had a longstanding
disability or illness at time of application**

Table 7A

	All cases involving any Discrimination Claims (DC)	All Cases (AC)	Difference (DC - AC)	Type of change DC compared to AC
Ethnicity				
White	76%	85%	-9%	Lower
Black	7%	5%	3%	Higher
Asian	9%	5%	4%	Higher
Mixed ethnic group	3%	2%	1%	Higher
Other answers	3%	2%	1%	Higher
Refused	1%	1%	0%	No difference
Don't know	0%	0%	0%	No difference
Religion				
Refused	1%	1%	0%	No difference
Don't know	0%	0%	0%	No difference
No religion (including Humanist, Atheist or Agnostic)	45%	53%	-8%	Lower
Christian	43%	40%	3%	Higher
Buddhist	1%	0%	0%	No difference
Hindu	2%	1%	1%	Higher
Jewish	1%	0%	0%	No difference
Muslim	4%	2%	2%	Higher
Sikh	2%	1%	1%	Higher
Others	1%	1%	1%	Higher
Not stated	0%	0%	0%	No difference
Applicant sex				
Male	42%	60%	-17%	Lower
Female	58%	40%	17%	Higher
Applicant age				
under 25	7%	8%	-1%	Lower
25-44	50%	46%	4%	Higher
45-64	40%	45%	-5%	Lower
65+	3%	2%	1%	Higher
Whether applicant had longstanding disability or illness at time of application	40%	22%	19%	Higher
Total number of cases	506	2,020		

Source: SETA survey 2008

Note 25% of all cases involve any discrimination claims

Table 7 B Discrimination cases showing awards under £30,000 and over £30,000 for unfair dismissal, race, sex and disability discrimination - 5 year average (2005/06 - 2009/10)

	5 year average (2005/06-2009/10)			
Volume of awards	Unfair Dismissal	Race discrimination	Sex discrimination	Disability discrimination
Numbers				
<£30,000	2584	65	157	74
£30,000 +	145	9	10	14
Total	2729	74	167	88
Percentages				
<£30,000	94.70%	88.30%	94%	84.50%
£30,000 +	5.3%	11.7%	6.0%	15.5%
Total	100%	100%	100%	100%

Source SETA survey 2009/10

Table 7 C Discrimination cases showing awards under £30,000 and over £30,000 for, race, sex, disability, religious, sexual orientation and age discrimination - 3 year average (2007/08 -2009/10)

	3 year average (2007/08-2009/10)					
Volume of awards	Race discrimination	Sex discrimination	Disability discrimination	Religious discrimination	Sexual orientation discrimination	Age discrimination
Numbers						
<£30,000	175	444	205	12	25	67
£30,000 +	26	30	41	0	2	4
Total	201	474	246	12	27	71
Percentages						
<£30,000	87.10%	93.70%	83.30%	100%	92.60%	94.40%
£30,000 +	12.9%	6.3%	16.7%	0.0%	7.4%	5.6%
Total	100%	100%	100%	100%	100%	100%

Source SETA survey 2009/10

Table 7D to show possible fees that would be charged for individuals not eligible for remission

	Option1	Option 1	Option 1	Option 2	Option 2
	Issue fee	Hearing fee	Total	Limited (up to £30,000)	Limited Over £30,000
Level 1	£150	£250	£400	£200	£1,750
Level 2	£200	£1000	£1,200	£500	£1,750
Level 3	£250	£1250	£1,500	£600	£1,750

Source calculated from proposed fees under option 1 and 2

Annex B Proposed Fee Levels and Recovering Costs

Employment tribunal fees – option 1

It is proposed to charge a fee for claimants in ETs and the EATs at two points in the process – an issue fee when the claim is made and a hearing fee a number of weeks before the claim is heard. We are also proposing 6 further fees for specific applications payable by the party who makes the application.

The current HM Courts and Tribunals Service administrative process is that once an employment tribunal claim has been accepted it is allocated to one of three “tracks” depending on the nature of the complaint (or complaints) that have been brought. The tracking system is an internal employment tribunal process that is used for listing and case management purposes and will be used to determine the level of fee payable in each claim. This is because some claims involve straightforward questions of fact which can be quickly resolved if the case gets to hearing. For example, a claim for non-payment of wages on termination of employment will focus on the terms of contract and what monies, if any, were paid. Such claims are allocated to the “short” track and are listed for a one hour hearing on receipt of the claim. These cases will attract, under fees at the lowest level - level 1.

