



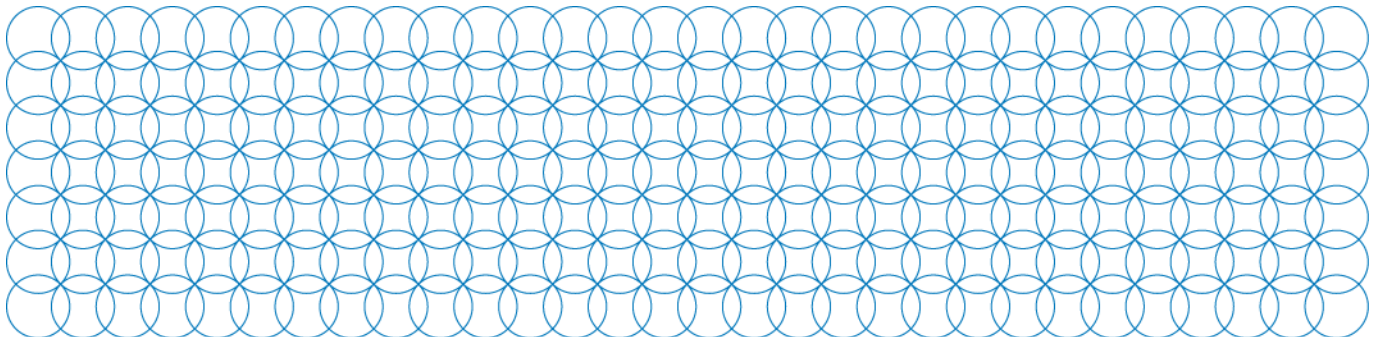
Ministry of
JUSTICE

Charging Fees in Employment Tribunals and the Employment Appeal Tribunal

Consultation Paper CP22/2011

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This consultation will end on 6 March 2012





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JUSTICE

Charging Fees in Employment Tribunals and the Employment Appeal Tribunal

**A consultation produced by the Ministry of Justice. This information is also
available on the Ministry of Justice website: www.justice.gov.uk**

About this consultation

- To:** This consultation is aimed at all stakeholders with an interest in employment tribunals and employment matters, or who would be affected by the introduction of fee charges for employment claims and appeals to the Employment Appeal Tribunal.
- Duration:** From 14 December 2011 to 6 March 2012
- Enquiries (including requests for the paper in an alternative format) to:** Doug Easton, on
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- How to respond:** Please send your response by 6 March 2012 to:

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Tel 0141 354 8409
Email: EmploymentFeesConsultation@hmcts.gsi.gov.uk
- Additional ways to feed in your views:** Should you wish to discuss further please use the 'Enquiries' contact details.
- Response paper:** A response to this consultation exercise is due to be published three months after the closing of the consultation at: <http://www.justice.gov.uk>

Contents

Foreword	3
Executive summary	5
Introduction	8
Background	11
The Proposals	14
Part 1 – Employment tribunals – Option 1 fee proposals	14
Part 2 – Employment tribunals – Option 2 fee proposals	40
Part 3 – The Employment Appeal Tribunal fee proposals	51
Part 4 – Operational changes to introduce fees	53
Annex A – List of fee levels to which individual complaints are allocated under Options 1 and 2	55
Annex B – The legislative framework for the remission system	62
Annex C – Remission 3 – Table of Contributions	67
Annex D – Examples of the application of the HM Courts & Tribunals Service remission system	68
Questionnaire	72
About you	76
Contact details/How to respond	77
The consultation criteria	79

**Charging Fees in Employment Tribunals and the Employment Appeal Tribunal
Consultation Paper**

Foreword



Promoting growth is this government's number one priority. At times of economic hardship, it becomes more important than ever to ensure that public services are cost effective and efficient, and to confront the structural barriers that impede competitiveness, employer confidence and the creation of jobs.

Accordingly, we need to identify elements within the operation of the civil justice system that could present such barriers. A modern justice system should resolve conflict effectively, efficiently and as early as possible. Yet, those involved in the current system can find it a slow, expensive and daunting experience, one that fosters rather than minimises litigation, and one which weighs heavily on the public purse.

Employment tribunals and the Employment Appeals Tribunals, the subject of this consultation, are particularly in need for reform. Bringing a claim or appeal to these tribunals is currently free for users, with the full £84 million annual cost of running the tribunals being met by taxpayers, despite the fact that most of them will never use the service.

It is of course vitally important that employees have meaningful access to justice. But employers complain that, at its worst, the operation of the current system can be a one way bet against them, with parties inadequately incentivised to think through whether a formal claim really needs to be lodged, or whether it could be settled in other ways such as conciliation, mediation or informal discussions.

Though the vast majority of awards in employment tribunals are relatively modest (the median award is £5000) business tells us that the fear of high awards being made against them creates uncertainty and can put them off taking on new staff. Litigation lightly entered into is also often not ultimately in the best interests of claimants, as people can find themselves bogged down in lengthy and emotionally draining proceedings.

Accordingly, we are seeking to bring in a fee structure in tribunals and the EAT. This consultation puts forward two sets of proposals that protect access to justice for those with low income or limited means, but which also ensure that those who use the system make a financial contribution. Our goal is to relieve pressure on the taxpayer and encourage parties to think through whether disputes might be settled earlier and faster by other means.

Losing your job or being subject to discrimination are matters every bit as serious as the issues arising in the civil courts. These proposals will put users of employment tribunals and the EAT on broadly the same footing as courts users who already pay fees. Just like in civil courts the taxpayer will continue to fund a system of fee remissions (waivers) for those who cannot afford to pay. In this way these reforms would rebalance the system, without denying access to justice for those on limited means.

Developing a fee regime that is appropriate, cost effective and ensures that users contribute towards the cost of running the service is our ambition, and one that will also support the broader aim of promoting growth. I hope that you will consider our proposals carefully to help ensure they are sensible and proportionate, and will make a genuine difference when introduced.

A handwritten signature in black ink, reading "Jonathan Djanogly". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jonathan Djanogly MP

Parliamentary Under Secretary of State for Justice

Executive summary

At present taking a claim to an employment tribunal or appealing to the Employment Appeal Tribunal is free of charge to users and entirely funded by the taxpayer. In the financial year 2010/11, the employment tribunals received 218,100 claims and 2,048 appeals were made to the Employment Appeal Tribunal at a total cost to the taxpayer of £84.2m.

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

The Government announced its intention in early 2011¹ to introduce fee-charging into these tribunals as part of the wider reforms to support and encourage early resolution of workplace disputes and in order to transfer some of the cost burden from the taxpayer to the users of the system.

The policy of introducing fees to contribute to the costs of running employment tribunals and the Employment Appeal Tribunal is not itself in question in this consultation. The purpose of this consultation paper is accordingly to seek views on the proposed fee-charging structure but not the principle of charging fees in employment tribunals or the Employment Appeal Tribunal.

There are two quite separate schemes for charging fees which we are consulting on in this paper – Option 1 and Option 2. Because of the significant differences between these options, respondents are asked to comment on each one separately. If, following this consultation, the Government decided to implement Option 1, fees would be introduced in 2013. If Option 2 were adopted, it would require primary legislation to be implemented in full – we estimate that could not be achieved until 2014.

There are two alternative fee options proposed within this consultation paper. The main proposals of **Option 1** are:

- That fees will be initially set to recover a proportion of the cost of providing the service;
- That for single claims the level of fees should vary depending on the nature of the claim made (reflecting the likely level of resources used by claims of this nature) and the stage reached in the proceedings;
- That for multiple claims the level of fees should vary depending on the nature of the claim made (reflecting the likely level of resources used by claims of this nature), the stage reached in the proceedings and the number of people in the claim

¹ Resolving Workplace Disputes

- That there should be two main charging points for fees – first, on issue and, for those claims proceeding to hearing, before the hearing.
- That fees will be initially payable at the time of lodging the claim by the party who makes the claim to an employment tribunal or an appeal with the Employment Appeal Tribunal.
- That the party that lodges a claim with an employment tribunal or an appeal with the Employment Appeal Tribunal should initially pay the hearing fee in advance of the claim or appeal being heard;
- That the indicative fee levels for single claims to employment tribunals are proposed at the following rates:

Fee	Initially payable by	Amounts
Issue fee	Claimant	Level 1 – £150 Level 2 – £200 Level 3 – £250
Hearing fee	Claimant	Level 1 – £250 Level 2 – £1000 Level 3 – £1250

- That there are 6 further fees for certain specified applications that may be made after a claim has been accepted, and the indicative fee levels are proposed at:

Fee	Initially payable by	Amounts
Request for written reasons	Party who applies	Level 1 – £100 Level 2 – £250 Level 3 – £250
Review application	Party who applies	Level 1 – £100 Level 2 – £350 Level 3 – £350
Dismissal of case after settlement or withdrawal	Respondent	£60
Set aside default judgment	Respondent	£100
Counter-claim	Respondent	£150
Mediation by judiciary	Respondent	£750

- That the HM Courts & Tribunals Service remission system will be available for those who need to access the tribunals but cannot afford to pay the fee; and
- That tribunals have 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.
- That the indicative fee levels for the Employment Appeal Tribunal are proposed at the following rates:

Fee	Initially payable by	Amounts
Issue fee	Appellant	£400
Hearing fee	Appellant	£1200

The main proposals under **Option 2** in this consultation paper are set out below with the main differences from Option 1 highlighted in bold:

- That there should be **one main charging point for fees only, at issue of claim stage**, and in employment tribunals six further fees for certain specified applications that may be made after a claim has been accepted;
- That the Level of fees should vary depending on the nature of the claim made (reflecting the likely level of resources used by claims of this nature) **and the value of the claim**, and for multiple claims, the number of people in the claim.
- That if the claimant chooses to seek an award over the threshold of £30,000 a higher fee is payable (Level 4) irrespective of the nature of the claim.
- That where a claimant seeks an award lower than the threshold of £30,000 the Tribunal is prohibited from making an award above the threshold if the claim is successful.
- That **the fee for high value claims (Level 4) will be initially set to recover the full cost** of providing the service with other fees (Levels 1, 2 and 3) set below full cost recovery;
- The indicative fee levels for single claims in Option 2 are proposed at:

Issue fee	Initially payable by	Amounts
Level 1 claims (up to an award of £29,999.99)	Claimant	£200
Level 2 claims (up to an award of £29,999.99)	Claimant	£500
Level 3 claims (up to an award of £29,999.99)	Claimant	£600
Level 4 claims – Any type of claims where the award sought is unlimited	Claimant	£1750

- That fees will be initially payable at the time of lodging a claim by the party who makes the claim to an employment tribunal or an appeal with the Employment Appeal Tribunal;
- That the HM Courts & Tribunals Service remission system will be available for those who need to access the system but cannot afford to pay the fee;
- That tribunals have 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.

It should be noted that Option 2 relates only to the employment tribunals and that only one proposal (described at Part 3) is made in relation to the Employment Appeal Tribunal.

Introduction

This consultation sets out proposals for introducing fee-charging into employment tribunals and the Employment Appeal Tribunal. The consultation is aimed at employers, employees, trade unions, employer organisations, representatives and other interested parties in Great Britain.

It is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 4 of the Code² have been followed.

At the time of publication options continue to be developed and discussed in relation to devolving the administration of tribunals in Scotland. However, no decisions have yet been made. To that end and for the purposes of this consultation, the fee proposals cover the whole of the current jurisdiction of employment tribunals in England, Wales and Scotland, (Northern Ireland has its own separate employment tribunal and does not form part of this consultation).

It has been announced³ that Government intends to consider whether and how to introduce a “Rapid Resolution” scheme to provide quicker, cheaper determinations in low value, straightforward claims (such as holiday pay), as an alternative to the current employment tribunals process. Any such scheme may remove some types of claims from the jurisdiction of the employment tribunals. Proposals will take time to develop, and will be subject to full consultation.

An Impact Assessment has been completed and provides preliminary estimates given the state of knowledge at the time of writing. The Impact Assessment indicates that under our proposals overall, employment tribunal claimants would tend to be worse off while respondents, taxpayers and HM Courts & Tribunals Service would be better off.

A separate Equality Impact Assessment for our fee proposals has also been prepared and published. The overall assessment in the Equality Impact Assessment is that there are some implications of the proposals on Equality Act 2010 protected characteristics groups in seeking access to justice; these will impact on different equality groups differently insofar as they have varying income profiles. Based on the limited information available, the initial assessment in the Equality Impact Assessment is that the proposals do not amount to direct discrimination and is unlikely to amount to indirect

² <http://www.bis.gov.uk/files/file47158.pdf>

³ Department for Business, Innovation & Skills, ‘Resolving workplace disputes: Government Response to Consultation’, published in November 2011. <http://www.bis.gov.uk/Consultations/resolving-workplace-disputes?cat=closedwithresponse>

discrimination under the Equality Act 2010. This is because the Government considers that the proposals, if implemented, would be likely to be a proportionate means of achieving the legitimate aim of transferring a proportion of the cost of running the tribunals from the taxpayer to those who use the service and can afford to pay.

Comments on the Impact Assessment and in particular the specific questions within the Equality Impact Assessment are particularly welcome.

The Impact Assessment and Equality Impact Assessment use the 2009/10 cost and caseload to assess the impacts of proposals because at the time of development this was the latest available information. However, given its subsequent availability this consultation paper refers to 2010/11 outturn costs and caseload. When the Government publishes its response to consultation, the Impact Assessment and Equality Impact Assessment will be updated with the 2010/11 data.

Copies of the consultation paper are being sent to:

- Administrative Justice and Tribunals Council
- Advisory, Conciliation and Arbitration Service
- Age & Employment Network
- Association of British Insurers
- Association of Chief Executives of Voluntary Organisations
- Association of Recruitment Consultancies
- British Chambers of Commerce
- Chartered Institute of Personnel Development
- Confederation of British Industry
- Citizen's Advice
- Citizen's Advice Scotland
- Discrimination Law Association
- Employment Bar Association
- Employment Law Group
- Employment Lawyers Association
- Engineering Employers Federation
- Entrepreneurs' Forum
- Equality and Diversity Forum
- Equality and Human Rights Commission
- Federation of Small Businesses
- Forum of Private Business

- Free Representation Unit
- GMB
- Institute of Directors
- Institute of Employment Rights
- Joint Industry Board for the Electrical Contracting Industry
- Judge D J Latham. President Employment Tribunals (England and Wales)
- Judge S Simon. President Employment Tribunals (Scotland)
- Law Society
- Law Society of Scotland
- Legal Action Group
- Lord Justice Carnwath, Senior President of Tribunals
- Mr Justice Underhill, President, Employment Appeal Tribunal
- National Association of Citizens Advice Bureaux
- Public and Commercial Services Union (PCS)
- Scottish Trades Union Congress
- Scottish Discrimination Law Association
- Trades Union Congress
- Unison
- Unite.

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Background

Employment tribunals were initially created by the Industrial Training Act 1964 to hear appeals against training levy assessments imposed by industrial training boards. This remains one of their functions today, but the jurisdiction has since expanded to embrace a large number of different types of claim arising from employment situations. There are, in employment tribunals, separate jurisdictions for England & Wales and Scotland. The Employment Appeal Tribunal generally hears appeals from all the employment tribunals on points of law.

The employment tribunals and Employment Appeal Tribunal are administered by HM Courts & Tribunals Service. The cost of running the tribunals is met through the allocation of funds provided to the Ministry of Justice (MoJ) from HM Treasury and ultimately provided by the taxpayer. In 2010/11 the cost of running the employment tribunals was £81.8m and the cost of running the Employment Appeal Tribunal was £2.4m.

There are clear reasons why fees should be introduced into the employment tribunals and the Employment Appeal Tribunal. First, these tribunals are similar to civil courts as they act as independent adjudicators with the power to make legally binding decisions in a dispute between two parties. Indeed there are claims that can be made in either the civil courts or the employment tribunals.⁴ Users in the civil courts in England & Wales and the separate Scottish civil courts have been charged fees for many years and introducing fees will place employment tribunal users on the same footing. As provided by HM Treasury⁵ guidance: "It is Government policy to charge for many publicly provided goods and services. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption."

