



Employment Tribunal Reform – Introduction of fees and new rules of procedure

Standard Note: SN6407
Last updated: 30 August 2012
Author: Jacqui Parker
Section: Business and Transport

This note focuses on the changes that have been and will be introduced with regard to the operation of the employment tribunals and the Employment Appeal Tribunal (EAT).

The [Coalition Programme for Government](#) promised a review of employment and workplace laws. In March 2012, the Department of Business, Innovation and Skills (BIS) published the [Employment Law Review Annual Update](#), which stated that: “The business community have consistently told Government that their biggest concern in relation to taking on staff is the employment tribunal system and that this fear ultimately acts as a barrier to growth”.

To that end, the government made a number of changes to employment tribunal rules that came into force in April 2012, these are: permitting employment judges to sit alone when hearing claims of unfair dismissal; increasing the amount payable under Deposit Orders; increasing the maximum amount that can be awarded under a costs order; removing the right to reclaim witness expenses from the public purse; and taking witness statements as read. It also announced proposals to introduce fee charging into the employment tribunal and EAT from summer 2013, this will mean that for a serious complaint like race discrimination, the fees for taking the claim to an employment tribunal hearing will amount to £1200 and for a minor or straight forward complaint like claiming a redundancy payment, the fees will amount to £390. Claimants may be exempted from paying fees if they have no income or are on a low income.

Information on other employment matters can be found on the relevant topical pages of the [Parliament website](#).

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1	Background	3
	The Review Process	3
2	Resolving Workplace Disputes	3
	2.1 Employment Judges Sitting Alone	4
	2.2 Deposit Orders	4
	2.3 Witness Statements to be taken as read	5
	2.4 Costs Orders	5
	2.5 Witness Expenses	6
	2.6 Enterprise and Regulatory Reform Bill, 2012-13	6
	Early Conciliation	6
	Decisions of Legal Officers	6
	Composition of Employment Appeal Tribunal	7
	Financial Penalties on employers	7
	Protected Conversations	7
3	Fundamental review of Employment Tribunal rules	8
	1.1 Background	8
	1.2 Review	8
4	Introducing fees in employment tribunals and Employment Appeal Tribunal	10
	4.1 Fees	12
	Employment Tribunal – Single Claims	12
	Employment Tribunal – Multiple Claims	12
	Employment Appeal Tribunal	13
	Other Fees	13
	4.2 Fee Reimbursement	13
	4.3 Fee Remission	13
	4.4 Annex	18

1 Background

The Coalition Agreement stated:

We will review employment and workplace laws, for employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive.¹

The Department for Business, Innovation and Skills (BIS) was responsible for leading the review:

The Coalition Agreement set out an important commitment to review employment and workplace laws to ensure they maximise flexibility for employers and employees while protecting fairness and providing the competitive environment required for enterprise to thrive.

The review is being led by the Department for Business (BIS) and all its employment laws are in scope. Other Government Departments' policies that impact on businesses by virtue of their being an employer are also in scope.

The review will last the lifetime of this Parliament.

The Employment Law Review aims to:

Improve growth through increased labour market flexibility

Reduce burdens on business

Give employers the confidence to take more people on.²

The Review Process

The review process was undertaken by a series of consultations:

- January 2011: BIS and the Employment Tribunal Service (now HM Courts and Tribunals Service) issued *Resolving Workplace Disputes - A consultation*;³
- December 2011: the Ministry of Justice (MOJ) issued *Introducing fees in employment tribunals and Employment Appeal Tribunal - Consultation document*;⁴ and
- December 2011, BIS asked Mr Justice Underhill to undertake a *Fundamental Review of Employment Tribunal Rules*.⁵

2 Resolving Workplace Disputes

The January 2011 consultation closed on 20 April 2011 and in November 2011 the Government published *its response*.⁶ HC Library Standard Note: *Employment Law Review – workplace disputes* (SN6118)⁷ provides general commentary on the consultation response.

¹ Coalition Programme for Government, page 10

² BIS Web page, *Employment Law Review – 2010 – 2015*

³ BIS, *Resolving Workplace Disputes A consultation*, January 2011; consultation closed on 20 April 2011

⁴ BIS, *Introducing fees in employment tribunals and Employment Appeal Tribunal - Consultation document*, December 2011; consultation closed on 6 March 2012

⁵ BIS, *Fundamental Review of Employment tribunal Rules*

⁶ *Resolving workplace disputes: Government response to the consultation*, November 2011

⁷ www.parliament.uk/briefing-papers/SN06118.pdf

So far as employment tribunals are concerned, the Government implemented a number of measures following the consultation. Information on each of those measures is given below.

2.1 Employment Judges Sitting Alone

Prior to 6 April 2012, claims of unfair dismissal were determined by an employment tribunal panel consisting of two lay members and an employment tribunal judge. Since 6 April, employment tribunal judges have been able to hear unfair dismissal claims on their own if they consider it appropriate. The change was given effect by the [Employment Tribunals Act 1996 \(Tribunal Constitution\) Order 2012](#) (SI 2012/988). The reason for this change was given in the Explanatory Note to the Order as follows:

Policy background

What is being done and why

7.1 Employment tribunals usually sit with three members hearing a case. One of the three members is an Employment Judge, and the other two are members drawn respectively from panels of people appointed after consultation with organisations representative of employees, or of employers.

