

<b>Title:</b> <b>Introducing a fee charging regime into Employment Tribunals and the Employment Appeal Tribunal</b>  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> HM Courts & Tribunals Service Department for Business, Innovation and Skills	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> TS 007
	<b>Date:</b> November 2011
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary
<b>Contact for enquiries:</b> doug.easton2@hmcts.gsi.gov.uk	

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The Employment Tribunal (ET) and Employment Appeal Tribunal (EAT) are civil courts of law that are fully funded by the taxpayer. Users are not currently required to make a financial contribution for using either the ET or EAT.

Government intervention is needed because taxpayers are currently subject to an excessive financial burden as this free service has become increasingly utilised in recent years.

Fear of tribunal costs and awards is an issue that has been frequently raised by business stakeholders, particularly in relation to the uncapped nature of discrimination awards. This concern may have been influenced by some of the extremely high figures quoted in the press, which in reality are likely to be exceptions. However, we understand that this fear creates uncertainty for businesses and can therefore discourage them from growing and taking on staff.

### What are the policy objectives and the intended effects?

In line with Government policy generally, the fundamental policy objective is to:

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

The intended effects are to:

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

In addition, the policy objectives of Option 2 (see next section) are 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; and
- encourage claimants to make a more informed judgement about the value of their claim and hence narrow the gap between an individual's expectation of what they can 'win' and their actual entitlement, leading to a more satisfactory outcome for claimants and respondents.

The additional intended effects of Option 2 are to:

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

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

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0 – Do nothing. Charge no fee and continue to fund the ET and EAT through general taxation.

Option 1 – To introduce a fee charging structure where:

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

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

- requires the claimant to choose whether to seek an award value above or below £30,000;
- prevents the tribunal from making an award above £30,000 where the claimant has chosen to limit any award value to less than this amount through the payment of an appropriate fee; and
- provides guidance and support to ensure that claimants can assess whether to make a claim for more or less than £30,000.

The consultation seeks views on the proposals.

**Will the policy be reviewed? Yes** If applicable, set review date: April 2014

**What is the basis for this review? PIR.** If applicable, set sunset clause date: N/A

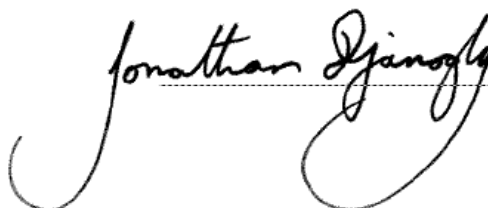
**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**MINISTERIAL Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible: MINISTER



Date: .....

# Summary: Analysis and Evidence

# Policy Option 1

Description: Introduce fees in ET and EAT payable by the party seeking the order; claimants' entitlement to a fee remission in accordance with the current HMCTS civil courts remissions system. All types of fees and all parts of the process attract a fee. Fee levels initially set at a rate that recovers a proportion of the full cost of service provision.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low*	High**	Best Estimate (mid-point)
2011/12	2011/12	10	10	76	43

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low*	1	14	98
High**		20	136
Best Estimate		17	117

### Description and scale of key monetised costs by 'main affected groups'

Compared to the base case, employees who bring a claim to the ET, some of whom subsequently appeal to the EAT initially pay some £9-10m p.a. in fees overall (although if successful this would be borne by the unsuccessful party if ordered by the tribunal). Employers who respond to a claim, some of whom subsequently appeal to the EAT, initially pay £1m p.a. in fees (although if successful this would be borne by the unsuccessful party if ordered by the tribunal). HMCTS spends about £2m to set up the fee payment and remission system, which then costs some £1-2m p.a. to operate. Lawyers potentially lose up to £9m p.a. in income due to the impact of reduced demand for ET legal advice and representation, but compensating adjustments in the UK market for legal services would limit the actual loss.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low*	0	16	108
High**		32	212
Best Estimate		24	160

### Description and scale of key monetised benefits by 'main affected groups'

Depending on the degree of demand response, employees who choose not to bring an ET claim (when they would have done in the base case) avoid the costs of some £1-6m p.a. overall from making a claim. Employers who do not have to respond to an ET claim (when they would otherwise have done) avoid in the region of £2-10m p.a. in costs. Taxpayers gain some £10-11m p.a. as their contribution to ET and EAT costs are replaced by user fees. Taxpayers also gain in the region of another £2-6m p.a. in the form of operational savings that HMCTS would obtain due to reduced demand for its services.

### Other key non-monetised benefits by 'main affected groups'

Compared to the base case, the number of onward appeals every year from the EAT to the Court of Appeal in England & Wales, to the Court of Session in Scotland and ultimately to the UK Supreme Court would tend to decline. These additional savings have not been estimated due to the small numbers of cases involved and uncertainty around the diminishing policy effects at each subsequent appeal stage.

Reduced economic 'deadweight loss' to society as consumption of ET/EAT services is currently higher than would be the case under full cost recovery, but uncertainty around the exact shape of the underlying demand and supply curves makes such estimates unreliable.

### Key assumptions/sensitivities/risks

Real discount rate

3.5%

Reliable long-term forecasts of demand for ET and EAT services do not exist because the structural drivers of user behaviour are not well understood at present, so a base case is based on recent historic data taking into account the expected impacts of currently proposed changes to British employment law, which would reduce demand in any event. The price elasticity of demand for ET and for EAT is unknown, so two scenarios have been used to capture a plausible range of demand responsiveness among employees and employers.

The income distribution of claimants has been estimated using the 2008/09 Family Resources Survey (plus an adjustment to better reflect claimants' characteristics), which is assumed to remain stable in the coming years. This information is needed to estimate eligibility for fee remission, based on the existing civil courts remissions system. The impact of the unsuccessful party being ordered to reimburse the fees of the successful party is ignored.

Direct impact on business (Equivalent Annual) (£m)***			In scope of OIOO?	Measure qualifies as
Costs: £1m	Benefits: £2-10m	Net: £1-9m	No	N/A

\* Low demand response scenario

\*\* High demand response scenario

\*\*\* All private, public and voluntary sector employers

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	April 2013				
Which organisation(s) will enforce the policy?	HMCTS				
What is the annual change in enforcement cost (£m)?	+£1-2m <sup>1</sup>				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	<b>Micro</b> (<10 employees) N/Q	<b>&lt; 20</b> N/Q	<b>Small</b> (<50) N/Q	<b>Medium</b> (<250) N/Q	<b>Large</b> N/Q
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>2</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	54
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	54
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	54
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	54
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	54
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	54
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	55
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	55
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	55
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	55

<sup>1</sup> Estimated cost of administering new system of fee collection and remissions only. HMCTS would also benefit from operational savings due to reduced demand for claims and appeals, other things being equal.

<sup>2</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on 'protected characteristics' under the Equality Act 2010. The protected characteristics are: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership along with pregnancy and maternity.

# Summary: Analysis and Evidence

# Policy Option 2

Description: Introduce fees in ET and EAT payable by the party seeking the order; claimants' entitlement to a fee remission in accordance with the current HMCTS civil courts remissions system. Claimants decide whether to seek an award above or below a threshold of £30,000 based on relevant fee rate. One stage fee paid when claim is issued and other parts of the process attract a fee. Most fees are set below the maximum cost recovery levels.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low*	High**	Best Estimate (mid-point)
2011/12	2011/12	10	7	86	46

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low*	1	18	105
High**		32	186
Best Estimate		2	25

### Description and scale of key monetised costs by 'main affected groups'

Compared to the base case, overall employees who bring a claim to the ET, some of whom subsequently appeal to the EAT initially pay some £10-13m p.a. in fees (although if successful this would be borne by the unsuccessful party if ordered by the tribunal) plus claimants potentially lose up to £5m p.a. in lower awards. Employers who respond to a claim, some of whom subsequently appeal to the EAT, initially pay £1m p.a. in fees (although if successful this would be borne by the unsuccessful party if ordered by the tribunal). HMCTS spends about £2m to set up the fee payment and remission system, which then costs some £1-2m p.a. to operate. Lawyers potentially lose up to £14m p.a. in income due to the impact of reduced demand for ET legal advice and representation, but compensating adjustments in the UK market for legal services would limit the actual loss.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low*	0	20	112
High**		48	272
Best Estimate		34	192

### Description and scale of key monetised benefits by 'main affected groups'

Depending on the degree of demand response, employees who choose not to bring an ET claim (when they would have done in the base case) avoid the costs of some £2-10m p.a. overall from making a claim. Employers who do not have to respond to an ET claim (when they would otherwise have done) avoid in the region of £3-16m p.a. in costs. Employers also potentially benefit by up to £5m p.a. in being ordered to pay lower awards to claimants. Taxpayers gain some £11-14m p.a. as their contribution to ET and EAT costs are replaced by user fees. Taxpayers also gain in the region of another £1-5m p.a. in the form of operational savings that HMCTS would obtain due to reduced demand for its services.

### Other key non-monetised benefits by 'main affected groups'

Compared to the base case, the number of onward appeals every year from the EAT to the Court of Appeal in England & Wales, to the Court of Session in Scotland and ultimately to the UK Supreme Court would tend to decline. These additional savings have not been estimated due to the small numbers of cases involved and uncertainty around the diminishing policy effects at each subsequent appeal stage. Reduced economic 'deadweight loss' to society as consumption of ET/EAT services is currently higher than would be the case under full cost recovery, but uncertainty around the exact shape of the underlying demand and supply curves makes such estimates unreliable.

### Key assumptions/sensitivities/risks

Real discount rate 3.5%

Reliable long-term forecasts of demand for ET and EAT services do not exist because the structural drivers of user behaviour are not well understood at present, so a base case is based on recent historic data taking into account the expected impacts of currently proposed changes to British employment law, which would reduce demand in any event. The price elasticity of demand for ET and for EAT is unknown, so two scenarios have been used to capture a plausible range of demand responsiveness among employees and employers. The income distribution of claimants has been estimated using the 2008/09 Family Resources Survey (plus an adjustment to better reflect claimants' characteristics), which is assumed to remain stable in the coming years. This information is needed to estimate eligibility for fee remission, based on the existing civil courts remissions system. The impact of the unsuccessful party being ordered to reimburse the fees of the successful party is ignored. It is unknown the extent to which claimants seeking compensation in excess of £30k would choose to limit the award values sought in response to the fee structure. Two extra scenarios are used to capture a possible range of responses.

<b>Direct impact on business (Equivalent Annual) (£m)***</b> (nearest £1m)			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> £1m	<b>Benefits:</b> £3-21m	<b>Net:</b> £2-20m	No	N/A

\* Low demand response + No substitution scenarios

\*\* High demand response + Substitution scenarios

\*\*\* All respondents

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			April 2014		
Which organisation(s) will enforce the policy?			HMCTS		
What is the annual change in enforcement cost (£m)?			+£1-2m <sup>1</sup>		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			<b>Costs:</b> N/A	<b>Benefits:</b> N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	<b>Micro</b> (<10 employees) N/Q	<b>&lt; 20</b> N/Q	<b>Small</b> (<50) N/Q	<b>Medium</b> (<250) N/Q	<b>Large</b> N/Q
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	<b>Impact</b>	<b>Page ref within IA</b>
<b>Statutory equality duties</b> <sup>2</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	54
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	54
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	54
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	54
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	54
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	54
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	55
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	55
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	55

<sup>1</sup> Estimated cost of administering new system of fee collection and remissions only. HMCTS would also benefit from operational savings due to reduced demand for claims and appeals, other things being equal.

<sup>2</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on 'protected characteristics' under the Equality Act 2010. The protected characteristics are: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership along with pregnancy and maternity.

<b>Sustainable development</b> Sustainable Development Impact Test guidance	No	55
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## Evidence Base (for summary sheets) – Notes

### References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Tribunals, Courts and Enforcement Act 2007
2	“Resolving Workplace Disputes” consultation, BIS, January 2011
3	“Proposals for the Reform of Legal Aid in England and Wales” consultation response, MoJ, June 2011

### Option 1 - Annual profile of monetised costs and benefits\* - 2011/12 £m (mid-point between high and low demand response scenarios) (nearest £1m)

	Y <sub>0</sub> 2011/12	Y <sub>1</sub> 2012/13	Y <sub>2</sub> 2013/14	Y <sub>3</sub> 2014/15	Y <sub>4</sub> 2015/16	Y <sub>5</sub> 2016/17	Y <sub>6</sub> 2017/18	Y <sub>7</sub> 2018/19	Y <sub>8</sub> 2019/20	Y <sub>9</sub> 2020/21
<b>Transition costs</b>	0	2	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	0	0	17	17	17	17	17	17	17	17
<b>Total annual costs</b>	0	2	17	17	17	17	17	17	17	17
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	0	24	24	24	24	24	24	24	24
<b>Total annual benefits</b>	0	0	24	24	24	24	24	24	24	24

\* For non-monetised benefits please see summary pages and main evidence base section

### Option 2 - Annual profile of monetised costs and benefits\* - 2011/12 £m (mid-point between high and low demand response scenarios) (nearest £1m)

	Y <sub>0</sub> 2011/12	Y <sub>1</sub> 2012/13	Y <sub>2</sub> 2013/14	Y <sub>3</sub> 2014/15	Y <sub>4</sub> 2015/16	Y <sub>5</sub> 2016/17	Y <sub>6</sub> 2017/18	Y <sub>7</sub> 2018/19	Y <sub>8</sub> 2019/20	Y <sub>9</sub> 2020/21
<b>Transition costs</b>	0	0	2	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	0	0	0	25	25	25	25	25	25	25
<b>Total annual costs</b>	0	0	2	25	25	25	25	25	25	25
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	0	0	34	34	34	34	34	34	34
<b>Total annual benefits</b>	0	0	0	34	34	34	34	34	34	34

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base

## 1. Background

- 1.1 Industrial Tribunals in Great Britain were first established by the Industrial Training Act 1964 to consider appeals by employers against training levies imposed under that Act.<sup>1</sup> Since then their scope, procedures and powers have changed and expanded considerably. The Employment Tribunal (ET) currently exists and operates under the Employment Tribunals Act 1996. Their procedures and constitution are currently governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004.<sup>2</sup>
- 1.2 The Employment Appeal Tribunal (EAT) hears appeals against decisions of the ET on points of law. Since 1 April 2011, the administration of these tribunals has been provided by Her Majesty's Courts & Tribunals Service (HMCTS).
- 1.3 The ET is a civil court in that the cases involve disputes between private parties.<sup>3</sup> The tribunal differs from a criminal court where cases are brought on behalf of the State by the Crown Prosecution Service in England and Wales or by the Crown Office and Procurator Fiscal Service in Scotland. Employees and employers who are in a workplace dispute jointly have the choice to resolve the matter between themselves through internal discussion, mediation or conciliation.
- 1.4 The Advisory, Conciliation & Arbitration Service (Acas) offers an alternative to the ET for resolving workplace disputes, although at present Acas is generally used after a claim has been lodged with the tribunal. Although similar to mediation, the term conciliation is used when an employee is making, or could make, a specific complaint against their employer to an ET. The service is voluntary, provided free of charge and both parties must agree to the process, which involves an independent Acas conciliator discussing the issues with both parties in order to help them reach a better understanding of each other's position and underlying interest. The impartial conciliator encourages the parties in dispute to come to an agreement between themselves, thus avoiding the time and expense of contesting the issue in an ET. Acas conciliated settlements (known as COT3s) are legally binding and commit parties to an agreed course of action; issues that are subject to the COT3 cannot subsequently be brought to a tribunal. Conciliation is available until all matters of liability and remedy have been determined by the Tribunal.
- 1.5 ETs were originally intended to be a last resort mechanism to resolve disputes between employers and employees. However, concerns have arisen among business groups that ET claims are increasingly being made without first using other less formal methods of dispute resolution. Partly as a response to this, the Department for Business, Innovation & Skills (BIS) and the former Tribunals Service published a joint consultation document in January 2011 entitled, "Resolving workplace disputes", which set out proposals for reforming the system of workplace dispute resolution in Great Britain.<sup>4</sup>
- 1.6 As part of the reforms, it was announced that the Government would consult on introducing fee-charging into the ET and EAT. Parliament has already made provision for the charging of user fees in tribunals: Section 42 of the Tribunal, Courts and Enforcement Act 2007 empowers the Lord Chancellor to prescribe fees in relation to "anything dealt with" by a tribunal. The relevant secondary legislation must be approved by both Houses of Parliament.

### *Jurisdictions*

- 1.7 An individual may submit a claim to the ET in one or more "jurisdictions" – i.e., the specific grounds of the employee's complaint against the employer. The main areas are:
  - Unfair dismissal
  - Unauthorised deductions (formerly Wages Act)
  - Breach of contract

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<sup>1</sup> ETs and the Employment Appeal Tribunal consider claims and appeals from England, Wales and Scotland. Northern Ireland has a separate system of employment law.

<sup>2</sup> [The Employment Tribunals \(Constitution and Rules of Procedure\) Regulations 2004](#)

<sup>3</sup> One of the parties may be a public sector organisation but in this capacity acts as an employer rather than a Government agency.

<sup>4</sup> [www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf)



- Sex discrimination
- Race discrimination
- Disability discrimination
- Religious belief discrimination
- Sexual orientation discrimination
- Age discrimination
- Working Time Directive
- Redundancy pay
- Equal pay
- National minimum wage

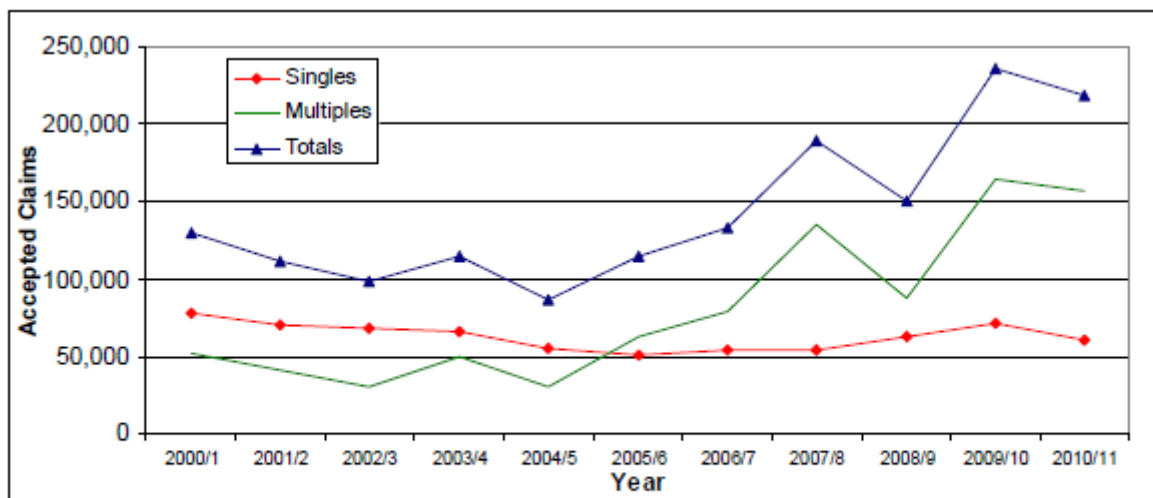
1.8 Claims can be brought under a single jurisdictional complaint (e.g., unfair dismissal alone) or under a number of jurisdictional complaints (e.g., unfair dismissal and sex discrimination). Claims can also be amended or clarified during the course of the ET's proceedings.