This policy does not underestimate the seriousness of claims that deal with the loss of a job or being discriminated against, or the level of impact that these events can have. Rather it recognises that such claims are equal to those in the civil courts where issues of medical negligence, personal injury, or even family law matters all attract fees. Employment tribunal users, potentially vulnerable though they may be, have no more reason not to pay fees than those seeking to gain access to their children.

⁴ A claim for breach of contract (wrongful dismissal) may be made to an employment tribunal or to a county or sheriff court. If the sum claimed is £25,000 or less the claim should be made to the employment tribunal. If the sum claimed exceeds £25,000 the claim must be made in the county or sheriff court.

⁵ Section 6.1.1, "Managing Public Money" (http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm)

Secondly, a significant majority of the population will never use employment tribunals but all taxpayers are being asked to provide financial support for parties who settle a workplace dispute in this way. Moreover, the taxpayer fully funds conciliation offered by Acas for those involved in employment disputes which can be accessed before or after the making of a claim. This currently offers users two different forms of dispute resolution without being required to make any financial contribution towards the cost of providing either service. At a time of tight financial pressures, it is not possible to sustain this and introducing fees in employment tribunals will reduce the financial burden on the taxpayer as well as bringing the tribunals into line with Government policy on fee-charging generally.

Thirdly, as set out in the Resolving Workplace Disputes⁶ consultation, it is recognised that fees can influence the behaviour of those who might become involved in employment tribunal proceedings by encouraging them to resolve their dispute by other means (e.g. within the workplace, via mediation or conciliation) or, if a claim is made, earlier in the tribunal proceedings. Ensuring that tribunals, along with courts, are seen as an option of last resort is essential to improving the way disputes are resolved and encouraging reasonable behaviour. Consequently, we believe it is right that fees are charged for using these tribunals.

However, our fee proposals will mean that taxpayers continue to subsidise part of the cost of administering employment tribunals and the Employment Appeal Tribunal. Under the proposals contained within this consultation paper it is intended that (at commencement) most fees will be set below the full cost i.e. the fee charged will not cover the actual cost of running the tribunals. In addition it is an integral part of our proposals that the taxpayer will fund the employment tribunals for any individual who cannot afford to pay the fee via the remission system which offers full or part fee waiver. It is important when considering our proposals that the fee proposals and remissions are considered together as part of the overall package of measures.

Developing a cost-effective fee structure which obtains a reasonable financial contribution from users but does not act as a barrier to justice is a challenging task. As a starting point initial views have been sought from external groups during the Resolving Workplace Disputes stakeholder engagement, as well as from the senior judiciary and HM Courts & Tribunals Service operational staff.

Any proposed fee structure should comply with HM Treasury policy on charging fees.⁷ A further key contextual component is the administration of the fee structure by HM Courts & Tribunals Service, which already charges fees for the services provided and proceedings issued in the civil courts in England and Wales. Given that considerable savings could be made by adopting or

⁶ <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf>

⁷ See chapter 6 of HMT's "Managing Public Money" (http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm)

adapting current processes or systems, it is important to make the best use of existing resources and staff expertise where possible.

Format of the consultation paper

Two alternative fee structures are proposed within this consultation. Both structures seek to transfer part of the cost of running the tribunals from the taxpayer to the user, and have some features in common, e.g. they both propose that the unsuccessful party pays the fees. However, there are significant differences between them as the two options have different aims and are seeking to achieve different outcomes. Only one proposal is made in relation to the Employment Appeal Tribunal.

Developing a fee structure is complicated and requires the appreciation of a large range of factors and underlying requirements. Option 1 is worked through in detail in Part 1. To support policy development of Option 1 a cost model has also been developed to ensure the proposals are equitable, in terms of ensuring proportionate contribution to costs is sought across fees types. The model is discussed in more detail in the impact assessment and will be reviewed and updated during the consultation period.

Option 2 is summarised in Part 2 and is a high level option where all the underlying cost implications have yet to be fully considered. Depending on the responses to the consultation and the Government's decision on what fee structure should be introduced, we will ensure that the response to this consultation contains the full underlying detail of our proposals. Part 2 also offers a comparison between Options 1 and 2.

Many forms of fee structures exist so further alternative options that were considered but not proposed have been included throughout this consultation document. Whilst these do not form a comprehensive list of all the alternatives considered, these summaries should help respondents to assess the suitability of the proposed structures.

Part 3 considers a fee structure for the Employment Appeal Tribunal where only one type of fee structure is proposed. Finally, Part 4 seeks views on the operational implications of introducing fees into the employment tribunals and the Employment Appeal Tribunal.

The Proposals

Part 1 – Employment tribunals – Option 1 fee proposals

Section 1 – Developing a fee structure

1. Developing a fee structure that is suitable for employment tribunals and the Employment Appeal Tribunal presents a number of issues. There are many inter-dependencies to consider, questions to resolve such as when to charge and what to charge for as well as what is fair for users and what is the likely impact of introducing a fee charging system. All of this is set in the context of tribunals with particular characteristics and ways of working that have become established without fees being in place.
2. Recognising this, there is a need to ensure that the key issues are identified and used to help shape suitable proposals for consultation. This section explains the criteria that are considered important for success and provides the basis for the fee structure outlined in this consultation.
3. The starting point is to acknowledge that the purpose of a fee structure is to act as the method of achieving the transfer of part of the cost burden from the taxpayer to the users of the service and under our proposed Option 1 this is adopted as its objective. However, fees must not prevent claims from being brought by making it unaffordable for those with limited means. Therefore, a fee remission system will be a key component of the fee structure and one that is integral to the fee proposals.
4. A fee structure that is simple to understand and administer brings benefits for users as well as HM Courts & Tribunals Service, who administer the employment tribunals. For users a simple fee structure makes it easier to understand and ensures that the decision to bring a claim is made in the knowledge of the potential fee. For HM Courts & Tribunals Service the greater the number and range of fees the more expensive the system will be to implement and subsequently administer. Any additional cost will ultimately be borne by users through fees and the taxpayer through HM Treasury funding.
5. The decision to charge fees sits within the wider proposals on reform of the employment landscape. It is important to recognise the impact that fees can have on resolving disputes early and encouraging parties to think more carefully about alternative options before making a claim or

taking a case to final hearing. Unmeritorious claims⁸ consume valuable administrative and judicial resources before they are disposed of; resources that would otherwise be available to deal with meritorious cases. Whilst there is considerable disagreement about the number of weak and vexatious claims that are made,⁹ it is expected that the introduction of fees will encourage parties to resolve disputes earlier and to think more carefully about alternative options before making a claim or taking a case to final hearing.

6. With these issues in mind the purpose and success criteria for the Option 1 fee structure are:

Purpose:

- To transfer part of the cost burden from taxpayers to users of the employment tribunals and the Employment Appeal Tribunal.

Criteria:

- Recover a contribution towards the costs from users which will be used to support and fund the system.
 - Develop a simple, easy to understand and cost-effective fee structure.
 - Maintain access to justice for those on limited means.
 - Contribute to improving the effectiveness and efficiency of the system by encouraging users to resolve issues as early as possible.
7. It should be noted that Option 2 has wider policy aims, although the same criteria for success have been adopted. The Option 2 fee structure is discussed in Part 2.

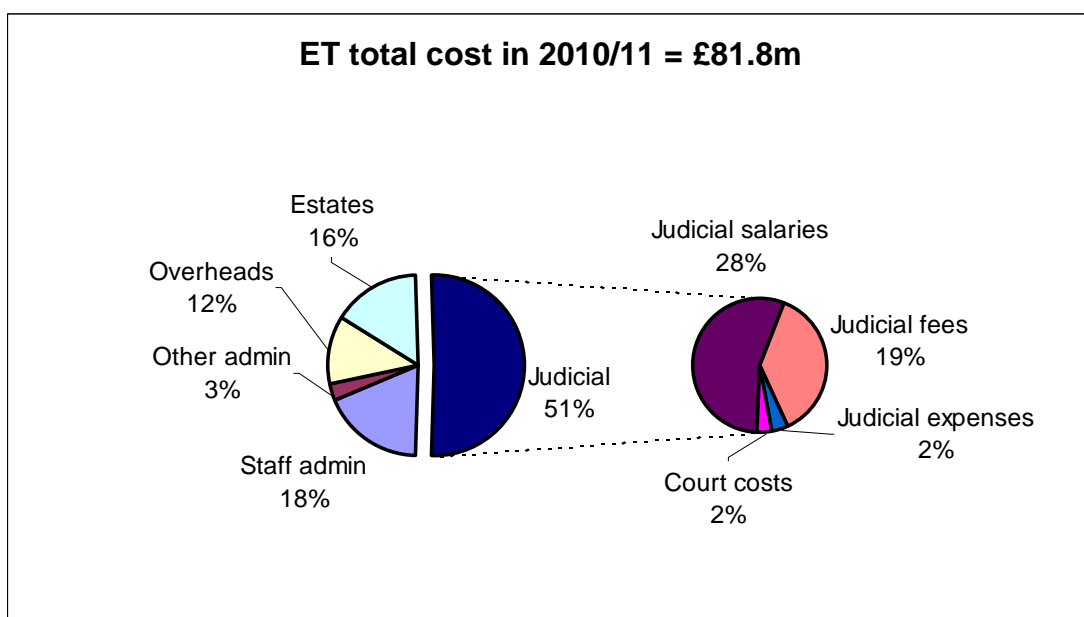
Question 1 – Are these the correct success criteria for developing the fee structure? If not, please explain why.

⁸ In the civil courts, while the matter is within the court's discretion, the normal rule is that the successful party is awarded costs against the unsuccessful party. Different considerations generally apply in employment tribunal proceedings. The underlying concept in relation to costs (in Scotland, expenses) in the employment tribunal has always been that a person who, in good faith, considers that s/he has a good cause of action or ground of defence, should not be inhibited from taking or defending proceedings before a tribunal for fear of liability for costs, which can provide a deterrent to civil litigation in the courts, and therefore as a general rule tribunals do not normally award costs or expenses.

⁹ For example, the Institute of Directors 2010 *Manifesto for Business* said: "Too many weak claims are being made by employees because there is no incentive for employees and their lawyers not to bring weak cases to tribunals." Conversely, in their response to the BIS *Resolving Workplace Disputes* consultation the TUC said there is no 'empirical evidence that a substantial proportion of employees currently use the Tribunal system to pursue unmerited cases'.

Section 2 – The cost of employment tribunals

8. Section 1 set out the purpose for a fee structure in employment tribunals for the Option 1 proposal and the criteria to assess the options. However, fees for public sector services are charged in accordance with HM Treasury guidelines¹⁰ which state that users should be charged no more than it costs to provide that service unless there are strong public policy reasons to do so. This section provides a summary of the cost of administering employment tribunals and considers what cost recovery levels are appropriate to seek from users when introducing fees for the first time. The Employment Appeal Tribunal is considered separately in Part 3.
9. In the financial year 2010/11¹¹ employment tribunals received approximately 218,000 claims. The budget for dealing with employment tribunals in 2010/11 was £81.8m. The break-down of costs is set out in the pie chart below which shows that the largest single component was judicial cost, (mostly related to judges' salaries, fees and expenses).



Employment tribunals expenditure in 2010/11

- Judicial Salaries £23.0m
- Judicial fees and expenses £16.9m
- Administrative staffing £14.7m

¹⁰ Managing Public Money – HM Treasury.

¹¹ For the purposes of policy development and impact assessing the policy proposals a cost model was developed using the most up to date information available at the time; i.e. the 2009/10 ET and EAT financial outturn and statistical information.

• Estates	£13.m
• Overheads ¹²	£10.2m
• Other Administrative costs	£2.4m
• Court costs	£1.3m

10. Good management of public services requires continuous improvement and review of operational costs. HM Courts & Tribunals Service are already undertaking efficiency savings in employment tribunals, which will continue in the future.¹³ However, as long as claims are brought to employment tribunals, a cost of processing them will occur and be required to be met.
11. The cost of administering the employment tribunals arises first from providing the processes needed to deal with the claims, as well as the costs that arise from the need to support the processes such as buildings, equipment, IT systems, staff and the judiciary. In processing claims, employment tribunals incur administrative costs in the receipt and service of claims, the receipt and service of responses, dealing with pre-hearing issues, responding to enquiries, arranging and holding hearings and providing notification of judicial decisions.
12. There are also many judicial decisions needed to consider claims and responses, including the holding of case management discussions and pre-hearing reviews, identifying and narrowing the key issues of dispute, dealing with correspondence and conducting hearings. Two non-legal members, drawn from both sides of industry¹⁴ sit with a qualified judge in

¹² Overheads consist of MoJ Estate costs, the costs of services centrally provided by MoJ (such as HR and Payroll), and internal HM Courts & Tribunal costs arising from support directorates.

¹³ Various innovations have been introduced over the last 18 months in the employment tribunals in England & Wales and Scotland and that process continues. These innovations include evening sittings, case management pilots with ACAS officers being present, digital recording of proceedings, variations in listing processes, changes in case management procedure (source: Senior President of Tribunals Annual Report 2011 – <http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/spt-annual-report-2011.pdf>).

¹⁴ Lay members are appointed by the Secretary of State after consultation with organisations of employees and employers (Reg 8(3)(b) & (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004). The members have knowledge and experience in commerce and industry and bring this practical experience to bear in their judicial role.

- nearly all hearings¹⁵ to ensure that a balanced judgement is reached. There are also indirect costs of providing the service such as line management, payroll and IT. It is all these costs of providing the employment tribunals that form the basis for the level of fees.
13. In order to allocate costs across the process a cost model was developed for the Option 1 fee structure that combined three sets of management information namely:
- 2009/10 financial outturn data including overheads;
 - A list of case events showing the stages cases may go through during their lifecycle together with the volume of 2009/10 cases where each event occurred; and
 - The amount of judicial and administrative effort that is involved for each stage/case event.
14. HM Treasury policy requires every fee-charging statutory service to have a financial objective for the level of cost recovery agreed between the responsible Minister and Treasury. The default position is that fees should be set, so far as possible, at levels that reflect the full cost¹⁶ (but no more), of the process involved. Consequently, the highest fee levels that could be set would reflect the full cost of providing employment tribunals services. Lower targets can be agreed where there is a sound policy justification.
15. The civil courts in England and Wales aim to attain 100% of cost from users net of the remission system, by 2014/15.¹⁷ Under the Option 1 fee structure we propose setting fee recovery rates lower than this when introducing fees into employment tribunals.

¹⁵ Section 4 of the Employment Tribunals Act s.4(2) – Employment Tribunals Act 1996 – provides that certain proceedings are, unless an Employment Judge decides otherwise, to be heard by an Employment Judge sitting alone. These proceedings include failure to pay guarantee, redundancy and insolvency payments, breach of contract claims and unlawful deductions from wages. The question of whether claims for unfair dismissal should be heard by an employment Judge alone was raised in the Resolving Workplace Disputes and the position announced in the Government response.

¹⁶ See chapter 6 of HMT's "Managing Public Money" (http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm). Although the term full cost is used, the target is not literally full cost recovery as the taxpayer makes and will continue to make a significant contribution to employment tribunals. A better way of describing the policy is full cost pricing. In other words, fees should be set at levels calculated to cover the cost of the system if paid in full in every case.

¹⁷ The cost of running the civil and family courts in England and Wales is currently some £619m a year and 82% is funded through court fees. In Scotland 76% of the cost is recovered. To ensure access to justice is protected, both jurisdictions operate their own remissions systems which are funded by the taxpayer.

16. Other things being equal, charging fees will tend to have an impact on the number of claims made because parties will have another factor to take into account when deciding whether to make a claim. However, the impact is extremely hard to forecast as there is currently no research that provides a reliable assessment of the impacts of charging fees specifically on employment tribunal users. However, a similar exercise has in the past been undertaken for the civil courts.¹⁸ To the extent that the experience of civil court fee-charging is a guide, this MoJ research suggests that Tribunal users required to pay a fee would not be especially price sensitive and that other factors will be more influential in the decision to make a claim than a fee.
17. There is no reason to assume that similarly wide-ranging motivations will not apply in the employment tribunals. However, given that civil court fees are long established, introducing fees where none have previously existed means that impacts could be greater and are harder to predict.¹⁹
18. Under Option 1 initial fee levels are proposed at a much lower level than would be required to achieve full cost recovery. The indicative fee levels for Option 1 are set out in section 9. Assumptions regarding the sensitivity of users to fee charging are outlined in the accompanying impact assessment.

