



Ministry of
JUSTICE

Charging fees in Employment Tribunals and the Employment Appeal Tribunal:

Government Response

Equality Impact Assessment

This EIA accompanies Charging fee in Employment Tribunals and the Employment Appeal Tribunal: the Government Response, published by the Ministry of Justice (MoJ) on 13 July 2012.

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Introduction

This post-consultation equality impact assessment (EIA) accompanies the Government's response to the public consultation '*Charging Fees in Employment Tribunal and the Employment Appeal Tribunal*¹', published by the Ministry of Justice on 13 July 2012. It considers the potential equality impacts of the proposed fee structure for employment tribunals and the Employment Appeal Tribunal, as a result of the Government's decision to introduce fees in these jurisdictions. The proposals apply to the jurisdictions of England, Wales and Scotland.

The EIA analyses the potential impact of the proposed reforms on the advancement of equality of opportunity, the fostering of good relations and the elimination of discrimination, harassment, victimisation and other conduct that is prohibited under the Equality Act 2010. It is designed to ensure that the Government has proper regard to these aims, in accordance with its public sector equality duties under section 149 of the Equality Act 2010.

The analysis has been informed by the feedback received to the consultation document '*Charging Fees in Employment Tribunal and the Employment Appeal Tribunal*', and builds on the initial EIA that accompanied that document. It is intended to show our present assessment of the potential equality impacts of how the Government now proposes to proceed – the Government's decisions have been informed by this assessment. However, to ensure we comply with our duty under the Equality Act 2010 we intend to engage further with stakeholders, and particularly those with equalities expertise, to consider ways in which new business processes, payment of fees, and completion of remission forms are accessible by all those who access the tribunal. Therefore this EIA should be seen as the next stage in the assessment of the equality impacts.

The assessment in this EIA is based upon the proposed fees structure and the current HMCTS civil courts remission scheme. However, this response also announces the Government's intention to review the HMCTS remissions scheme as part of the changes needed to introduce Universal Credit. We cannot assess the equality impacts for any proposals in advance of their development but will re-assess the equality impacts of any new proposals.

This post-consultation EIA should be read alongside the Government response document and the associated Impact Assessment (IA).

Structure of the Equality Impact Assessment

In this EIA we first set out the relevant legal duties and a summary of our assessment of the equality impacts of the proposals in light of the changes

¹ https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/supporting_documents/chargingfeesinetandeat1.pdf

made. We review the aims and outcomes of the fees policy, followed by the approach we have taken to assessing potential impacts including the sources of evidence, methodology used and stakeholder engagement.

We then analyse the potential impact on each of the protected characteristics groups where we have information, in light of the feedback on the equalities impacts of the proposals that we have received through consultation and how this differs from the analysis in the initial EIA where it does so. We consider the views of respondents on the mitigations that we proposed. Finally we set out the next steps for the implementation of the fee proposals.

The original proposals provided two options for fees (an overview of the original proposals is in Annex A). After consideration of the consultation responses, the Government proposes to introduce the Option 1 fee structure in 2013 with some changes. This EIA therefore considers the equalities impacts of the option 1 fee structure as amended. A summary of the fee structure is provided in Annex B. The accompanying consultation contains further details on the Government's decision.

Throughout this EIA the term 'proposed fee structure' refers to the fee structure the Government has chosen to implement as a result of consultation and not the original proposals unless otherwise specified. We have outlined the changes made to the original proposals in the aims and objectives section of this EIA.

Equality duties

Under the Equality Act 2010 ('The Act') 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 Act;
- 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.

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the Act – namely race, sex, disability, sexual orientation, religion or belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

To ensure we comply with our duty MoJ has to investigate and consider how policy proposals are likely to impact with reference to all of 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).

The forms of prohibited conduct

There are several types of prohibited conduct set out in Chapter 2 of the Equality Act 2010, namely:

- direct discrimination (defined in section 13 of the Act);
- discrimination arising from disability (defined in section 15);
- pregnancy and maternity discrimination (defined in sections 17 (non-work cases) and 18 (work cases));
- harassment (defined in section 26);
- victimisation (defined in section 27);
- breach of a non-discrimination rule (see section 61);
- breach of an equality clause (see sections 66 and 73);
- indirect discrimination (defined in section 19); and

- failure to comply with a duty to make reasonable adjustments (see sections 20 and 21).

Indirect discrimination

Indirect discrimination is defined in section 19 of the Equality Act 2010, in particular in subsections (1) and (2), which provide as follows:

‘(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

‘(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if -

(a) A applies, or would apply, it to people with whom B does not share the characteristic,

(b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.’

Discrimination arising from disability and duty to make reasonable adjustments

Section 15(1) of the Equality Act 2010 provides that:

“A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B’s disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate”

There are three requirements under the duty to make reasonable adjustments. The requirements are to make reasonable adjustments to avoid a disadvantage or in the last instance to take reasonable steps to provide auxiliary aid, where:

- a provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled;
- a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled; or
- a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.

Advancing equality of opportunity

Guidance in relation to the duty to have due regard to this is given in section 149(3) of the Equality Act 2010, which provides that:

'(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.'

Fostering good relations

In respect of the duty to have due regard to this, section 149(5) provides as follows:

'(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.'

Summary

This EIA considers the introduction of fees in employment tribunals (ET) and Employment Appeal Tribunal (EAT).

In accordance with our duty under section 149 of the Equality Act 2010, we have considered the equality impacts of the proposed fees structure. The following is a summary of our overall assessment. Further detail of the impacts is given in the analysis sections below.

A. Prohibited Conduct

Direct discrimination

The introduction of the proposed fee structure would not directly discriminate against people with a protected characteristic, because the fee changes would apply to all people irrespective of any protected characteristic; i.e. there is no less favourable treatment because of a protected characteristic.

Indirect discrimination

Many of those who responded were concerned that our proposals would put certain groups of people with a relevant protected characteristic at a particular disadvantage. We have carefully considered the evidence base for these assertions. All claimants, including those with protected characteristics, will have to pay a fee to use the ET and the EAT. We cannot rule out that this may have a greater impact on some people with particular protected characteristics than those who do not share that characteristic.

Our analysis suggests that BME groups, women, younger people and disabled people are more likely to fall into the lower income brackets and therefore these groups would be more likely to qualify for partial or full fee remissions. For these groups it is unlikely that they will experience any particular disadvantage as the fee remission mitigation is considered likely to lessen the impact.

Our analysis also suggests that mid to higher earners may experience the greatest negative impacts of the new fees and these people are more likely those aged 25 and over without children and people from a White ethnic group. These people are unlikely to qualify for full or partial remissions so the fee remission mitigation will not lessen the impacts. Other mitigations such as the free ACAS conciliation, not introducing a 3rd tier of fees and the ability to seek an order for the respondent to pay their fees should they win, are also considered to lessen the impacts. If people with these protected characteristics are unable to settle their ET issues via ACAS, they will have to pay fees up front and we are currently unclear whether or not this will deter claimants. Overall we do not consider that the introduction of the proposed fee

structures is likely to amount to indirect discrimination under the Equality Act 2010.

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider that the proposed fee structure is likely to cause someone to be treated unfavourably as a consequence of their particular disability.

In respect of the duty to make reasonable adjustments, the reference to a physical feature does not seem relevant. We have considered whether any aspect of the proposed fee structure will put a disabled person at a substantial disadvantage in relation to a relevant matter in comparison to someone who is not disabled and, if so what steps it would be reasonable to take to avoid any such disadvantage. We have also considered what reasonable steps we need to take to provide auxiliary aids. At present our conclusion is that the proposed fee structure ought not to lead to a breach of either requirement. However, we will consider during implementation what reasonable adjustments are necessary in order to ensure that everyone can access the tribunal processes, forms and guidance.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

B. Advancing equality of opportunity

We consider that it is possible that the fee structure could 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. However, we think the mitigations we have proposed will protect access to justice for those with protected characteristics.

C. Fostering good relations

We consider that to the extent that this obligation to the fee proposal is relevant it is reasonable to assume that the impact of fees on fostering good relations is neutral.

Conclusion

In light of the responses, we have considered the impact of the fee proposals against the statutory obligations imposed by section 149 of the Equality Act 2010. These considerations have influenced our decision to recommend two fee levels instead of the original proposal to have three as mitigation against any potential indirect discrimination².

² In the original proposals 8 claim types were allocated into the level 3 fee level (which attracted the highest fees) and 28 claim types allocated into level 2.

Our assessment is that, based on the limited information available on the protected characteristics of individuals and their level of income, the introduction of fees will impact differently depending on the varying income profiles. We believe that the measures we have put in place would mitigate any equality impacts.

For those who can afford to pay fees, the further mitigations are the power for the tribunal to order reimbursement if they are successful and the setting of fees below full cost recovery. For those who cannot afford to pay fees, including those who can only make a contribution to the fee, the further mitigation is the availability of the remissions scheme to protect their access to the tribunal. The availability of Acas conciliation lessens the impacts for all irrespective of their financial position because it offers an alternative to making a claim.

We therefore believe that with the existing mitigations and the additional measure of introducing two fee levels instead of three we can ensure that the proposals to introduce fees will mitigate the equality impacts.

As part of the implementation process we consider how to ensure the fee payment system and forms are accessible by those who seek to use them and that information about the availability of remissions is widely accessible.

Aims and outcomes for the policy

Background

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. The decision to charge fees will transfer some of the annual cost from the taxpayer to the user.