### Volume of claims

1.9 ET claims can be classified into two broad categories:

- singles – a complaint brought by a single employee against one employer; or
- multiples – complaints brought by a group of at least two employees against one employer on the same or very similar grounds such that a multiple claim is processed together.

1.10 The annual number of claims lodged at the ET has risen considerably since the mid-2000s, driven largely by an increase in the number of multiple claims submitted, as can be seen in the graph below. The total number of ET claims accepted in 2010/11 was 218,100, which was over twice as high as the number accepted in 2004/05, according to figures published by HMCTS.



Note: Figures for 2007-08 are estimated

Source: ET Reports

1.11 Some of the reasons underlying this upward trend are known. The number of claims alleging unfair dismissal appears to be related, with a time lag, positively to inflows into unemployment.<sup>5</sup> This implies that the economic effects of the 2008-09 recession would have contributed to an increase in this ET claim type in any event.

1.12 Changes in Britain's employment law have a direct influence on the number of claims received by ETs. For instance, the number of age discrimination claims has risen from around 970 in 2006/07 to 6,800 in 2010/11 following the creation of new statutory rights.<sup>6</sup>

<sup>5</sup> The "Employment Tribunal and EAT Statistics 2009/10" publication ([www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/tribs-et-eat-annual-stats-april09-march10.pdf](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/tribs-et-eat-annual-stats-april09-march10.pdf)) states that: "There were 126,300 jurisdictional claims associated with unfair dismissal, breach of contract and redundancy, which is 17% higher than for 2008/09 and 62% higher than in 2007/08, and likely to be a result of the economic recession."

<sup>6</sup> The Employment Equality (Age) Regulations 2006 took effect in October 2006.

- 1.13 Specific workplace disputes can also have an impact on the volume of claims. For example, pending a ruling by the European Court of Justice, over 10,000 multiple claims alleging a breach of the Working Time Directive were submitted every three months by a large group of claimants in the airline industry.

### *ET claim process*

- 1.14 A party making a claim has to present a valid claim form – known as an “ET1 form” – to any one of the 26 local ET offices<sup>7</sup> within a specified period of time of the alleged event. The time limit is generally 3 months, but this period can be longer. For example, there is a 6 months time limit in redundancy payment and equal pay claims. An ET1 form can be presented electronically (over the internet or by e-mail), in hard copy or by fax.
- 1.15 It is the location of the employer that determines whether the claim will be dealt with in England and Wales or in Scotland. This means that, for an employee who lives in Newcastle upon Tyne and works in Edinburgh, any claim would be handled by the ET in Scotland.
- 1.16 A party defending a claim (called the respondent) has to present a response form – known as an “ET3” – to the ET office handling the claim within 28 days of receiving the form. If a respondent fails to present a valid ET3 form within that time limit, a default judgment may be issued. This means that an Employment Judge can issue a decision without the claimant having to attend a hearing.
- 1.17 The flow chart in Annex 2 illustrates how ET claims progress at present. This diagram shows that, once a claim has entered the system, the possible outcomes are:
- the claimant withdraws the application – this may follow contact with Acas or advice from a legal representative;
  - the claim is dismissed because it is not within the scope of employment law or because a Pre-Hearing Review found that there was insufficient evidence to progress the case;
  - the parties reach a conciliated settlement, where Acas is involved in ratifying the final settlement;
  - the parties reach a private settlement outside Acas, either on the basis of a legally binding Compromise Agreement or an “informal agreement”;
  - the case is disposed of by way of a default judgment; or
  - there is a full ET hearing, whereupon the various elements of the claim are upheld or dismissed.
- 1.18 Most claims to the ET are brought by an employee against an employer. However, in 2009/10 there were 539 claims consisting of the following types:
- by employers against a decision of the State – e.g., an appeal by an employer against the issue of prohibition or improvement notice issued by the Health and Safety Executive;
  - by employers against a regulatory body – e.g., an appeal against by an employer against the levy assessment of an Industrial Training Board;
  - by employees against Government Departments – e.g., an appeal against a decision by the Redundancy Payments Office (an executive agency of BIS) not to make a redundancy payment; and
  - by a Government Department or agency – e.g., an application by BIS to prohibit a person from running an employment agency.

### *ET Tracks*

- 1.19 Once a claim has been accepted by the ET it is allocated to one of three “tracks”, depending on the nature of the complaint (or complaints) that have been brought. The track system is an internal ET process that assists both administrators and the judiciary to assess the length of time needed for a final hearing and the amount of case management likely to be required in order to ready the case for final hearing. Claims that start on one track can be re-allocated to another by the judge if considered appropriate.

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<sup>7</sup> The office to which the claim form should be sent is, in England and Wales, determined by the location of the claimant's employment. A full list of the postcodes covered by each tribunal office in England and Wales is contained in the ET leaflet “making a claim” - [www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/employment/forms/10\\_516\\_MCTS\\_Employment\\_April10\\_web.pdf](http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/employment/forms/10_516_MCTS_Employment_April10_web.pdf). In Scotland all claims should be sent to the ET office in Glasgow. If the claim is submitted online it will be routed to the appropriate office.

- 1.20 The three tracks in the ET are:
- i. short
  - ii. standard
  - iii. open.
- 1.21 Some claims involve straightforward questions of fact that can be quickly resolved if the case reaches a hearing. For example, a non-payment of wages on termination of or in the course of employment will focus on the terms of contract and what money was paid. Such claims are allocated to the *short track* and are automatically listed for a one hour hearing on receipt of the claim.
- 1.22 Other types of claims involve more difficult issues and require a greater degree of case management by the judiciary to ensure key points of dispute are identified before hearing. It is also likely that hearings will be lengthier than short track cases. Such claims are allocated to the *standard track* where more case management is required to ready the case for hearing.
- 1.23 The most legally complex of claims require the most amount of judicial and administrative resource to resolve. These claims are therefore allocated to the *open track*. They are discrimination, equal pay and Public Information Disclosure Act claims.
- 1.24 Where a claim contains two jurisdictional complaints that would be allocated to different tracks, the claim will be allocated to the track which covers the most complex of the issues raised. For example, if a claim contained complaints of non-payment of wages on termination of employment (short track) and a complaint of unfair dismissal (standard track) then the claim would be allocated to the standard track.
- 1.25 The relationship between the primary jurisdiction and the ET track system is summarised below.

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

- 1.26 Case management or pre-hearing work is undertaken by the judiciary either with the parties present or via correspondence. The judge can make orders to ensure the claim progresses – such as orders for the provision of additional information, the disclosure and inspection of documents and the preparation or exchange of witness statements. It is also the method by which the main issues in dispute are identified so as to help focus the final hearing on key points and limit the length of the final hearing. This is cost effective as case management is undertaken by the judiciary alone, although most final hearings use a judge and two lay members.

## Cost of ET

- 1.27 Claimants are not currently charged for making use of the ET, which is entirely funded by the UK taxpayer. The total cost of administering the ET was £84 million in money prices during 2009/10. The table below shows that the largest single component of 47% was the combined judicial cost – mostly related to judges’ salaries, fees and expenses (including £9 million on lay members).

Category	2009/10 £m	Share of total
Staff admin	14.7	18%
Other admin	2.8	3%
Estates	13.6	16%
Overheads	13.3	16%
Judicial salaries	21.1	25%
Judicial fees	15.6	19%
Judicial expenses	1.4	2%
Court costs	1.1	1%
<b>TOTAL</b>	<b>83.6</b>	<b>100%</b>

- 1.28 Based on 2009/10 figures as the most recent year for which outturn data are available, the following table sets out the estimated cost per case (uprated to 2011/12 prices using the UK GDP deflators published on HM Treasury’s website and rounded to the nearest £10) of processes by ET track. The core stages in the ET process are “receipt & allocation” and “hearing”, whereas the other elements are optional in that there is no obligation, for instance, to undergo mediation or to obtain written reasons.

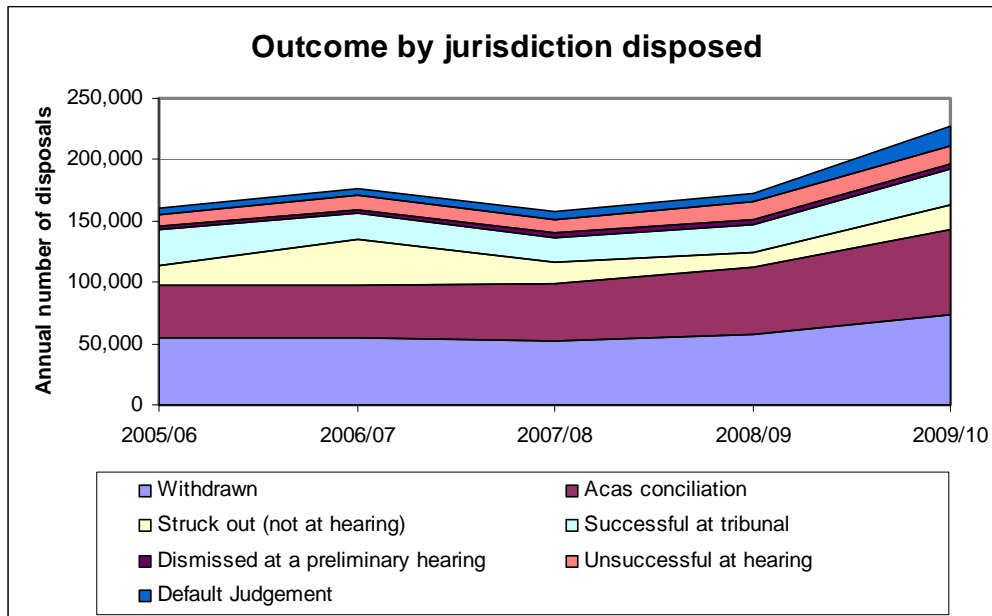
Track	Receipt & allocation	Hearing*	Mediation	Revoke/Review DJs	Dismissal after settlement	Written reasons	Review
Short	£450	£1,570		£360	£180	£470	£770
Standard	£410	£4,120		£360	£240	£1,050	£1,550
Open	£420	£6,170	£2,610	£360	£210	£1,380	£1,830
Variable	41%	82%	100%	70%	46%	87%	92%

\* includes interlocutory hearings

- 1.29 The table also shows the approximate proportions of the estimated average total cost per case by ET stage that is variable – i.e., the element of cost that will vary as the number of cases varies. For example, the cost of mediation (which only takes place in the open track) is a pure variable cost because it solely involves judicial time. Overall, it is currently estimated that variable costs accounted for 67% of the total ET cost in 2009/10.
- 1.30 Historically, the ET and EAT have not produced management information-based estimates of costs per case by stage. The cost estimates have therefore been produced using a new cost model that was developed specifically to support the development and analysis of the proposed fee-charging regime. This model provides our current best estimate of the costs per case at each main stage, which means that the figures may contain inaccuracies. Going forward, they will be updated and reviewed – e.g., to provide representative costs of administering single claims and multiple claims, instead of the weighted averages of all claims that are set out in the preceding table.

## ET outcomes

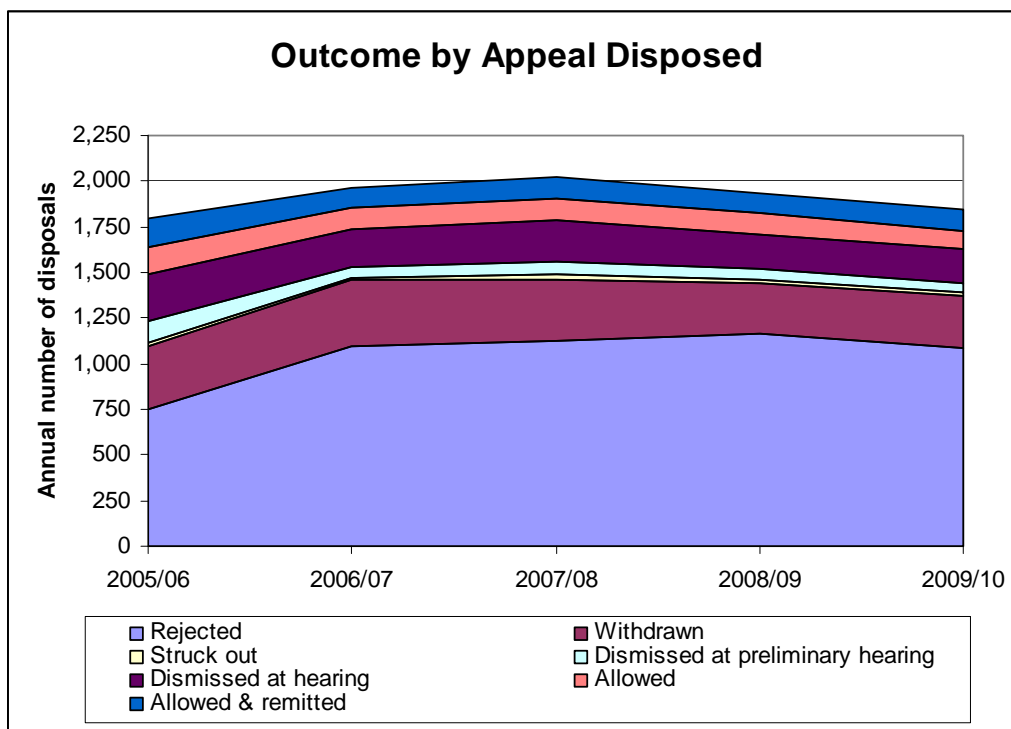
- 1.31 Since 2005/06 the number of ET claims disposed has averaged about 95,000 per year and fluctuated between 80,000 and 115,000. The composition of outcomes disposed by jurisdiction is illustrated in the following graph.



- 1.32 Over this five year period, on average 23% of jurisdictional complaints were resolved at a hearing – over half of which in favour of the claimant. Of all jurisdictional outcomes, an average of 33% were withdrawn by the claimant, 29% were conciliated by Acas, 14% were struck out before a hearing and the remaining 4% were Default Judgments.
- 1.33 It is important to reiterate, however, that a (single or multiple) claim can contain a number of separate jurisdictional complaints. In recent years there has been an average of 1.9 complaints disposed for every ET claim disposed.

### *Employment Appeal Tribunal (EAT)*

- 1.34 The EAT hears appeals on a point of law regarding any decision made by the ET. An appeal can be made against any decision of a tribunal at any time during the course of the claim through the ET, though most appeals relate to the final judgment of the ET. An appeal must generally be made to the EAT within 42 days of the ET decision in question. The EAT has one office in London to which all appeals must be submitted, though hearings also take place in Edinburgh.
- 1.35 Either party in an ET claim can appeal to the EAT. The party that appeals is called the appellant and the other party to the case is the respondent. The appellant can therefore be either the employer or the employee.
- 1.36 On receipt of a notice of appeal, the registrar or judge will review it to check that it is properly completed and provides the required supporting evidence. Unlike an ET claim at present, the appeal can be rejected at the outset on the grounds that there is no reasonable prospect of success, although this decision can also be appealed.
- 1.37 Since 2005/06 the number of appeals disposed has averaged about 1,900 per year and fluctuated between around 1,800 and 2,000. The composition of appeal outcomes since 2005/06 is illustrated in the graph below.



- 1.38 Over this five year period, on average 28% of appeals were resolved at a hearing – almost half of which in favour of the appellant (either upheld or upheld and remitted back to the ET), while the other half were dismissed at a preliminary or full hearing. Of all appeals disposed, an average of 55% were rejected for being out of time or having no prospect of success, 17% were withdrawn by the appellant and 1% were struck out.<sup>8</sup>
- 1.39 Unlike ET claims, appeals are not allocated to a track because the complexity of the issue is not determined by the appeal type. All but the most exceptional appeals are listed for 1 day’s hearing and most are disposed of within this time. Acas conciliation is not routinely available in the EAT because the parties are appealing a point that has been explored before so the chances of settlement are small.

### Cost of EAT

- 1.40 Appellants are not currently charged for making use of the EAT, which is entirely funded by the taxpayer. The total cost of administering the EAT was over £2 million in money prices during 2009/10. The table below shows that the largest single component was staff administration costs, followed closely by judicial costs (including £0.3 million on lay members).

Category	2009/10 £m	Share of total
Staff admin	1.1	45%
Other admin	0.3	11%
Judicial salaries	0.7	30%
Judicial fees	0.2	9%
Judicial expenses	0.1	4%
Court costs*	0.0	1%
<b>TOTAL</b>	<b>2.5</b>	<b>100%</b>

\* less than £0.05m

- 1.41 The EAT judiciary is largely composed of high court and circuit judges, so when they are sitting in the ET their cost becomes a cost of the EAT. The EAT’s overheads are provided by the ET.

<sup>8</sup> Among the reasons for “strike out” in the EAT may be that a claim/response has not been actively pursued or that there has been non-compliance with an order or practice direction.

1.42 Based on 2009/10 outturn data as the most recent year available, the following table sets out the cost per appeal (uprated to 2011/12 prices using the UK GDP deflators published on HM Treasury’s website and rounded to the nearest £10) by EAT stage. The table also shows that most of the average total cost of appeals by stage is variable. Overall, it is estimated that variable costs accounted for 95% of the total EAT cost in 2009/10. These estimates will be updated and reviewed going forward.

Stage	Receipt & registration	Hearing*
Cost	£300	£4,140
Variable	94%	95%

\* includes interlocutory + pre-hearing

### Further appeals

1.43 Either party in a case has the right to appeal a decision made by the EAT on a point of law. These further appeals are heard by the Court of Appeal in England & Wales and by the Court of Session in Scotland. The numbers of permissions to appeal (PTAs) and appeals issued in England & Wales since 2006/07 are listed below; equivalent data are not available for Scotland.

Cases from EAT, E&W

Year	No. of PTAs	Appeals issued
2006/07	142	41
2007/08	138	40
2008/09	138	48
2009/10	145	49
2010/11	168	45
<b>Average</b>	<b>146</b>	<b>45</b>

1.44 The table suggests that around 3% of EAT disposals were themselves the subject of a substantive onward appeal over the period. Of this fraction, around 28% of further appeals were upheld on average and the remainder were dismissed every year.

1.45 In addition, either party can next make a further appeal to the UK Supreme Court (which replaced the Appellate Committee of the House of Lords in October 2009). Between 2005 and 2009 a total of 8 employment cases were resolved in this manner, of which 7 were disposed during 2006 alone.<sup>9</sup> This total represents less than 0.1% of all EAT decisions handed down over this period.

1.46 Fees are payable for making seeking permission to appeal and, should that be granted, making an appeal to the Court of Appeal, Court of Session and UK Supreme Court. The current fee rates are set out below.

Court	Permission to appeal	Appeal
Court of Appeal	£235	£465
Court of Session	N/A	£180
UK Supreme Court	£800	£1600 (£800 if permission sought)

<sup>9</sup> Table 7.5, “Judicial and Court Statistics 2009” ([www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/judicial-annual.htm](http://www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/judicial-annual.htm)).