Charging for all types of claims

19. There are over 60 different types of claims that can be made to employment tribunals which include discrimination, equal pay and unfair dismissal. We propose that all types of claims and appeals are subject to a fee. With appropriate safeguards to protect access to justice this is fair because:
 - The cost of the service is borne across all users;
 - It will allow all users to make informed decisions when deciding whether to make a legal claim or use an informal route to resolve their dispute; and
 - It reflects the long-standing approach taken in the civil courts (where all types of claims and appeals attract a fee).

Alternative options

20. The vast majority of claims dealt with by the employment tribunals are 'party versus party' disputes in which neither party is representing the State. However, there are a small number of claims per year where an employer or an individual appeals against a decision of a Government

¹⁸ "What's cost got to do with it? The impact of changing court fees on users", MoJ Research Series 4/07, June 2007 (<http://www.justice.gov.uk/publications/docs/changing-court-fees.pdf>).

¹⁹ For further information on impacts see the impact assessment.

body.²⁰ These include appeals against a prohibition or improvement notice issued by the Health and Safety Executive and appeals against a decision of the Secretary of State not to make an insolvency payment in lieu of wages and/or a redundancy payment.

21. In the civil courts, appeals against decisions of the State are subject to fees and we see no reason to exclude these types of appeal in the employment tribunal fee structure. Those who appeal a decision of the State should be encouraged to consider carefully the consequences of taking formal legal action as should others making a claim in the employment tribunals. Our proposals mean that such appeals will attract the lowest level of fees and individual appellants will be able to apply for remission of the fee if they cannot afford it (see section 5).
22. Another option is to exclude some party versus party claims from fees, either on the basis of the type of claim or on the basis of low value of claim. However this option is not proposed because:
 - It is common in employment tribunals for claims to contain several types of jurisdictional complaint and exempting one type of claim may encourage users to seek redress under an exempt route which will in turn perversely increase demand for it;
 - Establishing a robust definition for the types of claim that should be excluded is not possible without creating unfairness for some users; and
 - Cost is incurred irrespective of the type of claim or whether the claim is for a small or non-monetary value so such claims should not be exempt from fees or consideration of the consequences of taking legal action.

Question 2 – Do you agree that all types of claims should attract fees? If not, please explain why.

Section 3 – Fee types – issue and hearing fees

23. The above sections set out the background and general cost recovery approach. This section outlines the types of fees we propose and the basis for fee charging in employment tribunals under Option 1. The proposed fee structure for the Employment Appeal Tribunal is set out in Part 3.
24. Introducing a charging regime means setting fees at levels that reflect the cost of the services provided. The cost of a claim in employment tribunals

²⁰ In 2010–11 there were 508 appeals against the decision of the State.

depends on how much administrative and judicial resources a case uses.²¹ This in turn depends on;

- The stage in the process i.e. the earlier stages consume less resource than the later stages; and
- The complexity of the issues to be resolved i.e. the nature of the claim.

25. It is proposed that these two factors are used to develop a simple fee structure that ensures that the fee is reasonably representative of the cost and ensures that the costs of administering the fees structure are kept to a minimum.

The stage in the process

26. The cost of dealing with a claim in employment tribunals increases the further a claim progresses. This is because at hearing it is normally a judge and two lay members who deal with the case. In pre-hearing work it is the judge alone who considers and deals with the parties, supported by administrative staff. To reflect this increasing cost and the fact that around 80% of jurisdictional complaints do not require a hearing, it is proposed that, under Option 1, fees are charged at two stages in the process namely:

- At the point of making a claim (the issue fee); and
- Before the case is heard (the hearing fee).

27. The advantages of adopting this approach are:

- It is simple to understand;
- Keeps down the costs of administration; and
- Encourages users to consider settlement before and during the tribunal process.

28. However, fees at two points in the process mean that users will not know at the start of the process whether they will need to pay a second fee because payment will only be due if the case requires a hearing. Other disadvantages are that:

- The total fee payable in those cases which require a hearing is higher than under Option 2; and
- It is more complex and expensive for HM Courts & Tribunals Service to implement and administer than a single flat fee.

²¹ For further detail on the cost of claims see sections 1.27–1.30 of the Impact assessment.

Alternative options

29. A further option would be to charge a fee once the case has concluded when an accurate calculation of the cost of the case could be calculated. However, this option is not proposed because:
- It would require extra expenditure to create a system capable of calculating the exact cost in every case
 - Payment after the case is concluded offers no direct incentive to users to consider alternative methods of dispute resolution; and
 - It would take considerable resource to develop processes for the tribunal to ensure that payment after the event was secured.
30. Another option is to charge fees at more stages in the process, for example, for pre-hearings or at every time an application is made, and is the approach used in the civil courts. In light of the informal nature of employment tribunals, which allows for frequent direct contact between the parties and the judiciary, this is not proposed because:
- It would require extra payment each time an application was made which could slow the process;
 - The fee charging system would need to account for those types of claims that do not have pre-hearing work (i.e. not charge a fee);
 - It could change the informal nature of employment tribunals; and
 - Initial estimates suggested that the introduction of a third charging point would cost in the region of 50% more to administer than the 2 charging point approach.
31. In part 2 we consider the option of charging one fee only at the start of the process. With this in mind please consider the following question.

Question 3 – Do you believe that two charging points proposed under Option 1 are appropriate? If not, please explain why.

The complexity of the case

32. The second factor that impacts on the cost of the case is the complexity of the issues it raises. Where claims raise difficult legal issues and/or where the facts are complex, the cost will increase. Conversely, there are claims made to the employment tribunals which require a purely factual decision.²²
33. HM Courts & Tribunals Service already allocates claims into 3 categories for the purposes of administration and listing cases. These are:

²² For example, complaints of failure by the employer to provide a guarantee payment or make a redundancy payment are routinely listed for a 1 hour hearing.

- Level 1 – generally claims for sums due on termination of employment e.g. unpaid wages, payment in lieu of notice, redundancy payments.
 - Level 2 – generally claims relating to unfair dismissal.
 - Level 3 – all discrimination complaints, equal pay claims and claims arising under the Public Information Disclosure Act.
34. The levels into which claims are allocated are determined by the administrative and judicial resource that the claims within each Level are likely to use given the complexity of the issues that are likely to arise. In general, more cost is incurred to deal with Level 2 and 3 cases because on average these types of cases require more judicial case management, more pre-hearings and longer final hearings (for further information see the Impact Assessment).
35. Cases within Level 1 generally consume smaller amounts of administrative and judicial resources because they raise factual issues that are straightforward to determine. Currently they are automatically listed at receipt of claim for a short hearing (1 hour) 9 weeks hence. These claims would therefore attract the lowest fees and our analysis suggests that Level 1 claims are likely to be those that are of small value. In 2010/11 62% of the jurisdictional complaints accepted by employment tribunals fell into this category.
36. As the cost incurred differs between the categories, it is proposed that all claim types are allocated to one of the three levels for the purposes of setting fee levels. The full list of claim types and their suggested allocation to the three fee levels are provided in Annex A.
37. It is common for claimants to send in their claims with more than one type of jurisdictional complaint. It is not proposed that each and every complaint made on a claim form should attract a separate fee as this could require a range of fees that will add to the complexity and cost of the system. Instead it is proposed that the fee payable will be that which relates to the highest Level claim. For example:
- A claim with unpaid wages (Level 1) as well as unfair dismissal (Level 2) would pay the Level 2 fee only.
38. We recognise that basing the fee on the amount of resource that the claim consumes from both an administrative and judicial perspective means that the fees payable in Level 3 cases, e.g. those containing either a claim of discrimination or a 'whistleblowing' claim, are higher than those payable in other types of claim. However, we believe it is right that all users contribute towards the cost of the tribunals and that higher fees should be payable by cases that use the greatest level of administrative and judicial resources. We also believe that the remission system we propose to introduce will ensure that access to justice will be protected for those seeking to bring such complaints (see section 5).

Question 4 – Do you agree that the claims are allocated correctly to the three levels (see Annex A)? If not, please identify which claims should be allocated differently and explain your reasons.

Alternative options

39. There are over 60 types of claim that can be made to employment tribunals and an alternative approach would be to set a different fee for each specific claim type. This could enable fee levels to reflect more accurately the cost of dealing with each specific type of claim. But as each claim type is processed in a similar way, the cost of processing most types of claim is largely the same. Allocating each individual claim type a different fee would be overly complex and as differences in cost are reflected in the allocation of fees to the three levels outlined above, this option is not proposed.

Conclusion

40. It is never possible to predict with complete accuracy how much resource a claim will use, which means that fees can only ever reflect a representative amount of the actual cost. Under Option 1 we believe our proposal to combine a two stage approach with three levels of fees, offers users a reasonably representative cost that ensures that cases more likely to use resources are charged a higher fee, without being overly complex for either users or administrators.
41. However, in part 2 we explore the option of charging one fee at the start of the process and basing fees more closely on the value of the claim – i.e. giving individuals submitting a claim the choice of paying a lower fee for lower value claims – up to a certain threshold. Individuals could choose to submit a claim for an amount above the threshold (i.e. £30,000 or more) and would then pay a higher fee.

Question 5 – Do you think that charging three levels of fees payable at two stages proposed under Option 1 is a reasonable approach? If not, please explain why.

Section 4 – Who pays the fees

42. In section 3 it was proposed that fees reflect the nature of the claim and be paid at two stages in the process, namely at issue and at hearing, to reflect the relative cost at each stage. This section considers who should pay the fee and outlines 6 further application specific fees.
43. Unlike alternative forms of dispute resolution, employment tribunals determine which party is at fault. The party at fault or the unsuccessful party can be considered to have given rise to the cost of the tribunal proceedings, either by requiring someone to bring an action to enforce their rights or by having brought an action which was found to be without merit.

44. Given the party versus party nature of the proceedings, it seems appropriate that the unsuccessful party should bear the cost of the fees where the tribunal so orders. If the claimant is successful, they were proved right to bring the claim and if the respondent is successful, they were proved right to defend the claim.
45. It is of course open to parties to reach a settlement at any time. The employment tribunals do not currently intervene in the details of private settlements reached and it is not proposed that fees should alter this approach. Therefore, parties will need to take account of any fees paid as part of their settlement negotiations.
46. In order to make an order that the fees paid are to be reimbursed by the unsuccessful party, tribunals will require the power to do so under their rules of procedure.²³ If the respondent is successful and incurs a fee the same rule will apply. However, it is proposed that tribunals will have the power not to order reimbursement in any case where it considers that it is not appropriate given the circumstances.
47. This proposal is not intended to change the cost awards made in employment tribunals, where generally parties pay their own costs (e.g. lawyers' fees and expenses). The tribunal's existing power to order one party to the proceedings to meet in whole or in part the costs (in Scotland, expenses) incurred by another party will also remain unchanged.²⁴ The proposals in this consultation only relate to the reimbursement of any tribunal fees paid.
48. Both Option 1 and Option 2 make the same proposal as to who initially pays the fees. With this in mind please consider the following question.

Question 6 – Do you agree that it is right that the unsuccessful party should bear the fees paid by the successful party? If not, please explain why.

²³ The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (as amended) regulate all employment tribunal proceedings and set out the Tribunals' main objectives and procedures, and matters such as time limits for making a claim, and dealing with requests for reviews.

²⁴ An employment tribunal may:

- award costs/expenses in favour of a legally represented party where in the opinion of the tribunal or employment judge a party or their representative has, in bringing or conducting the proceedings acted vexatiously, disruptively or otherwise unreasonably, or the bringing or conducting of proceedings has been 'misconceived.' In 2010/11 cost orders were made in 489 cases, with 133 to the claimant and 356 to the respondent.
- make a preparation time order in favour of a party who is not legally represented at the Hearing but who has spent time preparing the case. No records are kept of the number of awards made.
- make a 'wasted costs order' against a party's representative as consequence of the representative's conduct. No records are kept of the number of awards made.

Payment of the issue and hearing fees

49. It is proposed that the unsuccessful party bears the cost of the fee. However, when a claim commences it can only be the claimant who initially pays the fee. The employment tribunals incur cost as soon as the claim form is submitted. The respondent is not formally aware of the proceedings until the tribunal sends notification and therefore cannot be asked to pay the initial fee. A claim received without the correct fee, (or proof of eligibility for a remission considered in section 5), will not be properly made and will not be accepted.
50. It is also proposed that the hearing fee is initially paid by the claimant. If the fee is not paid by the due date in advance of the hearing, (or proof of eligibility for a remission is not provided), it is proposed that tribunals will have power to strike out the case.
51. An alternative option is that the hearing fee could be sought from both parties. This could directly encourage both sides to consider settling, and might encourage more cases to settle early. However, we do not propose this because:
- Respondents would be asked to pay to defend themselves from an allegation that is not proven until the tribunal determines it is;
 - Seeking a fee from both parties increases the complexity of the fee system and the cost of its administration. If the cost of the administration increases that will be passed on to users and the taxpayer and result in higher fees being charged overall; and
 - Only one side may pay leading to further administrative work to pursue the fee.
52. Both Options 1 and 2 propose that the claimant should initially pay the issue fees and, in the case of Option 1, the hearing fee. With this in mind, please consider the following question.

Question 7 – Do you agree that it is the claimant who should pay the issue fee and, (under Option 1), the hearing fee in order to be able to initiate each stage of the proceedings? If not, please explain why.

Payment of application specific fees

53. There are some applications to employment tribunals that are made by respondents and it is they who will gain the benefit if their application is successful. We propose that for such applications it is appropriate that the respondent should pay the fee. The applications are:
- A counter-claim in a breach of contract case.
 - Application to set aside a default judgement.
 - Application for dismissal following settlement or withdrawal.

54. Each of these applications costs a different amount to deal with and so will attract a different fee level. However, as the cost does not generally differ with the type of claim being made, it is proposed that these types of applications will have a single fixed fee for the application.
55. There are also circumstances where either party can make the application. We propose that the party who makes the application pays the fee in the following applications:
- Request for written reasons after the judgment where reasons have been issued orally.
 - Application for a review of the tribunal's judgment or decision.
56. Initial modelling suggests that the cost of these applications varies depending on the type of claim so it is proposed that the fee will vary depending on the type of claim, reflecting this difference in the cost.
57. All these fees will be payable at the time of the application and a failure to pay, (or provide proof of eligibility for a remission), will mean the application will not be properly made and will not be processed.
58. Both Options 1 and 2 make the same proposal for application specific fees. With this in mind, please consider the following question.

Question 8 – Do you agree that these applications should have separate fees? If not please explain why.

59. There is one further process undertaken by employment tribunals for which a separate fee is proposed. In employment tribunals mediation by the judiciary is available in some discrimination claims.²⁵ In employment disputes the cost of mediation, if provided externally, is normally borne by the respondent so it is proposed that this approach is also followed in the employment tribunals. As the proposed fee for mediation by the judiciary is less expensive than a hearing fee, this approach still provides an incentive to consider mediation. If the respondent fails to pay, mediation will not take place.
60. Both Options 1 and 2 make the same proposal for a fee for mediation by the judiciary. With this in mind, please consider the following question.

Question 9 – Do you agree that mediation by the judiciary should attract a separate fee that is paid by the respondent? If not, please explain why.

²⁵ Currently to be considered for mediation by the judiciary a case must include a discrimination complaint and have an estimated hearing duration of 3 days or more.

Section 5 – When someone cannot afford to pay

61. We want to make sure that the introduction of fees does not deny access to the employment tribunals for those who cannot afford to pay them. This section proposes that the HM Courts & Tribunals Service remission system that is currently applied in the civil courts in England and Wales should be extended to the proposed fee structure in employment tribunals across Great Britain.