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.

Some of the reasons underlying this upward trend are known. The number of claims alleging unfair dismissal appears to be positively related, with a time lag, to increases in unemployment³. This implies that the economic effects of the 2008-09 recession contributed to an increase in this ET claim type.

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 rights⁴. 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.

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, 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

³ The "Employment Tribunal and EAT Statistics 2009/10" publication (<http://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."

⁴ The Employment Equality (Age) Regulations 2006 took effect in October 2006.

ET. Acas-conciliated settlements (known as COT3s) are legally binding and commit parties to an agreed course of action.

Aims and Objective

The fundamental 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 users to pay fees where they can afford to do so in order to have their workplace dispute resolved through the ET and EAT process. 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.

The introduction of fees into the ET and EAT is also part of a wider Government review of Britain's employment laws that is designed to improve the efficiency and effectiveness of the ET and encourage employers and employees to work together to resolve workplace disputes at the earliest stage.

The intended effects of introducing fees 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.

The consultation asked respondents to consider two options for fee structure in the ET. Taking into account the views of respondents, the Government has decided to implement Option 1 as amended. The basis of the proposed fee structure is that:

- the person who seeks the order initially pays the fees;
- all types of ET claims and appeals and all parts of the process are subject to fee-charging;
- fee levels are based upon the representative cost of the claim based upon the nature of the case and the stage in the proceedings and, for multiple claims, the number of claimants;
- fees are paid at issue and before hearing and for several specified applications in ET;
- fees are payable in advance and before cost is incurred by HMCTS;
- it adopts the HMCTS remission system to ensure that those on a low income do not pay at all or only pay part of the fee; and
- there is power for the tribunal to order that the unsuccessful party reimburse the fees paid by the successful party.

The Government has considered the views of respondents to the consultation in reaching its decision to implement the Option 1 structure. Amendments and responses to the many detailed policy and practical points raised by respondents are discussed in the consultation response. The changes are:

Charging fees in the Employment Tribunals and the Employment Appeal Tribunal

- The merging of levels 2 and 3 fees into one fee level ⁵ ;
- Re-allocation of a small number of claims to new levels;
- No separate fee charged for seeking written reasons; and
- A reduction in the number of bands for multiple claims from 5 to 3.

There have been some changes to the fee levels and the proposed fee structure is provided in Annex B. We consider how these changes further mitigate equality impacts in more detail later in this EIA.

⁵ The original proposal was for three fee levels (see Annex A)

Methodology and evidence sources

Methodology

In considering how the introduction of fees will impact on individuals with different protected characteristics, this EIA draws upon a number of evidence sources. We have used the best quality evidence available, which is mainly national or official statistics, but have also drawn on other sources where appropriate. We have also considered the views of respondents to the consultation as well as the data sources they supplied.

In our initial EIA we identified that the potential impact of the introduction of fees on those with protected characteristics was that they were deterred from making claims and that a consequence of this could be a negative impact on the duty to advance equality of opportunity. As a result we provided a range of mitigations to reduce the impact on those with protected characteristics.

The methodology for determining the impact of fees on the volume of claims is considered by the impact assessment that accompanies the response to consultation.

Methodology of establishing the impact of fees on those with protected characteristics

We have considered how claimants with different protected characteristics might be affected by the introduction of fees. In assessing potential impacts, we have undertaken the following analysis:

- Examined the known links between claim type and protected characteristics of those who bring claims to the ET to assess whether the higher fees for some claim types would have a greater impact on different equality groups;
- Reviewed the available information on the varying income levels of different equality groups in the general population to consider how they may be differently impacted;
- Considered all the evidence provided by consultation respondents including views that those with protected characteristics (particularly women and migrant workers) are already deterred from bringing claims and the introduction of new fees may further deter vulnerable groups from issuing claims and this could result in wider societal impacts if they fail to issue discrimination claims;

- Identified the equality groups most likely to be affected by the introduction of fees using published employment tribunal statistics⁶; and
- Used the published employment tribunal statistics to help identify the current volumes of discrimination and equal pay claims (given that such claim types are more likely to be made by those with protected characteristics).

⁶ We used the Survey of Employment Tribunal Applications (SETA) 2008 to identify the groups most likely to be affected by the introduction of fees as well as some sampling data to assess the diversity of claimants in ET (see Annex C).

Stakeholder consultation and engagement

The 'Charging Fees in Employment tribunal and the Employment Appeal Tribunal' was open for consultation for 12 weeks. During this time and since we have reviewed responses from a range of interested parties including members of the public, trade unions, the judiciary, the legal profession, organisations representing businesses, claimant representative groups such as CAB, equality groups such as Ethnic Minorities Law centre and MIND and Government funded bodies such as Acas.

The consultation paper asked twelve questions that sought comments specifically on the equality impacts of the reforms and for any information that could be provided to improve our evidence base.

We also held the following events throughout the course of the consultation period:

- Five meetings in London and Glasgow were held with legal, business and claimant representative groups, including trade unions covering all proposals set out in the consultation;
- A discussion at the Scottish Employment Tribunal User Group Glasgow hosted by the President of the Scottish ET;
- a seminar in London on the equality impacts of the proposals⁷.

In total, the 7 events were attended by around 90 people from some 60 organisations; we also received over 140 written responses to the consultation. Over 40 respondents provided a response to the EIA questions raised⁸. The overwhelming majority of those respondents disagreed with all or part of the initial assessment, but three respondents broadly agreed.

We have considered all the responses in reaching our conclusions, but it is not possible to respond to all specific points made by individual respondents.

⁷ The equalities issues raised at this meeting were incorporated into our consideration of the responses. A list of those who attended as well as the original EIA questions are in Annex D

⁸ Most of these respondents answered one or more of the twelve equality questions, but some made more general equality comments as part of their response and some merely said that they supported the comments made by others.

Analysis of potential impacts

We consider that the following individuals / groups could be affected by the policy proposal to introduce fees:

- Claimants – typically at least one employee or ex-employee, and, in a small minority of cases, employers;
- Respondents – typically the employer⁹;
- Appellants – individuals or employers who choose to appeal an ET decision.

We consider the impacts on claimants, appellants and respondents below.

Impact on claimants (and appellants where an individual appeals to the EAT)¹⁰

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). In EAT the appellant could either be an employee or the business, depending on which party is appealing against the decision of the ET¹¹.

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 or appellants) who bring a claim or make an appeal. 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.

The impacts of fees differ depending on whether the claimant is required to pay them or not. We consider the potential impacts to differ under the following scenarios namely:

- i) the claimant pays the full fee or part of the fee – the impact is primarily financial;
- ii) the claimant is eligible for a full remission – there is no financial impact but there could be a non-financial impact if the claimant is put off from seeking a remission because the process of applying for remission is not accessible;
- iii) the claimant does not pay the fee because a trade union, household insurance policy or no-win no-fee agreement pays the fee – there is no impact

⁹ The employee would be the respondent where an employer chooses to make a counterclaim (which would only happen in breach of contract complaints).

¹⁰ For the purposes of this section 'claimants' should be read as referring to individuals who appeal to the EAT

¹¹ In 2010/11 approximately 1450 appeals to the EAT were made by employees, as opposed to 600 by employers.

financially on the claimant, but there could be a non-financial impact if such representatives are less willing to take such claims forward.

Given these scenarios we have examined the known data on income levels of each protected characteristic to see which is more likely to apply. The evidence tables are provided in Annex C.

A potential consequence of claimants not making claims is the impact on equality of opportunity. The wider societal aspects of a reduction in the number of discrimination and equal pay claims being brought is considered under the section on equality of opportunity.

i) The claimant pays the full fee or part fees

There is the potential for the proposed changes to have a larger impact on those individuals with particular protected characteristics who are middle /higher income earners and who would pay the full fee or only be eligible for a partial fee remission. Where a higher proportion of individuals with particular protected characteristics compared to the adult working-age population are middle / higher income earners, there is the potential for differential impact.

Our analysis¹² suggests that the groups with protected characteristics who are more likely to pay fees are people in households without children where the head is aged 25 and over and those in households where the head is from the White ethnic group.

Respondents thought generally that it was discriminatory to ask those with protected characteristics to pay a fee because they were higher earners. We do not consider it unreasonable or discriminatory to seek a fee from an individual who can afford to pay.

The imposition of fees will have an impact on claimants financially and, because there is limited evidence to the contrary, we cannot rule out that fees may have the effect of deterring some claimants from bringing a claim. However, the policy intent is not to reduce claims.

Some respondents also thought that those with on-going discrimination claims, who are still employed, would not be entitled to any form of remission, but this assumption is incorrect. The remissions system (described at Annex E) is available to those who are in receipt of prescribed state benefits, or whose gross annual or monthly disposable incomes fall below certain levels. Middle-income earners are not precluded from applying for a remission if they think they are eligible and the use of net disposable monthly income to determine a sliding scale of payment means that considerable income is needed before the full fee is payable.

The government has also taken other mitigating actions: namely, ensuring that fee levels would initially be set at a cost recovery rate of significantly less than full cost net of remissions. The availability of a free conciliation via Acas or

¹² See Evidence base in Annex C

other alternative dispute resolution methods and the ability for the successful claimant to ask the tribunal to order the respondent to reimburse their fee in addition to the award are still available to those who pay the fee.

ii) The claimant is eligible for a full remission

A higher proportion of claimants with some protected characteristics (working-age adults in single parent households with children (mostly women), people with disabilities, people from BME backgrounds and those in the younger age groups: 16 to 34 in households with children and 16 to 24 in households without children) have lower household incomes and will be eligible for remission and less affected by the introduction for fees than all working-age adults.