## 2. Policy rationale and objective

- 2.1 Hitherto users of the services provided by the ET and EAT have not had to pay any fees, save for the cost of any legal representation or advice that they choose to engage. This was because, until the implementation of the Tribunals, Courts and Enforcement Act 2007, the statutory power to prescribe user fees did not exist. But the 2007 Act now allows the Government to set fees in respect of any tribunal, subject to the necessary Parliamentary approval.
- 2.2 HM Treasury guidance states<sup>10</sup> that: “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.”
- 2.3 The intention is therefore to comply with this guidance which also states<sup>11</sup> that, “charges within and among central government organisations should be made at full cost including the standard cost of capital”. To this end, the Government is consulting on how best to begin charging fees for users of the Employment Tribunal and the Employment Appeal Tribunal.
- 2.4 The fundamental policy aim is to transfer a proportion of the cost of running the ET and EAT from taxpayers to users. The policy objective is to require those users to pay an appropriate fee where they can afford to do so in order to have their workplace dispute resolved through the ET and EAT process.
- 2.5 Under Option 1 (see section 3 below) it is proposed that the fee levels would initially be set at cost recovery rate of significantly less than 100% net of remissions. The taxpayer contribution would be lower compared to the status quo, but the initial proposed fee levels mean that the taxpayer would still make a significant contribution towards the cost of administering ET claims and EAT appeals. Moreover, even at 100% cost recovery levels the contribution of taxpayers would not be fully removed as they would continue to subsidise those claimants who are eligible for fee remissions.
- 2.6 The policy aim for Option 2 is wider. In addition to the practicalities of cost recovery, the Government is consulting on whether and how the ET fee structure could be used to provide greater certainty for employers as to their maximum liability in tribunal cases. This would be achieved by ensuring claimants decide whether to seek an award value of more or less than £30,000 where claimants seeking an award above this threshold would pay a substantially higher fee than those seeking under this threshold. Supporting guidance would be provided to improve claimant expectations on the level of awards with likely outcomes.
- 2.7 The introduction of fees into the ET and EAT is part of a wider Government review of Britain’s employment laws being led by BIS that is designed to encourage employers and employees to work together to resolve workplace disputes outside of a tribunal.

### Main Affected Groups

- 2.8 The following groups would be affected by the policy proposal:
  - Claimants – typically at least one employee or ex-employee, although an employer in a small minority of cases (such as in paragraph 1.18);
  - Respondents – typically the employer<sup>12</sup>;
  - Appellants – employees or employers who choose to appeal an ET decision;
  - HMCTS – the organisation that administers the ET and EAT;
  - Taxpayers – the ET and EAT are entirely subsidised by taxpayers at present;
  - Lawyers – claimants and respondents sometimes make use of legal advice and representation and

<sup>10</sup> Section 6.1.1 of “Managing Public Money” ([www.hm-treasury.gov.uk/psr\\_managingpublicmoney\\_publication.htm](http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm))

<sup>11</sup> Section 6.2.10 of HMT’s “Managing Public Money”.

<sup>12</sup> The employee would be the respondent where an employer chooses to make a counterclaim (which would only happen in breach of contract complaints).



- Advisory, Conciliation & Arbitration Service (Acas) – the publicly funded organisation which offers an alternative to the ET process in that Acas provides a free dispute resolution service to employers and employees.

### 3. Description of options

3.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot readily be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

#### Base Case - “Option 0”

3.2 The cost of running the ET and EAT is currently met by part of the allocation of funds provided to the MoJ which are ultimately sourced from the British taxpayer. The implications of not introducing fees is that the funds required to maintain the ET and EAT in its current form would have to be found from even greater efficiency savings within HMCTS, from elsewhere within the MoJ budget and/or a reduced service to users.

3.3 Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).<sup>13</sup>

3.4 As stated earlier, BIS and the former Tribunals Service jointly published a consultation document on “Resolving Workplace Disputes” in January 2011. This invited views on a series of proposed reforms to employment law and the way in which ETs would operate in future. Although the Government has yet to respond to this consultation (which closed in April 2011) and Parliament has not decided whether to enact any legislative changes, it is appropriate to incorporate these proposals into the base case against which to assess the impacts of ET and EAT fee-charging. While the exact timing of these proposals has yet to be decided at the time of writing, this IA assumes for modelling purposes that all of the BIS proposals have taken effect by the start of 2013/14.<sup>14</sup>

3.5 Moreover, the Ministry of Justice has consulted on a number of reforms to legal aid in England and Wales. Legal aid is currently available for (i) advice in the ET; and (ii) advice and representation in the EAT. The Government Response to this consultation was published in June 2011. It set out plans to remove all employment matters from the scope of legal aid in England and Wales, except for discrimination claims – the latter will continue to be supported by legal aid in the same way as at present.<sup>15</sup> It is not expected that the introduction of ET/EAT fee-charging would have a material impact on the total demand for legal aid in England and Wales, compared to the base case.

3.6 These reforms do not affect Scottish legal aid which will continue unchanged. Since the late 1990s in Scotland ET claimants have had the right to apply for a type of legal aid called “assistance by way of representation” (ABWOR). This legal aid would only be granted if: (i) the case is “arguable”, i.e., has a reasonable chance of success; (ii) it is deemed reasonable in the particular circumstances that ABWOR be made available; and (iii) the case is too complex to allow the claimant to present it to a minimum standard of effectiveness in person. The Scottish Legal Aid Board receives relatively few successful applications for ABWOR in respect of ET proceedings – e.g., there were 414 during 2009/10, 271 in 2008/09 and 219 in 2007/08. It is not

<sup>13</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The NPV is expressed in real terms and takes into account the fact that society tends to attach a decreasing weight to costs and benefits the further into the future they occur.

<sup>14</sup> One element of the BIS reforms – Early Conciliation – would not commence before 2014/15. While this coincides with the commencement of Option 2, it is a year after the envisaged start of Option 1. However, this difference is ignored in the Impact Assessment, which would probably result in higher demand for the ET and EAT during 2013/14, other things being equal, and therefore more fee income that year in reality.

<sup>15</sup> “Proposals for the Reform of Legal Aid in England & Wales”, Ministry of Justice, 21 June 2011 ([www.justice.gov.uk/consultations/legal-aid-reform.htm](http://www.justice.gov.uk/consultations/legal-aid-reform.htm))

expected that fee-charging would have a material impact on the total demand for legal aid in Scotland, compared to the base case.

- 3.7 The structural drivers of demand for ET and EAT services generally are not well understood at present. In the absence of reliable longer-term forecasts about the future number of ET claims and EAT appeals under the status quo, the first step in defining a suitable base case is to estimate a notional equilibrium – or ‘steady state’ – for the annual number of cases that claimants may bring to the ET during the remainder of the 2010s. According to data published by the former Tribunals Service, there was an annual average of around 165,000 claims accepted by the ET between 2005/06 and 2009/10. This five year period roughly corresponds to the most recent complete business cycle in the UK economy.<sup>16</sup>
- 3.8 Converting the annual number of ET claims into the relevant number of cases against separate employers is not straightforward. By definition, a single claim involves one claim per employer case – i.e., a ratio of 1:1. However, a multiple is a group of claims against one employer on the same or very similar grounds. On average, according to ET data, there were around 34 claims in each multiple submitted during 2009/10 – i.e., a ratio of 34:1. This was significantly higher than the median due to a limited number of cases involving a large number of claims, as can be seen in the table below.<sup>17</sup>

Number of claims in the multiple	Number of employer cases	Share of total
2-4	2,914	60.4%
5-10	1,184	24.5%
11-20	291	6.0%
21-30	128	2.7%
31-50	120	2.5%
51-100	100	2.1%
101-200	41	0.9%
201-500	22	0.5%
501-1,000	10	0.2%
1,001-5,000	8	0.2%
Over 5,000	5	0.1%
<b>TOTAL</b>	<b>4,823</b>	<b>100.0%</b>

- 3.9 The table shows that 60% of multiples were cases consisting of between 2 and 4 claims against the same employer in the most recent year for which data are available. It has not been possible from the available data to identify the exact number of 2009/10 cases that consisted specifically of 2, 3 or 4 claims, though it appears likely that the median number of claims per case was around 4.<sup>18</sup>
- 3.10 ET figures show that, averaged over the five year period between 2005/06 and 2009/10, 38% of accepted claims were singles and the remaining 62% were multiples. Applying the relevant ratio of single/multiple claims to cases, it is estimated that the steady state number of ET cases is around 65,500 per year, of which 95% are singles and 5% multiples, as shown in the table below.

Type	Singles	Multiples	Total
Claims	62,624	102,176	164,800
Cases	62,624	3,005	65,629

<sup>16</sup> One academic study concluded that the UK business cycle lasts around 62 months on average. “An Examination of UK Business Cycle Fluctuations: 1871-1997”, University of Cambridge Working Paper in Economics #24 ([econpapers.repec.org/paper/camcamdae/0024.htm](http://econpapers.repec.org/paper/camcamdae/0024.htm)).

<sup>17</sup> The average of 34 multiple claims per case was derived as follows: there were around 164,800 multiple claims accepted in 2009/10, which equated to 4,823 cases. The ratio was therefore 34:1.

<sup>18</sup> The maximum number of ET claims in any multiple during 2009/10 was 11,288.

- 3.11 The second step in specifying an appropriate base case is to reduce the steady state number of ET cases to take account of the “Resolving Workplace Disputes” proposals. Specifically, it has been proposed that all ET claims are submitted to Acas in the first instance. This would allow Acas a specified period to offer Early Conciliation before any case fully enters the ET system, unless one party chooses to opt out. At present, both parties have to opt in to Early Conciliation. BIS has estimated that making Early Conciliation the default would reduce the annual number of ET cases by around 25%.
- 3.12 The final step in defining the base case is to make an adjustment for the BIS consultation’s proposal to increase the minimum qualifying period from 1 to 2 years before which an employee is eligible to take an Unfair Dismissal (UD) case against an employer. BIS has estimated that this change would further reduce the annual number of ET cases by around 2,000, taking into account the policy interaction with Early Conciliation.
- 3.13 Combining these last two steps, the overall effect is summarised in the following table. This shows that, based on the actual figures from 2005/06 to 2009/10, the imputed steady state number of ET cases in ‘Option 0’ is around 47,200 per year if the main “Resolving Workplace Disputes” reforms are implemented.

Reform	No. cases
Early conciliation (-25%)	-16,407
UD time increase	-2,000
<b>Remaining ET cases</b>	<b>47,222</b>

- 3.14 Comparing the estimated number of steady state ET cases in paragraph 3.10 to the number of EAT cases disposed over the same period shows that around 3% of ET cases resulted in a subsequent appeal during the five year period in question. Assuming that this rate of appeal is not significantly influenced by the aforementioned BIS reforms, it follows that the imputed steady state number of appeals post-BIS reforms would be around 1,400 per year in the absence of fee-charging. This would represent a reduction of some 25% on the average number of EAT disposals since 2005/06 in any event.

Remaining ET cases	47,222
Number of appeals	1,417

- 3.15 The Government response to the RWD consultation announced some reforms that are intended to reduce the cost of the ET and EAT process to the Exchequer and to users. Such reforms will tend to lower the average total cost of administering a claim and appeal at various tribunal stages in the coming years. Analysis undertaken for the Government response to the RWD consultation concluded that the savings to HMCTS from the tribunal-focused reforms would be relatively modest – perhaps around £1 million per year in total at today’s prices when they have fully taken effect. These modest future impacts are ignored in the current Impact Assessment. The Government response to the MoJ’s fee-charging consultation will, however, be based on the 2010/11 unit cost model for the ET/EAT plus explicit adjustments to take account of the aforementioned reforms.

## Option 1

- 3.16 Subject to Parliamentary approval of the necessary secondary legislation, it is proposed that fees for ET and EAT cases are introduced at the start of 2013/14 on the basis of:
- the person who seeks the order initially pays most of the fees;
  - all types of ET claims and appeals and all parts of the process are subject to fee-charging;
  - fees paid at issue and hearing and for several specified applications in ET;
  - fees payable in advance and before cost is incurred;
  - adopting the HMCTS remission system to ensure that those on a low income do not pay at all or only pay part of the fee; and
  - a power for the tribunal to order that the unsuccessful party reimburse the fees paid by the winning party.

3.17 Fees would initially be set at less than 100% of cost recovery net of remissions. Based on 2009/10 data, it is estimated that the fee levels proposed (plus remitted income) would have met approximately 33% of the total costs of providing the ET and EAT overall service.

### *Employment Tribunal fees*

- 3.18 The issue and hearing fees would initially be payable by the claimant as the party seeking the order. The proposed level of fee depends upon the ET's underlying costs that are themselves a function of: (i) the type of claim made; and (ii) the stage in proceedings reached by the claim.
- 3.19 The type of claim made would initially determine the relevant fee for bringing a complaint to the ET. There are over 60 types of claims that can be made to the ET and each claim is allocated to one of three "fee Levels", equating to the tracks that are currently used. A full list of fee levels to which individual complaints are allocated is set out in Annex 3.
- 3.20 Where a claim contains two jurisdictional complaints that would have attracted fees at different levels, the fee payable is that appropriate to the most complex of the issues raised. For example, if a claim contained complaints of non-payment of wages on termination of employment (fee Level 1) and a complaint of unfair dismissal (Level 2), then one fee at Level 2 would be payable.
- 3.21 Fees would be payable in advance and act as a trigger for work to be undertaken and thus cost incurred by HMCTS. In the absence of a fee (or a valid remission application), the case would not progress. The tribunal will be able to strike out a claim if the fee (or remission) requirement is not met when due.
- 3.22 It is proposed in Option 1 that there would be 2 principal fee charging points:
- Issue fee – processing and checking the application as well as issuing the claim to the respondent; allocating the claim to the appropriate track; undertaking pre-hearing work and case management by the judiciary; and
  - Hearing fee – listing and conducting a full hearing.
- 3.23 The consultation proposes the following indicative fee levels for single claims (i.e., for each case). Although they are assumed to remain constant in real terms, it should be noted that all of the ET fee rates may be revised depending on the consultation responses received, the estimated ET costs per case in 2010/11 and expected future inflation.

**ET fees payable by the claimant per case (2011/12 prices)**

Track	Issue fee	Hearing fee
Level 1	£150	£250
Level 2	£200	£1,000
Level 3	£250	£1,250

- 3.24 In general, the further a claim progress in the tribunal process the higher the fee rate. This is because a case that proceeds further consumes increasingly expensive resources, notably the time of the judiciary and lay members.
- 3.25 Respondents in a case would pay fees for any orders they seek:
- counterclaim<sup>19</sup> – processing and issuing the counterclaim to the claimant;
  - setting aside a Default Judgment – asking the judge to overturn a judgment in default that arose because of a lack of a response by the respondent to the ET claim; and
  - dismissal of the case after settlement or withdrawal<sup>20</sup> – seeking dismissal of a case requested by the respondent after the case has been settled or withdrawn by the claimant.

<sup>19</sup> The respondent may decide to make a counterclaim in cases where a claimant has brought a breach of contract claim that arose from or was outstanding at the date when employment was terminated.

<sup>20</sup> The claim would lapse after a year in any event.

**Fees to be paid by the respondent per case (2011/12 prices)**

Counter-claim	Application to set aside default judgment	Application for dismissal following settlement or withdrawal
£150	£100	£60

- 3.26 Mediation by the judiciary, which is unique to the Employment Tribunal, would attract a fee of £750 at 2011/12 prices. The consultation proposes that the respondent should be liable for this fee.
- 3.27 Two applications, which can be sought by either party, would be payable by the party that applies:
- a request for written reasons – providing written reasons if the judgment and reasons have been issued orally; and
  - a review – asking the ET to review its own decision.

**Fees payable by the party seeking the order per case (2011/12 prices)**

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

*Multiple claims*

- 3.28 A financial contribution would be sought from all claimants no matter how they commence the proceedings. To achieve this, a slightly different fee system is needed for multiple claims – namely, a case where at least 2 claimants bring a complaint against one employer. The fee payable is based upon: (i) type of claim made; (ii) the stage reached in the proceedings; and (iii) the number of claimants in the multiple. Subject to further work to estimate the cost of administering multiple claims, this approach reflects the likely greater cost to HMCTS of processing multiple claims.
- 3.29 The following table sets out the proposed issue and hearing fees payable by multiple claimants per case.

Claims in the multiple	Fee payable
2-4	2x single fee
5-10	3x single fee
11-50	4x single fee
51-200	5x single fee
Above 200	6x single fee

- 3.30 This would mean that in a case where 7 claims have been made against the same employer, the 7 claimants collectively would pay 3 times the relevant single claim fee between them. Similarly, if there are 30 claims made against an employer, then all 30 claimants collectively as a case would be liable to pay 4 times the single claim fee. In general terms, therefore, the average fee paid by a claimant in a given multiple would fall as the total number of claims increases.
- 3.31 For claimants in a multiple who are represented by trade unions it is envisaged that the representative would be responsible for paying the fee on behalf of the group. This would mean that there is unlikely to be any impact on the behaviour of those claimants within such multiples because they would not normally directly pay the fee themselves. For those claimants in a multiple who are representing themselves, they would pay the relevant fees collectively.

## Remissions

- 3.32 The HMCTS remissions policy would be available for those individuals who cannot afford to pay part or all of any fee.<sup>21</sup> To be eligible an individual claimant must prove either that he is in receipt of certain permitted state benefits or that his household income is below a certain threshold. In line with the civil courts approach, proof of eligibility must be provided on every occasion a remission is sought.
- 3.33 The eligibility criteria used for remissions would be the same as in the civil courts system and any future changes to that system would also apply to ET users. For example, changes may be needed to accommodate the Government's intention to introduce the new Universal Credit in late 2013 which will replace all work-related state benefits.<sup>22</sup> However, it must be noted that only individuals are able to benefit from fee remission; employers, as corporate bodies, would not be eligible to apply for a remission.
- 3.34 The current remission system is made up of three eligibility criteria.

- **Remission 1** – A full fee remission for an individual in receipt of one of the following passported benefits: Income Support, Income-based Jobseekers Allowance, Pension Credit guarantee credit, Income-related Employment and Support Allowance and Working Tax Credit but not also receiving Child Tax Credit.
- **Remission 2** – A full fee remission for an individual or couple based on a means test to calculate gross annual income. Gross annual income not exceeding the stated threshold amounts in the following table will receive a full fee remission.

Number of children of party paying fee	Single	Couple
No children	£13,000*	£18,000*
1 child	£15,930	£20,930
2 children	£18,860	£23,890

If 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.

\*The amounts contained in this table for an individual (and couple) are based on the Working Tax Credit thresholds set out by HM Revenue and Customs. The single child amount is based on the amount provided by Income Support for a dependant child.

- **Remission 3** – A full or partial fee remission for an individual based on an income and expenditure means test to calculate the individual's (and if applicable their partner's) monthly disposable income<sup>23</sup>:
  - 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

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

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

\*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.

<sup>21</sup> [www.hmcourts-service.gov.uk/courtfinder/forms/ex160a\\_web\\_1010.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/ex160a_web_1010.pdf)

<sup>22</sup> Little policy detail exists at present ([Universal Credit: welfare that works](#) - DWP).

<sup>23</sup> Monthly household disposable income is defined as net monthly income (after deduction of tax, national insurance contributions and student loan payments) minus fixed allowances (depending on whether the party has a partner and the number of children they have- see table 2 above), housing costs, childcare expenses, child maintenance expenses and payments under a court order

If, for example, a claimant lives in a household that has a monthly disposable household income of between £50 and £59.99 (in nominal prices), then at present he would only have to contribute £12.50 towards a fee, regardless of the fee amount. A higher monthly disposable income means that the claimant would have to make a larger contribution to the fee.