7.2 In certain circumstances, the general rule is varied and an employment judge can sit alone – i.e. without members. Cases about (for example) unpaid wages, holiday or redundancy payments, and interim relief applications, can be heard by an Employment Judge alone, without the need for a full panel. Cases in other jurisdictions, where all parties consent to the judge sitting alone, are also permitted to run in that way.

7.3 Where appropriate, hearing cases in front of a single Employment Judge brings benefits. The tribunal costs are decreased, using less resource to hear the matter. Listing arrangements (and particularly re-listing arrangements, where a case needs to return to be heard by the original panel) are easier. And in certain instances hearing for a judge sitting alone can be shorter for all participants.

7.4 Currently, ET Judges have no power hear an unfair dismissal claim alone, regardless of the complexity or otherwise of the case. This Order will add unfair dismissal to the list of jurisdictions where an Employment Judge can sit alone, where they consider it appropriate to do so i.e. where the issues are relatively straightforward.

7.5 As the Government explained in ‘Resolving Workplace Disputes: A consultation’ it considers that this change would help the tribunals manage its caseload in the most efficient manner. However, as a safeguard to procedural justice, the tribunal will always be bound by the overriding objective of dealing with cases justly, including in respect of the judicial decisions made over whether to sit with a full panel of members in specific cases⁸

2.2 Deposit Orders

A tribunal has the power to require a financial deposit (from both claimants and respondents) in respect of both a single issue in their case or the case in its entirety. Such a deposit may only be required if the employment judge is satisfied that the claimant/respondent has ‘little reasonable prospect of success’ in pursuing the relevant issue/case. Prior to 6 April 2012, the limit was £500 per issue. Since 6 April 2012 the amount that can be ordered to be paid is

⁸ [Explanatory Note to The Employment Tribunals Act 1996 \(Tribunal Constitution\) Order 2012](#)

£1,000. This change was given effect by the [Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2012](#) (SI 2012/468).⁹

2.3 Witness Statements to be taken as read

Since 6 April 2012, unless an employment judge directs otherwise, witnesses' written witness statements are 'taken as read' (i.e. they no longer have to be read out loud). Cross examination, if any, will then follow. This change was effected by the [Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2012](#) (SI 2012/468).

The [Personnel Today](#) website provides the following comment on the pros and cons of this change:

Pros

There is a lack of consistency, often dependent on where the tribunal is located, as to when witness statements are taken as read. Tribunals will benefit from a more consistent approach and, in any event, civil courts do not require written statements to be read out. There is no strong reason why employment tribunals should be any different.

There will be cost savings and cases may be heard more quickly. It can take the tribunal many hours, and even days, to hear the evidence. This is often a waste of time, as the parties should be familiar with each other's witness statements anyway.

Cons

It is important, especially in complex cases, that all parties get a fair chance to put their arguments. It is to be hoped that judges take a flexible approach and allow testimony to be read out if, for example, a reminder is needed of its contents in a complicated case with many witnesses.

The rules should be made clear and some leeway given to litigants-in-person, who may want to feel that they have "had their say" or need to hear the other side's testimony if they are not used to familiarising themselves with witness statements, or the evidence is technical or confused.

The process of a witness reading out his or statement may help the tribunal to assess his or her credibility as a witness.¹⁰

2.4 Costs Orders

There are a number of circumstances in which an employment tribunal may make an award of costs against a party. The BusinessLink web page, [Employment Tribunal Claims – the outcomes](#), provides the following information:

Costs and expenses

Costs can be awarded in exceptional circumstances, such as where the tribunal considers one party has acted unreasonably in pursuing or conducting their case. For example:

A **cost award** can be made to cover legal costs for parties who were legally represented at the time the case was heard.

⁹ [Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2012](#) (SI 2012/468)

¹⁰ Article from Personnel Today website, [6 April 2012 employment tribunal procedure changes: pros and cons](#), dated 9 March 2012

A **preparation time award** covers time spent preparing for a case for a party who isn't legally represented.

Wasted costs orders are made directly against a paid representative on account of their own unreasonable conduct. This only applies to representatives who are acting in pursuit of profit, egg on a no-win, no-fee basis or paid legal representatives.

The limit on costs that the tribunal may itself award is £10,000, but a tribunal may order costs as assessed by an officer of the County Court, in which case the limit does not apply. Parties may also agree that costs of more than £10,000 are to be paid.¹¹

Since 6 April 2012 the amount of costs that an employment tribunal can order a party to pay under a costs award is £20,000. Prior to 6 April the maximum award was £10,000. The change was effected by the [Employment Tribunals \(Constitution and Rules of Procedure\) \(Amendment\) Regulations 2012](#) (SI 2012/468).