If the claimant is entitled to full remission there is no financial impact. For this reason we do not consider that the proposals have any equality impacts on low income groups.

A further point raised by respondents was that claimants who are entitled to remission could still be deterred if the claimant does not know of the availability of remissions or cannot complete the forms / provide the necessary evidence. We consider this to be a valid point and plan to address this as part of our implementation work (see next steps).

iii) The claimant does not pay the fee because a trade union, household insurance policy or no-win no-fee agreement pays the fee

Where claimants are represented by a trade union, a no-win no-fee lawyer or receive legal advice paid by household insurance we believe that there are no equality impacts if individual claimants have not directly incurred fees¹³. We thought this was particularly likely to be the case in multiple claims. But there could be an indirect impact if such representatives are less willing to take forward cases where a successful outcome is doubtful.

Some respondents rejected the assumption that claimants who are represented by trade unions, no-win no-fee lawyers or have legal expenses insurance will not suffer any equality impacts because they will not normally directly incur fees. In the case of trade unions it was pointed out that they generally only represent larger multiple claims, which make up less than 5% of the total ET caseload and it was suggested that, for example, smaller unions may not be able to afford to pay fees or that they may not do so in all circumstances. Anecdotal evidence, based on respondent experience, was put forward to suggest that while a higher percentage of claimants are represented few of these claims would fall within the no-win no-fee category. Finally, it was suggested that household insurance policies could be re-written to exclude the cover of fees.

¹³ In 2010-11 of 218,100 claims accepted by the Tribunal, 10,000 were represented by Trade Unions, 142,700 by lawyers, 40,400 provided no representative information on the ET1 (and are therefore likely to be unrepresented) and 25,000 were represented by other types of organisations.

We accept that to state there will be no equality impacts on individuals in multiple claims may be a simplification, but we do not accept there is evidence to show that individuals will suffer equality impacts where the fees are paid by another person or organisation. Where a representative does not pay the fee, the claimant will fall within one of the two other scenarios above.

However, there is a potential indirect impact if such representatives if such representatives are less willing to take forward cases. Such decisions will be made by trade unions, lawyers and insurance companies and we cannot forecast them. In view of the lack of evidence we will monitor the levels of representation after the introduction of fees.

The impacts due to the fee based on the claim type

Our general principle is that it is reasonable to seek a higher fee from those who cost the system more. The fee structure therefore provides that the level of the fee is determined by the nature of the claim made and the stage reached in the proceedings. This is based on case and cost modelling in ET which suggests that some types of claims typically consume considerably greater resources (in terms of staff and judiciary) than others and that the further the claim proceeds the more expensive it becomes. This approach means that claimants pay a fee which is reasonably representative of the cost typical to that case type and the stage in the proceedings, ensuring that cases that use more resources are charged a higher fee. This is further provided for because fees are payable at two stages in the process: namely, at issue and hearing.

We acknowledged in the initial EIA that the proposal to charge different levels of fees for different jurisdictions had the potential to impact more negatively on those claimants in more complex claims such as discrimination and equal pay claims' e.g. those involving sex discrimination or equal pay. These are more likely to involve women. However, as discussed above, there are various mitigations in place to reduce the likelihood that certain groups with protected characteristics are disproportionately affected by the policy.

Respondents said that fees will deter claims and, in particular, discrimination and equal pay claims because they pay the highest fees. They also stated that the assumption that all discrimination claims are complex was not always correct with some potentially involving more straightforward issues which will cost the system less. Moreover, in claims of dismissal without reason, people with protected characteristics will reasonably assume their status is a potential reason and will be forced to pay the greater fee even if later this aspect is dropped.

In light of these responses we have sought to mitigate these impacts by merging levels 2 and 3 fees. Instead of just 8 claim types in level 3, they are combined in levels 2. See Table 3 in Annex C.

Equality impacts of equal pay claim

A few respondents said that as equal pay claims are often multiple claims and will attract the highest fees and as only some of the claimants will be eligible for remission the remission policy will have no effect on most of those equal pay multiple claims.

This issue is mitigated through the combining of the 2 highest fee levels so that equal pay claims (like discrimination claims) will no longer pay the highest of three levels. However, the mitigations we have proposed for single claimants also apply to those in multiple claims. At issue stage, a claimant in a multiple claim can choose to make a single claim with remissions available for individuals whether they are in multiple or single claims. Also, no claimant in a multiple claim will be asked to pay more than a single fee, even if everyone else in the multiple claim is remitted. Should claimants in a multiple claim decide to share the fee, they will pay less than a single claimant.

Equality impacts on respondents

In employment tribunals respondents are generally businesses and are more likely to be larger companies.¹⁴ Under the proposed fee structure, respondents will pay fees if they make certain applications and they could be ordered to reimburse the fees paid by the claimant if the tribunal makes an award against them. Therefore, fees potentially have the same impact on respondents as claimants as they have a financial impact and may deter them from defending a claim.

The equality impacts relate to individuals. As the majority of respondents are companies, we initially identified no equality impacts; those respondents who commented also did not identify any. There is potential for an impact on sole traders, but the numbers are likely to be small. We will look to improve our knowledge of the numbers of sole traders as part of our monitoring process.

¹⁴ The last SETA survey found that 73% of claims brought involved larger employers as the respondent, and around a quarter of all respondents were smaller businesses – i.e., less than 25 employees across the organisation as a whole.

Further respondent views on the conclusion in the pre-consultation EIA and the government response

Direct and Indirect Discrimination¹⁵

Most respondents who said they believed the proposals to be discriminatory did not make a distinction whether they considered it direct or indirect discrimination. However, one respondent¹⁶ specifically argued that the proposals directly discriminate because 100% of those with successful discrimination claims which have a particular protected characteristic – for example, based on gender re-assignment – will have to pay a fee. By contrast, those without that characteristic will not because they will not have suffered discrimination on that ground.

We do not accept this analysis. We consider the correct comparator is with someone bringing a claim in the ET not based on the particular protected characteristic. Anyone bringing a claim will, potentially, have to pay a fee. Therefore, in light of the responses to consultation, our assessment remains unchanged and we believe that introducing fees is not directly discriminatory because everyone who seeks to make a claim is treated the same. No one will be treated less favourably because of a protected characteristic.

Discrimination arising from disability and the duty to make reasonable adjustments

In the initial assessment we said we do not consider there to be a risk of discrimination arising from disability and the duty to make reasonable adjustments within the meaning of the Act as a result of these proposals.

Concerns were raised that people with disabilities would be adversely affected by the proposals because (a) a substantial proportion of people with disabilities are in employment and are in high or upper middle skill groups, and may not qualify for a fee remission due to their income levels, and that (b) people with disabilities may be likely to face additional expenditure (e.g. transportation costs) that non-disabled adults do not. We acknowledge in the 'Evidence Base' section that 28 per cent of the general population of working-age adults with a disability are in the fourth and fifth income quintiles. However, our analysis also shows that non-disabled working-age adults are more likely to be in the fourth or fifth quintile.

The HMCTS civil courts remissions system discounts any income from disability benefits (such as severe disablement allowance, disability living allowance and carer's allowance) when assessing income for the purposes of

¹⁵ The points raised in relation to indirect discrimination are all considered in the sections above.

¹⁶ It should be noted that a number of respondents referenced responses made by others who supported their position. Therefore it is accepted that a number of respondents may have held this view.

remissions 2 and 3¹⁷. Therefore we believe that the increased financial burdens arising from disability are taken into account and the impacts will not be greater.

Concerns were raised about a higher proportion of disability discrimination claims were either withdrawn or settled through Acas. We recognise that this was also an issue for sex discrimination and sexual orientation. Some of these may pay a hearing fee despite settling but we expect that such settlements will take into account any fees paid. Where parties withdraw we expect the forthcoming payment of the hearing fee to encourage parties to reach final conclusion in advance of payment.

None of the responses we received persuaded us that our proposals would breach our duty to make reasonable adjustments so we therefore believe that our initial assessment is correct. However, we will consider what reasonable adjustments are necessary in order to ensure that everyone can access and understand forms and guidance.

Harassment and victimisation

In the initial EIA we said that we do not consider there to be a risk of harassment or victimisation within the meaning of the Act as a result of these proposals.

No specific comments were made on this element and we therefore believe that our initial assessment is correct.

Advancing equality of opportunity

In our initial EIA we acknowledged that 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.

Respondents say that as fees will deter claims, employers will no longer have regard for equality legislation. As a result, fewer claims will be brought. Fees will prevent women from bringing a sex discrimination claim; therefore, employers will no longer have the incentive to ensure pay systems are free of sex discrimination. Respondents also argue that as the issue and hearing fees are sought from claimants alone and not shared with respondents, there is no incentive to settle for respondents. This does not advance equality of opportunity.

¹⁷ Excluded benefits for the purposes of calculating income under remissions 2 and 3 are outlined at page 7 of the EX160 "Court Fees – Do I Have To Pay Them?" leaflet, found here: <http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf>

In respect to the impact on equality of opportunity, we believe our initial assessment remains valid. Neither we nor any of the respondents can predict with any certainty what the impact of the introduction of fees will be. There is no evidence to suggest what impact, if any, there will be on claimant and respondent behaviour. In addition, following engagement with SMEs, the Government is funding a national Ministerial road-show, in partnership with the British Chambers of Commerce to reinforce the message that equality is good for business by showcasing exemplar employers.