- 3.35 The Scottish civil courts have a remissions system that differs from the system available in England and Wales. In Scotland remissions are available for those court users in receipt of legal aid, certain state benefits and those on low incomes – as in Remissions 1 and 2 of the England and Wales system summarised above. However, no partial remissions are available at present. The policy intention would be to use the HMCTS remissions system in Scotland with respect to ET and EAT fee-charging so as to ensure consistency of approach across Great Britain as a whole as well as offering all individuals the benefit of a partial remission.
- 3.36 A remissions policy broadly in line with that in the civil courts would also be made available to individual claimants who participate in a multiple. This would mean that 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 issue fee. We propose to adopt the same principle would when payment of the hearing fee is due – i.e., where a sub-group of claimants is not entitled to a remission, responsibility for payment of the hearing fee would rest with that group. The consultation seeks views on what discretion would be needed to ensure that no one claimant in a multiple is required to pay more than the comparable single fee.
- 3.37 Fees do not impinge on the discretion of the ET judiciary to decide on the merits of cases that are joined together and/or split apart for the purposes of hearing. The consultation asks 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 to multiple or vice versa.
- 3.38 It is also proposed that the Lord Chancellor would have discretion to remit fees in certain circumstances.

### *Refunds*

- 3.39 If, 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, then he would receive a refund. It is not proposed that refunds would be available in any other circumstances.

### *Recovery of fees*

- 3.40 Successful parties in a case adjudicated by the ET would be able to ask for the unsuccessful party to reimburse the fees paid. Tribunal rules<sup>24</sup> already allow the tribunal to award costs<sup>25</sup> in favour of one party where the other party is deemed to have acted “vexatiously, abusively, disruptively or otherwise unreasonably” or where the bringing or conducting of the proceedings has been misconceived.
- 3.41 Costs are awarded in less than 1% of claims disposed of by an ET at hearing per year. However, an amendment to the rules will ensure that the tribunal has discretion to order the unsuccessful party reimburses the fees incurred by the successful party. It follows that there are likely to be cases where an unsuccessful employer would be obliged by the ET to pay the fees incurred by the claimant(s). Conversely, the tribunal may decide not to make a fees order where this is considered appropriate given the circumstances of the case.
- 3.42 Other than the existing costs award mentioned above, there would be no general power to award costs in ET cases and there are no plans to extend this as part of the fee-charging regime. The rule would be limited to the reimbursement of fees only by the unsuccessful to the successful party.

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<sup>24</sup> Rule 38 et seq of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

<sup>25</sup> Called “expenses” in Scotland.

- 3.43 At present, if a successful claimant does not receive the compensation that the ET awards, then he can seek to enforce payment through one of a number of methods. Awards made in England and Wales may be enforced through High Court Enforcement Officers as if they were County Court Judgments through the “ET Fast Track Scheme”.<sup>26</sup> Awards made in Scotland may be enforced by Sheriff Officers. Any fees ordered to be reimbursed by the unsuccessful party would be enforced as part of the enforcement process.
- 3.44 Moreover, if a person habitually and without reasonable justification initiates proceedings against an employer in the ET, a government law officer<sup>27</sup> may apply to the EAT for an Order declaring that person to be a “vexatious litigant”. This has the effect of barring that person from bringing further proceedings in the ET without the consent of the EAT.

### *Employment Appeal Tribunal (EAT)*

- 3.45 All fees in the Employment Appeal Tribunal would initially be paid by the appellant. The proposed fee would depend only on the stage of the proceedings because the costs incurred by the EAT do not depend upon the type of appeal. Multiples do not exist in the EAT as all cases are effectively treated as singles.
- 3.46 It is proposed that there will be just 2 fee-charging points:
- application – checking the application as well as issuing the appeal and some preliminary case management procedures; and
  - hearing – listing and hearing the appeal.
- 3.47 The consultation proposes the following indicative fee rates to appeal an ET decision. Although it is assumed that the fees remain constant in real terms, as with ET fees, it should be noted that the EAT fee rates may be revised depending on the consultation responses received, the estimated EAT costs per case in 2010/11 and expected future inflation.

**EAT fees per appeal (2011/12 prices)**

	Application	Hearing
Fee	£400	£1,200

- 3.48 Like the ET, the EAT would have power to order the unsuccessful party to reimburse the fees of the successful party. Remissions would be available to individuals under the HMCTS system and the same refunds would also apply.

### **Option 2 – Alternative proposal for ET fees only**

- 3.49 Subject to Parliamentary approval and the necessary primary legislation, it is proposed that fees for ET and EAT cases are introduced at the start of 2014/15 on the basis 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. The fee structure would have a single charging point. The remaining fee structure is unchanged compared to Option 1:
- the party who seeks the order pays the relevant fee;
  - all types of ET claims and appeals and all parts of the process are subject to fee-charging;
  - fees are payable in advance and before cost is incurred;
  - adopting the prevailing HMCTS 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 unsuccessful party reimburse the fees paid by the winning party; and
  - the fees payable by the respondent and appellant would be the same.

### *Single claims*

<sup>26</sup> This scheme was introduced in April 2010.

<sup>27</sup> The Advocate General in England and Wales; the Lord Advocate in Scotland.



- 3.50 The claimant would only pay one fee at the issue stage. There would be four fee Levels where the relevant fee rate depends upon the type of claim made and whether the claimant is seeking an award of £30,000 or more. Where a claimant seeks an award £30,000 or more, then the Level 4 fee is payable, irrespective of the type of claim made. This will enable the tribunal to award whatever amount it considers appropriate should the claimant be successful, as would happen under Option 1 for all three fee Levels.
- 3.51 But if a claimant chooses to limit their claim value to less than £30,000, then a Level 1, 2 or 3 fee becomes payable, depending on the type of claim. The 60 different types of claims that can be made to the ET are allocated across the three fee levels on the same basis as Option 1 (see Annex 3). A direct consequence of claimants choosing to limit their claim values by paying a fee at Levels 1, 2 or 3 is that the tribunal would be unable to make an award above £30,000, should the claimant be successful at a hearing. Any amount agreed at settlement would remain a private arrangement between the parties and so would not be affected.
- 3.52 As under Option 1, all fees would be payable in advance and act as a trigger for work to be undertaken and thus cost incurred by HMCTS. In the absence of a fee (or a valid remission application), the case would not be accepted.
- 3.53 The consultation proposes the following indicative fee levels for single claims. Although they are assumed in this Impact Assessment to remain constant in real terms, it should be noted that all of the ET fee rates may be revised depending on the consultation responses received, the estimated ET costs per case in 2010/11 and expected future inflation.

Track	Fee
Level 1	£200
Level 2	£500
Level 3	£600
Level 4	£1,750

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

### *Multiple claims*

- 3.55 When two or more claimants bring a complaint against one employer, the fee payable would be based upon: (i) type of claim made; (ii) the number of parties in the multiple; and (iii) whether any claimant within the multiple is seeking an award above £30,000. Subject to further work to estimate the cost of administering multiple claims, this approach reflects the likely greater cost to HMCTS of processing multiple claims.
- 3.56 The following table sets out the proposed issue and hearing fees payable by multiple claimants per case. It mirrors the Option 1 proposal.

Claims in the multiple	Fee payable
2-4	2x single fee
5-10	3x single fee
11-50	4x single fee
51-200	5x single fee
Above 200	6x single fee

- 3.57 Each claimant within a multiple claim will also need to decide whether to claim more than the threshold of £30,000. Where all claimants within the multiple seek an individual award below £30,000, they will pay the relevant fee (i.e., Levels 1, 2 or 3) depending on the type of claim and the multiple rate as set out in the existing proposal (i.e., 2x, 3x, 4x, 5x or 6x the fee depending on how many people are in the multiple).

- 3.58 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 (namely, 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, 2 or 3).

### *Remissions*

- 3.59 As proposed under Option 1, the prevailing HMCTS remissions scheme would apply to individuals in both single and multiple claims. No individual within the multiple would pay more than the appropriate single fee. For example, if one claimant is remitted and another claimant must pay a fee, then instead of 2x the single fee, the fee due would be the single fee. It is also proposed that the Lord Chancellor would have discretion to remit fees in certain circumstances.

### *Refunds*

- 3.60 If within six 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, then he would receive a refund. It is not proposed that refunds would be available in any other circumstances.

### *Recovery of fees*

- 3.61 The successful parties in a case adjudicated by the ET would be able to ask the Employment Judge to order the unsuccessful party to reimburse the fees paid.

### *Employment Appeal Tribunal (EAT)*

- 3.62 The fees that appellants would pay in the EAT would be the same as those proposed in Option 1.

### *Provision of information*

- 3.63 In order to ensure that claimants can assess the likely value of their claim, this option envisages the provision of information, by way of web-based guidance and a calculator. The consultation asks what information is required in order to support claimants to assess the likely value of their claim.

## **4. Costs and Benefits**

- 4.1 This section sets out a range of illustrative costs and benefits of the proposed introduction of ET and EAT fee-charging compared to the base case. It is important to note that these estimates are based on a number of assumptions and so cannot be regarded as firm predictions. Although most of the summary tables present monetary estimates rounded to the nearest appropriate multiple (e.g., £0.1m), these values should be not interpreted as being precise. Moreover, the figures may not sum exactly due to rounding.

### **Costs of Option 1**

#### *Transition Costs*

#### **HMCTS**

- 4.2 Implementation and ongoing business costs would be incurred in collecting and accounting for fee payments, and in dealing with remission applications. This would require changes to existing and/or new IT systems as well as new business processes so that fees can be received, banked and accounted for. Staff will require some training to understand the fees system, deal with queries from claimants as well as training on how to assess a remission application. The consultation asks what types of payment methods are needed.

- 4.3 The way(s) in which service users would pay the relevant fee has yet to be decided. One possibility is to provide for payment to be made to all 26 ET local offices as all local offices can currently receive claims. This would require the local offices to be modernised to ensure that appropriate accounting and financial security requirements are in place.
- 4.4 An alternative option might be to centralise the making of a claim with the collection and accounting of fees. One centralised system may be more efficient, but would also require secure and timely IT links and communication with local offices where cases would continue to be listed and heard. The consultation asks for views on this approach.
- 4.5 The EAT has one office each in London and Edinburgh, so the implementation issues are less complex with regard to appeals.
- 4.6 Current estimates of the cost of implementation – essentially project team and business change costs – across the ET and EAT are that they may be in the region of £1.5 million at 2011/12 prices in total, which would mostly be incurred during 2012/13. To account for optimism bias, the upper bound of this estimate is put at £2.5 million. It should be noted that the range of £1.5-2.5 million is a high level estimate and will remain so until suppliers are fully engaged in the procurement process of delivering modified IT systems. Revised estimates will be published as part of the Government response to this consultation.

### Ongoing Costs

#### Claimants

- 4.7 The total cost to claimants per year would be the annual sum of the fees paid by individual claimants, which in turn would be a function of the numbers of claimants at each fee Level, the stage the claim reaches in proceedings and whether the claimant receives a remission.
- 4.8 It was estimated above that, after the implementation of the proposed BIS reforms, the steady state number of ET cases would be around 47,200 per year, of which 95% would be singles. The following table sets out the notional pattern of ET cases across Fee Levels, assuming that the BIS reforms and the introduction of fee-charging do not alter the 2009/10 distribution within and between single and multiple cases in future years.

Type	Level 1	Level 2	Level 3	TOTAL
All cases	64%	16%	20%	100%
Singles	28,983	7,019	9,057	45,060
Multiples	1,391	337	435	2,162

- 4.9 It is recognised that ET fee-charging would tend to reduce the estimated 47,200 steady state number of cases per year that would prevail under 'Option 0'. It is currently unknown the extent to which paying claimants would respond to the introduction of fees of differing amounts.
- 4.10 Previous MoJ research<sup>28</sup> suggests that, among civil court users generally, parties who bring a case are not significantly influenced by the cost of proceedings. Their principal motivations are "getting justice" and "getting a final decision" by making use of the court. Insofar as these conclusions are relevant, the implication is that ET claimants would not be highly price sensitive to fee-charging. Moreover, the "Resolving Workplace Disputes" consultation says that, partly because of the media coverage given to very high value employment tribunals cases, there is evidence that claimants tend to overestimate the potential value of any compensation that would result from their claim.

<sup>28</sup> "What's cost got to do with it? The impact of changing court fees on users", Ministry of Justice Research Series 4/07, June 2007 ([www.justice.gov.uk/publications/docs/changing-court-fees.pdf](http://www.justice.gov.uk/publications/docs/changing-court-fees.pdf)).

- 4.11 In the absence of reliable price elasticity of demand estimates with respect to ET claimants (e.g., derived from a willingness-to-pay survey), two scenarios of demand response are used for modelling purposes. The “low” response scenario assumes that the number of ET cases brought by paying claimants decreases by 0.01% for every pound (£) of fee at 2011/12 prices; this would mean that a £100 fee rate causes demand to fall by 1%, compared to the status quo. In addition, the “high” response scenario assumes that the number of ET cases falls by 0.05% for every pound of fee – i.e., five times faster.<sup>29</sup>
- 4.12 However, this demand response would not always be uniform under either scenario. Firstly, the proposed application of the HMCTS remissions system so as to protect access to justice for low income groups would mean that claimants whose fees are remitted would have zero price sensitivity. Secondly, ET claimants who are represented by a trade union, a no-win-no-fee lawyer (more likely in multiple claims) or who receive legal advice paid by household insurance policies would have the fee paid for them and so these claimants would not alter their behaviour.
- 4.13 Data on claimants’ incomes are not routinely collected. In order to estimate claimants’ eligibility for HMCTS remissions, results from the 2008/09 Family Resources Survey<sup>30</sup> (FRS) were taken and adjusted by some of the results of the 2008 Survey of Employment Tribunal Applications<sup>31</sup> (SETA) in order to provide an indicative distribution of claimants’ incomes in Britain as a whole. The three variables common to both SETA and the FRS that were used to make the adjustment are listed in Annex 4. The findings suggest that ET claimants were more likely to be male, 35-54 years old, in full-time work or unemployed than the adult population of Britain as a whole that year.
- 4.14 One can therefore infer that 9.5% of the ET claimant population would have been entitled to Remission 1 (passported benefits) and that 16.9% of claimants would have been entitled to Remission 2 (gross annual household income beneath a specific threshold) in 2008/09. The position with regard to Remission 3 (monthly disposable household income of a particular amount) is complex. For instance, 2.8% of ET claimants would have been entitled to a variable discount on fee rates up to £100 in that year’s prices, whereas 46.3% of claimants would have benefited from a variable discount on fee rates up to £1,000. The detailed estimates are set out in Annex 5.
- 4.15 Consequently, it is assumed that in future years 26.4% of claimants would routinely receive a full remission under Remissions 1 and 2; and it is assumed that a variable proportion of claimants would receive a full or partial remission under Remission 3, depending on the exact fee rate charged. Furthermore, it is assumed for simplicity that these distributions are independent of the fee-charging regime and that claimants in receipt of any type of remission would not alter their behaviour in response to fee-charging.
- 4.16 One would expect fee-charging to reduce the total volume of cases brought to the Tribunal each year as some users’ expected costs of bringing a claim now exceed their expected benefits of doing so. Strictly, one would want to quantify and monetise claimants’ loss of “utility” (i.e., satisfaction), including those ‘Option 0’ claimants who no longer choose to bring cases to the ET under this Option. However, measuring and valuing changes in individuals’ utility is not straightforward. A reasonable approximation would be the total change in economic “consumer surplus”, i.e., the difference between the price that consumers pay and the maximum price that they are willing to pay for the good/service. Consumer surplus is usually closely related to willingness-to-pay, which is the amount of money that would restore an individual’s original level of utility.<sup>32</sup> But the exact shape of the underlying market demand curve that is needed to calculate consumer surplus is often unknown in practice, so the change in claimants’ total costs is used as a rough proxy in this Impact Assessment. Depending on the price elasticity of demand, this change will tend to be an under-estimate of the change in consumer surplus and thus in utility.

<sup>29</sup> A consequence of these scenario assumptions is that, other things being equal, the price elasticity of demand for ET services gradually increases (in absolute terms) from essentially zero as the fee rate rises (in real terms).

<sup>30</sup> Strictly, the Survey ([research.dwp.gov.uk/asd/frs/index.php?page=intro](http://research.dwp.gov.uk/asd/frs/index.php?page=intro)) encompasses all of the United Kingdom as opposed to just Great Britain. However, Northern Ireland represents around 3% of the UK population ([www.statistics.gov.uk/statbase/Product.asp?vlnk=15106](http://www.statistics.gov.uk/statbase/Product.asp?vlnk=15106)), so it is unlikely to have a significant impact on the FRS results for mainland Britain.

<sup>31</sup> [www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008)

<sup>32</sup> See chapter 3 and appendix 3A of “Cost-Benefit Analysis: Concepts and Practice” (2006) by Boardman *et al* for a more detailed discussion of the relationship between consumer surplus, willingness-to-pay and utility.

4.17 Claimants would have the cost of their fees reimbursed if the ET or EAT finds in their favour and then makes an order for the unsuccessful party to pay. This means that a claimant would then be reimbursed if he is successful at hearing or if a Default Judgment is issued in his favour. However, a claimant who is unsuccessful at an ET or EAT hearing may additionally incur the cost of any user fees paid by the respondent. The proposed power to allow tribunals to order the unsuccessful party to reimburse the other party's fees is ignored in this Impact Assessment because it is not automatic and would take place in both directions simultaneously among sub-groups of claimants and respondents for any given year. If a claimant reaches a settlement with the respondent before a hearing, then the parties may agree to include any fees paid by the claimant in the terms of settlement, but this is completely at the discretion of both parties.

## Singles

4.18 The following summary tables set out the estimated annual fee revenue that single claimants would pay at 2011/12 prices with respect to "R3" (Remission 3) and "Other claims" where claimants pay the entire issue fee. The figures are rounded to the nearest £0.1m.

Level 1 issue fee: £150

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,066	£0.1	19,963	£3.0	<b>£3.1</b>
High response	1,066	£0.1	18,747	£2.8	<b>£2.9</b>

Level 2 issue fee: £200

2011/12 £m	R3 claims	Payment*	Other claims	Payment	TOTAL
Low response	376	£0.0	4,694	£0.9	<b>£1.0</b>
High response	376	£0.0	4,311	£0.9	<b>£0.9</b>

\*Estimate less than £0.05m

Level 3 issue fee: £250

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	679	£0.1	5,838	£1.5	<b>£1.5</b>
High response	679	£0.1	5,239	£1.3	<b>£1.4</b>

4.19 It was stated earlier that on average 23% of jurisdictional complaints were resolved at a hearing. However, this proportion does not relate directly to ET cases. Based on the 2009/10 ET cost model, the following table sets out the estimated proportions of accepted cases that were listed for a hearing and those that actually received a hearing.<sup>33</sup> The former variable is relevant because that would be the point at which the hearing fee must be paid, whereas the latter is important because it represents the share of cases that were actually heard.