HM Courts & Tribunals Service remission system

62. HM Courts & Tribunals Service provides a fee remission system for users of the English and Wales civil and family 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 partial 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.

63. **Remission 1** – currently 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

64. **Remission 2** currently provides a full remission (i.e. no fee is payable) if the applicant's gross annual 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

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

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

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

Partner	£159 ²⁶ a month
Dependant Children	£244* a month per child
General Living Expenses	£315* a month

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

68. Other aspects of the HM Courts & Tribunals Service remission system are:

- The remission system is only available to individuals; it does not apply to companies, partnerships or charities.
- Remissions can be granted without proof of evidence in emergency situations where an undertaking is given to either provide proof of eligibility for remission or pay the full fee within 5 working days.
- Individuals can apply for a refund (known as a retrospective remission application) if they have paid a court fee within 6 months and have evidence to prove that they would have been eligible for a remission at the time they paid the fee.
- There is a clearly defined appeal process available to individuals who have been refused a remission but believe that they are eligible.
- Those determined by a court to be a vexatious litigant, or bound by a civil restraint order, cannot apply for a fee remission until permission to issue has been granted (for which a fee is payable). If the application for permission is successful, the person can apply for a refund (retrospective remission), of the fee within 6 months from the date of payment.

²⁶ 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.

69. In addition, there is a discretionary power for the Lord Chancellor to be able to reduce or remit a fee where owing to the exceptional circumstances of a particular case, the individual will suffer undue financial hardship.
70. Full details of the remission system, the application forms and evidence required are set out in the leaflet (EX160A) *Court fees – Do I have to pay them?*²⁷ Annex B provides the legislative framework for the remission system as currently provided to users of the English and Wales civil courts.

Suitability of HM Courts & Tribunals Service remission system

71. We believe that the HM Courts & Tribunals Service remission system will ensure that access to the employment tribunals is available to those individuals who are less well off.
72. The remission system means that anyone who comes before the tribunals after losing their employment will not pay a fee if they are in receipt of one of the specified benefits. It also protects access to employment tribunals for those earning low wages because some of the benefits are available for those in low income employment. For those who would otherwise find the full fee unaffordable, remission 3 ensures that only a contribution to the fee will be payable out of net disposable monthly income.
73. The HM Courts & Tribunals Service remission system can be used by everyone irrespective of type of income they receive. Therefore, whilst the demography of claimants in employment tribunals may not be the same as the courts, the HM Courts & Tribunals Service remission system is suitable given that the types of income they receive is the same.
74. Our current analysis (see paragraph 4.7–4.15 of the Impact Assessment which supports this consultation paper) suggests that approximately 10% of employment tribunal claimants will be eligible for Remission 1 and approximately 17% be eligible for Remission 2, both of which provide a full fee remission. Moreover, around 50% of additional claimants would pay only a proportion of the two highest proposed fees (and around 55% of claimants would pay a proportion of the highest fee of £1250). Some examples showing what fee remission an applicant would receive under this system are provided in Annex D.
75. One of the criteria for the fee structure was for a cost-effective system. HM Courts & Tribunals Service administers civil courts, employment tribunals and the Employment Appeal Tribunal and many other courts and Tribunals. Utilising one remission system across the organisation and all of Great Britain is more cost effective, simpler for a wide range of users and their advisers to understand and removes anomalies between jurisdictions. It is also a well established system that has in place clear

²⁷ http://www.hmcourtsservice.gov.uk/courtfinder/forms/ex160a_web_1010.pdf

appeal routes, eligibility requirements and provides for exceptional situations. If any changes are made to the HM Courts & Tribunals Service remission system, they will apply to all users, including those using employment tribunals. As the remission system is in legislation, any changes will be made after consultation.

76. However, it would be possible to consider using an amended HM Courts & Tribunals Service remission system for Employment Tribunals and **we would welcome your views on whether any changes are required to better meet the needs of users in employment tribunals.**

Alternative options for remission

77. The Scottish civil courts have different financial eligibility criteria for those seeking remission.²⁸ Users are eligible for remission if they are in receipt of legal aid, certain state benefits or are in receipt of a low income which mirrors Remissions 1 and 2 of the HM Courts & Tribunals Service system. As there is no equivalent Remission 3 and no partial remissions available under this system it is concluded that adoption of the Scottish civil courts approach to remission throughout the whole of the employment tribunals' jurisdiction would offer less opportunity for individuals to apply for a fee remission.
78. Both Options 1 and 2 make the same proposal for adopting the HM Courts & Tribunals Service remission system. With this in mind, please consider the following questions.

Question 10 – Do you agree that the HM Courts & Tribunals Service remission system should be adopted for employment tribunal fees across Great Britain? If not, please explain why.

Question 11 – Are there any changes to the HM Courts & Tribunals Service remission system that you believe would deliver a fairer outcome in employment tribunals?

Household Insurance

79. Many home insurers offer Before the Event (BTE) legal protection cover. This is sometimes offered as an optional extra to a basic policy, which means the customer has to opt to buy it for additional premium, or is sometimes included automatically in more expensive “premium” insurance products or other financial products.
80. We understand that this kind of BTE policy cover generally covers reasonable, justifiable and necessary disbursements, such as court fees, in civil proceedings and that this would also be the case in employment tribunal claims even if the claimant had not instructed a solicitor to

²⁸ <http://www.scotcourts.gov.uk/sheriff/docs/Fees%20Amendment%201%20April%2010.pdf>

represent them at the employment tribunal, provided they were represented by 'a suitably qualified person' (under certain circumstances, this could be themselves). We also understand that this would only relate to hearings in an employment tribunal but not any subsequent appeal.

81. However, we do not have a strong sense of how many people are likely to be covered under this type of insurance. **We would welcome any information on this.**

Section 6 – Fees for multiple claims

82. The above sections outlined the fee proposals for single claims. This is where one person makes a claim on one or more grounds of complaint against an employer or, as the case may be, an individual or more than one employer or the State. In 2010/11, around 60,000 people made a single claim to the employment tribunals. However, where two or more individuals bring a claim against the same respondent arising out of the same circumstances their case is known as a multiple claim.
83. Multiple claims are common in employment tribunals. In 2010/11, around 157,500 people brought proceedings as part of multiple claims. Most of these were made by two or more people making a claim against the same respondent or group of respondents. The remainder were single claims which were added to pre-existing multiple claims or subsequently combined by the judiciary to form multiple claims.
84. Every person within a multiple claim ultimately gains the same benefit as an individual bringing a single claim. If the lead case succeeds, then all claimants covered by that lead case succeed. Therefore it is appropriate that all claimants in multiple claims should pay a reasonable contribution to meeting the cost of providing the service, given the increased costs of dealing with such cases.
85. In section 3 two factors were identified that affected the cost of a single claim namely how far the case progressed (or the stage in the proceedings), and the complexity of the claim. Initial case modelling shows that multiple claims consume greater administrative and judicial resource than single claims and the hearings in multiple claims take longer than those of a case involving a single claimant.
86. Taking this into account it is proposed that the fee payable for multiple claims is based upon:
- Type of claim made
 - The stage reached in the proceedings; and
 - The number of people in the multiple claim

87. The proposed fees payable in multiple claims at issue and hearing are set out below:
- Multiple claims of between 2 and 4 individuals will pay a fee of 2 x the fee for single claims;
 - Multiple claims of between 5 and 10 individuals will pay a fee of 3 x the fee for single claims;
 - Multiple claims of between 11 and 50 individuals will pay a fee of 4 x the fee for single claims;
 - Multiple claims of between 51 and 200 individuals will pay a fee of 5 x the fee for single claims; and
 - Multiple claims of 201 or more individuals will pay a fee of 6 x the fee for single claims.
88. It is proposed that the fee is payable in relation to a case rather than individually by each claimant within the multiple. At the issue stage, if the full fee is not paid, the multiple set of claims would not be accepted. At the hearing stage, the full fee would be payable or the hearing would not proceed and the set of claims could be struck out. Individuals within a multiple claim will have to consider carefully the implications of commencing their case as a multiple set of claims. (Remissions for multiples are considered in section 7 below).
89. In multiple claims in which all of the claimants are legally represented we would expect the representatives to be responsible for payment of the fee on behalf of their clients and thereafter possibly look to their clients for repayment. For those represented by trade unions, we would expect the fee to be paid by the union. **Views are welcome on what you see as the role and responsibilities of unions and representatives in paying fees in multiple claims.**
90. Fees will not impinge on the discretion of the employment tribunal judiciary to decide on the merit of joining cases together and/or split apart for the purposes of hearing. **Views are welcome on how the fee structure can ensure that claimants do not pay more than would otherwise be expected if the tribunal changes the status of their case from a single claim to multiple claim or vice versa.**

Alternative options for fees in multiple claims

91. Multiple claims can comprise as few as 2 people to over 10,000 individuals, so it is a challenge to find a fee structure that ensures everyone within the multiple pays a reasonable contribution when based upon the cost of the case.
92. Moreover, it should not be forgotten that multiple claims have advantages to all. They allow individuals with similar complaints to come together to bring an action and spread the burden. They benefit claimant representatives who can submit the details of a number of claimants on

one form and reduce costs and they benefit respondents who can reply to one claim rather than many individual claims. Multiple claims are also more cost effective for HM Courts & Tribunals Service as resources are used to deal with what would otherwise be a number of single claims covering the same or similar issues on one occasion rather than many.

93. One alternative option is to charge each multiple claim the same fee as a single claim. This would have the advantage of a simpler approach and a cheaper one to administer. However, this approach is not proposed because:
- Individuals in multiple claims typically make up around 66% of the total number of claimants annually, yet would, if the single fee was applied in multiple claims, contribute only about 5% of the fee income to employment tribunals;
 - The financial contribution of those involved in single claims would be significantly greater than those individuals involved in multiple claims;
 - It would result in an increase in the level of fee payable at each charging point; and
 - It would not act as an incentive to encourage those in multiple claims to consider alternative forms of dispute resolution.
94. A further option was to charge each individual within the claim a percentage of the single fee e.g. 25%. However, this option is not proposed because the fee for multiples claims with high numbers of claimants within it (e.g. over 200) would be much higher than the cost of processing the claim.
95. Option 2 proposes that the number of people within a multiple claim should also increase the level of fee paid. However, the fees themselves are structured in a different manner. See Part 2 for further details.

Question 12 – Do you agree with the fee proposals for multiple claims under Option 1? If not, please explain why.

Section 7 – Remission for multiple claims

96. In section 5 it was proposed to extend the current HM Courts & Tribunals Service remission system to single claims in employment tribunals. Civil courts also receive multiple claims, so for the reasons explained above, it is proposed that the existing HM Courts & Tribunals Service remission system apply to individuals in multiple claims made to the employment tribunal.
97. The HM Courts & Tribunals Service remission system for multiple claims provides that where two or more claimants are involved in the same case, they will all be responsible for any fees that need to be paid during the case. Each claimant can apply for a fee remission. If one or more claimants are granted a fee remission, the remaining claimants will

become responsible for the fee. If two or more claimants gain a part remission under Remission 3, the amounts they must pay towards the fee will be added together. For example:

- Four claimants in the same case issue a claim. Two of them are given a full remission under Remission 1. The remaining claimants don't qualify for any remission and so would have to pay the fee in full.
- Four claimants in the same case issue a claim. Two of them are given a full remission under Remissions 1 and 2. The remaining two claimants apply for a remission under Remission 3 and are given a part remission. The amounts they pay towards the fee are added together to pay the court or tribunal fee in part or in full.

98. At issue the claim will not be processed unless the full fee is paid or an application with proof of eligibility for remission is provided from all individuals. At the hearing stage, the fee is payable for the case to proceed and again if the full fee is not paid or proof of eligibility for remission provided by all, then the whole case could be struck out.
99. Fee proposals for multiple claims in employment tribunals mean that fee levels are 2, 3, 4, 5 or 6 times the single fee depending on the number of people within the multiple claim. Applying the existing HM Courts & Tribunals Service remission system means that, in theory, one person could be liable for the payment of a fee equivalent to 2, 3, 4, 5 or 6 times the single fee if everyone else in the multiple claim could prove entitlement to a remission.
100. This seems inequitable and it is therefore proposed that one individual in a multiple claim should not be required to pay more than the single fee in circumstances where others in the multiple claim have been given a remission. **Your views are welcome on whether there are any other safeguards needed for claimants seeking remissions in multiple claims.**

Alternative options for remissions in multiple claims

101. The option of not allowing remissions for multiple claims at the issue stage was considered because all those considering starting as a multiple claim could apply as a single claim and gain a remission. This has the advantage of a simpler approach but because of the potential impact of reducing the number of multiple claims, on balance, it has not been proposed.
102. Both Options 1 and 2 make the same proposal for adopting the HM Courts & Tribunals Service remission system for multiple claims. For further details on Option 2, please see Part 2.

Question 13 – Do you agree that the HM Courts & Tribunals Service remission system should be adopted for multiple claims? If not, please explain why.

Conclusion

103. Providing remissions for multiples is a potentially complex area. In respect of the proposed remissions system for multiple claims, it is clear that the choices and options for those individuals considering or commencing a multiple claim will need to be explained. **If you have any suggestions as to any ways of simplifying the system we would be grateful for your views.**
104. Another issue for consideration is the point of payment of the hearing fee. It is a feature of employment tribunals that the judiciary may direct that cases be added to, or separated from, multiple claims depending on the circumstances of the case. The addition to or removal of individual claims from a multiple claim may, in certain cases, impact upon the level of the hearing fee payable if it results in the number of claims within the multiple exceeding or falling below the numbers set out in paragraph 87. This should not become a consideration in this process. **Your views are welcomed as to what further rules might be needed to act as a safeguard in this regard.**

Section 8 – Refunds

105. The two charging points at issue and hearing outlined in section 3 are designed to cover the cost of each stage. The issue fee covers the administrative and judicial cost of issuing the claim, considering any pre-claim issues and preparing the case for hearing. Costs are incurred by HM Courts & Tribunals Service as soon as the claim is presented. It is proposed that no refunds should be given as the HM Courts & Tribunals Service has incurred a cost to administer the proceedings and if a refund were available that cost would have to be borne by the general taxpayer. This is contrary to the approach that the cost of the service is funded by the people who use it.
106. It is also proposed that no refunds will be available for applications requiring specific fees (e.g. making a counter-claim or asking for a claim to be dismissed following settlement or withdrawal) as again cost is incurred at the time the application is made.
107. It is further proposed that there are no refunds for hearing fees where a case is settled or withdrawn once the case has been listed for hearing. Employment tribunals have high levels of withdrawals and settlements – around 2/3 of cases settle or withdraw – the majority after the case has been listed for hearing. The behaviour of those who wait until the hearing day to consider settlement must be changed. Payment will act as an incentive to ensure parties consider whether a hearing is necessary and to discuss settlement earlier in the process. Liability for the hearing fee at 4–6 weeks before the listed hearing gives parties ample time to reach settlement before payment becomes due.

108. The alternative option is that refunds are provided on a sliding scale depending on when the case is settled. However, this option has not been proposed because it:

- Is a waste of resource to collect a fee and then return it;
- Would cost more to implement the fee system; and
- Would not tackle the culture of waiting until near to or the day of the hearing to settle or withdraw the case.

109. If, within 6 months of a fee being paid, a claimant can prove eligibility for a full or partial fee remission at the time of payment, then he would receive a refund. It is not proposed that refunds would be available in any other circumstances.

110. Both Options 1 and 2 make the same proposal for refunds.

Question 14 – Do you agree with our approach to refunding fees? If not, please explain why.

Section 9 – Indicative fee levels for employment tribunals

111. The discussion in the previous sections has set out the rationale behind the fee structure and remission system for the Option 1 proposals. A cost model has been developed to identify where resources are consumed and where the cost lies during the process, given the nature of the claim. Therefore, higher fees reflect the more expensive nature of services provided at the stage of the proceedings and the likely higher use of resources by more complex claims.