Other types of claims involve more difficult issues and require a greater degree of case management by the judiciary to ensure key points of dispute are identified before hearing. It is also likely that hearings in these cases will be lengthier than short track cases. Such claims are allocated to the “standard” track where active case management takes place. These cases will attract fees at level 2. The most legally complex of claims, which are discrimination, equal pay and Public Information Disclosure Act cases require the most amount of judicial and administrative resource in order to prepare the case for hearing and to resolve the issues. Such claims will attract fees at level 3.

Where a claim contains two jurisdictional complaints that would attract fees at different levels, the fee that will be payable is that appropriate to the most complex of the issues raised. For example, if a claim contained complaints of non-payment of wages on termination of employment (Fee Level 1) and a complaint of unfair dismissal (Level 2) then, a fee at Level 2 would be payable.

The ET fees levels proposed are initially set at a level that will not result in full cost recovery even if all users paid the full fee. On 2009/10 data the fee levels proposed would have resulted in an overall cost recovery of 33%. However, this will always exclude the funding of those who are eligible for full or part remissions as taxpayers will continue to provide such funding to protect access to justice. Fees will be charged at the issue stage (when the ET1 form is submitted) and at the hearing stage (4-6 weeks prior to the hearing taking place).

The proposed indicative fees are set out below.

Option 1 – two charging points

Track	Issue fee	Hearing fee
Level 1	£150	£250
Level 2	£200	£1000
Level 3	£250	£1250

Fees will be payable by a party who makes a specified application. The first of these is where a party asks for written reasons of the tribunal's judgment when the judgment and the reasons have been given orally at the conclusion of the hearing. The second is where a party asks the tribunal to review its decision. The proposed charging levels are set out below.

Fee	Application for written reasons	Application for review
Level 1	£100	£100
Level 2	£250	£350
Level 3	£250	£350

It is proposed that fees will be payable by respondents if they make the following applications namely:

Counter-claim	Application to set aside default judgment	Application for dismissal following settlement or withdrawal	Mediation by the judiciary
£150	£100	£60	£750

As well as claims by individuals, employment tribunals receive multiple claims, where two or more claims brought are against the same respondent or group of respondents arising from the same circumstances. Where a multiple claim is received i.e. a claim form containing the details of more than one claimant, the fee payable will be based on the type of claim, the stage in the proceedings (i.e. issue or hearing) as well as the number of claims contained within the multiple claim:

- where there are between 2 and 4 individuals in a multiple, the fee payable will be 2 x the single fee
- where there are between 5 and 10 individuals in a multiple, the fee payable will be 3 x the single fee
- where there are between 11 and 50 individuals in a multiple, the fee payable will be 4 x the single fee
- where there are between 51 and 200 individuals in a multiple, the fee payable will be 5 x the single fee, and
- where the number of individuals in the multiple exceeds 201, the fee payable will be 6 x the single fee.

Remissions are also available to claimants in a single or a multiple claim for fees at both issue and hearing. It is open to claimants in a multiple claim to choose to commence their actions as a single claim. If the tribunal subsequently wishes to put the cases together to form a multiple, there will be no retrospective recalculation of the issue fee. Remissions are also available for claimants within a multiple claim at the hearing stage. For further details see paragraphs 25.1-25.7 above.

Employment tribunal fees – option 2

The alternative option 2 for ET fees shares many of the same features as option 1. The differences are that all claimants are required to state whether they are seeking an award above or below £30,000 in value for which the proposed fee would vary accordingly and the fee structure would have a single charging point. The remaining fee features are unchanged compared to Option 1:

- the party who seeks the order pays the relevant fee;
- all types of ET claims and appeals and all parts of the process are subject to fee-charging;
- Claims are allocated in the same way into 3 levels as provided by Option 1
- fees are payable in advance and before cost is incurred;
- adopting the prevailing HM Courts and Tribunals Service remission system to ensure that those on a low income do not pay at all or only pay part of the fee;
- a power for the tribunal to order that the losing party reimburse the fees paid by the winning party; and
- 6 further applications will attract fees at the same level as proposed under Option 1
- The proposals for refunds mirrors that of option 1

The indicative fee levels for single fees proposed under option 2 are

Fee Type	Amount
Level 1 - up to £29,999.99	£200
Level 2 - up to £29,999.99	£500
Level 3 - up to £29,999.99	£600
Level 4 - unlimited	£1750

Fees payable at levels 1, 2 or 3 would initially be set at less than full cost recovery net of remissions. Based on 2009/10 outturn data, it is estimated that all four of the fee Levels proposed (plus remitted income) would meet approximately 40% of the total costs of providing the ET and EAT overall service. It is currently estimated that the Level 4 category in isolation would represent approximately full cost recovery (including remissions), depending on claimants' behavioural response. The consultation seeks views on this approach.