Fee level	Singles		Multiples	
	Listing	Hearing	Listing	Hearing
Level 1	8%	5%	8%	6%
Level 2	56%	38%	58%	40%
Level 3	20%	14%	21%	14%
<b>Overall</b>	<b>18%</b>	<b>12%</b>	<b>19%</b>	<b>13%</b>

4.20 It is therefore assumed that the 2009/10 hearing rates are representative of the proportion of cases that would be predisposed toward paying a hearing fee. It is further assumed for modelling purposes that these rates are stable and independent of the proposed fee-charging regime and the BIS reforms. It is also assumed that eligibility for Remission 3 among ET claimants who proceed to a hearing is as set out in Annex 5.

<sup>33</sup> If the case is resolved after listing, but before a hearing takes place, then the fee payment would be forfeit.

- 4.21 The following tables set out the estimated annual fee revenue that single claimants would pay at 2011/12 prices for those parties who would continue on to an ET hearing with respect to “R3” (Remission 3) and “Other claims” where claimants pay the entire hearing fee. The figures are rounded to the nearest £0.1m and may not sum exactly.

Level 1 hearing fee: £250

2011/12 £m	R3 claims	Payment*	Other claims	Payment	TOTAL
Low response	118	£0.0	1,015	£0.3	<b>£0.3</b>
High response	113	£0.0	873	£0.2	<b>£0.2</b>

\*Estimate less than £0.05m

Level 2 hearing fee: £1000

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,157	£0.6	716	£0.7	<b>£1.3</b>
High response	1,093	£0.6	376	£0.4	<b>£1.0</b>

Level 3 hearing fee: £1250

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	630	£0.4	232	£0.3	<b>£0.7</b>
High response	588	£0.2	93	£0.1	<b>£0.3</b>

- 4.22 A number of claimants would also choose to pay for a statement of written reasons underlying a judgment and/or for the ET to review its decision. Data on the proportion of cases accepted at “ET1” stage that result in an application for written reasons and a review are not collected specifically with regard to claimants; they are only available for all ET cases by singles and multiples in 2009/10.
- 4.23 Based on 2009/10 outturns, it is therefore assumed for modelling purposes that half of the ‘single’ accepted case proportions are attributable to claimants and that these proportions are independent of fee-charging and the BIS reforms. The table below which shows the rounded whole numbers of ET single cases that would be predisposed toward making these applications under fee-charging.

Single cases	Written reasons	No. of cases (low response)	No. of cases (high response)	Review	No. of cases (low response)	No. of cases (high response)
Level 1	0.7%	197	188	0.2%	54	52
Level 2	4.8%	332	314	1.5%	106	100
Level 3	1.7%	152	142	0.6%	55	51

- 4.24 The following summary tables present estimates of the annual amounts paid by single claimants who would apply for written reasons and reviews under Option 1. The figures are rounded to the nearest £10k.

Written reasons (singles)

2011/12 £k	Level 1	Level 2	Level 3	TOTAL
Low response	£10	£60	£30	<b>£100</b>
High response	£10	£50	£20	<b>£80</b>

Review (singles)

2011/12 £k	Level 1*	Level 2	Level 3	TOTAL
Low response	£0	£20	£10	<b>£30</b>
High response	£0	£20	£10	<b>£30</b>

\*Estimate less than £5k.

## Multiples

- 4.25 The total cost to ET claimants of the proposed charging system for ‘multiple’ claimants would depend on the distribution of claims with respect to cases among this group. Assuming that the 2009/10 distribution (as the only year for which data are available) is stable and independent of the fee-charging regime, the following table sets out the proportions of cases that would pay 2-6 times the relevant single fee for issue and hearings.

Number of claims per case	Share of cases	Fee payable
2-4	60%	2x single
5-10	25%	3x single
11-50	11%	4x single
51-200	3%	5x single
Above 200	1%	6x single

4.26 In reality, most multiple claims are represented – typically by a trade union in some form. The following table sets out the annual representation rate for all multiple claims since 2005/06, which shows that nearly all of them were represented in some way.

Year	Representation
2005/06	89%
2006/07	91%
2007/08	95%
2008/09	87%
2009/10	94%
<b>Average</b>	<b>91%</b>

4.27 Anecdotal evidence based on operational experience suggests that it is the larger multiples that are represented, although definitive figures do not exist for representation rates by size of multiple. The current expectation is that the legal representative would pay the fee for these larger multiples, which would mean that these claimants would not alter their behaviour in response to fee-charging. It is assumed for modelling purposes that all cases involving more than 10 claims are represented and would therefore have zero price sensitivity. It is further assumed that cases with between 2 and 10 claims would pay the relevant fee between them, so they would adjust behaviour in response to the fee rate to the extent that they were not eligible for remissions.

4.28 Estimating the total costs paid by multiple claimants is challenging due to the interaction of representation, demand response, full/partial remission eligibility and the fee-charging regime proposed for this group of claimants.<sup>34</sup> Given these modelling complexities, a number of simplifying assumptions have been made so as to derive the following summary tables which set out the estimated annual fees that multiple claimants would pay at 2011/12 prices. For instance, it is assumed that multiples that have in excess of 10 claimants would not apply for remissions since they are highly likely to be represented and thus have the fee paid on their behalf already. The figures are rounded to the nearest £0.1m and may not sum exactly.

Level 1 fee

2011/12 £m	Payment at issue	Payment at hearing*	TOTAL
Low response	£0.5	£0.1	<b>£0.5</b>
High response	£0.5	£0.0	<b>£0.6</b>

\* Zero refers to an estimate of less than £0.05m

Level 2 fee

2011/12 £m	Payment at issue	Payment at hearing	TOTAL
Low response	£0.2	£0.3	<b>£0.5</b>
High response	£0.2	£0.3	<b>£0.5</b>

Level 3 fee

2011/12 £m	Payment at issue	Payment at hearing	TOTAL
Low response	£0.3	£0.2	<b>£0.5</b>
High response	£0.3	£0.2	<b>£0.5</b>

<sup>34</sup> For instance, in an unrepresented multiple of 10 claimants, the total fee payable would be 3 times the single fee – say, £300 in total or £30 each (i.e., 10% of the single fee). But if 2 claimants were entitled to a full remission, the remaining 8 claimants would be asked to pay the total fee of £300. The cost to each paying claimant would therefore be £37.50 (or 37.5% of the single fee). Similarly, if 5 claimants were entitled to a full remission, then the remaining 5 claimants would be asked to pay £60 each (or 60% of the single fee). One can see that, as the numbers of remitted claimants in a multiple rises, so does the individual cost to the remaining paying claimants. This may conceivably cause them to withdraw from the case due to demand response. The consultation invites views on how best to ensure that no one claimant would pay more than the comparable single fee.

- 4.29 Claimants who participate in a multiple would also be able to apply for written reasons of an oral judgment or for a review of the ET's decision. In practice, only one claimant in the multiple – or their representative – would make the application with respect to the case at hand.
- 4.30 As stated above, data on the proportion of cases accepted at "ET1" stage that result in an application for written reasons and a review are not collected specifically with regard to claimants; they are only available for all ET cases by singles and multiples in 2009/10.
- 4.31 Based on 2009/10 outturns, it is therefore assumed for modelling purposes that half of the 'multiple' accepted case proportions are attributable to claimants and that these proportions are independent of fee-charging and the BIS reforms. The table below shows the rounded whole numbers of ET multiple cases that would be inclined to make these applications, before taking into account the effect of fee-charging with respect to written reasons and ET reviews.

Multiple cases	Written reasons	No. of cases (low response)	No. of cases (high response)	Review	No. of cases (low response)	No. of cases (high response)
Level 1	0.7%	10	10	0.2%	3	3
Level 2	5.0%	17	17	1.6%	5	5
Level 3	1.8%	8	7	0.7%	3	3

- 4.32 The following summary tables present rounded estimates of the annual amounts paid by multiple claimants who apply for written reasons and reviews. Unlike issue and hearing fees, it is not proposed that each case of this type would pay a multiple of the relevant single fee. The implication is that, even when unrepresented, the average cost to each claimant in a multiple would be small. Given the limited number and modest proportions of multiple cases and the small cost to individual claimants, it is therefore assumed for simplicity that no cases in a multiple that request written reasons or review would also apply for a remission. The figures are rounded to the nearest £1k.

2011/12 £k	Level 1	Level 2	Level 3	TOTAL
Low response	£1	£4	£2	<b>£7</b>
High response	£1	£4	£2	<b>£6</b>

2011/12 £k	Level 1*	Level 2	Level 3	TOTAL
Low response	£0	£2	£1	<b>£3</b>
High response	£0	£2	£1	<b>£3</b>

\*Estimate less than £0.5k

## Respondents

- 4.33 Respondents (i.e., employers) would incur direct costs for using ET if they choose to:
- counterclaim in a breach of contract case;
  - request written reasons if the reasons have been given orally;
  - apply for a review of the ET's decision;
  - request the dismissal of a case after it has been settled or withdrawn by the claimant(s).
- 4.34 As stated earlier, a counterclaim is a breach of contract complaint made by a respondent against a claimant who has alleged breach of contract. In 2009/10 around 0.7% of all single and multiple ET accepted cases involved a counterclaim. For simplicity, therefore, counterclaims are ignored in this Impact Assessment.
- 4.35 Furthermore, it is proposed that respondents would be liable to pay a £750 fee to make use of judicial mediation, although this would only be available in the open track (i.e., at Level 3). In 2009/10 around 0.6% of all single and multiple ET accepted cases involved this type of mediation. Given the advent of free Early Conciliation by Acas, for modelling purposes it is considered unlikely that respondents would then choose to pay such a fee in the event that an open track ET claim still proceeds. Any revenue from this fee category is therefore assumed to be zero in the Impact Assessment.



- 4.36 Data on the frequency of applications for Default Judgment reviews/revocations or case dismissals are not routinely collected, but they have been estimated for 2009/10 as part of the ET and EAT fee-charging policy development. These are listed in the table below as the percentages of ET cases accepted with respect to singles and multiples.

Fee level	Singles		Multiples	
	Revoke or review DJ	Dismissal after settlement, etc.	Revoke or review DJ	Dismissal after settlement, etc.
Level 1	4.5%	20.3%	4.7%	21.4%
Level 2	2.0%	19.7%	2.1%	20.4%
Level 3	0.3%	20.3%	0.4%	21.3%
<b>Average</b>	<b>3.2%</b>	<b>20.3%</b>	<b>3.4%</b>	<b>21.3%</b>

- 4.37 Assuming that this distribution is stable and independent of fee-charging and the BIS reforms, the next table sets out the rounded number of applications that respondents would be predisposed to make, after taking into account the impact of fee-charging among claimants but before factoring in the impact on respondents.

Fee level	Low response				High response			
	Singles		Multiples		Singles		Multiples	
	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal
Level 1	1,277	5,827	65	296	1,223	5,580	64	291
Level 2	140	1,361	7	68	132	1,286	7	67
Level 3	31	1,810	2	92	29	1,688	2	90
<b>Total</b>	<b>1,448</b>	<b>8,998</b>	<b>74</b>	<b>456</b>	<b>1,384</b>	<b>8,554</b>	<b>73</b>	<b>447</b>

- 4.38 Respondents – as corporate bodies – would not be eligible for a fee remission, so they would have to pay the entire fee if they request a review/revocation of a Default Judgment or dismissal of a claim that had been withdrawn or settled. As with claimants, the price sensitivity of respondents to different fee rates is unknown at present. It is therefore assumed for modelling purposes that respondents' demand would fall by 0.01% per pound (£) of fee under a "low response" scenario and by 0.05% per £ of fee under a "high response" scenario at 2011/12 prices, regardless of whether the originating claim is a single or multiple.
- 4.39 Given these assumptions, the following table presents estimates of the annual amounts that respondents would pay under the proposed fee-charging regime. The figures are rounded to the nearest £0.1m and they do not sum exactly.

2011/12 £m	Revoke	Dismissal	<b>Total</b>
Low response	£0.2	£0.6	<b>£0.7</b>
High response	£0.1	£0.5	<b>£0.7</b>

- 4.40 As stated earlier, the proposed fees for written reasons and ET review applications would be paid by the party that makes the request. Data on the proportion of cases accepted at "ET1" stage that result in an application for written reasons and a review are not collected specifically with regard to respondents; they are only available for all ET cases by singles and multiples in 2009/10. Based on that year's outturns, it was assumed above that half of the ET1 accepted case proportions are attributable to claimants (the other half is thus respondents) and that these proportions are independent of fee-charging and the BIS reforms. Before taking into account the effect of fee-charging with respect to written reason and review applications, the table below shows the rounded whole numbers of respondents who would be predisposed to make such applications.

2009/10 volumes

All cases	Written reasons		ET review	
	(low response)	(high response)	(low response)	(high response)
Level 1	207	198	57	54
Level 2	349	330	111	105
Level 3	160	149	58	54

- 4.41 The following summary tables present rounded estimates of the annual amounts paid by respondents who would choose to apply for written reasons and ET reviews under the proposed fee-charging regime. Unlike claimants, the distinction between multiples and singles is not relevant with respect to respondents. The figures are rounded to the nearest £10k.

Written reasons

2011/12 £k	Level 1	Level 2	Level 3	TOTAL
Low response	£20	£90	£40	<b>£150</b>
High response	£20	£70	£30	<b>£120</b>

ET Review

2011/12 £k	Level 1	Level 2	Level 3	TOTAL
Low response	£10	£40	£20	<b>£70</b>
High response	£10	£30	£20	<b>£60</b>

- 4.42 It should be noted that a proportion of the costs to respondents from Option 1 would fall on the public and voluntary sectors as well as the private sector. According to the last SETA, during 2008 around one in five respondents was in the public sector, one in twelve respondents in the voluntary sector and the majority of respondents were all in the private sector, as illustrated in the next table.<sup>35</sup>

Sector	Employer share
Private	72%
Public	19%
Voluntary	8%
Don't know	1%

- 4.43 HMCTS does not routinely collect data on the different sizes of respondents. The latest SETA suggests that in 2008 almost half of all respondents were “large” employers and around a quarter were relatively small, as shown in the following table.<sup>36</sup>

No. of employees	Employer share
1-24	27%
25-49	9%
50-249	19%
250+	45%

- 4.44 However, uncertainty around the effects of fee-charging at different stages of the ET and EAT process means that it has not been possible to estimate the impact of Option 1 by size of respondent.
- 4.45 To reiterate an earlier point, a respondent who is unsuccessful at an ET or EAT hearing may be ordered to pay the fees previously incurred by the claimant, so there may be additional costs for respondents. Equally, however, an unsuccessful claimant may be ordered to pay the fees incurred by the respondent. The proposed power for the tribunal to order the unsuccessful party to pay the fees of the successful party is ignored in this Impact Assessment.

<sup>35</sup> Table 2.5, SETA 2008. The percentages refer to the share of respondents by total number, not by outcome of claim or by size.

<sup>36</sup> Table 2.5, SETA 2008. The percentages refer to the share of respondents by size of organisation, not by outcome of claim or by sector.

- 4.46 Respondents are not presently able to claim legal aid with regard to ET or EAT matters either in England and Wales or in Scotland.<sup>37</sup>

## Appellants

- 4.47 It was estimated earlier that, following enactment of the proposed BIS employment law reforms, the notional steady state number of appeals disposed may be around 1,400 per year (some 25% less than the average number between 2005/06 and 2009/10) during the remainder of the 2010s. This was on the basis that around 3% of ET accepted cases produced an appeal in the recent past.
- 4.48 This annual total would be further reduced under fee-charging because the total number of ET cases that could give rise to appeal would be lower and because of demand response due to the introduction of EAT fees. The exact number of appeals that would be made under Option 1 is therefore uncertain. However, the following table presents rounded estimates of the number of single and multiple ET accepted cases under fee-charging.

Accepted ET1 cases

Fee level	Low response		High response	
	Singles	Multiples	Singles	Multiples
Level 1	28,679	1,385	27,463	1363
Level 2	6,923	335	6,540	328
Level 3	8,908	432	8,309	420
<b>Total</b>	<b>44,510</b>	<b>2,152</b>	<b>42,312</b>	<b>2,111</b>
	<b>46,662</b>		<b>44,423</b>	

- 4.49 Assuming the 3% rate of appeal remains stable and is independent of ET fee-charging and the BIS reforms, then the number of ET cases that would be predisposed to make an appeal would be around 1,300-1,400 per year, depending on the demand response scenario. One should note that the estimated range does not take into account the demand response effect of EAT fee-charging and that the distinction between single and multiples does not exist in the EAT.
- 4.50 The next table sets out the approximate proportions of all appeals brought by ET claimants (i.e., employees) and ET respondents (i.e., employers) and the proportions of all appeals disposed at a hearing over recent years.<sup>38</sup> It shows that claimants brought twice as many appeals as respondents and that, having brought an appeal, claimants were then more likely to drop out before a hearing for a number of reasons. This information is necessary because it is only individuals who would be eligible for a fee remission.

Year	Received by EAT		Disposed at hearing	
	Respondent	Claimant	Respondent	Claimant
2006/07	36%	64%	46%	54%
2007/08	35%	65%	49%	51%
2008/09	33%	67%	45%	55%
2009/10	29%	71%	38%	62%
<b>Average</b>	<b>33%</b>	<b>67%</b>	<b>45%</b>	<b>55%</b>

- 4.51 The following table presents the recent annual and average EAT hearing rates among ET claimants and respondents. It shows that over the period respondents who appealed (a minority of initial appellants) were significantly more likely to proceed to a hearing than claimants who appealed (a majority of initial appellants).

Year	Respondent	Claimant
2006/07	35%	23%
2007/08	39%	23%
2008/09	34%	21%
2009/10	33%	22%
<b>Average</b>	<b>35%</b>	<b>22%</b>

<sup>37</sup> There are rare exceptions. Conceivably, in the case of an employee who brings a discrimination complaint against his/her employer and names another employee as the person who had allegedly carried out the discriminatory act, then the accused employee could seek legal assistance.

<sup>38</sup> England & Wales only. Figures for 2005/06 are excluded due to data quality issues.

4.52 Assuming the same “low”/“high” demand response scenarios for both claimants and respondents who choose to appeal an ET decision and assuming the same distribution among those eligible for remissions as listed in Annex 5, the next summary table presents estimates of the annual revenue that appellants would pay at 2011/12 prices, based on the average distributions set out above which are also assumed to be stable and independent of fee-charging and the BIS reforms. The figures are rounded to the nearest £0.1m.

2011/12 £m Scenario	Application		Hearing		Total payment
	Respondents	Claimants	Respondents	Claimants	
Low response	£0.2	£0.2	£0.2	£0.1	<b>£0.7</b>
High response	£0.1	£0.2	£0.1	£0.1	<b>£0.5</b>

## HMCTS

4.53 Compared to the status quo, the costs to HMCTS are likely to involve dealing with an increased volume of customer enquiries (relating to the financial aspects of the claim and appeal process). Depending on the IT solution there are likely to be ongoing maintenance costs or service charges. HMCTS will also have ongoing annual administrative costs for taking fees and operating the remissions system.