112. Under Option 1 the fee levels proposed do not equate to the full cost i.e. we are not proposing a fee that will cover the cost to HM Courts & Tribunals Service of dealing with the claim. We propose fees at a level that we believe is suitable given that anyone on benefits or low income will be eligible to receive a remission in part or in full. This approach will allow us to monitor the impact of fees on users of the service. On the basis of the modelling work, under Option 1 we propose indicative single claim fees as follows namely:

Fee	Initially payable by	Amounts
Issue fee	Claimant	Level 1 – £150 Level 2 – £200 Level 3 – £250
Hearing fee	Claimant	Level 1 – £250 Level 2 – £1000 Level 3 – £1250

113. For the application specific fees the following indicative fee levels are proposed namely:

Fee	Initially payable by	Amounts
Request for written reasons	Party who applies	Level 1 – £100 Level 2 – £250 Level 3 – £250
Review application	Party who applies	Level 1 – £100 Level 2 – £350 Level 3 – £350
Dismissal of case after settlement or withdrawal	Respondent	£60
Set aside default judgment	Respondent	£100
Counter-claim	Respondent	£150
Mediation by judiciary	Respondent	£750

114. For multiple claims the fee levels depend upon the type of claim, stage in the proceedings and the number of claimants in the claim. Therefore, based upon the above single fee levels, the indicative multiple claims are as follows:

Level 1 claims

	Number of claimants in multiple				
	2-4	5-10	11-50	51-200	over 200
Issue fee	£300	£450	£600	£750	£900
Hearing fee	£500	£750	£1000	£1250	£1500

Level 2 claims

	Number of claimants in multiple				
	2-4	5-10	11-50	51-200	over 200
Issue fee	£400	£600	£800	£1000	£1200
Hearing fee	£2000	£3000	£4000	£5000	£6000

Level 3 claims

	Number of claimants in multiple				
	2-4	5-10	11-50	51-200	over 200
Issue fee	£500	£750	£1000	£1250	£1500
Hearing fee	£2500	£3750	£5000	£6250	£7500

115. Based on the estimated unit costs for 2009/10 and projected work-loads these fee rates would have achieved approximately 33% of the unit cost of providing the service.

116. Fees will be set to recover costs estimated at the time of implementation of fee charging currently planned for 2013, but projecting future cost and work-load so far ahead is inherently problematic, particularly with the

proposed reforms to the employment tribunals system.²⁹ Therefore these fee levels should be considered as indicative only and may be revised depending on the consultation responses and as further work to estimate the costs per case is undertaken.

Question 15 – Do you agree with the Option 1 fee proposals? If not, please explain why.

²⁹ Department for Business, Innovation & Skills, 'Resolving workplace disputes: Government Response to Consultation', published in November 2011. <http://www.bis.gov.uk/Consultations/resolving-workplace-disputes?cat=closedwithresponse>

Part 2 – Employment tribunals – Option 2 fee proposals

117. Part 1 outlined our proposed Option 1 for a fee structure in the employment tribunals. Option 1 has the aim of transferring some of the cost burden of administering employment tribunals from the taxpayers to users. However, we think that introducing fees may also offer the opportunity to tackle wider issues as well as redressing the imbalance between users and taxpayers. In this section we explore in overview an alternative fee structure (Option 2) using reference to the detail provided in Part 1.

Policy aims

118. The alternative Option 2 fee structure seeks to provide business with greater certainty over their maximum liability of award by asking claimants to specify if their claim is above or below a threshold amount. Moreover, through asking claimants to make a more informed judgment about the value of their claim, it seeks to narrow the gap between an individual's expectation of what they can be awarded and their actual entitlement, leading to a more satisfactory outcome for claimants and respondents.

119. Fear of tribunal costs and awards is an issue which has been frequently raised by business stakeholders, particularly in relation to the uncapped nature of discrimination awards. In May 2011 the Government committed to reviewing discrimination awards as part of the Employment Law Review³⁰ and has considered a number of approaches in this area. As discrimination law derives from European legislation, it is prohibited to set a fixed cap on discrimination awards, which effectively restricts the policy options available to address concerns in this area. We have considered other options which we believe would be possible, but do not believe that these would address business concerns in a meaningful way. These include:

- A flat rate cap applicable to all compensation for discrimination in employment cases, but with an obligation on employment tribunals to exceed it where necessary to put the claimant in the position they would have been in if the discrimination had not occurred; and
- A flat rate cap applicable only to compensation awarded to job applicants who would not have got the job notwithstanding discrimination.

120. We, therefore, believe that, within the legal parameters, Option 2 is the most effective means of meeting business needs for greater certainty in

³⁰ Employment Law Review | Policies | BIS
<http://www.bis.gov.uk/policies/employment-matters/employment-law-review>

relation to discrimination claims and clarity for individuals on realistic pay-outs should they be successful at the Tribunal.

121. Set in this wider context the aims of Option 2 are:

- To transfer part of the cost burden from taxpayers to users of employment tribunals and the Employment Appeal Tribunal; and
- Through the provision of underlying advice to narrow the gap between an individual's expectation of what they can be awarded and their actual entitlement. This will mean that both employers and employees better understand the likely level of the award that the Tribunal can make, if the claim is successful – giving business greater certainty over their likely level of liability if the claim is lost and claimants more realistic expectations on the award which may be available to them.

122. In order to enable claimants to make an informed decision about the value of their claim under Option 2 we propose that a greater amount of advice and support would be required, in order to assist claimants to assess the likely value of their case.

123. In addition, to achieve the aims of Option 2 through the introduction of fees, we are proposing a structure where a higher fee is payable by a claimant who chooses to pursue a higher level award and legislation which precludes the tribunals from making a higher award where the claimant chooses not to pay a higher fee.

124. We intend to adopt the same criteria for assessing the suitability of this option as adopted for Option 1 namely to:

- Recover a contribution towards the costs from users which will be used to support and fund the system;
- Develop a simple, easy to understand and cost-effective fee structure;
- Maintain access to justice for those on limited means; and
- Contribute to improving the effectiveness and efficiency of the system by encouraging users to resolve issues as early as possible.

Question 16 – Do you prefer the wider aims of the Option 2 fee structure? Please give reasons for your answer.

Costs and fee structure under Option 2

125. Options 1 and 2 share some of the same features so much of the following discussion refers back to the issues that have already been explored. The key differences in Option 2 are that all claimants are required to state whether they are seeking an award above or below £30,000 in value for which the proposed fee would vary accordingly and the fee structure would have a single charging point. The remaining features are unchanged compared to Option 1 namely:

- The party who seeks the order pays the relevant fee;
- All types of claims and appeals and all parts of the process are subject to fee-charging;
- Claims seeking an award under £30,000 are allocated into levels as provided by Option 1
- Fees are payable in advance and before cost is incurred;
- Adopting the existing HM Courts & Tribunals Service remission system to ensure that those on a low income do not pay at all or only pay part of the fee;
- A power for the tribunal to order that the losing party reimburse the fees paid by the winning party;
- Fees for the same 6 specified applications at the same levels as proposed under Option 1; and
- The proposals for refunds mirrors that of Option 1

126. Under Option 1 we proposed charging fees at issue and hearing but Option 2 proposes only one fee charging point. This means that, unless entitled to a remission, the claimant pays one fee at the time of making a claim. The advantages of a one fee charging point are that:

- It is cheaper and easier for HM Courts & Tribunals Service to implement and administer both in terms of fee collection and because remissions need only be considered on one occasion;
- It is more straightforward to implement a single fee for multiple claims at issue than at hearing, (because of the potential for the number of individuals within the multiple claim to change between issue and hearing);
- It is the simplest fee structure for users to understand; and
- The total fee payable in those cases which proceed through the system is lower.

127. The disadvantages are that:

- The fee would be the same no matter where in the process a claim reached – this would mean that the same amount would be paid for a case that settled early on in the process as for a claim that went all the way to hearing.³¹
- One fee at issue offers no further opportunities to incentivise parties to consider settlement before hearing; and

³¹ Only 23% of the jurisdictional complaints disposed of by the employment tribunals during 2010/11 were disposed at a hearing.

- It could act as a disincentive to settle later in the process by acting as a factor that drives parties to ‘their day before the tribunal’ and receive what they have ‘paid’ for.

Question 17 – Do you think one fee charged at issue is the appropriate approach? Please give reasons for your answer and provide evidence where available.

Claim type and the value of the claim

128. In Part 1 (section 3) we proposed that the claim type and the stage in the proceedings were used to determine the fee types. Under Option 2 we propose that the fee types should be determined by:

- The claim type; and
- The value of the claim.

129. Our reasoning for using the claim type remains the same as under Option 1; namely that claims that consume more administrative and judicial resources should attract higher fee levels. We also propose to adopt the same allocation of claims into the 3 levels as outlined in section 3 (see paragraphs 32–40).

130. However, Option 2 also uses the value of the claim in order to determine what fee is payable so that a higher fee would be payable when a claimant seeks an award above a threshold; proposed to initially be set at £30,000. Our assumption is that this approach will give business more certainty as to its possible financial liability. Therefore the proposed fee types are:

Fee Type	When payable
Level 1	The claim contains Level 1 claim types only
Level 2	The claim contains one or more Level 2 claim type and may include Level 1 claim types
Level 3	The claim contains one or more Level 3 claim types and may include Level 1 and 2 claim types
Level 4	Any claim type where the claimant is seeking an award above £30,000

131. The consequence of basing the fee on the value of the claim is that it requires claimants to assess the likely value of the award they will receive if successful before making an application. Tools and guidance will need to be available to assist claimants to make this assessment.

132. Under Option 2 it is a matter of choice for the claimant to decide whether to restrict their claim to below the threshold of £30,000. If a claimant chooses to pay fees at levels 1–3, they would not be able to receive an award of greater than £29,999.99, even if the tribunal determined that their loss was in excess of this amount.

Question 18 – Do you think it is appropriate that a threshold should be put in place and that claims above this threshold attract a significantly higher fee? Please give reasons for your answer.

Question 19 – Do you think it is appropriate that the tribunal should be prevented from awarding an award of £30,000 or more if the claimant does not pay the appropriate fee? Please give your reasons and provide any supporting evidence.

Question 20 – Fewer than 7% of ET awards are for more than £30,000. Do you think £30,000 is an appropriate level at which to set the threshold?

Indicative fee levels for the Option 2 proposals

133. Under Option 1 we have proposed initially setting fee levels at less than full cost recovery levels. This allows the opportunity to consider the impact of fees at introduction. The fee levels we propose for Option 1 are given in Part 1.
134. Under Option 2 we also propose that fees at levels 1–3 should also be set to achieve less than full cost recovery. When taken as a whole, the fee levels proposed under Option 2 will achieve approximately 40% of full cost recovery.
135. However, in Option 2, we are proposing to initially set the Level 4 fee at around the full cost incurred to HM Courts & Tribunals Service in bringing these claims to resolution. Fewer than 7% of ET awards are for more than £30,000, and a large proportion of the value of the awards in these claims is associated with loss of earnings, which suggests that generally higher income earners will be more likely to make Level 4 claims. This higher contribution to the cost will also encourage all claimants to think carefully about the true value of their claim – giving greater business certainty and more realistic expectations for claimants.
136. For the purposes of Option 2 we have not undertaken the detailed cost modelling provided in Option 1. However, our initial view is that the following fees would meet these goals namely:

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

137. Under Option 2 the same fee levels as proposed for Option 1 would apply for the 6 specified application types such as request for written reasons, counter-claim and judicial mediation.

Question 21 – Do you agree that Option 2 would be an effective means of providing business with more certainty and in helping manage the realistic expectations of claimants?

Question 22 – Do you agree with our view that it is generally higher income earners who receive awards over £30,000? Please provide any evidence you have for your views.

Question 23 – Do you agree that we should aim to recover through fees a greater contribution to the costs of providing the service from those who choose to make a high value claim (and can afford to pay the fee)? Do you have any views on impacts you think this would have on claimants or respondents? Please provide any supporting evidence for your statement.

Question 24 – Do you agree with the Option 2 fee proposals? If not, please explain why.

Multiple claims

138. In Part 1 we proposed that fees would also apply to multiple claims i.e. where at least 2 claimants bring a claim against the same respondent. Under Option 2 we propose an approach to fees for multiple claims similar to that proposed under Option 1. The fee level will be based upon:

- The type of claim;
- Whether any claimant within the multiple claim is seeking an award of £30,000 or more; and
- The number of claimants within the multiple claim.

139. Where all claimants within the multiple seek an individual award below £30,000, we propose that they pay the appropriate jurisdiction fee (i.e. levels 1–3) depending on the type of claim and given the numbers of people in the claim namely:

- Multiple claims of between 2 and 4 individuals will pay a fee of 2 x the fee for single claims;
- Multiple claims of between 5 and 10 individuals will pay a fee of 3 x the fee for single claims;
- Multiple claims of between 11 and 50 individuals will pay a fee of 4 x the fee for single claims;
- Multiple claims of between 51 and 200 individuals will pay a fee of 5 x the fee for single claims; and
- Multiple claims of 201 or more individuals will pay a fee of 6 x the fee for single claims.

140. Where one or more claimants within a multiple claim seek an individual award above £30,000 then the Level 4 fee is payable multiplied by the relevant number of individuals within the claim. As only one fee is payable at issue, any claimant who is not seeking an award above £30,000 may choose to submit a single claim with the appropriate jurisdictional fee (levels 1–3). Based upon the indicative fee levels proposed for the single fee payable under this option, the multiple fees will be:

	No of claimants in multiple				
	2-4	5-10	11-50	51-200	201+
Level 1	£400	£600	£800	£1,000	£1,200
Level 2	£1,000	£1,500	£2,000	£2,500	£3,000
Level 3	£1,200	£1,800	£2,400	£3,000	£3,600
Level 4	£3,500	£5,250	£7,000	£8,750	£10,500

141. We think this approach is equitable as any claimant within the multiple who does not wish to seek an award above £30,000 can choose to bring a single claim and pay the relevant Level 1–3 fee. Each claimant within a multiple claim will also need to decide whether to claim more than the threshold of £30,000.

Question 25 – Do you agree with our proposals for multiple claims under Option 2? Please give reasons for your answer.

Remissions

142. In Part 1 (sections 5 and 7) we explain why we proposed to adopt the HM Courts & Tribunals Service remission system for Option 1 and we believe the same arguments apply to Option 2. We therefore propose that the provisions for the remission system under Option 2 mirror those proposed under Option 1 with the HM Courts & Tribunals Service remission system applying to single claims as well as multiple claims.

143. Our initial analysis for the likely level of remissions for the level 4 fee of £1750 proposed under Option 2 suggests that approximately 90% of claimants would be eligible for a full or part remission (see paragraph 5.5 of the Impact Assessment which supports this consultation paper). Some examples showing what fee remission an applicant would receive under Option 2 are provided in Annex D.

144. As under Option 1 it is proposed that no individual within a multiple claim will pay more than the appropriate single fee. For example, if in a multiple of two claims one person is entitled to a remission and one due to pay the fee then instead of 2 x the single fee, the fee payable would be the single fee. It is also proposed that the Lord Chancellor would have discretion to remit fees in certain circumstances.

Question 26 – Do you agree with our proposals for remissions under Option 2? Please give reasons for your answer.

Refunds

145. In section 8 (paragraphs 105 – 109) we explain that our approach to refunds would be limited to those occasions where, within 6 months of a fee being paid, a claimant can prove that he was actually eligible to a full or partial fee remission at the time of payment. We believe that Option 2 should adopt a similar approach. We accept that Option 2 sees the entirety of the cost of bringing a claim to an employment tribunal front

loaded and that therefore the fee levels at issue under Option 2 are higher than those under Option 1. However as we have explained at paragraph 105 costs are incurred by HM Courts & Tribunals Service as soon as the claim is presented. We see no reason to adopt a different approach to refunds under Option 2.

Question 27 – Do you agree with our approach to refunding fees under Option 2? If not, please explain why.

Comparing Options 1 and 2

146. Whilst they have differing aims, Options 1 and 2 share some of the same features. In order to provide a quick assessment of the Options, the following table provides a summary comparison of the main factors.