In respect of settlement we believe there is incentive for the respondent to settle despite the issue and hearing fee being paid only by the claimant. First, the respondent will pay any fees where they seek the benefit of the order (e.g. counter-claims or application to review a default judgement). Secondly, given the power for the tribunal to order re-imbursement, the respondent will need to take into account the fees when considering whether to defend a claim. Thirdly, respondents have consistently indicated that there are factors within the existing system which create an incentive to settle, (such as risk to reputation), which are unaffected by the fee proposals.

Fostering good relations

In our initial EIA we said that we did not think this obligation is of particular relevance to the proposals.

A number of respondents rejected our initial assessment because legal prohibitions on discrimination have a role to play in encouraging good relations and provide the claimant with a remedy where such behaviour occurs. They also highlighted the potential wider impact on society of a failure to tackle discrimination through the tribunal, which some say will lead to a reduction in the bringing of high profile cases and the consequent impact of employers ignoring discrimination laws.

We believe that the introduction of fees with the measures we are proposing, and, in particular, the remission scheme will mean that claimants will not be prevented from bringing cases to the tribunal. Legal prohibitions will remain and claims will continue to be brought where a claimant considers their rights have been breached. Discrimination will continue to be challenged in the tribunal. We therefore believe that to the extent that this obligation to the fee proposal is relevant it is reasonable to assume that the impact of fees on fostering good relations is neutral.

We also note by way of counter-balance that there are a wide range of guidance, advice and help-lines available for both employees and employers. This helps business to observe their duties under the Act, set up an equality

policy and action plan and help employees to understand their rights¹⁸. There is also independent research that highlights the potential wide-ranging benefits for employers from fostering a diverse workforce¹⁹.

We also highlight that there are wider Government initiatives that are aimed at promoting equality in business and throughout society. Moreover, given that parties which reach settlements away from the formal legal process can maintain or even improve their working relationship, the future extension of pre-claim Acas will have a positive impact on fostering good relations. In addition, Government is working with employers to promote the use of mediation early in the dispute process through a regional mediation network pilot and encouraging the sharing of best practice from large companies in the retail sector with their own in-house mediation schemes²⁰.

Evidence provided by respondents

A number of respondents to the consultation submitted new data or research, or referred to other existing information. Some of this information was provided in support of the view that those with protected characteristics are already deterred from making claims and therefore would be additionally negatively impacted by the introduction of fees, given that these act as a further deterrent. Evidence was also provided to suggest that the remissions system would not be available as widely as had previously been suggested by the MoJ analysis²¹ and that HMCTS staff were failing to apply the system correctly.

Some consultation responses commented on the extent and quality of the data available. We have considered these points carefully and will address them as part of our monitoring plans. We have also given proper consideration to qualitative as well as quantitative evidence on the potential impact of the reforms. A summary of the evidence is provided in Annex F.

¹⁸ For example the Acas Helpline where employers and employees can get advice on employment problems; Equalities and Human Rights Commission publications for small and larger business and Government Equalities Office information

¹⁹ For example see CIPD report – Managing Diversity which shows that diversity can help stimulate creative interaction, motivate employees and improve business performance <http://www.cipd.co.uk/NR/rdonlyres/D4D2D911-FC8A-4FD2-A814-B80A55A60B87/0/mandivlink0405.pdf>

²⁰ <http://news.bis.gov.uk/Press-Releases/Regional-Mediation-Pilot-Schemes-up-and-running-67b90.aspx>

²¹ See the impact assessment that accompanies the response to the fee charging consultation for more details on the analysis of the likely level of eligibility of claimants.

Mitigation and Justification

The overall assessment in the initial EIA was that there are some implications of the proposals on 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. The original mitigations proposed were:

- The application of the remissions policy which will protect access to justice for those on low incomes;
- 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.

Respondents raised a number of issues in relation to our initial assessment that proposals would be likely to be a proportionate means of achieving a legitimate aim, given the above mitigations. We consider them below.

The application of the remissions policy which will protect access to justice for those on low incomes

The HMCTS remissions system is explained in Annex E. Our analysis²² suggests that approximately 11 per cent of the employment tribunal claimant population would be eligible for Remission 1 and approximately 13 per cent eligible for Remission 2, both of which provide a full fee remission. Moreover, 53 per cent of claimants would benefit from a variable discount on fee rates up to £950.

Some respondents thought that our assumption of the extent to which the remissions system would apply to ET claimants was wrong and it would apply in a far more limited way. As a result, remissions will not mitigate the impacts on those with protected characteristics as effectively as suggested²³.

Neither we nor any group has an accurate picture of the income levels or range of income for those who make claims in the employment tribunals. We believe that the evidence we have produced offers the best available method of making a reasonable assessment and shows that the remissions system

²² See paragraph 4.17 of the Impact Assessment

²³ For example, in their response, the TUC offered remission eligibility estimates based on an alternative survey (Understanding Society) although it was unclear from their response, how these estimates were derived.

will be available and used by a wide range of claimants, with or without protected characteristics, to protect them from being denied access to justice.

In addition, there will be a discretionary power for the Lord Chancellor to reduce or remit a fee where, owing to exceptional circumstances of a particular case, which will ensure that impacts are mitigated.

Respondents also said that using household income to determine eligibility for remissions will reduce the number of discrimination claims brought because it is known that household income is not equally shared and a woman will therefore have to ask permission of her partner before making a claim

We do not accept that it is wrong to use household income as the basis for eligibility for a remission. Our approach follows that taken in determining state benefits and the remission scheme for fees in the civil courts. It is appropriate that the same basis is used for remissions in employment tribunals

Respondents said that it could not be stated with certainty that the remission system will mitigate the significant adverse impact on disabled people. This is because there are no details of the personal circumstances of disabled people presenting employment claims and whether they are more likely or not to be in employment or otherwise entitled to remission of any kind.

While we do not know the personal circumstances of disabled people, the remission system is intended to protect access to justice and ensure that only those who can afford to pay a fee do so.

A number of respondents said that MoJ research²⁴ indicated that the remissions system was too complex and frequently applied incorrectly by staff. This means that those with protected characteristics are not protected.

The MoJ research report was published in 2007 and since then all staff who have dealt with remissions have received further training; improved guidance has been made available; and changes have been made to the remissions form. Therefore, we believe that this criticism has been addressed and the remissions system will act to protect access to justice.

The Government believes that the existing HMCTS remission system is suitable in ET to protect access to justice for those who cannot afford to pay the fee. However, given the concerns raised MoJ will undertake a review of remissions as part of the wider review required for the introduction of Universal Credit. Respondents will be able to feed in with their comments at that point. The assessment in this EIA is based upon the proposed fees structure and the current HMCTS remission scheme. We cannot assess the equality impacts for any proposals in advance of their development but will assess the equality impacts of any new proposals.

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<http://webarchive.nationalarchives.gov.uk/20100111120959/http://www.justice.gov.uk/publications/docs/2007-court-fee-remission-system.pdf>

The provision for the tribunal to order that fees are reimbursed by the unsuccessful party

Some respondents thought that the tribunal's power to order the respondent to reimburse claimants' fees at the end of a successful case could not provide mitigation or justification to those claimants from equality groups who are prevented from bringing or continuing with claims in the first case through lack of funds. In addition, some suggested that the power for the tribunal to order reimbursement should be automatic rather than discretionary, partly to mitigate the deterrent for potential claimants who weigh up the fees they will pay against the sums they will be likely to obtain.

We consider that claimants should not be prevented from bringing or continuing a claim because of lack of funds owing to the availability of the remission scheme (including the power of the Lord Chancellor's power to waive a fee in exceptional circumstances). However, we consider this a relevant consideration because if a claimant pays a fee and wins their case, they can ask the tribunal to order the respondent to re-pay their fee.

We do not accept that automatic reimbursement of a successful claimant is appropriate as we believe that the tribunal is best placed to consider whether the successful party should reimburse the unsuccessful party given that both the respondent and claimant can pay fees and both parties can make representations to the tribunal. We will work with the Presidents of the employment tribunals and the Employment Appeal Tribunal to establish what guidance is necessary to ensure consistency of approach. In settlements, it will be for the parties to agree what re-imbusement is appropriate.

The availability of a free alternative form of dispute resolution via Acas

Some respondents thought that the availability of Acas as an alternative dispute resolution mechanism cannot be used as justification for the proposals since it is used after the event and only in a few claims.

We do not see the possibility of resolving matters through Acas as a justification, but see its availability as something to take into account. It offers an alternative form of dispute resolution that is free to parties and can result in the maintaining or improving of the employment relationship. This is in addition to any other forms of dispute resolution (within the workplace or via mediation) the parties might use.

Currently, a third of claims commenced in the employment tribunals are settled via Acas. This will clearly have an effect on the payment of any fees because those parties who settle in time will not need to pay the hearing fee; pre-claim Acas is already available and highly successful so will continue to be a free alternative solution to resolve claims outside of the formal employment tribunal process. Its availability will become even more significant when formal pre-claim referral to Acas is introduced in 2014. We think that the availability of free Acas conciliation acts as a mitigation and that it is appropriate for us to take into account.