Multiple claims would pay higher fees depending on the number of people in the claim. The fee payable in a multiple claim will therefore be the appropriate single fee multiplied by 2, 3, 4, 5 or 6 depending on the number of people in the claim. This mirrors that proposed under Option 1.

Fees proposals in the Employment Appeal Tribunal

There is one proposal made for the Employment Appeal Tribunal. It is proposed that an appeal fee and hearing fee would be charged for appeals to the EAT and the proposed fee levels are given below. No other fees are proposed in the EAT. Remissions would apply as

	Appeal fee	Hearing fee
EAT fee	£400	£1200

Fee Charging Process

Introducing fees into employment tribunals and the Employment Appeal Tribunal will require both service users and HM Courts and Tribunals Service staff to undertake new and changed business processes.

We are exploring payment processes that will enable users of the service to make payments in an efficient and effective manner which is easy to understand, simple to use and which will minimise the additional costs that will be incurred by the organisation in running the process.

The options we intend to explore include utilising technology to facilitate fee payment (e.g. on-line and automated telephone payment solutions) and the potential to centralise fee accounting and administration for payments away from local offices. In developing these new processes HM Courts and Tribunals Service will ensure that access to justice is not denied for those service users who do not have access to or the means to pay fees electronically (e.g. by allowing payment to be made through a High Street bank).

When we have developed the detail for these payment processes we will ensure they are communicated to service users both clearly and well in advance of when any changes will be introduced.

Our development of this area is on going and we are very interested in your thoughts about how we can develop payment systems that are both easy to use for claimants [and respondents] and straightforward and cost effective for the tribunal.

Annex C Background to employment tribunals

Employment tribunals (ETs), previously called industrial tribunals, were first established under the Industrial Training Act 1964 to consider appeals by employers against training levy assessments imposed by industrial training boards. This remains one of the functions of ETs today, but their jurisdiction has now expanded to embrace a large number of different types of claim arising from the provisions of numerous unrelated Acts of Parliament and statutory instruments. There are separate jurisdictions for England & Wales and Scotland.

In the vast majority of employment cases, ETs are the first tier of a system of courts designed to resolve disputes between employee and employer or, in some cases, between a trade union and an employer or employee. Nearly all disputes are heard 'at first instance', but there are some cases in which tribunals hear appeals from the decisions of other bodies.

Appeals, which can only be made on a point of law are, generally, heard by the Employment Appeal Tribunal (EAT), which has the status of the High Court in England & Wales and the Court of Session in Scotland.

Appeals from the EAT lie to the Court of Appeal in England and to the Inner House of the Court of Session in Scotland.

Employment tribunal rules

ET proceedings are regulated by the Employment Tribunal Rules of Procedure²⁵.

Her Majesty's Court Service and Tribunals Service

Since 1 April 2011, the administration of ETs and the EAT has been provided by Her Majesty's Courts & Tribunals Service (HMCTS).

Claims received and disposed of

The economic challenges faced recently by the country have meant difficult choices for employers and individuals, including in many cases the need to change, or end, employment relationships. Undoubtedly, a significant number of these cases were resolved between employers and employees, but many were not and, as result, there has been a dramatic increase in the number of claims submitted to employment tribunals. Between 2008-09 and 2009-10, the number of claims rose by 56%, from 151,000 to 236,100, a record number. Details of the number of jurisdictional complaints received and the number and nature of complaints disposed of in 2009-10 are contained at Tables 1 and 2 (Evidence base section 11).

²⁵ [The Employment Tribunals \(Constitution and Rules of Procedure\) Regulations 2004](#)

Summary of administration process

There are separate employment tribunals for Scotland, and for England and Wales, and it is the location of the employer that determines whether the claim will be dealt with in England and Wales or in Scotland. This means that, for an employee who lives in Newcastle upon Tyne but works in Edinburgh, any claim would be dealt with by the ET in Scotland. A claim may not be presented in Scotland for proceedings in England and Wales, and vice versa, but it is possible to transfer proceedings between the two jurisdictions in certain circumstances.