	Option 1	Option 2
Policy aims	Transfer of cost from user to taxpayer	Transfer of cost from user to taxpayer Greater certainty for employers as to likely financial liability Improve claimants awareness of likely value of the claim
When is fee charged	At two stages, issue and hearing	At issue only
All claim types charged for	Yes	Yes
Fee types (single claims)	Type of claim and Stage in the proceedings	Type of claim and Value of claim
Specified fees	Yes namely Request for written reasons Counter claims Mediation by the judiciary Set aside default judgment Dismissal following settlement or withdrawal Review of tribunal's judgment or decision	As Option 1 (fee levels also the same as Option 1)

Charging Fees in Employment Tribunals and the Employment Appeal Tribunal
 Consultation Paper

	Option 1	Option 2
Fee values for main fees (single claims)	<u>Issue fee</u> Level 1 – £150 Level 2 – £200 Level 3 – £250 <u>Hearing fee</u> Level 1 – £250 Level 2 – £1000 Level 3 – £1250	Fee Level 1 – £200 Level 2 – £500 Level 3 – £600 Level 4 – £1750 (NB Level 4 is only payable if the claimant seeks an award of £30,000 or more)
Cost recovery levels	All fees are set below full cost recovery levels	Fees for levels 1–3 are set below full cost recovery levels. The fee for Level 4 is proposed to be around full cost recovery
Remissions	Adopt the HM Courts & Tribunals Service remissions system	As Option 1
Refunds	No refunds, other than in limited circumstances	As Option 1
Multiple claims	Fee determined by the number of claimants within the multiple	As Option 1
Fee types (multiples)	Type of claim and Stage in the proceedings	Type of claim and Value of claim
Fee levels (multiples)	Issue fee <u>Level 1</u> 2–4 claimants – £300 5–10 claimants – £450 11–50 claimants – £600 51–200 claimants – £750 201+ claimants – £900 <u>Level 2</u> 2–4 claimants – £400 5–10 claimants – £600 11–50 claimants – £800 51–200 claimants – £1000 201+ claimants – £1200 <u>Level 3</u> 2–4 claimants – £500 5–10 claimants – £750 11–50 claimants – £1000 51–200 claimants – £1250 201+ claimants – £1500	Fee <u>Level 1</u> 2–4 claimants – £400 5–10 claimants – £600 11–50 claimants – £800 51–200 claimants – £1000 201+ claimants – £1200 <u>Level 2</u> 2–4 claimants – £1000 5–10 claimants – £1500 11–50 claimants – £2000 51–200 claimants – £2500 201+ claimants – £3000 <u>Level 3</u> 2–4 claimants – £1200 5–10 claimants – £1800 11–50 claimants – £2400 51–200 claimants – £3000 201+ claimants – £3600

	Option 1	Option 2
	Hearing fee	<u>Level 4</u>
	<u>Level 1</u>	2–4 claimants – £3750
	2–4 claimants – £500	5–10 claimants – £5250
	5–10 claimants – £750	11–50 claimants – £7000
	11–50 claimants – £1000	51–200 claimants – £8750
	51–200 claimants – £1250	201+ claimants – £10500
	201+ claimants – £1500	No hearing fee for Option 2
	<u>Level 2</u>	
	2–4 claimants – £2000	
	5–10 claimants – £3000	
	11–50 claimants – £4000	
	51–200 claimants – £5000	
	201+ claimants – £6000	
	<u>Level 3</u>	
	2–4 claimants – £2500	
	5–10 claimants – £3750	
	11–50 claimants – £5000	
	51–200 claimants – £6250	
	201+ claimants – £7500	

Conclusion

147. Whilst they share some of the same features, Options 1 and 2 offer different choices, advantages and disadvantages. These have been detailed throughout the consultation but, in summary, Option 1 offers the advantages of fee levels nearer the representative cost of the case, by proposing two fees at issue and hearing, as well as incorporating an incentive to settle at two points in the process. However, this approach means that for a case requiring a hearing, the total fee payable is greater than under Option 2. Moreover, the two stage fee process under Option 1 is more costly to administer, may be more difficult to understand in comparison to a single fee and means that the total cost payable in fees is not known at the outset.
148. Option 2 overall offers lower fees for a case that requires a hearing when compared to Option 1. It has the advantages of a simple to understand system that is the cheapest and easiest for HM Courts & Tribunals Service to administer. It also provides greater certainty to business over their maximum liability of award by asking claimants to specify if their claim is above or below a threshold amount. In addition, by asking claimants to make a more informed judgment about the value of their claim, it seeks to narrow the gap between an individual's expectation of what they can be awarded and their actual entitlement, leading to a more satisfactory outcome for claimants and respondents, none of which is provided for under Option 1.

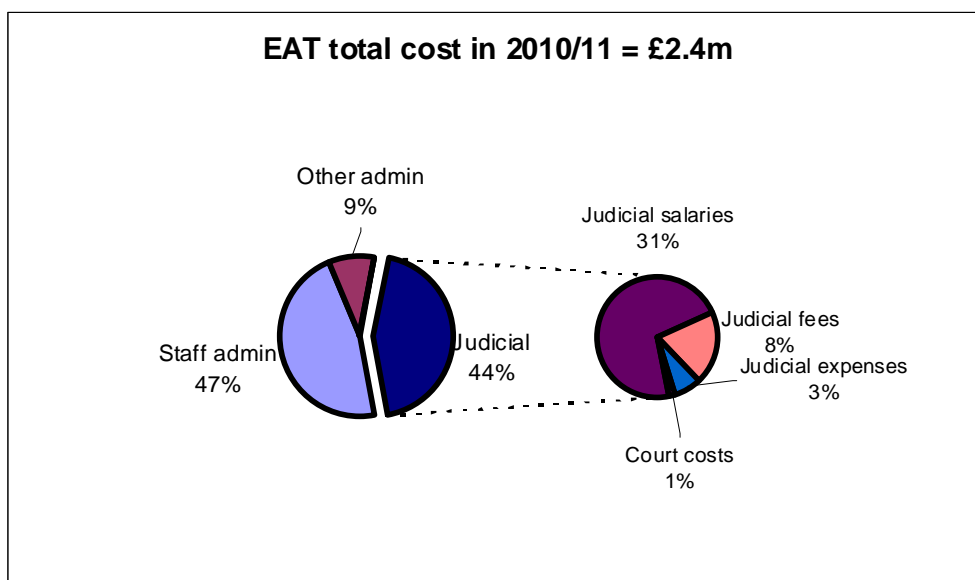
149. However, Option 2 does not offer a second opportunity to incentivise settlement once a claim is made and the single fee at issues does not differentiate between the differing costs at issue and hearing. In addition, Option 2 will require claimants to assess the value of their claim and then choose which fee type to pay. This may not be easy in some types of claims and we welcome your views on what types of guidance would be appropriate. Moreover there may be particular difficulty in providing guidance in some cases e.g. equal pay cases, where the amount by which an individual has been underpaid will not be calculable until the pay history of an appropriate comparator has been disclosed. We would welcome your views on what issues you think may need to be overcome in order to assist claimants in assessing the value of their claims.
150. In terms of implementation, the Option 2 fee structure offers the opportunity to achieve wider policy aims but it will take longer to implement in full. This is because primary legislation will be required to prevent the tribunal from making awards over £30,000 when a Level 4 fee has not been paid. Guidance will also have to be developed to enable claimants to assess the potential value of their claim to allow them to make an informed judgment on the level of fee that should be paid. We estimate that, under Option 2, fees could be introduced in full in 2014. In contrast, Option 1 does not require primary legislation prior to fees being introduced and could be implemented by 2013.

Question 28 – What sort of wider information and guidance do you think is needed to help claimants assess the value of their claim and what issues do you think may need to be overcome?

Question 29 – Is there an alternative fee charging system which you would prefer? If so, please explain how this would work.

Part 3 – The Employment Appeal Tribunal fee proposals

151. The main function of the Employment Appeal Tribunal is to hear appeals on a question of law arising from decisions made by employment tribunals. The appellant in the Employment Appeal Tribunal may be either the claimant or the respondent in the employment tribunal proceedings which are the subject of the appeal. The Employment Appeal Tribunal has the status of a superior court of record with an equivalent status to that of the High Court.
152. The Employment Appeal Tribunal has a much smaller workload than the employment tribunals. Just over 2,000 appeals were received by the Employment Appeal Tribunal in 2010/11 and a similar number of appeals were dealt with. Correspondingly its costs are much smaller. The Employment Appeal Tribunal judiciary is largely composed of High Court Judges, Circuit Judges and non-legal members, so when they are sitting in the Employment Appeal Tribunal their salary and other associated costs are attributed to the Tribunal.
153. The chart and table below show a break-down of Employment Appeal Tribunal expenditure in 2010/11.



Category	2010/11 £m	Share of Total
Staff Admin	1.11	47%
Other Admin	0.22	10%
Judicial salaries	0.74	31%
Judicial fees	0.20	8%
Judicial Expenses	0.08	3%
Court Costs	0.02	1%
Total	2.38	100%

154. It is proposed that broadly the same fee structure as in Option 1 is adopted for the Employment Appeal Tribunal as employment tribunals but because it is a smaller jurisdiction and has some differing characteristics, it is possible to look at a simpler approach.

155. Unlike the employment tribunals the resource used by an appeal in the Employment Appeal Tribunal does not vary depending on the type of appeal made. Appeals nearly always take one day to conclude at hearing and there is no cost difference between an appeal made by a single appellant and one made by multiple appellants. There is no mediation conducted in the Employment Appeal Tribunal, no applications to set aside-default judgment or dismissal following settlement or withdrawal and very few applications for written reasons.

156. These characteristics offer the opportunity for charging only two fees namely:

- Fee for appeal payable initially by the appellant
- Fee for hearing an appeal payable initially by the appellant

157. It is proposed to extend the HM Courts & Tribunals Service remission system, (as outlined in section 5), to the Employment Appeal Tribunal and to adopt the same approach to refunds (as outlined in section 8).

158. The following indicative fee levels are proposed for the Employment Appeal Tribunal namely:

Fee	Payable by	Amount
Issue fee	Appellant	£400
Hearing fee	Appellant	£1200

159. Based on the estimated unit costs for 2009/10 and projected work-loads these fee rates would have achieved approximately 55% of the cost of providing the Employment Appeal Tribunal. The fee rates are considered reasonable because of the appellate nature of the Employment Appeal Tribunal, which means that issues have already been considered in the employment tribunals.

160. Fees will be set to recover costs estimated at the time of implementation of fee charging but projecting future cost and work-load so far ahead is inherently problematic, particularly with the future changes proposed to employment tribunals. Therefore these fee levels should be considered as indicative only and may be revised depending on the consultation responses and further work to estimate the costs per case.

Question 30 – Do you agree with the simplified fee structure and our fee proposals for the Employment Appeal Tribunal? If not, please explain why and provide any supporting evidence.

Part 4 – Operational changes to introduce fees

161. Introducing fees into the employment tribunals and Employment Appeal Tribunal will require both users as well as HM Courts & Tribunals Service staff to use new and changed business processes. Users who submit a claim or an appeal will need to complete the relevant forms as well as pay the appropriate fee or provide a completed remission application form together with supporting evidence. This means that existing business processes and systems need to be adapted or new systems and processes implemented to ensure that fees can be collected as well as ensuring that any relevant fee information is connected with the case.
162. HM Courts & Tribunals Service will explore how to do this in a manner that is cost effective and minimises additional business costs (which would be passed on to users and taxpayers). Given the increased use of the internet, the options we intend to explore include the development of on-line and electronic payment systems to complement the existing on-line system of submitting claims.³² However, in developing these new processes HM Courts & Tribunals Service wants to ensure that access to justice is not restricted for those service users that do not have access to the internet.

Question 31 – What ways of paying a fee are necessary e.g. credit / debit cards, bank transfers, direct debit, account facilities? When providing your answer please consider that each payment method used will have an additional cost that will be borne by users and the taxpayer.

163. Currently, users can submit claims either on-line or directly to any local employment tribunal office in person, via post or fax. Payment of fees directly to local offices may not be cost effective because of the additional accounting processes and systems that would be required as well as the necessary security arrangements needed for the collection and banking of monies. It is therefore proposed that centralising the collection and accounting of fees is an appropriate option to consider.
164. Centralisation of fee collection may require users to make fee payments, and apply for fee remission through a centralised office. However, in order to continue to have cases dealt with locally, users may subsequently be required to correspond, liaise and provide additional information to their local employment tribunal office. **We would be interested in views as to how to make this process easy to operate.**

³² In England and Wales the office to which the claim is allocated is determined by the claimant's place of employment. The postcode of the place of employment is used to identify the office to which the claim will be directed. Where the place of employment is in Scotland all claims are routed to Glasgow.

165. We also wish to consider whether, alongside the centralisation of payments it would make sense to provide for any claims that are not submitted on-line to also be centralised in their initial stages (e.g. issue and service of the claim form ET1). Local offices would still administer all local work and hold hearings.

166. The detail of any changes has yet to be explored but **your initial views are sought on what issues should be taken into account.**

Question 32 – What aspects should be taken into account when considering centralisation of some stages of claim processing and fee collection?

Annex A – List of fee levels to which individual complaints are allocated under Options 1 and 2

This reflects the existing HMCTS track allocation. Where no allocation currently exists the jurisdiction type has been allocated to Level 1.

Where the award sought is £30,000 or more, the issue fee payable would be £1,750 under Option 2.

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
Suffer a detriment and/or dismissal resulting from a failure to allow an employee to be accompanied or to accompany a fellow employee at a disciplinary/grievance hearing	EReIA 1999 s.10–12	Level 2	£200	£1000	£500
Application for a declaration that the inclusion of discriminatory terms/rules within certain agreements or rules causes the aforesaid to be invalid	E A 2010 s.145 and 146(1)	Level 1	£150	£250	£200
Application by an employee, their representative or trade union for a protective award as a result of an employer's failure to consult over a redundancy situation	TULR(C)A 1992 s.188–189	Level 2	£200	£1000	£500
Breach of Contract	Breach of contract and s.3 ETA 1996 & SI 1994/1623 and (in Scotland) SI 1994/1624	Level 1	£150	£250	£200
Failure of the employer to consult with an employee representative or trade union about a proposed contracting out of a pension scheme	Reg 4 of OPS(CO)R 1996	Level 1	£150	£250	£200
Application or complaint by the EHRC in respect of discriminatory advertisements or instructions or pressure to discriminate (including preliminary action before a claim to the county court)	E A 2010 s.13–14, 19, 26–27 and 120	Level 1	£150	£250	£200
Suffered a detriment, discrimination, including indirect discrimination, harassment or victimisation or discrimination based on association or perception on grounds of age	E A 2010 s.13–14, 19, 26–27 and 120	Level 3	£250	£1250	£600

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
Suffered a detriment, discrimination including indirect discrimination, and discrimination based on association or perception, harassment or victimisation and/or dismissal on grounds of disability or failure of employer to make reasonable adjustments	E A 2010 s.13–15, 19 – 21, 26–27, 120 and Schedule 8	Level 3	£250	£1250	£600
Suffered a detriment and/or dismissal resulting from requiring time off for other (non-work but not Health and Safety) duties, study, training or seeking work	ERA 1996 s.46–48, 102–103, 105, 108 and 111	Level 2	£200	£1000	£500
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of religion or belief	E A 2010 s.13–14, 19, 26–27 and 120	Level 3	£250	£1250	£600
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sexual orientation	E A 2010 s.13–14, 19, 26–27 and 120	Level 3	£250	£1250	£600
Application by the Secretary of State for Business, Innovation & Skills to prohibit a person from running an Employment Agency	Employment Agencies Act 1973 s3A and 3C	Level 1	£150	£250	£200
Failure to provide equal pay for equal value work	E A 2010 s.64, 120, 127 and 128	Level 3	£250	£1250	£600
Failure of the employer to consult with an employee rep. or trade union about a proposed transfer	TUPE 2006 Reg 13–15	Level 2	£200	£1000	£500
Suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure	ERA 1996 s.47E, 80F–80G 94 and 104C FWR 2002	Level 2	£200	£1000	£500
Application by an employee that an employer has failed to pay a protected award as ordered by a tribunal	TULR(C)A 1992 s.190 and 192	Level 1	£150	£250	£200
Failure to pay remuneration whilst suspended from work for health and safety reasons whilst pregnant or on mat. leave	ERA 1996 s.67–68D and 70	Level 1	£150	£250	£200
Failure to provide a written statement of terms and conditions and any subsequent changes to those terms	ERA 1996 s.1, 4, 8 and 11	Level 1	£150	£250	£200