4.54 The figures in the next table are initial estimates of the average additional staff resource costs that would be required to account for fees and to process remissions; they have been produced specifically for the purposes of modelling within this Impact Assessment. In addition, there would be other costs associated with the introduction of fee charging (e.g., estate and IT costs) and these have been also included in the overall Impact Assessment. The figures in the table are not therefore an estimate of the total future unit cost of this work, which would be higher. Moreover, the variation in the estimated costs for dealing with different types of remissions is based on an assumption of a future business processing model within the employment jurisdiction. The cost estimates listed in the table have been updated to 2011/12 prices and then rounded up to the nearest whole number of pounds to allow for a measure of optimism bias.<sup>39</sup> The estimates will be updated and refined going forwards.

Transaction	2011/12 £
Fee collection	£8
Remission 1	£5
Remission 2	£20
Remission 3	£20

4.55 The next table presents estimates of the cost of administering the new payment system and the courts remissions system in the ET and EAT under the low and high demand response scenarios. The figures are rounded to the nearest £0.1m and may not sum exactly. It should be noted that they assume that only those individuals who would be entitled to any type of remission would actually apply for one.

### Low response

2011/12 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.2	£0.1	£0.3	<b>£0.6</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.2</b>	<b>£0.1</b>	<b>£0.4</b>	<b>£0.7</b>

\*Estimate less than £0.05m

### High response

2011/12 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.2	£0.1	£0.3	<b>£0.6</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.2</b>	<b>£0.1</b>	<b>£0.3</b>	<b>£0.7</b>

\*Estimate less than £0.05m

<sup>39</sup> Strictly, Remission 3 involves the provision of a full or partial remission and collection of the outstanding fee. The £20 cost per transaction is an average estimate across Remission 2 and 3 due to data limitations, so the ‘true’ cost of Remission 2 is slightly less than £20 and Remission 3 is slightly more than £20.

4.56 The tables show that the total annual cost of operating the fee payment and remission systems would tend to be lower under the high demand response scenario. This is largely because fewer claimants take forward an ET claim in the presence of fee-charging. To repeat an earlier point, remissions are only available to individuals; companies would not be eligible to apply for a remission.

4.57 It is further estimated that there would be around £0.7 million per year in other business costs, e.g., related IT and estate costs for extra staff. This additional annual cost already includes a degree of optimism bias; the estimate will be refined in the coming months. The annual total cost to HMCTS is therefore put at £1-2 million at 2011/12 prices.

## Taxpayers

4.58 Compared to the status quo, UK taxpayers would not incur any additional costs under Option 1.

## Lawyers

4.59 The direct costs to this group would be reduced income due to the decline in the number of ET claims and appeals, compared to the status quo. This is because there would tend to be less demand for legal advice and representation with respect to tribunal matters, other things being equal.

4.60 The following table presents estimates (rounded to the nearest £100) of the average cost to each claimant and respondent of legal advice and representation in the ET.<sup>40</sup> It is important to note that these figures are averages across all claimants and respondents, regardless of whether they individually obtain legal advice and representation and regardless of the stage of proceedings reached when the claim is disposed.

2011/12 £	Overall average
Cost to claimant	£700
Cost to respondent	£2,100

4.61 The next table presents rounded estimates of the notional loss in annual income that lawyers would experience as a group due to the potential reduction in demand for legal advice and representation in ET matters.<sup>41</sup> The figures are rounded to the nearest £1m and should be only be interpreted as order-of-magnitude estimates.

2011/12 £m	Low response	High response
Loss of income	£2	£9

4.62 It must be noted that the potential loss of some £2-9 million in total income per year at 2011/12 prices implicitly assumes that there are no other opportunities for legal services elsewhere in the UK economy that affected lawyers could meet. In reality, the market for lawyers would adjust toward a new equilibrium, thereby offsetting at least some of the potential loss among this group. This loss in income of this group is therefore best considered as a pessimistic outcome, but it is included here because it is a possible distributional impact.

## Acas

4.63 Acas is a taxpayer funded body that offers arbitration and mediation services to employers and employees who are in dispute. It was stated earlier that an average of 29% of ET jurisdictional compliants were resolved by Acas between 2005/06 and 2009/10, which should decline following the introduction of Early Conciliation, which is one of the proposed BIS reforms that form part of the fee-charging base case. In other words, demand for Acas services would rise in future even in the absence of fee-charging.

<sup>40</sup> The estimates have been provided by BIS and are based on various data sources.

<sup>41</sup> Given its much smaller caseload, the impact on reduced demand for legal advice and representation in the EAT is ignored.

- 4.64 Conceivably, the introduction of fee-charging may encourage an additional rise in the demand for Acas services (e.g., helpline, individual conciliation) as prospective claimants substitute away from the formal ET/EAT system, compared to the base case. This is more likely with respect to single claimants than multiple claimants as the latter are effectively less price sensitive – i.e., lower fee paid per claimant on average, essentially all large multiples represented.
- 4.65 There is uncertainty about whether and to what extent ET and EAT fee-charging would induce such a substitution effect beyond the introduction of Early Conciliation that is already incorporated in the base case.

### *Summary of costs*

- 4.66 The following table presents estimates (rounded to the nearest £1m) of the total annual quantified costs to each main group that would be affected by Option 1. The impact on appellants is decomposed into the constituent groups of ET claimants and ET respondents so as to highlight the quantified impact specifically on employers.

2011/12 £m	Low response	High Response
Claimants*	£10	£9
Respondents*	£1	£1
HMCTS	£1	£1
Taxpayers	£0	£0
Lawyers	£2	£9
<b>TOTAL</b>	<b>£14</b>	<b>£20</b>

\* includes relevant appellants

- 4.67 Based on a number of assumptions, the table shows that the total annual cost to society of fee-charging would be around £14-20 million per year at 2011/12 prices. It is higher under the “high” demand response scenario largely because of the dominance of the notional income loss to lawyers as a group. As explained earlier, however, this loss would in reality be significantly less due to a compensating adjustment in the UK market for legal services, but the potential impact is included here for the sake of clarity.

### **Benefits of Option 1**

#### *Ongoing benefits*

#### **Claimants & Appellants**

- 4.68 Although not a benefit compared to the base case (as fee-charging does not exist at present), a sub-group of ET claimants and EAT appellants would receive full or partial fee remission if they individually meet one of the three existing remission criteria – i.e., in receipt of a passported state benefit (Remission 1), having a gross annual household income beneath a specific threshold (Remission 2) or a monthly disposable household income being assessed as £50 or more (Remission 3). These remissions are granted so as to protect access to justice among low income households and individuals.
- 4.69 It is proposed that the prevailing civil courts remission system would be extended to the ET and EAT. The following summary table presents estimates of the total fee remissions given to claimants and appellants as a group. The figures are rounded to the nearest £0.1m.

2011/12 £m	Remission 1	Remission 2	Remission 3	<b>TOTAL</b>
Low response	£1.4	£2.5	£1.3	<b>£5.2</b>
High response	£1.4	£2.4	£1.2	<b>£5.0</b>

- 4.70 The preceding table shows that, given all of the preceding assumptions, in the absence of the remissions system, HMCTS would notionally receive in the region of an additional £5m. However, it is expected that most of this group of claimants would not apply if no remissions system was in place.

4.71 Compared to the base case, ET claimants as a group would benefit from avoiding the various costs involved with making a claim – including the cost of any legal advice and representation – due to the expected reduction in demand for ET services. The next table presents an estimate (rounded to the nearest £100) of the average gain to claimants of not pursuing an ET claim.<sup>42</sup>

2011/12 £	Overall average
Gain to claimant	£1,300

4.72 It is important to note that this figure is an average across all claimants, regardless of whether they individually obtain legal advice and representation and regardless of the stage of proceedings reached when the claim is disposed. The next table presents estimates of the approximate gain that claimants would collectively experience due to the reduction in this group's demand.<sup>43</sup> The figures are rounded to the nearest £1m and should be viewed as order-of-magnitude estimates.

2011/12 £m	Low response	High response
Total gain	£1	£6

## Respondents

4.73 Respondents (i.e., employers) incur costs in dealing with ET claims that are lodged against them. Business resources are diverted from productive uses to responding to an ET claim. As outlined above, the introduction of fee-charging would mean that the total number of claims would decline, compared to the base case. This effect would reduce respondents' total costs – including the cost of any legal advice and representation – in dealing with claims.

4.74 The next table presents an estimate rounded to the nearest £100 of the average gain to respondents of not having to defend an ET claim.<sup>44</sup>

2011/12 £	Overall average
Gain to respondent	£3,700

4.75 It is important to note that this figure is an average across all respondents, regardless of whether they individually obtain legal advice and representation and regardless of the stage of proceedings reached when the claim is disposed. The next table presents estimates of the approximate gain that respondents would collectively experience due to the reduction in this group's demand.<sup>45</sup> The figures are rounded to the nearest £1m because they are only order-of-magnitude estimates.

2011/12 £m	Low response	High response
Total gain	£2	£10

4.76 As stated above, data are not routinely collected on the size of respondents, so it has not been possible reliably to estimate the impact by employers' sizes or by economic sector.

## HMCTS

4.77 Although HMCTS would directly receive the annual fee income under Option 1, this would be offset by a corresponding reduction in public expenditure on the ET and EAT, compared to the status quo. In other words, the transfer of income is effectively from ET/EAT users to taxpayers.

<sup>42</sup> The estimates have been provided by BIS and are based on various data sources.

<sup>43</sup> Given its much smaller caseload, the impact of reduced demand for appeals to the EAT is ignored.

<sup>44</sup> The estimates have been provided by BIS and are based on various data sources.

<sup>45</sup> Given its much smaller caseload, the impact of reduced demand for appeals to the EAT is ignored.

4.78 The economic benefit to HMCTS is the operational savings that would result from the reduced demand for claims and appeals at the ET and EAT respectively.<sup>46</sup> The following table sets out estimates of what would be the annual cost of operating the ET and EAT under the base case and what would be the change in total cost due to reduced user demand. The figures are rounded to the nearest £0.1m, but they should not be regarded as precise at this level of aggregation and they may not sum exactly.

2011/12 £m	Steady state	Low response	High response
E.T.	£48.1	-£1.6	-£5.1
E.A.T.	£2.0	-£0.2	-£0.8
<b>TOTAL</b>	<b>£50.1</b>	<b>-£1.8</b>	<b>-£6.0</b>

4.79 Operational costs are made up of fixed costs and variable costs. This means that, as the volume of claims changes, in the short term only the variable costs increase or decrease. HMCTS operational savings are based on the derived proportions of the average total costs of processing each claim or appeal that are set out in paragraph 1.28. These variable costs would be avoided with each claim or appeal that does not proceed at a particular stage of the ET/EAT process in the coming years.

4.80 It follows that the number of appellants who subsequently choose to make onward appeals to the Court of Appeal in England and Wales or to the Court of Session in Scotland and then to the UK Supreme Court would be lower in future years, compared to the status quo. However, the absolute change in these numbers would be small and the effects increasingly uncertain at each further stage of appeal, so these diminishing secondary impacts are ignored in the the Impact Assessment.

## Taxpayers

4.81 Compared to the status quo, UK taxpayers gain from the reduction in public expenditure on the ET and EAT under Option 1 as users (i) start to pay toward the costs of service provision; and (ii) moderate their demands on HMCTS thus leading to operational cost savings.

4.82 The following summary table sets out rounded estimates of the total gain to taxpayers. This excludes remissions because currently taxpayers meet this cost. The figures are rounded to the nearest £1m.

2011/12 £m	Fee income	Cost saving	<b>TOTAL</b>
Low response	£11	£2	<b>£13</b>
High response	£10	£6	<b>£16</b>

4.83 The table suggests that taxpayers' total gain in the region of £13-16 million per year at 2011/12 prices under the proposed fee-charging regime.

## Lawyers

4.84 It is not currently expected that lawyers as a group would gain any material benefits from fee-charging.

## Acas

4.85 The possible impact of ET and EAT fee-charging on Acas compared to the base case is discussed as part of the forthcoming Government response to the BIS "Resolving Workplace Disputes" consultation.

<sup>46</sup> Strictly, one would measure the change in "producer surplus" – namely, the difference between the price that a firm receives and the price at which it would be willing to sell particular quantities of the good/service. The expected decline in demand brought about by the introduction of fee-charging would also technically reduce producer surplus, but since the exact shape of the supply curve is unknown and since HMCTS is an entirely publicly funded body, the fall in annual operating costs are represented here as a gain to the organisation and ultimately to taxpayers.



## Wider benefits

- 4.86 The ET and EAT are completely subsidised by the taxpayer at present. Their services are therefore provided free of charge to users, which means that consumption is higher than would be the case under full cost recovery. Economic theory holds that in a conventional market this higher level of consumption results in a technical ‘deadweight loss’ to society as the additional gain to consumers and producers is outweighed by the additional cost to the taxpayer.<sup>47</sup> Reducing the extent of public subsidy through fee-charging would tend to lower these technical deadweight losses, other things being equal.
- 4.87 However, uncertainty about the exact shape of the demand and supply curves for ET and EAT services means that it is not possible to produce a reliable estimate of the overall gain in economic efficiency that fee-charging may bring about.

### Summary of benefits

- 4.88 The following table presents estimates (rounded to the nearest £1m) of the total annual quantified costs to each main group that would be affected by Option 1. So as to avoid double-counting, the gain to taxpayers only refers to the contribution that this group no longer would have to make due to the fee income raised from users. In reality, the cost saving to HMCTS would also accrue to taxpayers, but these benefits are represented separately here for the purposes of illustration.

2011/12 £m	Low response	High Response
Claimants	£1	£6
Respondents	£2	£10
HMCTS	£2	£6
Taxpayers*	£11	£10
Lawyers	£0	£0
<b>TOTAL</b>	<b>£16</b>	<b>£32</b>

\* avoided contribution due to fee income raised

- 4.89 Based on a number of assumptions, the table suggests that the total gain to society from the proposed fee-charging regime would be some £16-32 million per year at 2011/12 prices. It is higher under the “high” demand response scenario partly because of the dominance of the gain to respondents (i.e., employers) as a group who avoid the various costs – including legal advice and representation – of dealing with an ET claim, compared to the base case.

### Net Impact of Option 1

- 4.90 The following table sets out estimates of the annual net benefit to each main group, based on a number of assumptions. The quantified net impact on appellants has been decomposed into the constituent ET claimants and respondents groups. The figures are rounded to the nearest £1m and they may not sum exactly.

2011/12 £m	Low response	High Response
Claimants	-£9	-£3
Respondents	£1	£9
HMCTS	£0	£5
Taxpayers*	£11	£10
Lawyers	-£2	-£9
<b>TOTAL</b>	<b>£2</b>	<b>£12</b>

\* avoided contribution due to fee income raised

<sup>47</sup> This assumes that there are no positive externalities from consumption. In other words, ET and EAT use does not lead to gains to society that exceed the sum of the gains to consumers and producers of these services.

- 4.91 Compared to the base case, ET claimants who are not entitled to a full or partial remission would be worse off (though successful ET claimants who win their claims at a hearing would not be financially worse off if the tribunal orders the respondent to reimburse the successful party's fees). ET claimants who are entitled to a full remission would see no change. Although some claim-related costs would be avoided due to reduced demand for tribunal services, these would be more than offset by the impact of fee-charging, even taking remissions into account, for the group of claimants as a whole.
- 4.92 Respondents (i.e., employers) would be generally better off as a group. While some new costs would arise from the imposition of certain fees, these are more than offset by the avoidance of claim-related costs due to reduced demand for tribunal services, other things being equal.
- 4.93 HMCTS as an organisation would tend to be better off. It would incur new costs from the introduction and administration of an ET/EAT fee payment and remission system, but these would tend to be offset by a reduction in the demand for tribunal services.
- 4.94 UK taxpayers collectively would be unambiguously better off because their subsidy would be partly replaced by the income raised from user fees. Taxpayers would also benefit from the decline in demand for tribunal services, compared to the base case, although this element has been captured separately as a benefit to HMCTS for the purposes of illustration.
- 4.95 Lawyers as a group may be worse off, although in reality the UK market for legal service would adjust, which means that the notional loss of income would probably be lower than the figures suggested here.
- 4.96 Overall, the quantified net benefit to society of Option 1 would be around £2-12 million per year at 2011/12 prices. However, it must be noted that this estimated range is subject to uncertainty and that it includes the estimated impact on lawyers that is a pessimistic outcome.

## **Costs of Option 2**

### *Transition costs*

#### **HMCTS**

- 4.97 Implementation and business-as-usual costs would be incurred as in Option 1 and discussed in paragraphs 4.2-4.6. The current estimates for implementation costs across the ET and EAT could be in the region of £1.5-£2.5 million at 2011/12 prices. There will be additional costs of designing and implementing web-based guidance and a calculator in order to enable claimants to assess the value of their claim. The exact nature of any accompanying support has yet to be decided and will be finalised over the consultation period.

### *Ongoing costs*

#### **Claimants**

- 4.98 As in Option 1, two scenarios of demand response, "low" and "high", are used for modelling purposes to take account of the impact of fee-charging. Further details of these two scenarios are set out in paragraph 4.11. The total cost to claimants per year is approximated by the annual sum of the fees paid by individual claimants, which in turn would be a function of the numbers of claimants at each Fee level and whether the claimant receives a remission, as discussed in paragraphs 4.12-4.17.
- 4.99 Option 2 would create a new "Level 4" category for cases where claimants seek awards of £30,000 or more; the fee rate would be set so as to encourage claimants to substitute into a Level 1, 2 or 3 category where the maximum value of any award would not exceed £30,000. Two additional stylised scenarios are therefore used to outline the range of possible impacts: (i) where 0% of Level 4 claimants choose to substitute into Levels 1, 2 or 3 and are unresponsive to fee-charging; and (ii) where 100% of Level 4 claimants choose to substitute into Levels 1, 2 or 3 and are responsive to fee-charging.

4.100 The notional steady state number of annual cases is set out in the tables below for the additional scenarios. It should be noted that there is particular uncertainty around the number of Level 4 cases because there is no existing ET track that corresponds to this extra fee Level and it has not been possible from the available HMCTS data to determine the actual number of cases where claimants have chosen in recent years to state that their award value would exceed £30,000.<sup>48</sup> Based on SETA data, it has been estimated that around 3% of awards sought would exceed £30,000, so for simplicity this proportion of cases in Levels 1, 2 and 3 under Option 1 is assumed to fall into the proposed Level 4.

No substitution					
Type	Level 1	Level 2	Level 3	Level 4	TOTAL
All cases	29,463	7,135	9,207	1,417	47,222
Singles	28,114	6,808	8,786	1,352	45,060
Multiples	1,349	327	422	65	2,162

Substitution					
Type	Level 1	Level 2	Level 3	Level 4	TOTAL
All cases	30,374	7,356	9,492	0	47,222
Singles	28,983	7,019	9,057	0	45,060
Multiples	1,391	337	435	0	2,162

4.101 Option 2 would also use the prevailing HMCTS civil courts system of fee remissions to protect access to justice for individuals on low incomes. A description of the eligibility criteria and process of obtaining a fee remission is outlined in paragraphs 3.32-3.38. The methodology for estimating the amount of fee income that may be remitted is outlined in paragraphs 4.12-4.15.