The setting of fees below full cost recovery

Some respondents thought that charging at less than full cost is a mitigation but not a justification.

We agree that it is not itself a justification and never set that as our position. HM Treasury policy is that a public service should be charged at full cost recovery so charging initially less than full cost is something to take into account.

Additional mitigations

Some respondents suggested that there were further measures we could take which would make the measures work more effectively. One in particular was the short time-limits in employment tribunals should be extended because coupled with fees that had disproportionately greater impacts on different groups for different reasons. For example the impact on pregnant women was because it is a period when finances change and a baby is due; people with disabilities who may need longer to fill in claim forms, and require further advice on how to frame and understand relevant issues; and migrant workers who face a language barrier and will have casual work so are less able to supply proof of earnings. It was also said that the strict time-limits mean that there is insufficient time for benefits to be processed and this will mean that claimants are denied the opportunity to bring a claim; (this is not per se an equality issue but many respondent's raised it in this context).

We do not propose to alter the time-limits for making claims in employment tribunals which currently apply. However, we propose, so as not to disadvantage any group, to separate out consideration of the fees from whether a claim has been made "in time". In other words, the imposition of fees will not affect the current position except that an application will have to be accompanied by either a fee or an application for remission.

It is important that there are three ways in which to qualify for a remission. A person whose benefits are not in place or suspended at the time a claim needs to be paid can apply under remission 2 (a retrospective consideration of the last year's gross annual income) or remission 3 (consideration of the last months net disposable income). This approach ensures that no-one is penalised for the shorter time-limits in employment tribunals because they do not have their benefits in place.

Making paying fees, accessing information and applying for remissions accessible

Respondents suggested a range of practical ways in which the proposals could be further mitigated. For example:

- Make payment options as wide as possible to ensure that those without internet connections and bank accounts are not adversely impacted;
- Cash could be paid at county courts;
- Improve the information available on Acas.

We are continuing to consider what range of payment options and direct contact should be offered and will take these views into account.

Respondents also said that the fee proposals will require claimants who are from vulnerable and hard to reach communities to seek early legal advice and guidance before making an application.

We do not consider that the availability of legal aid is relevant to the fee proposals (as fees are about paying for the service whereas legal advice can assist someone to bring a claim). However, we note that legal aid will continue to be available for claims relating to a contravention of the Equality Act 2010 in employment cases (subject to the statutory tests of means and merits) that are currently within the scope of the legal aid scheme. For all other employment matters legal aid will not be available.

We will monitor the impact of the proposals on people with protected characteristics. In particular, we will consider what provision is necessary in order to ensure that everyone can access and understand forms and guidance.

Next steps

Our next work is to prepare for implementation of fees in the employment tribunal and Employment Appeal Tribunal. Given the practical suggestions made by respondents we hope to work with equalities groups, in particular to consider the practical ways we can make the fee and remission scheme accessible to those who may use the tribunal.

We accept our assessment of the likely equality impacts is restricted because of the limited evidence available and intend to include the monitoring of the equality impacts of fees as part of our post-implementation review. As part of this, we will look to establish what links there are between case type and protected characteristics.

As a first step we are seeking to improve the gathering of our equalities data of claimants. We hope to update the existing monitoring form (attached to the current ET1 claim form) as part of the changes to forms expected to occur as a result of the fundamental review of the rules that govern Employment Tribunals, led by Mr Justice Underhill²⁵.

Cumulative impacts of changes and future impacts

We received a number of comments that said we should consider the cumulative equality effects of the wider changing landscape for example, the changes to legal aid provision, the fundamental review of ET rules and the wider employment law reform. Where we know of the impacts we have taken them into account (e.g. legal aid changes), but in many cases it is not possible because the extent of the changes are not yet known.

The measures which have been already been introduced or will be in place by 2013/14 include:

- Early conciliation – the requirement that all potential ET claims to be lodged with Acas in the first instance (expected in 2014)
- Changes to the ET Rules in relation to cost and deposit orders; witness statements; witness expenses and judges sitting alone in unfair dismissal cases (introduced 2012)
- Further changes to the ET Rules following the fundamental review led by Mr Justice Underhill (expected in 2013), and

²⁵ Terms of reference for the Fundamental review can be found at the following link: <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/f/11-1379-fundamental-review-employment-tribunal-rules-terms>

- The extension of the unfair dismissal qualifying period from one to two years (introduced 2012)

Our analysts do not believe that these measures will bring to bear any significant impact upon the financial model used however we will monitor the impact of fees in light of other changes made.

Annex A – Summary of original fee proposals

The consultation outlined two main options for the fee charging system in employment tribunals.

- Option 1 proposed a two stage charging system with fees the first fee stage being due at the issue of a claim and the second fee stage due prior to hearing, with the level of fee payable dependent on the type of claim and stage in the proceedings. The aim of Option 1 was to transfer some of the costs of the tribunal from the taxpayer to the tribunal users.
- Option 2 proposed a single fee at issue, dependent on the type of claim and the value of the award sought by the claimant, so that a higher fee would be payable where the claimant sought an award over £30,000. Under Option 2, the tribunal would be restricted from making an award over £30,000 unless the higher fee was paid. Option 2 had the additional policy aims of providing businesses with greater certainty over their maximum liability of an award and improving claimants' expectations of what they may be awarded if they were to be successful in their claim.

In addition, there were a number of proposals which were common to both options, namely:

- That 6 “application specific” fees would be charged for:
 - i. A counter-claim in a breach of contract case.
 - ii. Application to set aside a default judgement.
 - iii. Application for dismissal following settlement or withdrawal.
 - iv. Request for written reasons after the judgement where reasons have been given orally.
 - v. Application for review of the tribunal's judgement or decision.
 - vi. A fee for mediation by the judiciary.
- The HMCTS fee remission system for civil courts in England and Wales would be applied to the employment tribunals fee structure across the whole of the UK to protect access to justice for those who:
 - i. Cannot afford to pay the full fee or;

ii. Can only afford make a contribution to it.

- Multiple cases would be charged more than single claims, with a multiplier applied dependent on the number of claims in the case.
- Refund provisions, would be restricted to where a fee was taken in error or where it became apparent that a claimant who had paid a fee was eligible for remission at the time at which they paid the fee.
- A power for the tribunal to order the unsuccessful party to reimburse any fees paid by the successful party.
- In the EAT a two stage charging system was proposed, similar to Option 1 in employment tribunals, with a fee payable upon requesting permission to appeal and a further fee due prior to the hearing of the appeal. The same remission, refund and other provisions would apply to the EAT equally, as proposed for the employment tribunals. There were no application specific fees proposed.

Annex B – Employment tribunal and Employment Appeal Tribunal Fees Structure

The following is a summary of the fees the Government proposes to charge in employment tribunals and the Employment Appeal Tribunal, after consideration of the responses to consultation.

Employment tribunals – proposed fee levels for single claims

Fee Type	Level 1 claims	Level 2/3 claims
Issue Fee	£160	£250
Hearing Fee	£230	£950
Total	£390	£1200

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.

Charging fees in the Employment Tribunals and the Employment Appeal Tribunal

	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

Other fees

	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

Employment Appeal Tribunal – proposed fee levels

	Appeal fee	Hearing fee	Total
EAT fee	£400	£1200	£1600

Annex C – Evidence base

To examine potential differential impacts, we have considered these impacts on the protected characteristics groups given the information available. Where we have the data, three comparisons are made:

- 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 or high income than average for the working-age population and may potentially be impacted negatively with the introduction of charging; and
- c. The characteristics of those using ET.

Potential age impacts

Whether more likely to be employed

According to the Office of National Statistics Labour Market Statistics Bulletin²⁶ those aged 16-17 and those 65 and over are most likely to be economically inactive (either because they have not yet started full-time employment or have retired). Persons aged 18-24 and 50-64 are the next groups more likely to be economically inactive. This means that these four age groups could be less likely to have the need to be users of the tribunal. People aged 25-49 are more likely to be employed and to be users of the ET and EAT. However, their age may mean that they have less reason to use ET.

Household income

Table 6 shows the quintile²⁷ 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: 81 per cent of individuals in households with children where the head of the household is aged 16-24 years old and 52 per cent of individuals in households without children where the head of the household is aged 16-19 year olds, and 44 per cent of individuals in households with children where the head of household is aged between 20 and 24 years old are in the two lower disposable income quintiles compared to 37 per cent of all working-age adults. Where income is low families would be eligible for remission to reduce the impact of the introduction of fees.

There is some variation between the proportion of each age group in households without children with incomes in the middle quintile and all

²⁶ <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/june-2012/statistical-bulletin.html>

²⁷ Quintiles are income values which divide the population, when ranked by income, into five equal-sized groups.

working-age adults with some age groups less likely to be in the middle quintile compared to all working-age adults. Those in the middle quintile may not be eligible to a fee remission.

For individuals aged 25 and over in households without children, a higher proportion of individuals in these groups than the average for the adult working-age population are in the fourth and fifth quintiles. Proportions vary from 49 per cent for those aged 55 and over to 63 per cent for 35 to 39 year olds compared to 44 per cent for all working-age adults. These groups may be more likely to be impacted by the introduction of fees due to ineligibility for a fee remission.

Use of ET and EAT

Table 7 indicates that around 90 per cent of claimants are aged 25 to 64, compared to 81 per cent of the general population of those aged 16-64. There is a higher proportion in the younger age group (25-44) who are involved with discrimination cases compared to all cases (50 per cent compared to 46 per cent)²⁸. For comparison 42 per cent of the general population aged 16-64 are in the age group 25-44.