2.5 Witness Expenses

Since 6 April 2012, witnesses who attend an employment tribunal to give evidence no longer have the right to seek reimbursement of some or all of their expenses from public funds. The employment tribunal can direct that the parties bear the witnesses costs and that the unsuccessful party reimburses the successful party any such costs which they have already paid out. The Ministry of Justice website states:

Where an employment tribunal claim is made on, or after, 6 April 2012 expenses and allowances will only be paid to witnesses called to give medical evidence or to medical professionals asked provide medical reports. Any other witnesses called by either party should be paid by that party, unless the tribunal makes a specific order for the payment of expenses.¹²

2.6 Enterprise and Regulatory Reform Bill, 2012-13

Full details of the Bill can be found in [HC Library research paper RP 12/33](#)¹³, available on the [Parliament website](#).

A number of the proposals contained in the Government's response to the January 2011 *Resolving Workplace Disputes* consultation have been taken forward in the *Enterprise and Regulatory Reform Bill 2012-13*. So far as employment tribunals and the Employment Appeal Tribunal are concerned, those proposals include:¹⁴

Early Conciliation

Clause 7 of the Bill seeks to introduce a mandatory period of conciliation before a claim will be accepted by an employment tribunal.

Decisions of Legal Officers

Clause 10 of the Bill proposes to delegate the power of employment tribunal judges to determine certain proceedings to legal officers.

¹¹ Article from BusinessLink website, [Employment Tribunal Claims – the outcomes](#)

¹² Ministry of Justice web page, [The hearing guidance for the Employment Tribunal](#)

¹³ www.parliament.uk/briefing-papers/RP12-33

¹⁴ Clause numbers relate to the Bill as first published [Bill no. 7 of 2012 - 2013]

Composition of Employment Appeal Tribunal

Clause 11 of the Bill proposes that, subject to a number of exceptions, all cases will be heard by a judge sitting alone.

Compensatory Award

Clause 12 of the Bill proposed to give the Secretary of State power to increase or decrease the limit on the compensatory award for unfair dismissal.

Financial Penalties on employers

Clause 13 of the Bill would give employment tribunals discretion to penalise employers for breach of the law.

Protected Conversations

A new clause regarding protected conversations was tabled during the Committee Stage of the Bill. What it proposes, in effect, is to allow employers to raise issues such as poor performance in an open way without fear that it will be used against them in an employment tribunal. The provision would operate so that employment tribunals would not be able to take account of "any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee". The provision would only apply in respect of claims for unfair dismissal i.e. other complaints would not be affected. Further, if in the tribunal's opinion something "improper" is said or done during the discussion, the employment tribunal can take the discussion into account. The full text of the proposed clause can be found [here](#).¹⁵

The proposed clause has been criticised by legal commentators for a number of reasons but particularly with regard to the likelihood of protracted litigation around what a tribunal considers to be 'improper' conduct. The Public Law Company website provides the following comment:

While the proposed legislation sets out what is admissible, in terms of unfair dismissal proceedings, it does not anticipate the other ways in which the fact and/or content of such meetings may be brought into the open. For example, imagine an employee who is deeply offended by the matters put to him in such a confidential discussion, for example he may feel that his professionalism has been called into question or that others have levelled unfair allegations at him. What is to stop him from bringing a grievance in relation to what was said in the meeting? If the employer fails to address the grievance, the employee could potentially bring a claim for constructive unfair dismissal. It would be part of the factual matrix, that the grievance arose out of the confidential discussion, so it would seem impossible not to refer to the contents of the discussion in the subsequent unfair dismissal proceedings. In other words, the confidential discussion may legitimately find its way into a grievance which then has an evidential place in unfair dismissal proceedings. Surely section 111A(1) cannot have been intended to preclude such a scenario, effectively redacting what has gone on in the employment relationship?

The current wording does not give employers the certainty that they need if this development is to have any meaningful effect. There will doubtless be disputes about whether the contents of the discussions were in any way improper. But quite apart from that, there is scope for an employer to be caught out by a determination in "other proceedings" made in relation to the confidential discussions then legitimately making

¹⁵ [Notices of Amendments given on 19 June 2012, Public Bill Committee, Enterprise and Regulatory Reform Bill](#)

its way into subsequent unfair dismissal proceedings. Arguably, there will be more recourse to lawyers, rather than less, on whether it is safe to hold such discussions.

Employees are also going to have to get to grips with the idea that the refusal of an offer may have costs consequences for them at a later stage, something which is more rather than less likely to make them consult a lawyer.¹⁶

3 Fundamental review of Employment Tribunal rules

1.1 Background

In its response to the January 2011 Resolving Workplace Disputes consultation, the Government confirmed that it had asked Mr Justice Underhill to undertake a review of the employment tribunal Rules of Procedure. The [Review's terms of reference](#) were as follows:

The overriding objective of the system remains as set out in Regulation 3 of the 2004 Constitution & Rules Order, in particular, the revised procedural rules for employment tribunals should, insofar as practicable, ensure that:

a) cases can be managed in a way that is proportionate to the nature of the issues involved, with the importance of saving expense considered throughout.