4.102 As in Option 1, claimants would have the cost of their fees reimbursed if the ET or EAT finds in their favour and then makes an order for the unsuccessful party to pay. The proposed power to allow the tribunal to order the unsuccessful party to reimburse the other party's fees is ignored in this Impact Assessment because it is not automatic and would take place in both directions simultaneously among sub-groups of claimants and respondents during any given year. There would be only one fee-charging point for both single and multiple claims, whereas Option 1 has two charging points.

## Singles

4.103 The following summary tables set out the estimated annual fee revenues that single claimants would pay at 2011/12 prices with respect to "R3" (Remission 3) and "Other claims" where claimants pay the entire issue fee. The figures refer to the "no substitution" and "substitution" scenarios" for each fee Level and they are rounded to the nearest £0.1m.

Level 1 issue fee: £200 - no substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,508	£0.1	18,802	£3.8	<b>£3.9</b>
High response	1,508	£0.1	17,267	£3.5	<b>£3.6</b>

Level 1 issue fee: £200 - substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,508	£0.1	19,654	£3.9	<b>£4.1</b>
High response	1,508	£0.1	18,049	£3.6	<b>£3.7</b>

Level 2 issue fee: £500 - no substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,370	£0.4	3,459	£1.7	<b>£2.1</b>
High response	1,370	£0.4	2,731	£1.4	<b>£1.8</b>

Level 2 issue fee: £500 - substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,370	£0.4	3,659	£1.8	<b>£2.2</b>
High response	1,370	£0.4	2,889	£1.4	<b>£1.8</b>

<sup>48</sup> Claimants are not presently required to express any monetary value for awards they are seeking, though some claimants elect to do so.

Level 3 issue fee: £600 - no substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	2,231	£0.8	3,981	£2.4	<b>£3.1</b>
High response	2,231	£0.8	2,965	£1.8	<b>£2.5</b>

Level 3 issue fee: £600 - substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	2,231	£0.7	4,237	£2.5	<b>£3.3</b>
High response	2,231	£0.7	3,155	£1.9	<b>£2.6</b>

Level 4 issue fee: £1750 - no substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	842	£0.6	153	£0.3	<b>£0.9</b>
High response	842	£0.6	153	£0.3	<b>£0.9</b>

Level 4 issue fee: £1750 - substitution

2011/12 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	0	£0.0	0	£0.0	<b>£0.0</b>
High response	0	£0.0	0	£0.0	<b>£0.0</b>

4.104 A number of claimants would also choose to pay for a statement of written reasons underlying a judgment and/or for the ET to review its decision. We assume that the proportion of cases accepted at "ET1" stage that result in an application for written reasons and a review are the same as those for Option 1, as outlined in paragraphs 4.22-4.24. For Level 4 cases, it is assumed that these proportions are a weighted average of those proportions for Levels 2 and 3.

Written reasons (singles) - no substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£10	£50	£20	£10	<b>£90</b>
High response	£10	£40	£20	£10	<b>£80</b>

Written reasons (singles) - substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£10	£60	£30	£0	<b>£100</b>
High response	£10	£40	£20	£0	<b>£70</b>

Review (singles) - no substitution

2011/12 £k	Level 1*	Level 2	Level 3	Level 4*	TOTAL
Low response	£0	£20	£10	£0	<b>£30</b>
High response	£0	£20	£10	£0	<b>£30</b>

\*Estimate less than £5k.

Review (singles) - substitution

2011/12 £k	Level 1*	Level 2	Level 3	Level 4	TOTAL
Low response	£0	£20	£10	£0	<b>£30</b>
High response	£0	£20	£10	£0	<b>£30</b>

\*Estimate less than £5k.

## Multiples

4.105 The total cost to ET claimants of the proposed charging system for 'multiple' claimants would depend on the distribution of claims with respect to cases. As in Option 1, we assume that the 2009/10 distribution (the only year for which data are available) is stable and independent of the fee-charging regime (see paragraph 4.25 and accompanying table for further details).

4.106 As in Option 1, we assume for modelling purposes that all cases involving more than 10 claims are represented and would therefore have zero price sensitivity. It is also assumed that cases with between 2 and 10 claims would pay the relevant fee between them, so they would adjust behaviour in response to the fee rate to the extent that they were not eligible for remissions.

4.107 As in Option 1, to take account for various modelling complexities, we make a number of simplifying assumptions. Further details are available in paragraphs 4.27-4.28.

Level 1 fee - no substitution

2011/12 £m	Payment
Low response	£0.7
High response	£0.7

Level 1 fee - substitution

2011/12 £m	Payment
Low response	£0.7
High response	£0.7

Level 2 fee - no substitution

2011/12 £m	Payment
Low response	£0.4
High response	£0.4

Level 2 fee - substitution

2011/12 £m	Payment
Low response	£0.4
High response	£0.4

Level 3 fee - no substitution

2011/12 £m	Payment at issue
Low response	£0.6
High response	£0.6

Level 3 fee - substitution

2011/12 £m	Payment at issue
Low response	£0.7
High response	£0.6

Level 4 fee - no substitution

2011/12 £m	Payment
Low response	£0.3
High response	£0.3

Level 4 fee - substitution

2011/12 £m	Payment
Low response	£0.0
High response	£0.0

4.108 Claimants who participate in a multiple would also be able to apply for written reasons of an oral judgment or for a review of the ET's decision. In practice, only one claimant in the multiple – or their representative – would make the application with respect to the case at hand. We assume that the proportion of cases accepted at "ET1" stage that result in an application for written reasons and a review are the same as those for Option 1, as outlined in paragraphs 4.30-4.31 and accompanying table. For Level 4 cases, we assume that these proportions are a weighted average of those proportions for Level 2 and 3.

4.109 Given the limited number and modest proportions of multiple cases and the small cost of these fees to individual claimants, it is assumed for simplicity that no cases in a multiple that request written reasons or review would also apply for a remission. The following tables set out the relevant estimates rounded to the nearest £1k, though the totals may not sum exactly.

Written reasons (multiples) - no substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£1	£4	£2	£1	<b>£7</b>
High response	£1	£3	£2	£0	<b>£6</b>

Written reasons (multiples) - substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£1	£4	£2	£0	<b>£7</b>
High response	£1	£3	£2	£0	<b>£6</b>

Review (multiples) - no substitution

2011/12 £k	Level 1*	Level 2	Level 3	Level 4*	TOTAL
Low response	£0	£2	£1	£0	<b>£3</b>
High response	£0	£1	£1	£0	<b>£3</b>

\*Estimate less than £0.5k

Review (multiples) - substitution

2011/12 £k	Level 1*	Level 2	Level 3	Level 4	TOTAL
Low response	£0	£2	£1	£0	<b>£3</b>
High response	£0	£1	£1	£0	<b>£3</b>

\*Estimate less than £0.5k

## Award values

4.110 In addition to the fees that claimants would be required to pay under Option 2, claimants would also be worse off compared to the status quo insofar as successful claimants who opt to bring a claim under Levels 1, 2 or 3 may receive lower awards on average. This is because any awards made at a hearing with respect to Levels 1, 2 or 3 cases would be limited to a maximum of £30,000. At present awards for discrimination are unlimited; while Unfair Dismissal awards have a number of elements that are individually limited, but they can be added together such that the total award may exceed £30,000.

4.111 The following table sets out the average and median awards made for jurisdictional complaints in excess of £30,000 where HMCTS routinely collects data – i.e., successful complaints of discrimination and of Unfair Dismissal.

Award values of £30k+ only

£k nominal	Average	Median	Total	Share of all award values*
2008/09	£71	£47	£10,250	38%
2009/10	£67	£45	£13,533	40%
2010/11	£54	£42	£10,483	36%

\* For which data are collected

4.112 Based on the last few years of available data, the jurisdictional complaints that would have been affected by Option 2 had an average award value of £50-70k. The averages were significantly higher than the comparable median awards for this sub-category because of the small number of high awards given – less than 20 in number each year exceeded £100k; and only 1 award in the whole period exceeded £1 million. The £30k+ category of awards represented roughly 40% of the total value of all awards handed down in the ET over recent years, according to available data.

4.113 Although the values of awards given are not necessarily representative of the values of awards sought by claimants for alleged breaches of employment law, it is assumed for the purposes of modelling that successful Level 4 cases typically receive around £60k. This means that, if they choose to substitute to Levels 1, 2 or 3, their awards would be reduced by about £30k on average. However, it is important to remember that Option 2 would only affect awards made by an Employment Judge; settlements between the claimant(s) and respondent would not be affected.

- 4.114 Based on the indicative modelling carried out for this Impact Assessment, it is suggested that there would be in the region of 350 Level 4 cases annually in the “no substitution” scenario that would be worse off if they all chose to substitute out of Level 4 (where award values are not limited) to Levels 1, 2 or 3 (where award values are limited to a maximum of £30,000).
- 4.115 Assuming that roughly one-half of this number of cases is resolved in favour of the claimant, it follows that around 175 of them would be successful, thereby resulting in a potential loss of some £5 million in total in the “substitution” scenario compared to the base case. However, it should be emphasised that this illustrative figure is an order-of-magnitude estimate and that judicial discretion with respect to award values could result in a significantly different figure during any given year.

## Respondents

- 4.116 As in Option 1, respondents would incur direct costs from using the ET if they choose to take the actions listed in paragraph 4.33-4.35. It is further assumed that the application rates for Default Judgment revocations and dismissals are stable at 2009/10 levels. The figures for level 4 cases are assumed to be a weighted average of Levels 2 and 3 figures.

### No substitution

Fee level	Low response				High response			
	Singles		Multiples		Singles		Multiples	
	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal
Level 1	1,235	5,634	63	287	1,167	5,322	62	280
Level 2	134	1,303	7	66	119	1,160	7	62
Level 3	30	1,733	2	89	26	1,527	2	83
Level 4	15	271	1	14	15	271	1	14
<b>Total</b>	<b>1,413</b>	<b>8,941</b>	<b>72</b>	<b>455</b>	<b>1,327</b>	<b>8,280</b>	<b>71</b>	<b>440</b>

### Substitution

Fee level	Low response				High response			
	Singles		Multiples		Singles		Multiples	
	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal
Level 1	1,273	5,807	65	295	1,202	5,481	63	289
Level 2	138	1,342	7	68	122	1,191	7	64
Level 3	31	1,785	2	91	27	1,566	2	86
Level 4	0	0	0	0	0	0	0	0
<b>Total</b>	<b>1,441</b>	<b>8,935</b>	<b>74</b>	<b>455</b>	<b>1,351</b>	<b>8,238</b>	<b>72</b>	<b>439</b>

- 4.117 Respondents – as corporate bodies – would not be eligible for a fee remission, so they would have to pay the entire fee if they request a revocation of a Default Judgment or dismissal of a claim that has been withdrawn or settled. As in Option 1, two demand response scenarios – “low” and “high” – are used.
- 4.118 Given these assumptions, the following table presents estimates of the annual amounts that respondents would pay under the proposed fee-charging regime. The figures are rounded to the nearest £0.1m and the totals may not sum exactly.

### No substitution

2011/12 £m	Revoke	Dismissal	<b>Total</b>
Low response	£0.1	£0.6	<b>£0.7</b>
High response	£0.1	£0.5	<b>£0.6</b>

### Substitution

2011/12 £m	Revoke	Dismissal	<b>Total</b>
Low response	£0.2	£0.6	<b>£0.7</b>
High response	£0.1	£0.5	<b>£0.6</b>

4.119 A number of respondents would also choose to pay for a statement of written reasons underlying a judgment and/or for the ET to review its decision. It is assumed that the proportion of cases accepted at “ET1” stage which result in an application for written reasons and a review are the same as those for Option 1. For Level 4 cases, it is assumed that these proportions are a weighted average of those proportions for Levels 2 and 3.

Written reasons - no substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£20	£80	£40	£10	<b>£150</b>
High response	£20	£70	£30	£10	<b>£130</b>

Written reasons - substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£20	£80	£40	£0	<b>£140</b>
High response	£20	£70	£30	£0	<b>£120</b>

ET Review - no substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£10	£40	£20	£0	<b>£70</b>
High response	£0	£30	£10	£0	<b>£40</b>

ET Review - substitution

2011/12 £k	Level 1	Level 2	Level 3	Level 4	TOTAL
Low response	£10	£40	£20	£0	<b>£70</b>
High response	£10	£30	£10	£0	<b>£50</b>

4.120 Respondents span the UK’s private, public or voluntary sectors. The proportion of respondents in each relevant sector is outlined in paragraph 4.42 and the accompanying table. Respondents are also employers of varying sizes – the proportion of employers with certain number of employees is outlined in paragraph 4.43 and the accompanying table.

4.121 A respondent who is unsuccessful at an ET or an EAT hearing may be ordered to pay the fees previously incurred by the claimant, so there may be additional costs to respondents. Equally, however, an unsuccessful claimant may be ordered to pay the fees incurred by the respondent. This impact has been ignored in this Impact Assessment.

## Appellants

4.122 It was estimated that the base case number of “steady state” appeals disposed may be around 1,400 per year. This is on the basis that around 3% of ET accepted cases produced an appeal in the recent past. This annual total would be lower under fee-charging because of the decline in the number of cases passing through the ET and because of demand responsiveness in the EAT. The exact number of appeals that would be made and disposed under Option 2 is therefore uncertain.

4.123 Assuming the 3% rate of appeal remains stable and is independent of ET fee-charging and the BIS reforms, then the number of ET cases that would be predisposed to make an appeal would be around 1,300-1,400, depending on the demand response scenario. It is assumed that the proportion of EAT cases brought by respondents or claimants is the same as in Option 1 – see paragraph 4.50. It is also assumed that the proportion of respondents or claimants who proceed to hearing is the same as in Option 1, as outlined in paragraph 4.51.

4.124 Assuming the same “low” and “high” demand response scenarios for both claimants and respondents who choose to appeal an ET decision and assuming the same distribution among those eligible for remissions as listed in Annex 5, the next summary table presents estimates of the annual revenue that appellants would pay at 2011/12 prices.



No substitution

2011/12 £m	Application		Hearing		Total payment
Scenario	Respondents	Claimants	Respondents	Claimants	
Low response	£0.2	£0.2	£0.2	£0.1	<b>£0.7</b>
High response	£0.1	£0.2	£0.1	£0.1	<b>£0.5</b>

Substitution

2011/12 £m	Application		Hearing		Total payment
Scenario	Respondents	Claimants	Respondents	Claimants	
Low response	£0.2	£0.2	£0.2	£0.1	<b>£0.7</b>
High response	£0.1	£0.2	£0.1	£0.1	<b>£0.5</b>

## HMCTS

- 4.125 The costs to HMCTS primarily involve collecting, banking and administering the various fee rates. Depending on the IT solution there are likely to be ongoing maintenance costs or service charges. HMCTS will also have ongoing annual administrative costs from operating the remissions system.
- 4.126 The same unit costs of fee collection and processing fee remissions are used as in Option 1. These costs are explained in further detail in paragraph 4.54 and the accompanying table.
- 4.127 The summary tables below present estimates of the costs of administering the new payments and the courts remissions system in the ET and EAT under the various scenarios. The figures are based on the annual numbers of parties who are estimated to pay fees and to apply for a remission in respect of each fee rate, assuming that only those individuals who would be entitled to a remission actually apply for one. The estimates are rounded to the nearest £0.1m and may not sum exactly.

Low response - no substitution

2011/12 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.2	£0.1	£0.2	<b>£0.6</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.2</b>	<b>£0.1</b>	<b>£0.3</b>	<b>£0.7</b>

\*Estimate less than £0.05m

Low response - substitution

2011/12 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.2	£0.1	£0.2	<b>£0.6</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.2</b>	<b>£0.1</b>	<b>£0.3</b>	<b>£0.7</b>

\*Estimate less than £0.05m

High response - no substitution

2011/12 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.2	£0.1	£0.2	<b>£0.6</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.2</b>	<b>£0.1</b>	<b>£0.3</b>	<b>£0.6</b>

\*Estimate less than £0.05m

High response - substitution

2011/12 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.2	£0.1	£0.2	<b>£0.5</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.2</b>	<b>£0.1</b>	<b>£0.3</b>	<b>£0.6</b>

\*Estimate less than £0.05m

- 4.128 It is further estimated that there would be around £0.7 million per year in other business costs e.g., related IT and estate costs for extra staff. The additional annual cost already includes a degree of optimism bias; the estimate will be refined in due course. The annual total cost to HMCTS is therefore put at some £1-2 million at 2011/12 prices.

## Taxpayers

4.129 Taxpayers would not incur any additional costs under this Option.

## Lawyers

4.130 Other things being equal, this group would receive less income due to the decline in the number of ET claims and appeals, compared to the status quo. This is because there would tend to be less demand for legal advice and representation with respect to tribunal matters. In reality, the legal services market would adjust, perhaps to the point where any loss of income is completely offset by lawyers taking up opportunities elsewhere.

4.131 The same estimates as in Option 1 are used for the average cost to each claimant and respondent of legal advice and representation in the ET. Further details are explained in paragraph 4.60 and accompanying table.

4.132 The next table presents rounded estimates of the notional loss in annual income that lawyers would experience as a group due to the potential reduction in demand for legal advice and representation in ET matters.<sup>49</sup> The figures are rounded to the nearest £1m and should only be interpreted as order-of-magnitude estimates of a pessimistic outcome.

No substitution		
2011/12 £m	Low response	High response
Loss of income	£3	£14

Substitution		
2011/12 £m	Low response	High response
Loss of income	£3	£14

## Acas

4.133 Acas is a taxpayer funded body that offers arbitration and mediation services to employers and employees who are in dispute. As in Option 1, there is uncertainty about the extent to what ET and EAT fee-charging would induce claimants or respondents to substitute from the Employment Tribunal to Acas. These issues are discussed in more depth in paragraphs 4.63-4.65.

### Summary of costs

4.134 The following table presents estimates (rounded to the nearest £1m) of the total annual quantified costs to each main group that would be affected by Option 2 compared to the base case. The impact on appellants is decomposed into the constituent groups of ET claimants and ET respondents so as to highlight the quantified impact specifically on employers. The figures may not sum due to rounding.

No substitution		
2011/12 £m	Low response	High Response
Claimants*	£13	£11
Respondents*	£1	£1
HMCTS	£1	£1
Taxpayers	£0	£0
Lawyers	£3	£14
<b>TOTAL</b>	<b>£18</b>	<b>£27</b>

\* includes relevant appellants

<sup>49</sup> As in Option 1, the impact on reduced demand for legal advice and representation in the EAT is ignored given the much smaller caseload.

Substitution		
2011/12 £m	Low response	High Response
Claimants*	£17	£15
Respondents*	£1	£1
HMCTS	£1	£1
Taxpayers	£0	£0
Lawyers	£3	£14
<b>TOTAL</b>	<b>£22</b>	<b>£32</b>

\* includes relevant appellants

4.135 Based on a number of assumptions, the table shows that the total annual cost to society of fee-charging would be approx £18-32 million p.a. at 2011/12 prices, which includes the approximate £5 million loss in awards among claimants in the “substitution” scenario. The estimated impact on lawyers is effectively a pessimistic outcome that would only materialise if the relevant providers of legal services are unable to take advantage of opportunities elsewhere.