ETs are constituted by and their procedures regulated by the Employment Tribunals Rules of Procedure²⁶. The rules relating to appeals are set out in the separate Rules of the Employment Appeal Tribunal²⁷.

A party making a claim to an ET has to present a valid claim form, on a prescribed form known as an ET1, to an employment tribunal office within the appropriate time limit i.e. normally within three months of the incident complained of taking place. A claim form can be hand delivered, posted, presented electronically (over the internet or by e-mail) or by fax. If the claim form is late, then the employment tribunal may not be permitted to hear it and the claim may be dismissed on that basis alone, without a consideration of the merits, at a Pre-Hearing Review.

A party defending a claim has to present a response form (a prescribed form known as an ET3) to the employment tribunal handling the claim within 28 days of being sent the claim form by the employment tribunal. If a party fails to present a response form, then a default judgment may be issued and the respondent debarred from taking part in proceedings, which will proceed undefended.

The ET will reject a claim or a response if it is not provided in a prescribed form. Also, certain information must be provided on the forms for them to be valid and accepted.

The rules concerning time limits are complex but the typical time limit for making a claim is three months from the date of the act complained of, such as being dismissed unfairly or not being paid wages. The employment tribunal may grant an extension of time to bring a complaint if certain conditions are met.

Time limits of six months apply for claims for equal pay and redundancy payment. Although no extension of time can be granted in equal pay claims an extension may be granted in a redundancy payment claim if a tribunal decides that it was not reasonably practicable to present the claim in time.

In the majority of cases claims are initiated by individuals, and responded to by employers, or former employers, or trade unions. The terms "claimant" and "respondent" are used to describe the parties involved in tribunal proceedings. Normally each party pays its own costs. Tribunals will order one party to pay the other party's costs only in exceptional circumstances, where, for example, it is claimed that a party in bringing or conducting the proceedings has acted in a vexatious manner, abusively, disruptively or otherwise unreasonably.

If a former employee brings a claim for breach of contract, then the defending employer may bring a counter-claim against the former employee. In breach of

²⁶ [The Employment Tribunals \(Constitution and Rules of Procedure\) Regulations 2004](#)

²⁷ www.employmentappeals.gov.uk/Documents/FormsLeafletsGuidance/EAT_Rules.pdf

contract cases the ET may not award damages that exceed £25,000. Actions for damages in excess of that amount must be brought in the civil courts.

Tribunals are intended to be informal and to encourage parties to represent themselves. There is no special court dress or complex civil procedure rules as in at a County Court or Sheriff Court.

The confidential use of conciliation is encouraged, and in the majority of cases, the claim and response forms are, along with other case related correspondence, copied to Acas so that conciliation officers can assist parties in reaching a binding agreement to resolve the claim. Parties may also settle a claim by a compromise agreement.

Hearings

Prior to a hearing, case management may take place to hand down directions as to how the full hearing will be heard. This can be by one of several means, either through correspondence between the parties and the employment tribunal or in a Case Management Discussion (CMD). Case Management Discussions may take place by telephone.

The employment tribunal rules of procedure allow for several types of hearing:

- (i) A Case Management Discussion (CMD). A CMD is an interim hearing held in private and conducted by an Employment Judge sitting alone. In addition to dealing with the future progress of the case, identifying the issues to be dealt with at a substantive hearing and setting a time frame for the hearing, a CMD can address specific issues such as the issue of directions or orders that must be complied with;
- (ii) A Pre-Hearing Review (PHR). A PHR is an interim hearing held in public and is normally heard by an Employment Judge sitting alone. As well as carrying out a preliminary consideration of the proceedings an Employment Judge (or where appropriate a tribunal) may determine preliminary matters relating to the proceedings; issue orders; order a deposit to be paid by a party as a condition of continuing with the proceedings and deal with an application for interim relief (a form of preliminary finding in certain types of claim involving Trade Union activities or making a protected disclosure (whistle-blowing), which may order a former employer to continue to pay a dismissed employee until a full hearing);
- (iii) A full hearing is a hearing at which the merits of the case and/or the remedy are determined;
- (iv) A Review hearing is a hearing at which the Employment Judge or tribunal conducts a review of his or her or its own judgment or decision.