Charging Fees in Employment Tribunals and the Employment Appeal Tribunal
Consultation Paper

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
Suffered less favourable treatment and/or dismissal as a fixed term employee, than a full time employee or, on becoming permanent, failed to receive a written statement of confirmation from employer	FTE 2002 Regs 3, 6 to 9	Level 2	£200	£1000	£500
Failure to allow time off for trade union activities or duties, for ante-natal care or for public duties	TULR(C)A 1992 s.168–170; ERA 1996 s.50, 55 and 56	Level 1	£150	£250	£200
Failure to provide a guarantee payment	ERA 1996 s.28–34	Level 1	£150	£250	£200
Failure to pay remuneration whilst suspended for medical reasons	ERA 1996 s.64 and 70	Level 1	£150	£250	£200
Failure to allow time off to seek work during a redundancy situation	ERA 1996 s.52	Level 1	£150	£250	£200
Failure of an employer to comply with an award by a tribunal following a finding that the employer had previously failed to consult about a proposed transfer of an undertaking	TULR(C)A 1992 s.188, 188A, 190 and 192	Level 1	£150	£250	£200
Failure to allow or to pay for time off for care of dependants, union learning representatives duties, pension scheme trustee duties, employee representatives duties, young person studying/training and European Works Council duties	ERA 1996 s 57A to 63C TICER 1999 Reg 25, 26, 27	Level 2	£200	£1000	£500
Failure to provide a written pay statement or an adequate pay statement	ERA 1996 s.8, 9 and 11	Level 2	£200	£1000	£500
Failure to provide a written statement of reasons for dismissal or the contents of the statement are disputed	ERA 1996 s.92 and 93	Level 2	£200	£1000	£500
Appeal against an enforcement, improvement or prohibition notice imposed by the HSE or Environmental Health Inspector, or by the Environment Agency	REACH Regs 2008, reg 21 or HSWA 1974 s.24(2) or COMAH 1999 s.18	Level 1	£150	£250	£200
Failure to pay for or allow time off to carry out Safety Rep duties or undertake training	Health & Safety at Work etc Act 1974 s.48 and 80 SRSC 1977 Reg. 4, 11; HSCE 1996 Reg. 7, Sch. 1	Level 1	£150	£250	£200
Suffer a detriment, dismissal or redundancy for health and safety reasons	ERA 1996 s.44, 48, 94, 100, 105 and 111	Level 2	£200	£1000	£500

Charging Fees in Employment Tribunals and the Employment Appeal Tribunal
Consultation Paper

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
Application for interim relief	ERA 1996 s.128 or TULR(C)A 1992 s161–167	Level 2	£200	£1000	£500
Failure by the SOS to make an insolvency payment in lieu of wages and/or redundancy	ERA 1996 s182 and 188	Level 1	£150	£250	£200
Appeal against the levy assessment of an Industrial Training Board	Relevant Industrial Training Levy Order – either Construction or Engineering Construction Board	Level 1	£150	£250	£200
Suffer a detriment and/or dismissal on grounds of pregnancy, child birth or maternity	ERA 1996 s.47C, 48, 94, 99 and 111 MPL 1999 Regs 19–20 PAL Regs 2002 regs 28–29	Level 2	£200	£1000	£500
Appeal against an enforcement or penalty notice issued by HMRC	NMWA 1998 s.19C	Level 1	£150	£250	£200
Suffer a detriment and/or dismissal related to failure to pay the minimum wage or allow access to records	ERA 1996 s.94, 104A, 105, and 111 NMWA 1998 s.10, 11 and 23	Level 2	£200	£1000	£500
Appeal against an unlawful act on a notice issued by the EHRC	EA 2006 s.21	Level 1	£150	£250	£200
Failure of the employer to comply with a certificate of exemption or to deduct funds from employees pay in order to contribute to a trade union political fund	TULR(C)A 1992 s.86 and 87	Level 2	£200	£1000	£500
Failure of the employer to prevent unauthorised or excessive deductions in the form of union subscriptions	TULR(C)A 1992 s.68 and 68A	Level 1	£150	£250	£200
Failure of the Secretary of State to pay unpaid contributions to a pensions scheme following an application for payment to be made	Pensions Schemes Act 1993 s.124 and 126	Level 1	£150	£250	£200
Suffered a detriment and/or dismissal due to exercising rights under the Public Interest Disclosure Act	ERA 1996 s.47B, 48, 94, 103A, 105, and 111	Level 3	£250	£1250	£600

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
Suffer a detriment and/or dismissal due to requesting or taking paternity or adoption leave or time off to assist a dependant	ERA 1996 s.47C, 48, 57A and 80 MPL 1999 Regs 19 PAL Regs 2002 Reg. 28	Level 2	£200	£1000	£500
Suffer less favourable treatment and/or dismissal as a result of being a part time employee by comparison to a full time employee	PTW 2000 Regs. 5, 7, 8 ERA 1996 s.105	Level 2	£200	£1000	£500
Failure to pay a redundancy payment	ERA 1996 s.135, 163 and 177	Level 1	£150	£250	£200
Failure of the SOS to pay a redundancy payment following an application to the NI fund	ERA 1996 s.166 and 170	Level 1	£150	£250	£200
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of race or ethnic origin	E A 2010 s.13–14, 19, 26–27 and 120	Level 3	£250	£1250	£600
Suffer a detriment and/or dismissal for refusing to work on a Sunday	ERA 1996 s.45, 48, 94 101, 105 and 111	Level 2	£200	£1000	£500
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sex, marriage and civil partnership or gender reassignment	E A 2010 s.13–14, 16, 18, 19, 26–27 and 120	Level 3	£250	£1250	£600
Suffered less favourable treatment and/or dismissal as a temp. employee than a full time employee	FTE Regs 2002	Level 2	£200	£1000	£500
Suffer discrimination in obtaining employment due to membership or non-membership of a trade union; or refused employment or suffered a detriment for reasons related to a blacklist.	TULR(C)A 1992 s.137 and 139 ERA 1999 s.104F ERA 1999 (Blacklist) Regs 2010 (SI 2010/493)	Level 2	£200	£1000	£500
Suffer a detriment and/or dismissal relating to being, not being or proposing to become a trade union member	TULR(C)A 1992 s.145A–145C, 146–147 and 152–160 ERA 1996 Part X	Level 2	£200	£1000	£500

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
(a) Failure of the employer to consult or report about training in relation to a bargaining unit (b) Suffered a detriment on grounds related to recognition of a trade union for collective bargaining	TULR(C)A 1992 s.70A–70C and Schedule A1 paras 156–157	Level 2	£200	£1000	£500
Suffer discrimination in obtaining the services of an employment agency due to membership or non-membership of a trade union	TULR(C)A 1992 s.138 and 139	Level 2	£200	£1000	£500
Suffered a detriment and/or dismissal due to exercising rights under the Tax Credits Act	ERA 1996 s.47D, 48, 104B, 105, 108–109 and 111	Level 2	£200	£1000	£500
Unfair dismissal after exercising or claiming a statutory right	ERA 1996 s.104, 105, 108–109 and 111	Level 2	£200	£1000	£500
Unfair dismissal on grounds of capability, conduct or some other general reason including the result of a transfer of an undertaking	ERA 1996 s.98 and 111	Level 2	£200	£1000	£500
Unfair dismissal in connection to a lock out, strike or other industrial action	TULR(C)A 1992 s.237–239 ERA 1996 s.94	Level 2	£200	£1000	£500
Failure of employer to pay or unauthorised deductions have been made	ERA 1996 s.13 and 23	Level 1	£150	£250	£200
Appeal by a person who has been served with an improvement or prohibition notice under the Working Time Regulations 1998	WTR 1998 Schedule 3, para 6	Level 1	£150	£250	£200
Failure to limit weekly or night working time, or to ensure rest breaks	WTR 1998 Regs 4, 6, 10, 12–17 and 30 ERA 1996 Ss 45A, 48, 101A, 105, 108–109 and 111	Level 2	£200	£1000	£500
Complaint by a worker that employer has failed to allow them to take or to pay them for statutory annual leave entitlement	WTR 1998 Regs 13, 14 or 16 and 30	Level 1	£150	£250	£200
Appeal by a person who has been served with an improvement notice under the Road Transport (Working Time) Regulations 2005.	RT(WT) Regs 2005 Schedule 2, para 6	Level 1	£150	£250	£200
(a) Suffer a detriment and/or dismissal related to a request for time to train or study. (b) Failure of an employer to follow the correct procedures or reject a request based on incorrect facts.	ERA 1996 s.47A, 47F, 63A to 63I	Level 2	£200	£1000	£500

Originating Legislation – Abbreviation and Full Title

AWR 2010	Agency Workers Regulations 2010
CEC 1975	Colleges of Education (Compensation) Regulations 1975
COMAH 1999	Control of Major Accident Hazards Regulations 1999
DCOA 1994	Deregulation and Contracting Out Act 1994
DRC 1999	Disability Rights Commission Act 1999
EA 2006	Equality Act 2006
EA 2010	Equality Act 2010
ERA 1996	Employment Rights Act 1996
ERelA1999	Employment Relations Act 1999
ETA 1996	Employment (Industrial) Tribunals Act 1996
FTE 2002	Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
FWR 2002	Flexible Working (Procedural Requirements) Regulations 2002 and Flexible Working (Eligibility, Complaints and Remedy) Regulations 2002
HSCE 1996	Health and Safety Consultation with Employee Regulations 1996
HSWA 1974	Health and Safety at Work Act 1974
MPL 1999	Maternity and Parental Leave Regulations 1999
MPL 2002	Maternity and Parental Leave (Amendment) Regulations 2002
NESE 1994	Notification of Existing Substances (Enforcement) Regulations 1994
NMWA 1998	National Minimum Wage Act 1998
PAL 2002	Paternity and Adoption Leave Regulations 2002
PIDA 1998	Public Interest Disclosure Act 1998
PTW 2000	Part Time Worker (Prevention of Less Favourable Treatment) Regulations 2000
SRSC 1977	Safety Representatives and Safety Committees Regulations 1977
SSPA 1975	Social Security Pensions Act 1975
STA 1994	Sunday Trading Act 1994
TCA 2002	Tax Credits Act 2002
TICER 1999	Transnational Information and Consultation of Employees Regulations 1999
TULR(C) 1992	Trade Union and Labour Relations (Consolidation) Act 1992
TUPE 1981	Transfer of Undertakings (Protection of Employment) Regulations 1981
TURER 1993	Trade Union Reform and Employment Rights Act 1993
WTR 1998	Working Time Regulations 1998
RT (WT) R 2005	Road Transport (Working Time) Regulations 2005

Art = (Article) Par = (Part) Reg = (Regulation) Sch = (Schedule) Sec = (Section)

Annex B – The legislative framework for the remission system

Civil Proceedings Fees Order 2008

s.5 – Schedule 2 applies for the purpose of ascertaining whether a party is entitled to a remission or part remission of a fee prescribed by this Order.

SCHEDULE 2

REMISSIONS AND PART REMISSIONS

1. Interpretation

(1) In this Schedule—

“child” means a child or young person in respect of whom a party is entitled to receive child benefit in accordance with section 141, and regulations made under section 142, of the Social Security Contributions and Benefits Act 1992;

“child care costs” has the meaning given in the Criminal Defence Service (Financial Eligibility) Regulations 2006;

“couple” has the meaning given in section 3(5A) of the Tax Credits Act 2002;

“disposable monthly income” has the meaning given in paragraph 5;

“excluded benefits” means—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992—

- (i) attendance allowance paid under section 64;
- (ii) severe disablement allowance;
- (iii) carer’s allowance;
- (iv) disability living allowance;
- (v) constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;
- (vi) council tax benefit;
- (vii) any payment made out of the social fund;
- (viii) housing benefit;

(b) any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England)

Regulations 2003 or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004;

- (c) a back to work bonus payable under section [26] of the Jobseekers Act 1995;
- (d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;
- (e) any pension paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pension Order 2006;
- (f) any payment made from the Independent Living Funds; and
- (g) any financial support paid under an agreement for the care of a foster child;

"the Funding Code" means the code approved under section 9 of the Access to Justice Act 1999;

"gross annual income" means total annual income, for the 12 months preceding the application for remission or part remission, from all sources other than receipt of any of the excluded benefits;

"gross monthly income" means total monthly income, for the month in which the application for remission or part remission is made, from all sources other than receipt of any of the excluded benefits;

"the Independent Living Funds" has the meaning given in the Criminal Defence Service (Financial Eligibility) Regulations 2006;

"partner" means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

"party" means [the individual] who would, but for this Schedule, be liable to pay the fee required under this Order;

"restraint order" means—

- (h) an order under section 42(1A) of the [Senior Courts Act 1981]; or
- (i) a civil restraint order under rule 3.11 of the Civil Procedure Rules 1998 or a practice direction made under that rule.

(2) Paragraphs 2, 3 and 4—

- (a) do not apply to a party who is in receipt of funding provided by the LSC for the purposes of the proceedings for which a certificate has been issued under the Funding Code; and
- (b) are subject to the provisions of paragraphs 10 (vexatious litigants) and 11 (exception).

2. Full remission of fees – qualifying benefits

- (1) No fee is payable under this Order if, at the time when a fee would otherwise be payable, the party is in receipt of a qualifying benefit.

- (2) The following are qualifying benefits for the purposes of sub-paragraph (1)—
- (a) income support under the Social Security Contributions and Benefits Act 1992;
 - (b) working tax credit, provided that no child tax credit is being paid to the party;
 - (c) income-based jobseeker's allowance under the Jobseekers Act 1995; and
 - (d) guarantee credit under the State Pension Credit Act 2002[; and
 - (e) income-related employment and support allowance under the Welfare Reform Act 2007].

3. Full remission of fees – gross annual income

- (1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the party has the number of children specified in column 1 of the following table and—
- (a) if the party is single, the gross annual income of the party does not exceed the amount set out in the appropriate row of column 2; or
 - (b) if the party is one of a couple, the gross annual income of the couple does not exceed the amount set out in the appropriate row of column 3.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of party paying fee</i>	<i>Single</i>	<i>Couple</i>
no children	[£13,000]	[£18,000]
1 child	[15,930]	[£20,930]
2 children	[£18,860]	[£23,860]
3 children	[£21,790]	[£26,790]
4 children	[£24,720]	[£29,720]

- (2) If the party paying the fee has more than 4 children then the relevant amount of gross annual income is the amount specified in the table for 4 children plus the sum of [£2,930] for each additional child.

4. Full and part remission of fees – disposable monthly income

- (1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the disposable monthly income of the party is £50 or less.
- (2) The maximum amount of fee payable is—
- (a) if the disposable monthly income of the party is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's disposable monthly income up to a maximum of £50; and

(b) if the disposable monthly income is more than £210, an amount equal to £50 plus one-half of every £10 over £200 of the party's disposable monthly income.

(3) Where the fee that would otherwise be payable under this Order is greater than the maximum fee which a party is required to pay as calculated in sub-paragraph (2), the fee will be remitted to the amount payable under that sub-paragraph.

5. Disposable monthly income

(1) A party's disposable monthly income is the gross monthly income of the party for the month in which the fee becomes payable ("the period") less the deductions referred to in sub-paragraphs (2) and (3).

(2) There are to be deducted from the gross monthly income—

(a) income tax paid or payable in respect of the period;

(b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992 in respect of the period;

(c) either—

(i) monthly rent or monthly payment in respect of a mortgage debt or hereditament, payable in respect of the only or main dwelling of the party, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or

(ii) the monthly cost of the living accommodation of the party;

(d) any child care costs paid or payable in respect of the period;

(e) if the party is making bona fide payments for the maintenance of a child who is not a member of the household of the party, the amount of such payments paid or payable in respect of the period; and

(f) any amount paid or payable by the party, in respect of the period, in pursuance of a court order.