b) proceedings can be handled quickly and efficiently, with an emphasis on helping proceedings to resolve themselves otherwise than through judicial determination at hearings, and dealing robustly and, so far as appropriate, consistently with cases where they appear to have little or no reasonable prospect of success, with a view to fairness for all parties and the tribunal and its resources; Consideration should also be given to the efficiency in the listing of cases for hearing.

c) rules are both simple and simply expressed, in particular given the significant proportion of unrepresented parties using employment tribunals;

d) proceedings have as much certainty as the nature of particular cases allows, and that in particular –

like cases are treated alike (with as much use made of standardised orders and directions as possible, building on the good work already developed around Case Management Discussion agendas), and

the rules are exercised, and orders are made, in a manner that is consistent, so far as appropriate, across Great Britain (backed, where necessary and appropriate by relevant and published practice directions)

In conducting the Review, Ministers invite Mr Justice Underhill to have specific regard for the cost-effectiveness and proportionality of the system, both insofar as taxpayers are concerned, and the parties themselves.¹⁷

1.2 Review

On 29 June 2012, Mr Justice Underhill and his team published their recommendations which amounted to a complete redrafting of the existing Rules of Procedure. The BIS website sets out the **key** recommendations as follows:

An **early paper sift** meaning weak cases submitted that should not proceed are managed more effectively. This will ensure that employment judges are considering

¹⁶ <http://employment.practicallaw.com/6-519-9827>

¹⁷ BIS, [Fundamental Review of Employment Tribunal Rules, Terms of reference](#) [emphasis in original]

the file earlier in the process, and dismissing any claims where there is no arguable complaint or response.

Combining separate case management discussions and pre hearing reviews. This will ensure there is one consideration of the claim prior to a hearing, known as a **preliminary hearing** which may aid a quicker resolution for some disputes.

New 'Presidential guidance' will seek to give all parties in a dispute a much better idea of what to expect from the Tribunal process and equally, what is expected of them. This will help parties consider alternatives to resolving their disputes outside of the tribunal process, such as independent mediation. In addition, the guidance will seek to ensure that employment judges across the tribunal service are managing cases in a consistent manner, providing clarity to all parties.

A change to the **withdrawals process** meaning when one party ends the dispute at tribunal the other does not have to signal their intention to end the claim. At the moment when a claimant decides that they no longer wish to pursue a case against their employer, the case will not be closed until the employer has made an official application.¹⁸

Other recommendations include:

- Simplifying the rules around the non-acceptance of late ET3 forms (the forms used to respond to employment tribunal claims). At present if an ET3 is received outside the prescribed time limit it will be rejected and a default judgment will be entered. The Review recommends that where a late ET3 is accompanied by an application to extend time for service of the ET3, it will not be rejected pending the outcome of the application.
- At present an employment tribunal can only assess costs up to a maximum of £20,000. If costs are likely to exceed that amount, the employment tribunal must refer the matter for the County Court for costs to be assessed. The Review recommends allowing employment tribunals to carry out full costs assessments.
- In order to make the most effective use of the tribunal's time, the draft rules propose to grant employment tribunals the power to limit the amount of time that a party has to present their evidence, conduct cross-examination and present submissions. Further it is proposed that Judges be given the power to prevent a party from exceeding any limit that has been imposed.

The overarching purpose of the Rules of Procedure is to enable employment tribunals to deal with cases fairly and justly. To achieve that end, the Rules of Procedure provide employment tribunals with a range of case management powers which allow them to deal with cases in an efficient and proportionate manner. As stated above, the recommendations made by Mr Justice Underhill involved a complete redraft the existing rules. A full copy of the new draft rules can be accessed [here](#).¹⁹

A formal consultation on the new draft rules is expected to be conducted before the end of 2012.

¹⁸ BIS, [Employment Tribunal Rules Review Published](#), 11 July 2012

¹⁹ Mr Justice Underhill for BIS, [Fundamental Review of Employment Tribunal Rules: employment tribunal rules of procedure](#), December 2011

4 Introducing fees in employment tribunals and Employment Appeal Tribunal

The Government's rationale for seeking to introduce fees in the employment tribunal and employment appeal tribunal were set out in the 2011 *Resolving Workplace Disputes* consultation:

The number of cases accepted by the employment tribunals in 2009/10 was 236,100, and increase of 56% on the previous year. In 2005/06, only 115,000 cases were accepted, less than half the figure five years later.

At the end of 2010/11, the Tribunals Service anticipates a live caseload in employment tribunals of around 440,000 cases.

In 2008/09, the total cost of administering the employment tribunals system was, broadly, £77.8m. In 2009/10, that figure had increased to £82.1m. Source: *Tribunals Service*.

[...]

The volume of claims brought in employment tribunals has increased steadily in recent years. The current caseload is high – and shows no sign of dissipating to any significant extent. Given this pressure, it is vital that we ensure the system is resourced adequately to meet its challenges.

Currently, the cost burden of running employment tribunals falls in its entirety on tax payers. Unlike the civil and family courts, where users of the services contribute to the associated costs, funding for the employment tribunals and the Employment Appeal Tribunal comes from the budget allocated by the Treasury to the Ministry of Justice (MOJ) and, in turn, to the Tribunals Service.