Table 2 shows that 6,800 claims for age discrimination were accepted in 2010-11.

Potential disability impacts

Whether more likely to be employed

According to the Office of National Statistics labour force survey²⁹ approximately 50 per cent of people of working age with a disability are in work, compared to an employment rate of around three-quarters for non disabled people of working age. 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

Table 5 shows the quintile distribution of household income by disability³⁰. The research shows 53 per cent of disabled working-age adults are in the two lower disposable household income quintiles compared to 34 per cent of non disabled working-age adults³¹. The data indicate that disabled working-age adults are more likely to be in lower income households. Therefore, they are potentially more likely to benefit from the proposed remission system based on household disposable income than non-disabled adults of working-age.

²⁸ SETA survey 2008

²⁹ National Statistics Online - Browse by theme - Labour market

³⁰ No adjustment is made to disposable household income to take into account any additional costs that may be incurred due to illness or disability.

³¹ Using data from the Household Below-Average Income (HBAI) survey

The general population of disabled working-age adults has a similar distribution of disposable income in the middle quintile as the general population of non-disabled working-age adults, so the impact on this group would not differ by income.

For non-disabled working-age adults, a higher proportion of individuals in these groups than disabled working-age adults are in the fourth and fifth quintiles (47 per cent compared to 28 per cent). Non-disabled working-age adults may be more likely to be impacted by the introduction of fees due to ineligibility for a fee remission.

Use of ET and EAT

Table 7 shows that 22 per cent of claimants had a long standing disability or illness at the time of application compared to 40 per cent 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 claimants³². For comparison the prevalence of disability in the adult working-age population was 14 per cent³³.

Table 2 shows that 7,200 claims for disability discrimination were accepted in 2010-11.

Potential gender reassignment impacts

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.

Potential marriage and civil partnership impacts

Household income

Table 6 shows the quintile distribution of household income for working-age adults by marital status. People, who are married or in a civil partnership without children are more likely to be in the top two income quintiles than those who do not share that protected characteristic (61 per cent compared to 44 per cent for all working-age adults). This indicates that these individuals would be more likely to pay full fees and 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. For those people who are married or in a civil partnership with children there is little variation compared to all working-age adults.

We do not have data comparing the household income of those married compared to those in a civil partnership.

³² SETA survey 2008

³³ Office for Disability Issues

Potential pregnancy and maternity impacts

Household income

Data is not available on household income and pregnancy.

Use of ET and EAT

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 shows that 1,900 cases were taken forward in 2010-11. However the fees would apply equally to all individuals claiming discrimination or unfair dismissal on grounds other than pregnancy, i.e. health and safety.

Potential race impacts

Household income

Tables 6 show the quintile distribution of household income by the ethnic group of the head of the household. Working-age adults 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 57 per cent for Black/Black British groups, 59 per cent for Asian or Asian British and 52 per cent of Chinese, compared to 37 per cent of the working-age population overall and 34 per cent 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.

There are fewer middle income households headed by someone from an ethnic background when compared to all working-age adults and compared to those from White backgrounds, both 19 per cent. The highest proportion was for households headed by someone from an Indian background (16 per cent) and the lowest was for those headed by those from a Pakistani or Bangladeshi background (9 per cent). Working-age adults headed by someone from a White background are more likely to be in the fourth and fifth income quintiles. These data confirm that those with an ethnic minority background are more likely to benefit from the proposed remission system than people from a White background due to their lower income levels.

Use of ET and EAT

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

- 86 per cent White;
- 2 per cent Mixed;
- 5 per cent Asian;
- 5 per cent Black, and

- 2 per cent Chinese or Other³⁴

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

- 87 per cent White;
- 2 per cent Mixed;
- 7 per cent Asian;
- 3 per cent Black, and
- 2 per cent Chinese or Other³⁵

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

Table 2 shows that 5,000 claims for race discrimination were accepted in 2010-11.

Potential religion and belief impacts

Household income

There is some evidence to suggest that in the employment field there is a disparity of earnings between Muslims and non-Muslims.³⁶

Use of ET and EAT

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

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

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

- 20 per cent No religion
- 71 per cent Christian
- 5 per cent Muslim

³⁴ SETA - The Survey of Employment Tribunal Applications 2008.

³⁵ 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.

³⁶ 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.

- 2 per cent Hindu
- 1 per cent Sikh,
- 1 per cent Other
- 1 per cent Jewish
- 0 per cent Buddhist³⁷

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, they do give an indication of the differences.

Table 2 shows that 880 claims for religious discrimination were accepted in 2010-11.

Potential sex impacts

More likely to be employed

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

Household income

Table 5 shows the quintile distribution of household income by gender. 18 per cent of adult males and 19 per cent of adult 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 households³⁸ 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. We know that the majority of lone parent households with children are headed by women, and 69 per cent of these households are in the bottom 2 quintiles indicating that they would be more likely to access the remission system.

Similarly there is no difference by gender in the proportion in the middle income quintile, 20 percent in both cases and the same as all working-age adults. A slight difference was noted when using the 2009/10 figures, but with the 2010/11 figures there is no difference in household income, so access to remission will not differ by sex.

³⁷ ONS, 'Integrated Household Survey Experimental Statistics, 2009-10', *Statistical Bulletin*, September 2010, Table 2.

³⁸ 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.

There is little difference in the proportion by gender in the top 2 quintiles with 44 per cent of males and 42 per cent of females in the top 2 quintiles.

Use of ET and EAT

Table 7 shows that men brought the majority of applications across most jurisdictions (60 per cent), but women brought more cases involving discrimination claims. However, Table 2 provides statistics on the nature of employment tribunal claims made over the last 3 years and shows that of the jurisdictional complaints received in 2010/11, 34,600 were for equal pay and 18,300 for sex discrimination, 14 per cent of the total number (382,400) of complaints received. 82 per cent of sex discrimination complaints were brought by women³⁹ and equal pay complaints can only be brought on the grounds of sex. These more often involve 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.

Potential sexual orientation impacts

Table 2 shows that in 2008/09, 600 claims of discrimination on the grounds of sexual orientation were made, rising to 710 in 2009/10 and falling to 640 in 2010/11. This suggests that those who make claims on the 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.

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 per cent White;
- 2 per cent Mixed;
- 3 per cent Asian or Asian British ;
- 2 per cent Black or Black British; and
- 2 per cent as Chinese or Other.

Of all respondents 56 per cent were male and 44 per cent 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

³⁹ SETA survey 2008

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 SETA⁴⁰ survey in 2008 where it was found that of the 2,020 claimants participating in the survey, they described their ethnic origin as follows:

- 86 per cent White;
- 2 per cent Mixed;
- 5 per cent Asian;
- 5 per cent Black; and
- 2 per cent Chinese or Other.

Of these respondents 60 per cent were male and 40 per cent 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, the following percentages of ethnic origin were indicated:

- 86 per cent white;
- 2 per cent mixed;
- 5 per cent Asian;
- 6 per cent Black; and;
- 1 per cent Chinese or Other.

The sampling exercise was repeated in February 2012. 944 forms were sampled with the following results:

- 80 per cent White;
- 2 per cent Mixed;
- 6 per cent Asian;
- 11 per cent Black, and;
- 1 per cent Chinese or Other.

⁴⁰ SETA - The Survey of Employment Tribunal Applications 2008
(<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008.pdf>)

Evidence Base – Statistical analysis

Table 1: Employment tribunal cases disposed of and outcomes by jurisdiction in 2010-2011

Year	2008/09			2009/10		2010/11	
Total claims disposed			92,000		112,400		122,800
JURISDICTION MIX OF TOTAL CLAIMS DISPOSED Apr 10 to Mar 11							
Nature of claim	Jurisdictions disposed	Withdrawn		ACAS conciliated settlements		Struck out (not at a hearing)	
	No.	No.	%	No.	%	No.	%
Unfair dismissal	49,600	12,300	25	20,500	41	5,400	11
Wages Act	38,200	12,600	33	10,400	27	3,400	9
Breach of contract	31,800	7,300	23	10,300	32	2,700	7
Redundancy pay	14,100	3,700	27	2,600	18	1,400	10
Sex discrimination	15,600	7,600	49	4,300	28	2,500	16
Race discrimination	4,900	1,400	28	1,700	36	500	10
Disability discrimination	6,800	2,100	31	3,100	46	510	7
Religious belief discrimination	850	250	29	290	34	93	11
Sexual orientation discrimination	660	210	31	270	41	70	11
Age discrimination	3,700	1,500	40	1,300	35	350	10
Working time	24,100	6,300	26	7,100	29	1,900	8
Equal pay	25,600	15,300	60	3,000	12	5,300	21
National minimum wage	600	120	20	200	33	37	6
All Others	27,400	7,700	28	6,300	23	1,400	5
Total	244,000	78,300	32	71,400	29	25,500	10