(3) There will be deducted from the gross monthly income an amount representing the cost of living expenses in respect of the period being—

(a) [£315]; plus

(b) [£244] for each child of the party; plus

(c) [£159], if the party has a partner.

6. Resources of partners

(1) For the purpose of determining whether a party is entitled to the remission or part remission of a fee in accordance with this Schedule, the income of a partner, if any, is to be included as income of the party.

(2) The receipt by a partner of a qualifying benefit does not entitle a party to remission of a fee.

7. Application for remission or part remission of fees

- (1) An application for remission or part remission of a fee must be made to the court officer at the time when the fee would otherwise be payable.
- (2) Where a claim for full remission of fees is made, the party must provide documentary evidence of, as the case may be—
 - (a) entitlement to a qualifying benefit; or
 - (b) gross annual income and, if applicable, the children included for the purposes of paragraph 3.
- (3) Where a claim for full or part remission of fees under paragraph 4 is made, the party must provide documentary evidence of—
 - (a) such of the party's gross monthly income as is derived from—
 - (i) employment;
 - (ii) rental or other income received from persons living with the party by reason of their residence in the party's home;
 - (iii) a pension; or
 - (iv) a state benefit, not being an excluded benefit; and
 - (b) any expenditure being deducted from the gross monthly income in accordance with paragraph 5(2).

8. Remission in exceptional circumstances

Where it appears to the Lord Chancellor that the payment of any fee prescribed by this Order would, owing to the exceptional circumstances of the particular case, involve undue financial hardship, the Lord Chancellor may reduce or remit the fee in that case.

9. Refunds

- (1) Subject to sub-paragraph (3), where a party has not provided the documentary evidence required by paragraph 7 and a fee has been paid at a time when, under paragraphs 2, 3 or 4, it was not payable, the fee will be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.
- (2) Subject to sub-paragraph (3), where a fee has been paid at a time where the Lord Chancellor, if all the circumstances had been known, would have reduced or remitted the fee under paragraph 8, the fee or the amount by which the fee would have been reduced, as the case may be, will be refunded.
- (3) No refund will be made under this paragraph unless the party who paid the fee applies within 6 months of paying the fee.
- (4) The Lord Chancellor may extend the period of 6 months mentioned in sub-paragraph (3) if the Lord Chancellor considers that there is a good reason for an application being made after the end of the period of 6 months.

Annex C – Remission 3 – Table of Contributions

This table shows how much of the fee a person will have to pay (contribution) if their monthly disposable income is calculated to be £50 or more. If monthly disposable income is calculated to be less than £50, they do not have to pay a court fee.

Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution
£	£	£	£	£	£
50–59*	12.50	340–349	120.00	630–639	265.00
60–69	15.00	350–359	125.00	640–649	270.00
70–79	17.50	360–369	130.00	650–659	275.00
80–89	20.00	370–379	135.00	660–669	280.00
90–99	22.50	380–389	140.00	670–679	285.00
100–109	25.00	390–399	145.00	680–689	290.00
110–119	27.50	400–409	150.00	690–699	295.00
120–129	30.00	410–419	155.00	700–709	300.00
130–139	32.50	420–429	160.00	710–719	305.00
140–149	35.00	430–439	165.00	720–729	310.00
150–159	37.50	440–449	170.00	730–739	315.00
160–169	40.00	450–459	175.00	740–749	320.00
170–179	42.50	460–469	180.00	750–759	325.00
180–189	45.00	470–479	185.00	760–769	330.00
190–199	47.50	480–489	190.00	770–779	335.00
200–209	50.00	490–499	195.00	780–789	340.00
210–219	55.00	500–509	200.00	790–799	345.00
220–229	60.00	510–519	205.00	800–809	350.00
230–239	65.00	520–529	210.00	810–819	355.00
240–249	70.00	530–539	215.00	820–829	360.00
250–259	75.00	540–549	220.00	830–839	365.00
260–269	80.00	550–559	225.00	840–849	370.00
270–279	85.00	560–569	230.00	850–859	375.00
280–289	90.00	570–579	235.00	860–869	380.00
290–299	95.00	580–589	240.00	870–879	385.00
300–309	100.00	590–599	245.00	880–889	390.00
310–319	105.00	600–609	250.00	890–899	395.00
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. ** Details of contributions payable where the monthly disposable income exceeds £920 may be found in Annex 5 of the Impact Assessment.

Annex D – Examples of the application of the HM Courts & Tribunals Service remission system

There are currently three levels of remissions available under the HMCTS remissions scheme:



Remission 1 – Full remission based on receipt of certain benefits.


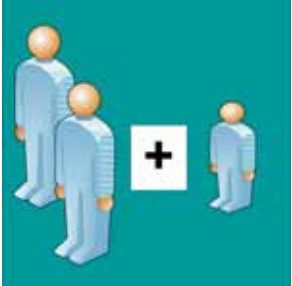
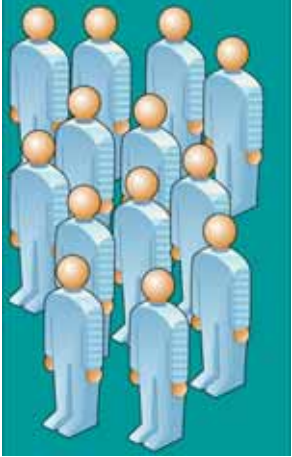
Remission 2 – Full remission based on gross annual income.

Remission 3 – Full or part remission based on monthly disposable income.

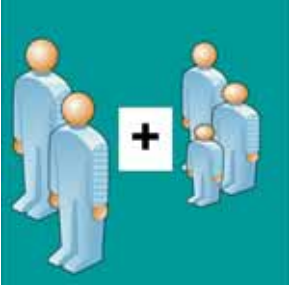



We have provided below a number of examples of how that remission scheme would work if applied in Employment Tribunals.

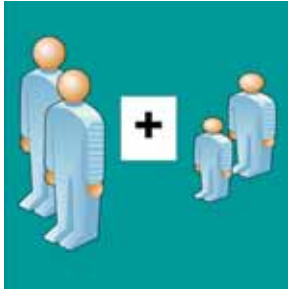
Examples of the application of the HMCTS remissions scheme under Option 1

	<p>Name: Dhanesh Status: Unemployed single parent with 2 children. Circumstances: He lives in a Housing Association property and is in receipt of Income based Job Seekers Allowance. Dhanesh left his most recent employment and is claiming Constructive Dismissal. Employment Tribunal claim: Level 2 claim Issue Fee: £200 Hearing Fee: £1000 Remissions: Dhanesh would be entitled to a full remission (Remission 1) on both fees due to claiming a prescribed benefit.</p>
	<p>Name: Mark Status: Employed, single and disabled. Circumstances: Mark works part time (earning £7000 per annum) and is in receipt of Disability Living Allowance. He recently submitted a claim to the Employment Tribunal against his employer for Disability Discrimination as the employer had not made reasonable adjustments to accommodate Mark within the work place. Mark is currently off work with stress. Employment Tribunal claim: Level 3 claim Issue Fee: £250 Hearing Fee: £1250 Remissions: Mark would be entitled to a full remission (Remission 2) on both fees due to earning less than £13000 per annum</p>

	<p>Name: Tim Status: Employed, married with 3 children. Circumstances: Tim was made redundant from his job as an engineer and has since secured a clerical job at a lower salary of £20000. He has three young children and a wife that works part time in a clerical role earning £6000. He is making a claim to the Employment Tribunal for his redundancy pay which the company have not paid. Employment Tribunal claim: Level 1 claim Issue Fee: £150 Hearing Fee: £250 Remissions: Tim would be entitled to a full remission (Remission 2) on both fees due to the household earning less than £26790 per annum.</p>
	<p>Name: Ajay Status: Employed, living with partner with 1 child Circumstances: Ajay is claiming Unfair Dismissal against a previous employer and has now secured a job as a Library Assistant. His partner is a school teacher. Their joint income is £37000 per annum, however their disposable income (after paying their mortgage and their living expenses) per month is around £200. Employment Tribunal claim: Level 2 claim Issue Fee: £200 Hearing Fee: £1000 Remissions: Ajay would be entitled to a part remission (Remission 3) on both fees due to the level of the household disposable monthly income. His contribution would be £50 to each fee.</p>
	<p>Name: Multiple claimants Status: All with varying personal circumstances. Circumstances: 250 Local Authority cleaners have submitted an Equal Value claim to the Employment Tribunal through their Trade Union Official. The claims have been received and registered together and form a "Multiple" Claim. Employment Tribunal claim: Multiple Level 3 claim. Issue Fee: £1500 Hearing Fee: £7500 Remissions: Where the details of the claimants were submitted in the one claim form and no claimants in the multiple were entitled to a remission, the full fee would be payable. Where a sub-group of claimants in a multiple is entitled to a remission, then the remaining claimants in the group would be required to pay the total relevant fee. Benefits of entering a Multiple claim: As this claim has been entered as a Multiple the fee per person equates to £6 for the Issue Fee and £30 for the Hearing Fee. Had each of the claimants submitted their claims separately they would potentially have had to pay an Issue Fee of £250 and a Hearing Fee of £1250 if they were not entitled to any remission.</p>

Examples of the application of the HMCTS remissions scheme under
Option 2

	<p>Name: Vihaan Status: Unemployed, married with 3 children, wife does not work. Circumstances: Vihaan is claiming unfair dismissal. Since losing his job he has started to claim Housing Benefit and Jobseekers Allowance. Employment Tribunal claim: Level 2 claim Issue Fee: £500 Remissions: Vihaan would be entitled to a full remission (Remission 1) due to claiming a prescribed benefit.</p>
	<p>Name: Feliks Status: Unemployed, married, wife earns £40000 pa. Circumstances: Feliks is claiming unfair dismissal. He was employed at an Executive level in a Media company and is claiming £94000. Employment Tribunal claim: Level 4 fee payable Issue Fee: £1750 Remissions: Feliks would not be entitled to a Remission due to his wife earning more than £18000 per annum</p>
	<p>Name: Brendan Status: Unemployed, married, wife earns £28000 pa. Circumstances: Brendan is claiming disability discrimination and unfair dismissal and is seeking an award of £50000. He is claiming Income-based Jobseekers allowance. Employment Tribunal claim: Level 4 fee payable Issue Fee: £1750 Remissions: Brendan would be entitled to a full remission (Remission 1) due to claiming a prescribed benefit.</p>
	<p>Name: Khushi Status: Employed, married with 4 children Circumstances: Khushi is claiming race and sex discrimination and unfair dismissal. The amount she is claiming for is £80000. She has started a part time job earning £5000 pa and her partner earns £35000 pa. Their joint monthly disposable income is £600 per month. Employment Tribunal claim: Level 4 claim as the award sought exceeds £30000 Issue Fee: £1750 Remissions: Khushi would be entitled to a part remission (Remission 3) on the basis of the household's monthly disposable income. Her contribution to the issue fee would be £250.</p>



Name:	Julia
Status:	Unemployed, married with 2 children.
Circumstances:	Julia was employed as a PA for 20 years at the same company until she was made redundant. Her children are still at school and her husband owns his own business earning £67000 per annum. She is making a claim to the Employment Tribunal for wages and holiday pay that she has not been paid.
Employment Tribunal claim:	Level 1 claim
Issue Fee:	£200
Remissions:	Julia is not entitled to a remission as she does not qualify under any of the 3 remission criteria.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper

Question 1 – Are these the correct success criteria for developing the fee structure? If not, please explain why.

Question 2 – Do you agree that all types of claims should attract fees? If not, please explain why.

Question 3 – Do you believe that two charging points proposed under Option 1 are appropriate? If not, please explain why.

Question 4 – Do you agree that the claims are allocated correctly to the three Levels (see Annex A)? If not, please identify which claims should be allocated differently and explain your reasons.

Question 5 – Do you think that charging three levels of fees payable at two stages proposed under Option 1 is a reasonable approach? If not, please explain why.

Question 6 – Do you agree that it is right that the unsuccessful party should bear the fees paid by the successful party? If not, please explain why.

Question 7 – Do you agree that it is the claimant who should pay the issue fee and, (under Option 1), the hearing fee in order to be able to initiate each stage of the proceedings? If not, please explain why.

Question 8 – Do you agree that these applications should have separate fees? If not please explain why.

Question 9 – Do you agree that mediation by the judiciary should attract a separate fee that is paid by the respondent? If not, please explain why.

Question 10 – Do you agree that the HM Courts & Tribunals Service remission system should be adopted for employment tribunal fees across Great Britain? If not, please explain why.

Question 11 – Are there any changes to the HM Courts & Tribunals Service remission system that you believe would deliver a fairer outcome in employment tribunals?

Question 12 – Do you agree with the fee proposals for multiple claims under Option 1? If not, please explain why.

Question 13 – Do you agree that the HM Courts & Tribunals Service remission system should be adopted for multiple claims? If not, please explain why.

Question 14 – Do you agree with our approach to refunding fees? If not, please explain why.

Question 15 – Do you agree with the Option 1 fee proposals? If not, please explain why.

Question 16 – Do you prefer the wider aims of the Option 2 fee structure? Please give reasons for your answer.

Question 17 – Do you think one fee charged at issue is the appropriate approach? Please give reasons for your answer and provide evidence where available.

Question 18 – Do you think it is appropriate that a threshold should be put in place and that claims above this threshold attract a significantly higher fee? Please give reasons for your answer.

Question 19 – Do you think it is appropriate that the tribunal should be prevented from awarding an award of £30,000 or more if the claimant does not pay the appropriate fee? Please give your reasons and provide any supporting evidence.

Question 20 – Fewer than 7% of ET awards are for more than £30,000. Do you think £30,000 is an appropriate level at which to set the threshold?

Question 21 – Do you agree that Option 2 would be an effective means of providing business with more certainty and in helping manage the realistic expectations of claimants?

Question 22 – Do you agree with our view that it is generally higher income earners who receive awards over £30,000? Please provide any evidence you have for your views.

Question 23 – Do you agree that we should aim to recover through fees a greater contribution to the costs of providing the service from those who choose to make a high value claim (and can afford to pay the fee)? Do you have any views on impacts you think this would have on claimants or respondents? Please provide any supporting evidence for your statement.

Question 24 – Do you agree with the Option 2 fee proposals? If not, please explain why.

Question 25 – Do you agree with our proposals for multiple claims under Option 2? Please give reasons for your answer

Question 26 – Do you agree with our proposals for remissions under Option 2? Please give reasons for your answer

Question 27 – Do you agree with our approach to refunding fees under Option 2? If not, please explain why.

Question 28 – What sort of wider information and guidance do you think is needed to help claimants assess the value of their claim and what issues do you think may need to be overcome?

Question 29 – Is there an alternative fee charging system which you would prefer? If so, please explain how this would work.

Question 30 – Do you agree with the simplified fee structure and our fee proposals for the Employment Appeal Tribunal? If not, please explain why and provide any supporting evidence.

Question 31 – What ways of paying a fee are necessary e.g. credit / debit cards, bank transfers, direct debit, account facilities? When providing your answer please consider that each payment method used will have an additional cost that will be borne by users and the taxpayer.

Question 32 – What aspects should be taken into account when considering centralisation of some stages of claim processing and fee collection?

We would welcome responses to the following questions set out in the accompanying Equality Impact Assessment.

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 (the Level 4 fee) 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 of the Equality Impact Assessment 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.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 6 March 2012 to:

**Ministry of Justice
HQ Civil Family & Tribunals Directorate –
Employment Tribunals Fees Consultation
Level 1 (post point 1.40)
102 Petty France
London SW1H 9AJ**

Tel: 0141 354 8409

Email: EmploymentFeesConsultation@hmcts.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from 0141 354 8409.

Publication of response

A paper summarising the responses to this consultation will be published within three months of the closing date of the consultation. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Ministry of Justice Consultation Co-ordinator, at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Ministry of Justice Consultation Co-ordinator
Better Regulation Unit
Corporate and Access to Justice Analytical Services
7th Floor, Pillar 7:02
102 Petty France
London
SW1H 9AH

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 77.

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