As part of the recent spending review, the overall MOJ budget settlement was reduced by 23% over the next four years. This requires the MOJ to make £2bn of savings. The cost of providing the range of 'justice' services, including across all courts and tribunals, needs to be scrutinised. The circa £80m annual budget allocated to the running of the employment tribunal system is no exception.

Various groups and organisations have made recent public recommendations about a fee-charging mechanism being necessary for employment tribunal cases and appeals. Given the context of high workload and pressure on funding, introducing such a fee-charging mechanism is one option available to us so as to ensure the system as a whole can be appropriately funded.

Accordingly, we think that service users should be asked to contribute towards the cost of running employment tribunals, and the Employment Appeal Tribunal, by paying fees. However, we intend to consult on the detail of our proposals in the Spring, to allow us to develop a model that is as fair and effective as possible for all users.

The policy case for fees?

It is general Government policy that services provided by the State and used by a particular segment of the population should attract a fee to cover the cost of providing that service. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption.

Providing access to justice is not the same as providing other 'goods' or 'services'. But charging fees for tribunal cases and appeals has the potential to play a central role in

our strategy to modernise and streamline the employment dispute resolution system, helping to safeguard the provision of services, at an acceptable level, that are so important to the maintenance of access to justice.

Firstly, a fees mechanism will help to transfer some of the cost burden from general taxpayers to those that use the system, or cause the system to be used. That is fair, particularly if the burden is shouldered by the party who causes the system to be used.

Secondly, a price mechanism could help to incentivise earlier settlements, and to disincentivise unreasonable behaviour, like pursuing weak or vexatious claims. In turns, this helps to improve the overall effectiveness and efficiency of the system.

Thirdly, and more generally, the courts have for some time charged fees for family and civil disputes. We see no fundamental difference between the courts and the employment tribunals in the sense that both consider cases between individuals (party v party disputes). Therefore, introducing a fees system will bring the Employment Tribunal and Employment Appeal Tribunal into line with other similar parts of justice system.²⁰

In December 2011, the MOJ published its consultation, *Charging Fees in Employment Tribunals and the Employment Appeal Tribunal*. The [consultation response](#) was published on 13 July 2012. The department stated that it was not consulting on the *principle* of introducing fees as the Government had already made clear its intention to do so. Furthermore, the power to introduce fees already existed:

Parliament has already made provision for the charging of fees in tribunals. The Lord Chancellor has the power, under section 42 of the Tribunals Courts and Enforcement Act 2007, to introduce fees in certain tribunals which could include employment tribunals and the Employment Appeal Tribunal.²¹

In terms of application, it is proposed that fees will apply to most but not all processes undertaken by the employment tribunal. In summary, fees will be charged in the following circumstances:

- Issuing a claim (to be paid by the claimant)
- Hearing fee (to be paid by the claimant)
- Submission of a counterclaim (to be paid by respondent)
- Application for a review (to be paid by the party making the application)
- Application to review default judgment (to be paid by party making the application)
- Application for judicial mediation (to be paid by the respondent)
- Application to dismiss following settlement (to be paid by the respondent)

It is proposed that fees will be introduced in Summer 2013.

²⁰ Op cit., [Resolving workplace disputes: A consultation](#), pages 49-50

²¹ MOJ website, [Introducing fees in the employment tribunals and Employment Appeal Tribunal – consultation response](#), second paragraph of executive summary.

4.1 Fees

Employment Tribunal – Single Claims

Under the new proposals there will be two levels of claim, each with different fees:

- Level 1 claims, the issue fee will be £160 and the hearing fee will be £230.
- Level 2 claims, the issue fee will be £250 and the hearing fee will be £950.

Whether a claim attracts Level 1 or Level 2 fees will depend on the type of claim.

More complex claims, i.e. those that take up more of the tribunal's time to resolve, are Level 2 claims. Claims that raise issues of equal pay, unlawful discrimination and unfair dismissal are examples of the type of claim that will be Level 2 claims. Straight forward claims such as claims in respect of unlawful deduction from wages, holiday pay, and redundancy payments will be Level 1 claims.

Annexed to this note is the draft schedule of fee levels to which employment tribunal claims will be allocated.

Employment Tribunal – Multiple Claims

There is a separate fee structure for multiple claims (claims submitted jointly by more than one claimant) in employment tribunals.

Multiple claims – level 1

Level 1 claims are generally for sums due on termination of employment e.g. unpaid wages, payment in lieu of notice, redundancy payments

	Number of claimants in multiple claim		
	2-10 (2 x the single fee)	11-200 (4 x the single fee)	over 200 (6 x the single fee)
Issue fee	£320	£640	£960
Hearing fee	£460	£920	£1380
Total	£780	£1560	£2340

Multiple claims – level 2 claim fee levels

Level 2 claims include those relating to unfair dismissal, discrimination complaints, equal pay claims and claims arising under the Public Information Disclosure Act

	Number of claimants in multiple claim		
	2-10 (2 x the single fee)	11-200 (4 x the single fee)	over 200 (6 x the single fee)
Issue fee	£500	£1000	£1500
Hearing fee	£1900	£3800	£5700
Total	£2400	£4800	£7200

Employment Appeal Tribunal

The fee for submitting an appeal to the Employment Appeal Tribunal will be £400 and the hearing fee will be £1,200.