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Nature of claim	Successful at tribunal		Dismissed at a preliminary hearing		Unsuccessful at hearing		Default judgment	
	No.	%	No.	%	No.	%	No.	%
Unfair dismissal	4,200	8	1,400	3	4,800	10	1,200	2
Wages Act	5,400	14	670	2	2,100	6	3,600	9
Breach of contract	5,400	17	770	2	2,300	7	3,200	10
Redundancy pay	3,200	23	200	1	680	5	2,200	16
Sex discrimination	290	2	200	1	590	4	87	1
Race discrimination	150	3	260	5	800	16	48	1
Disability discrimination	190	3	200	3	640	9	48	1
Religious belief discrimination	27	3	53	6	120	15	12	1
Sexual orientation discrimination	22	3	22	3	62	9	9	1
Age discrimination	90	2	120	3	320	9	21	1
Working time	4,400	18	530	2	1,400	6	2,600	11
Equal pay	280	1	36	0	1,700	7	7	0
National minimum wage	75	13	11	2	130	22	30	5
All Others	4,400	16	520	2	5,700	21	1,400	5
Total	28,100	12	5,000	2	21,200	9	14,400	6

The table below shows how the manner of disposal of 2,001 appeals disposed of by the EAT in 2010-11

Nature of disposal	Numbers of cases	% of claims disposed
Rejected as having no reasonable prospect of success	959	48%
Disposed of at hearing	423	21%
Withdrawn	317	16%
Rejected as being out of time	279	14%
Struck out because of failure to comply with orders	23	1%

Table.2: Claims Accepted by employment tribunals from April 2008 to March 2011⁴¹

	2008-09	2009-10	2010-11
Total Claims Accepted [1]	151,000	236,100	218,100
Singles	62,400	71,300	60,600
Multiples	88,700	164,800	157,500
NATURE OF CLAIM	2008-09	2009-10	2010-11
Unfair dismissal	52,700	57,400	47,900
Unauthorised deductions (Formerly Wages Act)	33,800	75,500	71,300
Breach of contract	32,800	42,400	34,600
Sex discrimination	18,600	18,200	18,300
Working Time Directive [2]	24,000	95,200	114,100
Redundancy pay	10,800	19,000	16,000
Disability discrimination	6,600	7,500	7,200
Redundancy – failure to inform and consult	11,400	7,500	7,400
Equal pay	45,700	37,400	34,600
Race discrimination	5,000	5,700	5,000
Written statement of terms and conditions	3,900	4,700	4,000
Written statement of reasons for dismissal	1,100	1,100	930
Written pay statement	1,100	1,400	1,300
Transfer of an undertaking - failure to inform and consult	1,300	1,800	1,900
Suffer a detriment / unfair dismissal - pregnancy[6]	1,800	1,900	1,900
Part Time Workers Regulations	660	530	1,600
National minimum wage	600	500	520
Discrimination on grounds of Religion or Belief	830	1000	880
Discrimination on grounds of Sexual Orientation	600	710	640
Age Discrimination	3,800	5,200	6,800
Others	9,300	8,100	5,500
Total	266,500	392,800	382,400

[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 include approximately 84,000 resubmitted multiple claims in 2010-11.

⁴¹ 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 of fees	
		Pre-consultation	Post-consultation
Unauthorised deductions (Formerly Wages Act)	Short	Level 1	Level 1
Breach of Contract	Short	Level 1	Level 1
Working Time Directive	Short	Level 1	Level 1
Redundancy Pay	Short	Level 1	Level 1
Written statement of terms and conditions	Short	Level 1	Level 1
Unfair Dismissal	Standard	Level 2	Level 2
Redundancy – failure to inform and consult	Standard	Level 2	Level 2
Written statement of reason for dismissal	Standard	Level 2	Level 2
Written pay statement	Standard	Level 2	Level 2
Transfer of an undertaking – failure to inform and consult	Standard	Level 2	Level 2
Suffer a detriment/unfair dismissal – pregnancy	Standard	Level 2	Level 2
Part Time Workers Regulations	Standard	Level 2	Level 2
National Minimum Wage	Standard	Level 2	Level 2
Sex Discrimination	Open	Level 3	Level 2
Disability Discrimination	Open	Level 3	Level 2
Equal Pay	Open	Level 3	Level 2
Race Discrimination	Open	Level 3	Level 2
Discrimination on the grounds of Religion or Belief	Open	Level 3	Level 2
Discrimination on the grounds of Sexual Orientation	Open	Level 3	Level 2
Age Discrimination	Open	Level 3	Level 2

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

Track	Stage	Fee at full cost	Proposed Fee recovery
Short	Issue	£390	£160
	Hearing	£1,250	£230
Standard	Issue	£420	£250
	Hearing	£3,780	£950
Open	Issue	£440	£250
	Hearing	£6,250	£950
EAT	Issue	£320	£400
	Hearing	4350*	£1,200

*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 33per cent 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 income¹ (after housing costs) for individuals by gender and disability, United Kingdom

Percentage of individuals	Net equivalised disposable household income					Source: FRS 2010/11
	Bottom quintile	Second quintile	Middle quintile	Fourth quintile	Top quintile	All individuals (millions)
Gender and adulthood						
Adult male	18	18	20	21	23	23.4
Adult female	19	20	20	21	21	24.6
Disability						
Disabled working-age adults	30	23	19	16	12	5.4
Non-disabled working-age adults	19	15	18	22	25	30.9

1. 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 downwards and the incomes of smaller households adjusted upwards relative to this reference point.

Source:
Households Below Average Income (HBAI) 1994/95-2010/11, Department for Work and Pensions

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Table 6: Quintile distribution of income³ (after housing costs) for working-age adults by age, ethnic group and family type, 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	50	31	12	5	2	0.7
25 - 29	33	31	20	13	4	1.2
30 - 34	26	23	22	16	13	1.9
35 - 39	22	19	19	21	20	2.8
40 - 44	19	20	22	20	19	3
45 - 49	19	18	21	22	21	2.3
50 - 54	17	17	22	23	21	1.1
55 +	18	21	23	20	19	0.5
Without children						
16 - 19	29	23	18	18	12	1.3
20 - 24	26	18	21	20	15	3.7
25 - 29	17	11	17	30	25	2.7
30 - 34	15	9	15	24	36	1.9
35 - 39	15	11	11	24	39	1.4
40 - 44	20	11	14	21	34	1.6
45 - 49	17	12	17	24	30	2.2
50 - 54	15	11	18	22	34	2.9
55 +	17	15	18	21	28	5.3
Ethnic group of head (3-year average)						
White	18	16	19	22	24	32.2
Mixed	32	17	14	18	18	0.4
Asian or Asian British	37	22	13	13	15	2.1
Indian	28	20	16	16	20	1
Pakistani and Bangladeshi	50	27	9	7	6	0.8
Black or Black British	37	20	14	16	12	1
Black Caribbean	29	21	16	17	17	0.4
Black Non-Caribbean	43	20	13	15	9	0.6
Chinese or other ethnic group	34	18	13	14	21	0.6
Family type and marital status						
Couples						
Married or Civil Partnered	15	15	19	23	28	18
Cohabiting	20	16	18	24	22	5.7
Singles						
Singles ¹	28	19	18	18	17	12.7
All working-age adults with children						
Couples	23	21	21	19	16	13.6
Married or Civil Partnered	21	20	21	21	18	11.7
Cohabiting	18	18	21	22	20	9.4
Singles ¹	31	24	19	16	10	2.3
Singles ¹	38	31	18	9	4	1.9
All working-age adults without children						
Couples	19	14	17	23	27	22.8
Married or Civil Partnered	12	11	16	26	35	12
Cohabiting	12	11	16	24	37	8.6
Singles	13	10	17	29	30	3.4
Singles	26	17	18	19	19	10.8
Male	27	17	18	19	19	6.6
Female	25	18	19	19	19	4.2
All working-age adults²	20	17	19	21	23	36.4

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 averages.

3. 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) 1994/95-2010/11, Department for Work and Pensions

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

Table 7

	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

Annex D - Initial EIA questions and list of stakeholders attending equalities event

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.

List of those equality Stakeholders who attended MoJ Meeting

A range of stakeholders were invited to our equalities event. Those who attended are in italics

Employers Forum on Disability
Employers Forum for Age and Belief
<i>Stonewall</i>
Just West Yorkshire
Black Police Association
Black Police Association
Chairman / RESPECT
RESPECT
<i>NCAF</i>
<i>Associate Black Probation Officer</i>
Associate Black Probation Officer
BME Staff Network
BME Staff Network
DCLG BME Staff Network
Age & Employment Network
British Deaf Association
<i>Equality & Human Rights Commission</i>
<i>Equality And Diversity Forum</i>
Ethnic Minorities Law Centre
<i>Free Representation Unit</i>
Low Pay Commission
<i>Maternity Action</i>
Radar
Stonewall
UK Disabled People's Council
Citizens Advice Bureau
Legal Action Group
DTI
<i>National Black Crown Prosecutors Association</i>
<i>Discrimination Law Association</i>

Annex E – Summary of HMCTS remissions system

HM Courts and Tribunals Service remissions 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 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 income⁴² and expenditure means test to calculate their (and, if applicable, their partner’s) monthly disposable income:

⁴² A number of benefits are excluded from the calculation of income in remissions 2 and 3. These include Carer’s Allowance, Disability Living Allowance, Exceptionally Severe Disablement Allowance and Severe Disablement Allowance. The complete list can be found at page 7 of the EX160 “Court Fees – Do I Have To Pay Them?” leaflet, found here: <http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf>

- 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 ⁴³ a month
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.

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

⁴³ 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.

Charging fees in the Employment Tribunals and the Employment Appeal Tribunal

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

Under the proposal, 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.

Annex F – Evidence base referred to by respondents

Respondents to the Government's consultation referred to the following reports and statistics. For each we have given an indication of the basis for the evidence and its quality for decision making.