If the case proceeds to a full hearing, the case is heard, subject to certain exceptions, by a tribunal of three people, a legally-qualified Employment Judge, and two lay members²⁸. The lay members, who are drawn from all areas of the local community, use their employment experience in judging the facts. During the hearing the Employment Judge is under a duty to ensure that the hearing is conducted fairly, taking into account both sides' submissions on the law and facts. Generally witnesses are called for both sides with witness statements being supplied in advance. However the procedure is different in Scotland where there is no provision for written witness statements are rarely used. Each witness will give their evidence-in-chief orally.

Sometimes the Employment Judge sits alone, for example, to hear preliminary legal arguments or in a case involving a claim for unpaid wages. The employment tribunals' rules of procedure explain the circumstances in which an Employment Judge may sit alone²⁹.

A claim (or part of it) may be determined at a Pre-Hearing Review and a judgment may be issued to either dismiss a case or to allow it to proceed to a hearing. Once a judgment is issued in respect of a particular matter, that matter is determined and, other than through an appeal or a review, cannot be re-opened.

A party bringing a claim to a tribunal may, at any time, withdraw a claim by writing to the tribunal to bring the claim to an end. A withdrawal can be done verbally at a hearing. A party may still be liable for the other side's costs or expenses after a claim has been withdrawn.

Cost of running the ETs and the EATs in last financial year

The administration costs for ETs and EATs was in the region of £84.2.m in 2010/11. In broad terms, 45% of the expenditure was on fixed costs and 55% on variable costs. A fixed cost is a cost which does not vary with the level of activity, for example, the rental costs of buildings etc. A variable cost is a cost which varies with the level of activity, for example, the fees payable to the judiciary, postage etc.

²⁸ The lay members are appointed by the Secretary of State after consultation with organisations of employees and employers through open competition – Regulation 8(3)(b) and (c) of the Employment Tribunal Rules of Procedure. The members have knowledge and experience in commerce and industry and bring this practical experience to bear in their judicial role.

²⁹ The Employment Tribunals Act 1996 s.4(2) provides that certain proceedings are, unless an Employment Judge decides otherwise, to be heard by an Employment Judge sitting alone. These proceedings include failure to pay guarantee, redundancy and insolvency payments, breach of contract claims and unlawful deductions from wages. S.4(3) of the Act provides a full list of the proceedings that will normally be heard by an Employment Judge sitting alone - [Employment Tribunals Act 1996](#). BIS are, in their *Resolving workplace disputes* consultation sought views on whether claims for unfair dismissal should be added to the types of complaint which may be heard by an Employment Judge sitting alone.

Annex D - Evidence base – Customer diversity

HM Courts and Tribunals Service gathers some information on diversity data as part of its Annual Customer Satisfaction Survey and is the best available evidence we have at this time for undertaking our initial equality impact assessment. When asked to describe their ethnic origin tribunals' general public customers described their ethnic origin as follows:

- 90% White;
- 2% Mixed;
- 3% Asian or Asian British
- 2% Black or Black British, and
- 2% as Chinese or other.

Of all respondents 56% were male and 44% female.

That data is however not without its limitations. For example, the data is gathered from customers across a wide range of tribunals and may not therefore be a completely representative reflection of the composition of the employment tribunal customer base. For this reason we have cross-checked this dataset with information from other sources.

These findings are broadly in line with the Survey of Employment Tribunals Applicants (SETA)³⁰ research undertaken by BIS in 2008 where it was found that of the 2,020 claimants participating in the survey, they described their ethnic origin as follows:

- 86% white;
- 2% mixed;
- 5% Asian;
- 5% Black, and
- 2% Chinese or other.

Of these respondents 60% were male and 40% female

In an effort to ensure that the information gathered about ethnic origin is as up to date as possible, we have analysed self-completed diversity monitoring forms received in employment tribunal offices in the month of February 2011. That analysis showed that of the 1,197 forms received, shows the following ethnic origin:

- 86% white;
- 2% mixed;
- 5% Asian;
- 6% Black, and;
- 1% Chinese or other.

This is all but identical to the findings of the 2008 SETA survey and we are satisfied that this accurately reflects the ethnic composition of our customer base.

³⁰ SETA - The Survey of Employment Tribunal Applications 2008
(www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008.pdf)