Other Fees

As noted above, it is proposed that fees will be payable in respect of other employment tribunal processes. The proposed fee structure is set out below:

	Review Default Judgment	Application to dismiss following settlement	Mediation by the judiciary	Counter-claim	Application for review
Level 1	£100	£60	-	£160	£100
Level 2	£100	£60	£600	-	£350

4.2 Fee Reimbursement

In the consultation document the Government proposed that employment tribunals be given the power to order that fees paid by the successful party to a claim be reimbursed by the unsuccessful party. The consultation response document confirms the Government's intention that employment tribunals be granted the power to make such an award where appropriate:

We believe it is right that the party who ultimately causes the employment tribunals to be used should bear the cost. However, we recognise that there may be circumstances in which it is not appropriate for such an award to be made and that the employment tribunal judge is best placed to make a determination, so the provision will not be an automatic one.

It is intended that the employment tribunals will have the power to make such an award at any point at which they make a decision on an application that attracts a fee. We will consider whether to provide for the tribunal to make provision for an order at interlocutory stages for example when an application for a review or to set aside default judgement is made.²²

4.3 Fee Remission

In the 2011 consultation document the Government proposed that the system for fee remission utilised in the civil courts could be extended to the employment tribunal system. The consultation response document noted that the proposal was criticised on a number of grounds, including that the system was overly complicated or that it was too generous. Notwithstanding those criticisms, the Government decided to introduce the same system for fee remission in the employment tribunals:

The Government has decided to adopt the proposal to extend the current HMCTS civil courts remission system to protect access to justice in employment tribunals and the Employment Appeal Tribunal for those who cannot afford to pay the fee.

²² Op cit., [Introducing fees in the employment tribunals and Employment Appeal Tribunal – consultation response](#), page 25.

Given the concerns raised by respondents to this consultation and more widely, the Government will undertake a review of remissions as part of a wider review required for the introduction of Universal Credit. The review will aim to produce a single remissions system for courts and tribunals which is simpler to use, more cost efficient and better targeted to ensure that those who can afford to pay fees do so, while continuing to provide access to the courts and tribunal system to those who cannot.²³

Details of the fee remission system used by the Court Service was set out at annex B of the consultation response document:

Annex B – HMCTS Civil Courts Remission System

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 as 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's annual gross income and that of their partner (if they are a couple) is calculated to be not more than the amounts shown in the table on the next page:

²³ Op cit., [Introducing fees in the employment tribunals and Employment Appeal Tribunal – consultation response](#), Page 9

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 income¹⁷ 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 is payable, 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 is payable.

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

Partner	£159 a month ²⁴
Dependant Children	£244* a month per child
General Living Expenses	£315* a month

For example, where a person's monthly disposable income is calculated between £50 and £59.99, they will contribute £12.50 on each occasion that a fee is required 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.

²⁴ 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
£	£	£	£	£	£
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

Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution
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
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

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. The same principle will apply 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

The MOJ intends to undertake a review of the remission system next year and will also review the fee levels after they have been implemented:

Our plan is to publish the wider MOJ consultation on remissions in Autumn 2012.

[...]

The Government is committed to reviewing the fee structure once implemented to assess its impacts in order to consider if changes are needed. The review will seek to:

Ensure that those who use the employment tribunals system, and can afford to pay, do pay a fee as a contribution to the cost of administering their claim/appeal;

Ensure that the remissions system provides that those who can afford to pay a fee do so;

Ensure that the fee charging process is simple to understand and to administer;

Examine impacts on equality groups; and

Verify the amount of fee income raised against the models presented in the Impact Assessment and quantify any operational savings.²⁶

²⁵ Op cit., *Introducing fees in the employment tribunals and Employment Appeal Tribunal – consultation response*, Page 71.

²⁶ Op cit. *Introducing fees in the employment tribunals and Employment Appeal Tribunal – consultation response*, Page 60.