1) Greater expectations: Final report of the Equal Opportunities Commission's investigation into discrimination against new and expectant mothers in the workplace, June 2005

The 2005 EOC Inquiry report was the outcome of the two year statutory investigation into pregnancy discrimination. The evidence presented is the result of a major consultation exercise carried out by the EOC with a wide range of stakeholders across Great Britain, particularly employers and their representative organisations. They consulted with employers of all sizes and across all sectors to get their views on the recommendations contained in their interim report, published in 2004 with findings from the first year of the investigation and recommendations for change. They also wanted employers' suggestions for possible solutions to the problems that had been identified, as well as to gather additional evidence, case studies and examples of how managing pregnancy and maternity could be made easier for employers.

In addition to consultation responses the EOC also completed a further major research project into the experiences of 1,006 women who had recently worked while they were pregnant. We examined details of women's experiences using in-depth interviews with 35 women who had experienced pregnancy-related discrimination, and 12 focus group discussions with women who had worked while pregnant, including four exclusively with women from black and ethnic minority groups.

This inquiry report has been used by respondents to the ET consultation:

- to support the view that charging fees would be a further deterrence to claims given the evidence of pre-existing high levels of pregnancy and maternity discrimination but the low numbers of claims made.(used as a footnote in methodology)
- to support the view that charging fees would be a further deterrence to claims given the evidence of pre-existing high levels of pregnancy and maternity discrimination but the low numbers of claims made; also concluded that there is little incentive for employers to comply with the law and little deterrent for them not to comply

2) The 2010 Equality and Human Rights Commission research into treatment of pregnant migrant workers in the meat and poultry processing industry

The evidence in this report was based on:

a) Written evidence – the EHRC sent out a ‘call for evidence’, translated into 12 languages, to organisations and individuals working in this sector, and received over 150 responses. 120 of these were from individual workers, three-quarters of which were in languages other than English, half being in Polish. They also obtained written evidence from supermarkets, unions, industry representative bodies, regulators, and government departments.

b) Worker interviews - They conducted 140 face-to-face interviews with meat processing workers in 15 different locations across England and Wales. 120 were migrant workers. Over 2,000 pages of verbatim transcripts of interviews were analysed using qualitative analysis software.

c) Surveys of meat processing firms and agencies - The research agency GfK NOP conducted and analysed two in-depth online surveys on behalf of the Commission. We received:

- 190 responses from meat and poultry processing firms
- 131 responses from work agencies supplying labour to this sector.

d) Case studies – they conducted in-depth studies of seven organisations – both processing firms and work agencies – which were recognised as displaying good practice in terms of recruitment, employment, equality and integration. They interviewed a further 50 managers and staff involved in production at various levels of seniority, and examined documentation the firms supplied.

e) Stakeholder interviews – These interviews were also held with a range of stakeholders – from police officers to advice-giving agencies, and other groups who represent the interests of migrant and/or agency workers.

This inquiry report has been used by respondents to the ET consultation:

- to support the view that migrant workers with poor levels of English will be unable to understand the remissions system and therefore unable to access the tribunal

3) First wave survey report, 2009/10 from Understanding Society Survey, the UK Household longitudinal study.

This first wave survey reports on an annual survey of 50,000 individuals in 30,000 households which was analysed independently for the TUC by academics Peter Urwin and Franz Busha at University of Westminster and Paul Latreille at Swansea University to find out the likely impact of the proposed remissions policy. The Understanding Society survey has a

longitudinal design that aims to collect data at annual intervals from all adult members in each household as well as young people aged 10-15. This first wave survey also included an ethnic boost to give data on the experience of ethnic minority populations in the UK.

This analysis has been used by respondents to the ET consultation:

- to support the view that remissions will not be as available as widely as MoJ forecasts;

4) Monitoring the Disability Discrimination Act (DDA) 1995 Phase 3, February 2004

The Disability Rights Commission research by Hurstfield J, Meager N, Aston J, Davies J, Mann K, Mitchell H, O'Regan S, Sinclair A at the Institute for Employment Studies that suggests that the cost involved in taking a case to the County Court is one barrier to taking cases.

This research was based on interviews with 18 people about 12 DDA court cases. Almost all the cases involved private sector service providers, the majority in leisure and tourism services.

This research has been used:

- to support the view that fees will act as a deterrence;

5) 2011 Annual Survey of Hours and Earnings (ASHE), November 2011.

This is a statistical series to National Statistic standard produced by ONS. The 2011 Annual Survey of Hours and Earnings (ASHE) was based on 190,000 returns which is based on a 1 per cent sample of employee jobs. This is drawn from HM Revenue and Customs Pay As You Earn (PAYE) records. ASHE collects information on the levels, distribution and make-up of earnings and hours paid. Results are produced for various industrial, occupational and geographic breakdowns, as well as by public and private sectors and age groups. This bulletin contains provisional results from the 2011 survey and revised results from the 2010 survey.

This data was used:

- to support the view that Scotland would be disproportionately affected by the introduction of fees as 30% of Scottish households are living in poverty and a substantial proportion will be migrant workers and part time female workers;
- to support the view that middle/higher income brackets will be disadvantaged.

6) Fair Treatment at Work Survey – Findings from the 2008 by Ralph Fevre, Theo Nichols, Gillian Prior and Ian Rutherford, Employment Relations research series No, 103, BIS

Information for this survey was collected through face-to-face interviews with a representative population of current and recent employees between September and December 2008 with a response rate of 57 per cent.

This survey has been used:

- to support the view that many were already deterred from bringing a discrimination claim without the introduction of fees.⁴⁴

7) What's cost got to do with it? The impact of changing court fees on users. Opinion Leader Research, Ministry of Justice Research Series 4/07, June 2007

This research comprised of three stages:

- a) A literature review to both inform and frame the research.
- b) Qualitative research amongst a spectrum of court users who paid their own court fees and personal injury representatives (no-win-no-fee solicitors and representatives of insurance and other companies who sub-contract the legal services to no-win-no-fee solicitors).
- c) A robust quantitative telephone survey amongst a range of court users who paid their own court fees.

This MoJ funded research evaluation has been used:

- to support the view that the remissions system was too complex and not applied correctly by court staff in some instances;

8) Statistics on Employment Tribunals and Employment Appeal Tribunals, Sept 2011, MoJ

This report presents annual statistical information on Employment Tribunals (ET) and Employment Appeal Tribunals (EAT) in Great Britain (1 April 2010 to 31 March 2011). These statistics are based on administrative data collated by the HMCT&S.

These statistics, which show the low success rates of discrimination cases at hearing, have been used:

- to support the view that people with protected characteristics will be further dissuaded from making discrimination claims

⁴⁴ However, this does not appear to be a correct assessment of the research

9) Practitioners' experience of working with ET claimants

A number of respondents as well as equalities groups attending the MoJ stakeholder event drew on their expertise gained through working with ET claimants to support their views.

10) 'People with disabilities in the labour market – 2011' Office for National Statistics

This report is based on official statistics of people with disabilities in the labour market.

Findings in this report were used to indicate that a large proportion of disabled people are in employment (46 per cent) and around a half of these people are in high or upper middle skilled jobs. Therefore some disabled people may be unlikely to qualify for remission

11) 'How fair is Britain?' EHRC 2010

This is a report to Parliament on the progress that society is making in relation to equality, human rights and good relations.

Findings from this report:

- 7 per cent of British employees had reported bullying harassment or discrimination were used to show the need for meaningful access to justice.
- the pay gap which particularly disadvantages women, disabled people and some ethnic minority groups were used to draw attention to the groups that are likely to bring ET claims

12) Citizenship survey, 2009/10, Department for Communities and Local Government

This was a household survey covering a representative core sample of 10,000 adults in England and Wales each year. There is also an ethnic minority boost sample of 5,000 and a Muslim boost sample of 1,200 each year, to ensure that the views of these groups are robustly represented.

Findings from this survey:

- that 7 per cent (of who) felt that they had experienced discrimination in the labour market in the last 5 years by being turned down for a job, were used to show the need for meaningful access to justice, and
- that 4 per cent of people aged 50+ believe they have been discriminated against on grounds of age when being turned down for a job were used to show that age is a source of discrimination alongside those types that often attract more attention.

13) Practitioners' anecdotal evidence from the EHRC helpline and casework assistance

This evidence is based on expert knowledge built up through experience of working and advising claimants.

It was used to support the view that lack of funds prevents claims from being commenced and that in their view current proposals will not alleviate this position.

14) 'Ending the abuse, policies that work to protect migrant domestic workers', Kalayaan 2011

This report is based on quantitative and qualitative research conducted by Kalayaan from June 2010 to January 2011 on the 'Overseas Domestic Worker' (ODW) visa system in the UK.

The findings were used to support the assertion that fees would deter women, ethnic minority groups and those of low socio-economic status to bring a claim

15) 'Managing an Ageing Workforce', CIPD/CMI 2010

This survey is based on 1,033 responses received from CMI and CIPD members surveyed, who come from across a wide range of economic sectors and sizes of organisation.

The findings that 40 per cent of age 50+ employees believe that they have been disadvantaged supports the view that incidents of age discrimination increase from the age of 50.

16) Canadian research document / survey

The respondent said that the findings state that it is much more common for the individual to leave their job than to pursue a discrimination claim thereby supporting the view that taking claims forward is already a rare event. We have been unable to find this research.