4.4 Annex

Annex C – Draft schedule of fee levels to which ET claims are allocated

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffer a detriment and/or dismissal resulting from a failure to allow an employee to be accompanied or to accompany a fellow employee at a disciplinary/grievance hearing	EReIA 1999 s.10–12	Level 2	£250	£950
Application for a declaration that the inclusion of discriminatory terms/rules within certain agreements or rules causes the aforesaid to be invalid	E A 2010 s.145 and 146(1)	Level 1	£160	£230
Application by an employee, their representative or trade union for a protective award as a result of an employer's failure to consult over a redundancy situation	TULR(C)A 1992 s.188–189	Level 2	£250	£950
Breach of Contract	Breach of contract and s.3 ETA 1996 & SI 1994/1623 and (in Scotland) SI 1994/1624	Level 1	£160	£230
Failure of the employer to consult with an employee representative or trade union about a proposed contracting out of a pension scheme	Reg 4 of OPS(CO)R 1996	Level 1	£160	£230
Application or complaint by the EHRC in respect of discriminatory advertisements or instructions or pressure to discriminate (including preliminary action before a claim to the county court)	E A 2010 s.13–14, 19, 26–27 and 120	Level 1	£160	£230
Suffered a detriment, discrimination, including indirect discrimination, harassment or victimisation or discrimination based on association or perception on grounds of age	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, and discrimination based on association or perception, harassment or victimisation and/or dismissal on grounds of disability or failure of employer to make reasonable adjustments	E A 2010 s.13–15, 19 – 21, 26–27, 120 and Schedule 8	Level 2	£250	£950
Suffered a detriment and/or dismissal resulting from requiring time off for other (non-work but not Health and Safety) duties, study, training or seeking work	ERA 1996 s.46–48, 102–103, 105, 108 and 111	Level 2	£250	£950

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of religion or belief	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sexual orientation	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Application by the Secretary of State for Business, Innovation & Skills to prohibit a person from running an Employment Agency	Employment Agencies Act 1973 s3A and 3C	Level 1	£160	£230
Failure to provide equal pay for equal value work	E A 2010 s.64, 120, 127 and 128	Level 2	£250	£950
Failure of the employer to consult with an employee rep. or trade union about a proposed transfer	TUPE 2006 Reg 13–15	Level 2	£250	£950
Suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure	ERA 1996 s.47E, 80F–80G 94 and 104C FWR 2002	Level 2	£250	£950
Application by an employee that an employer has failed to pay a protected award as ordered by a tribunal	TULR(C)A 1992 s.190 and 192	Level 1	£160	£230
Failure to pay remuneration whilst suspended from work for health and safety reasons whilst pregnant or on mat. leave	ERA 1996 s.67–68D and 70	Level 1	£160	£230
Failure to provide a written statement of terms and conditions and any subsequent changes to those terms	ERA 1996 s.1, 4, 8 and 11	Level 1	£160	£230
Suffered less favourable treatment and/or dismissal as a fixed term employee, than a full time employee or, on becoming permanent, failed to receive a written statement of confirmation from employer	FTE 2002 Regs 3, 6 to 9	Level 2	£250	£950
Failure to allow time off for trade union activities or duties, for ante-natal care or for public duties	TULR(C)A 1992 s.168–170; ERA 1996 s.50, 55 and 56	Level 1	£160	£230
Failure to provide a guarantee payment	ERA 1996 s.28–34	Level 1	£160	£230
Failure to pay remuneration whilst suspended for medical reasons	ERA 1996 s.64 and 70	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Failure to allow time off to seek work during a redundancy situation	ERA 1996 s.52	Level 1	£160	£230
Failure of an employer to comply with an award by a tribunal following a finding that the employer had previously failed to consult about a proposed transfer of an undertaking	TULR(C)A 1992 s.188, 188A, 190 and 192	Level 1	£160	£230
Failure to allow or to pay for time off for care of dependants, union learning representatives duties, pension scheme trustee duties, employee representatives duties, young person studying/training and European Works Council duties	ERA 1996 s 57A to 63C TICER 1999 Reg 25, 26, 27	Level 2	£250	£950
Failure to provide a written pay statement or an adequate pay statement	ERA 1996 s.8, 9 and 11	Level 2	£250	£950
Failure to provide a written statement of reasons for dismissal or the contents of the statement are disputed	ERA 1996 s.92 and 93	Level 2	£250	£950
Appeal against an enforcement, improvement or prohibition notice imposed by the HSE or Environmental Health Inspector, or by the Environment Agency	REACH Regs 2008, reg 21 or HSWA 1974 s.24(2) or COMAH 1999 s.18	Level 1	£160	£230
Failure to pay for or allow time off to carry out Safety Rep duties or undertake training	Health & Safety at Work etc Act 1974 s.48 and 80 SRSC 1977 Reg. 4, 11; HSCE 1996 Reg. 7, Sch. 1	Level 1	£160	£230
Suffer a detriment, dismissal or redundancy for health and safety reasons	ERA 1996 s.44, 48, 94, 100, 105 and 111	Level 2	£250	£950
Application for interim relief	ERA 1996 s.128 or TULR(C)A 1992 s161-167	Level 2	£250	£950
Failure by the SOS to make an insolvency payment in lieu of wages and/or redundancy	ERA 1996 s182 and 188	Level 1	£160	£230
Appeal against the levy assessment of an Industrial Training Board	Relevant Industrial Training Levy Order – either Construction or Engineering Construction Board	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffer a detriment and/or dismissal on grounds of pregnancy, child birth or maternity	ERA 1996 s.47C, 48, 94, 99 and 111 MPL 1999 Regs 19–20 PAL Regs 2002 regs 28–29	Level 2	£250	£950
Appeal against an enforcement or penalty notice issued by HMRC	NMWA 1998 s.19C	Level 1	£160	£230
Suffer a detriment and/or dismissal related to failure to pay the minimum wage or allow access to records	ERA 1996 s.94, 104A, 105, and 111 NMWA 1998 s.10, 11 and 23	Level 2	£250	£950
Appeal against an unlawful act on a notice issued by the EHRC	EA 2006 s.21	Level 1	£160	£230
Failure of the employer to comply with a certificate of exemption or to deduct funds from employees pay in order to contribute to a trade union political fund	TULR(C)A 1992 s.86 and 87	Level 2	£250	£950
Failure of the employer to prevent unauthorised or excessive deductions in the form of union subscriptions	TULR(C)A 1992 s.68 and 68A	Level 1	£160	£230
Failure of the Secretary of State to pay unpaid contributions to a pensions scheme following an application for payment to be made	Pensions Schemes Act 1993 s.124 and 126	Level 1	£160	£230
Suffered a detriment and/or dismissal due to exercising rights under the Public Interest Disclosure Act	ERA 1996 s.47B, 48, 94, 103A, 105, and 111	Level 2	£250	£950
Suffer a detriment and/or dismissal due to requesting or taking paternity or adoption leave or time off to assist a dependant	ERA 1996 s.47C, 48, 57A and 80 MPL 1999 Regs 19 PAL Regs 2002 Reg. 28	Level 2	£250	£950
Suffer less favourable treatment and/or dismissal as a result of being a part time employee by comparison to a full time employee	PTW 2000 Regs. 5, 7, 8 ERA 1996 s.105	Level 2	£250	£950
Failure to pay a redundancy payment	ERA 1996 s.135, 163 and 177	Level 1	£160	£230
Failure of the SOS to pay a redundancy payment following an application to the NI fund	ERA 1996 s.166 and 170	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of race or ethnic origin	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffer a detriment and/or dismissal for refusing to work on a Sunday	ERA 1996 s.45, 48, 94 101, 105 and 111	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sex, marriage and civil partnership or gender reassignment	E A 2010 s.13–14, 16, 18, 19, 26–27 and 120	Level 2	£250	£950
Suffered less favourable treatment and/or dismissal as a temp. employee than a full time employee	FTE Regs 2002	Level 2	£250	£950
Suffer discrimination in obtaining employment due to membership or non-membership of a trade union; or refused employment or suffered a detriment for reasons related to a blacklist.	TULR(C)A 1992 s.137 and 139 ERA 1999 s.104F ERA 1999 (Blacklist) Regs 2010 (SI 2010/493)	Level 2	£250	£950
Suffer a detriment and/or dismissal relating to being, not being or proposing to become a trade union member	TULR(C)A 1992 s.145A–145C, 146–147 and 152–160 ERA 1996 Part X	Level 2	£250	£950
(a) Failure of the employer to consult or report about training in relation to a bargaining unit (b) Suffered a detriment on grounds related to recognition of a trade union for collective bargaining	TULR(C)A 1992 s.70A –70A and Schedule A1 paras 156–157	Level 2	£250	£950
Suffer discrimination in obtaining the services of an employment agency due to membership or non-membership of a trade union	TULR(C)A 1992 s.138 and 139	Level 2	£250	£950
Suffered a detriment and/or dismissal due to exercising rights under the Tax Credits Act	ERA 1996 s.47D, 48, 104B, 105, 108–109 and 111	Level 2	£250	£950
Unfair dismissal after exercising or claiming a statutory right	ERA 1996 s.104, 105, 108–109 and 111	Level 2	£250	£950

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Unfair dismissal on grounds of capability, conduct or some other general reason including the result of a transfer of an undertaking	ERA 1996 s.98 and 111	Level 2	£250	£950
Unfair dismissal in connection to a lock out, strike or other industrial action	TULR(C)A 1992 s.237–239 ERA 1996 s.94	Level 2	£250	£950
Failure of employer to pay or unauthorised deductions have been made	ERA 1996 s.13 and 23	Level 1	£160	£230
Appeal by a person who has been served with an improvement or prohibition notice under the Working Time Regulations 1998	WTR 1998 Schedule 3, para 6RT(WT) Regs 2005 Schedule 2, para 6	Level 1	£160	£230
Failure to limit weekly or night working time, or to ensure rest breaks	WTR 1998 Regs 4, 6, 10, 12–17 and 30 ERA 1996 Ss 45A, 48, 101A, 105, 108–109 and 111	Level 2	£250	£950
Complaint by a worker that employer has failed to allow them to take or to pay them for statutory annual leave entitlement	WTR 1998 Regs 13, 14 or 16 and 30	Level 1	£160	£230
Appeal by a person who has been served with an improvement notice under the Road Transport (Working Time) Regulations 2005.	RT(WT) Regs 2005 Schedule 2, para 6	Level 1	£160	£230
(a) Suffer a detriment and/or dismissal related to a request for time to train or study. (b) Failure of an employer to follow the correct procedures or reject a request based on incorrect facts.	ERA 1996 s.47A, 47F, 63A to 63I	Level 2	£250	£950