## **Benefits of Option 2**

### *Ongoing benefits*

#### **Claimants & appellants**

4.136 Claimants and appellants would benefit from a fee remission if they are eligible to receive one, although this is not technically a benefit compared to the base case (as the service is presently free of charge). Further details are explained in paragraph 4.68. The following summary table presents estimates of the total fee remissions given to claimants and appellants as a group. The figures are rounded to the nearest £0.1m. The estimates are larger in the “no substitution” scenario because most Level 4 claimants benefit from fee remissions; this does not happen in the “substitution” scenario.

No substitution				
2011/12 £m	Remission 1	Remission 2	Remission 3	<b>TOTAL</b>
Low response	£1.8	£3.2	£2.0	<b>£7.0</b>
High response	£1.8	£3.2	£2.0	<b>£7.0</b>
Substitution				
2011/12 £m	Remission 1	Remission 2	Remission 3	<b>TOTAL</b>
Low response	£1.6	£2.8	£1.2	<b>£5.6</b>
High response	£1.6	£2.8	£1.2	<b>£5.5</b>

4.137 It is also assumed that ET claimants as a group would benefit from avoiding the various costs involved with making a claim. Estimates of the average gain to claimant are as set out in Option 1 in paragraph 4.71. The following tables present estimates of the approximate gain that claimants would collectively experience due to the reduction in this group’s demand.<sup>50</sup> The figures are rounded to the nearest £1m and should only be interpreted as order-of-magnitude estimates.

No substitution		
2011/12 £m	Low response	High response
Total gain	£2	£9

Substitution		
2011/12 £m	Low response	High response
Total gain	£2	£10

<sup>50</sup> As in Option 1, the impact of reduced demand for appeals to the EAT is ignored given the much smaller caseload

## Respondents

4.138 Respondents (i.e. employers) incur costs in dealing with ET claims that are lodged against them. The nature of these costs is explained in further detail in paragraphs 4.73-4.74. The following tables present estimates of the approximate gain that respondents would collectively experience due to the reduction in this group's demand.<sup>51</sup> The figures are rounded to the nearest £1m because they should only be interpreted as order-of-magnitude estimates.

No substitution		
2011/12 £m	Low response	High response
Total gain	£3	£15

Substitution		
2011/12 £m	Low response	High response
Total gain	£3	£16

4.139 In addition, respondents would benefit compared to the base case insofar as the average award they are ordered to pay to successful claimants would be lower, other things being equal. This is because Option 2 is explicitly intended to encourage claimants to limit the awards that they are seeking to no more than £30,000.

4.140 In paragraphs 4.110-4.115 it was provisionally estimated that claimants in the "substitution" scenario would collectively be £5 million per year worse off due to receiving lower award values compared to the base case. Respondents are therefore £5 million per year better off in total because the awards that they are ordered to pay would be reduced compared to the base case.

4.141 The overall gain to respondents in Option 2 would therefore be in the region of £3-21 million p.a. at today's prices.

## HMCTS

4.142 The benefits to HMCTS consist of operational cost savings that would result from the reduced demand for claims and appeals at the ET and EAT respectively. The cost of administering Level 4 cases has had to be imputed; the estimates are set out in the table below (based on 2009/10 outturns, uprated to 2011/12 prices and rounded to the nearest £10).

Track	Receipt & allocation	Hearing*	Mediation	Revoke/Review DJs	Dismissal after settlement	Written reasons	Review
Level 1	£450	£1,570		£360	£180	£470	£770
Level 2	£410	£4,120		£360	£240	£1,050	£1,550
Level 3	£420	£6,170	£2,610	£360	£210	£1,380	£1,830
Level 4	£420	£4,770	£2,610	£360	£230	£1,160	£1,650
Variable	41%	82%	100%	70%	46%	87%	92%

\* includes interlocutory hearings

4.143 It is important to note that HMCTS management information on average case costs in the ET is based on the jurisdictional nature of claims made and not the monetary amount of the claim sought (which the claimant is not required to state at present). Initial evidence suggests that, while high value claims can relate to a number of different claim jurisdictional types, the resolution of those cases will typically incur higher-than-average costs. To be conservative the average cost for Level 4 cases has been estimated as a weighted average of cases in Levels 2 and 3. Further analysis of case data and costs is planned, which will help inform the Government response to this consultation.

4.144 The following table sets out estimates of what would be the annual cost of operating the ET and EAT under the "steady state" base case and what would be the change in total cost due to reduced user demand during the 2010s. The figures are rounded to the nearest £0.1m, but they should not be regarded as precise at this level of aggregation and they may not sum exactly.

<sup>51</sup> As in Option 1, the impact of reduced demand for appeals to the EAT is ignored given the much smaller caseload

No substitution			
2011/12 £m	Steady state	Low response	High response
E.T.	£48.1	-£0.5	-£3.3
E.A.T.	£2.0	-£0.2	-£0.9
<b>TOTAL</b>	<b>£50.1</b>	<b>-£0.8</b>	<b>-£4.2</b>

Substitution			
2011/12 £m	Steady state	Low response	High response
E.T.	£48.1	-£1.4	-£4.4
E.A.T.	£2.0	-£0.2	-£0.9
<b>TOTAL</b>	<b>£50.1</b>	<b>-£1.7</b>	<b>-£5.3</b>

## Taxpayers

- 4.145 Compared to the status quo, UK taxpayers gain from the reduction in public expenditure on the ET and EAT under Option 2 as users (i) start to pay towards the costs of service provision; and (ii) moderate their demands on HMCTS thereby leading to operational cost savings.
- 4.146 The following summary table sets out rounded estimates of the total gain to taxpayers. This excludes remissions because taxpayers currently pay 100% of the cost of the ET and EAT. The figures are rounded to the nearest £1m.

No substitution			
2011/12 £m	Fee income	Cost saving	<b>TOTAL</b>
Low response	£14	£1	<b>£15</b>
High response	£12	£4	<b>£16</b>

Substitution			
2011/12 £m	Fee income	Cost saving	<b>TOTAL</b>
Low response	£13	£2	<b>£15</b>
High response	£11	£5	<b>£17</b>

## Lawyers

- 4.147 It is not currently expected that lawyers as a group would gain any material benefits from fee-charging

## Acas

- 4.148 The possible impact of ET and EAT fee-charging on Acas is discussed as part of the forthcoming Government response to the BIS "Resolving Workplace Disputes" consultation.

## Wider benefits

- 4.149 The wider social benefits of this option are qualitatively the same as those discussed in Option 1 (see paragraphs 4.86-4.87). This benefit has not been monetised for the reason.

## Summary of benefits

- 4.150 The following table presents estimates (rounded to the nearest £1m) of the total annual quantified costs to each main group that would be affected by Option 1. So as to avoid double-counting, the gain to taxpayers only refers to the contribution that this group no longer would have to make due to the fee income raised from users. In reality, the cost saving to HMCTS would also accrue to taxpayers, but these benefits are represented separately here for the purposes of illustration.

No substitution

2011/12 £m	Low response	High Response
Claimants	£2	£9
Respondents	£3	£15
HMCTS	£1	£4
Taxpayers*	£14	£12
Lawyers	£0	£0
<b>TOTAL</b>	<b>£20</b>	<b>£41</b>

\* avoided contribution due to fee income raised

Substitution

2011/12 £m	Low response	High Response
Claimants	£2	£10
Respondents	£8	£21
HMCTS	£2	£5
Taxpayers*	£13	£11
Lawyers	£0	£0
<b>TOTAL</b>	<b>£25</b>	<b>£48</b>

\* avoided contribution due to fee income raised

4.151 Based on a number of assumptions, the table suggests that the total gain to society from the proposed fee-charging regime would be in the region of £20-48 million per year at 2011/12 prices. It is higher under the “high” demand response scenario partly because of the dominance of the gain to respondents (i.e., employers) as a group who avoid the various costs – including legal advice/representation and lower awards on average – of an ET claim, compared to the base case.

*Net impact of Option 2*

4.152 The following table sets out estimates of the annual net benefit to each main group, based on a number of assumptions. The quantified net impact on appellants has been decomposed into the constituent ET claimants and respondents groups. The figures are rounded to the nearest £1m and they may not sum exactly.

No substitution

2011/12 £m	Low response	High Response
Claimants	-£11	-£2
Respondents	£2	£14
HMCTS	-£1	£3
Taxpayers*	£14	£12
Lawyers	-£3	-£14
<b>TOTAL</b>	<b>£2</b>	<b>£14</b>

\* avoided contribution due to fee income raised

Substitution

2011/12 £m	Low response	High Response
Claimants	-£15	-£6
Respondents	£7	£20
HMCTS	£0	£4
Taxpayers*	£13	£11
Lawyers	-£3	-£14
<b>TOTAL</b>	<b>£3</b>	<b>£15</b>

\* avoided contribution due to fee income raised

4.153 Further details on the nature of the net impact on the groups specified in the above table are discussed in paragraphs 4.91-4.95. Overall, the quantified net benefit to society of Option 2 would be around £2-15 million per year at 2011/12 prices. However, it must be noted that this range is subject to uncertainty and that the estimated impact on lawyers is a pessimistic outcome.

## Comparison of Options 1 and 2

4.154 To the extent that the estimates derived from Options 1 and 2 can be compared given the various uncertainties around the assumptions and scenarios used, the following points can be made:

- Total fee income may be higher under Option 2 due to the higher rate of cost recovery achieved given the proposed fee rates.
- Total fee remissions may be higher under Option 2 due to the existence of an additional fee category ("Level 4") where the proposed fee rates are relatively high.
- The annual total cost of the ET and EAT may be higher under Option 2 due to the existence of an additional fee category ("Level 4") that HMCTS would have to administer.
- Claimants may be worse off overall under Option 2 due to the higher rate of cost recovery achieved and due to reduced award values in total.
- Respondents may be better off overall under Option 2 due to the lower volumes of ET cases being submitted and the reduced total award values.
- It is envisaged that Option 2 will commence a year after Option 1, so the annual net benefits begin in 2014/15 under the former as opposed to 2013/14 under the latter.

## 5. Risks and Assumptions

- 5.1 ET and EAT statistical data are subject to detailed checks and validation prior to its publication to ensure that data is accurate. All statistical data included in this Impact Assessment is based on figures up to 2009/10 because at the time of development this was the latest available information. The Government response to the fee-charging consultation will use 2010/11 data.
- 5.2 Reliable long-term forecasts of demand for ET and EAT services do not exist because the underlying drivers of user behaviour are not well understood at present. A notional equilibrium based on recent historic data has been derived so as to infer a base case of what would happen over the coming years in the absence of fee-charging and given the proposed BIS reforms to employment law. In reality, the status quo level of demand could be higher or lower than indicated during any given year.
- 5.3 The price elasticity of demand for ET and EAT services is unknown because fee-charging has never existed. Two scenarios have been used to represent what is currently considered to be a plausible range of price sensitivity, but the risk remains that users (who would not benefit from a fee remission) would react more strongly than is currently anticipated.
- 5.4 Under Option 2, claimants who opt to bring a Level 1, 2 or 3 claim would not receive compensation in excess of £29,999.99. If a claimant seeks compensation in excess of this amount, they would have to pay the appropriate fee for a Level 4 case or prove eligibility for a fee remission. It is uncertain what proportion of existing Level 1, 2 or 3 claimants would fall into the proposed Level 4 category and it is unknown what proportion of the latter would choose in future to substitute away from Level 4. Two scenarios are used: (i) where no Level 4 claimants substitute to Levels 1, 2 or 3 and are unresponsive to fee-charging; and (ii) where all Level 4 claimants substitute to Levels 1, 2 or 3 and are responsive to fee-charging. In reality, the actual proportion of Level 4 claims that would choose to substitute to Levels 1, 2 or 3 could lie anywhere within this range.
- 5.5 A notable risk associated with Option 2 is analogous to what is termed "adverse selection". To elaborate, the one-stage fee proposed for Level 4 cases is significantly higher than for Levels 1, 2 or 3. This could potentially result in a situation where only claimants entitled to a full or at least partial fee remission (almost 90% of claimant population) would proceed with Level 4 cases, while claimants who are required to pay the entire fee would substitute to a cheaper fee Level. This possibility is not modelled in the Impact Assessment.

- 5.6 In addition it is unknown under Option 2 whether the existence of a one-stage upfront fee would materially alter the ET hearing rate assumptions used at each fee Level. Limiting respondents' maximum liabilities may alter the balance between their expected costs and benefits of proceeding to an ET hearing compared to the status quo. Claimants may also be motivated to "get their money's worth" by proceeding to an ET hearing for which they do not have to pay.
- 5.7 The number of individual claimants who would receive a full or partial fee remission have been estimated using results from the 2008/09 Family Resources Survey, which is a comprehensive dataset of around 24,000 private households in the UK (the inclusion of Northern Ireland households is not believed to be significant), plus an adjustment to reflect some characteristics of the ET claimant population. As well as possibly failing to produce an accurate distribution of ET claimants' incomes in 2008/09, it is unknown how stable this estimated distribution would be in future years. The additional use of simplifying assumptions in the Impact Assessment means that, in general, there is a risk that the number of claimants and appellants who would qualify for a full or partial remission could be significantly higher or lower than estimated.
- 5.8 The Department for Work & Pensions (DWP) has announced plans to introduce a Universal Credit in late 2013. This may also affect the number of claimants and appellants who would be entitled to a full or partial fee remission given the use of passported state benefits in the current civil courts remission system. In addition, the scope and generosity of the civil courts remission system may itself change in future years. The outcome and any proposals which impact on ET and EAT fee-charging will be considered and addressed if necessary.
- 5.9 BIS has consulted on various reforms to Britain's system of employment dispute resolution. While the Impact Assessment has sought to take account of these proposals in formulating a base case, there remains a risk that – depending on the precise options taken forward – the number of ET and EAT cases submitted could differ significantly from the estimates presented, even in the absence of fee-charging. The possible impact on the average total cost of processing an ET claim at each stage is estimated to be relatively modest at around £1 million p.a. at today's prices in total. This effect has therefore been ignored in the Impact Assessment. However, the 2010/11 average costs of the ET and EAT will be used in the Government response to the fee-charging consultation and explicitly adjusted to take account of the reforms when the cost estimates are finalised.
- 5.10 It is proposed that if an ET claimant is successful at a hearing, then the tribunal can order the respondent to reimburse any fees paid. However, if the claimant is unsuccessful at a hearing, then the tribunal can order the claimant to reimburse any fees paid by the respondent. Given that in any year this reimbursement would apply simultaneously to sub-groups of claimants and respondents, this effect has been ignored. Fee income from counterclaims and the benefit to ET claimants and respondents from lower demand for appeals have also been ignored given the relatively small volumes involved.
- 5.11 The policy intention is to include a discretionary power for the Lord Chancellor to be able to exempt claimants from paying fees in exceptional or compelling circumstances. This exception has not been included in the Impact Assessment.
- 5.12 It is not currently expected that there would be any significant changes in workplace behaviour beyond the reduction in demand for ET and EAT services as a result of fee-charging.
- 5.13 Given all the assumptions and risks articulated above, it is important to note that the estimates of annual fee revenue paid by claimants, respondents and appellants as well as any HMCTS operational savings may in reality be higher or lower than indicated in the Impact Assessment.



## **6. Enforcement and implementation**

- 6.1 The fees order will provide that, without either payment or supporting evidence for either full or partial remission, a claim will not proceed beyond an appropriate point. If the fee is paid or a full or partial remission granted, the claim would continue on receipt of the contribution and clearance of funds. If no fee or application for fee remission is received all received paperwork will be returned and the claimant is advised of the fee due and the remission system.
- 6.2 This means that debt recovery would not arise and that HMCTS would not incur any significant costs if the relevant fees are not paid when due. Payment and money handling systems would be designed to minimise the opportunity for fraud.
- 6.3 The proposed policy falls outside the scope of the “One In, One Out” rule because it relates to the introduction of user fees by a public body – namely, HMCTS – for cost recovery purposes only.

## **7. Specific Impact Tests**

### **Equalities Impact Test**

- 7.1 An Equality Impact Assessment has been completed and is published separately.

### **Competition Assessment**

- 7.2 We have fully considered the questions posed in The Office of Fair Trading competition assessment test and concluded that none of the proposals outlined in this impact assessment are likely to hinder the number or range of suppliers or the ability and incentive for businesses to compete.

### **Small Firms Impact Test**

- 7.3 Any enterprise with employees could potentially have a dispute with one of its employees that ends up being resolved at an Employment Tribunal. The proposals apply to all enterprises irrespective of their size.
- 7.4 Assessment of the potential impact of additional capacity on small firms has relied on the Department for Business, Innovation and Skill’s Small Firms Impact Assessment Guidance (January 2009). Although the last SETA found that a majority of claims brought involved larger employers<sup>52</sup> as the respondent, around a quarter of all respondents were smaller businesses – i.e., less than 25 employees across the organisation as a whole.
- 7.5 This group of employers would be affected by the introduction of fee-charging to the extent that, if a claimant succeeds at a hearing, they may be ordered to meet the cost of the fees incurred by the claimant, in addition to their existing liability to meet the cost of the award as well as their own cost of defending the case. Small firms would, additionally, be required to pay a user fee if they choose to appeal against an ET decision or to bring a counterclaim against the claimant in a breach of contract case.
- 7.6 The potential impact of these proposals on small firms should be mitigated by proposals set out in BIS’s “Resolving Workplace Disputes” consultation document which are intended to benefit all employers by streamlining and simplifying the employment tribunal system. Moreover, small firms would benefit from the expected fall in the total number of ET cases that the introduction of fee-charging would bring about, other things being equal.

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<sup>52</sup> According to table 2.5 of SETA 2008, around 73% of respondents by size of organisation had 25 or more employees.

## **Carbon Assessment**

- 7.7 The proposals are unlikely to have any significant impact on greenhouses gases. It is likely that fewer claims will be made after the introduction of a fee and this could possibly reduce travel related emission. However, if there is any impact, we expect it to be minimal.

## **Other Environment**

- 7.8 We do not expect that the proposal will have any impact on noise pollution, landscape, wildlife, air quality or any other environmental impact.

## **Health Impact Assessment**

- 7.9 There is no evidence that our policy will have a significant impact on human health by virtue of its effects on the wider determinants of health or that it will place a significant demand on any health and social care services. On this basis we do not believe a full health impact assessment is required.

## **Human Rights**

- 7.10 We believe that our Human Rights obligations are met by the proposed fee rates and system of fee remissions.

## **Justice Impact Test**

- 7.11 The proposal will impact on HMCTS, primarily in gathering fees and considering remissions. Legal aid would not be affected by these proposals.

## **Rural proofing**

- 7.12 The proposals are not expected to have any significant rural impacts.

## **Sustainable Development**

- 7.13 The primary impact on sustainable development is that those who use the service and can afford to pay will make a contribution towards the costs of administering their claim or appeal, thereby reducing public spending and the benefit this will bring to the UK economy. Any potential impact on communities and equality groups will continue to be monitored through our Equality Impact Assessment and Post Implementation Review processes.

## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

The HMCTS will review ET and EAT fee rates to evaluate the impact of the introduction of a fee in this jurisdiction, and to compare against the behaviour predicted by our economic model. We will seek, wherever practicable, to align any proposals for improvements to the system with future reviews of fee levels. Any changes to fee levels will be made through legislation.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review will seek to:

- Ensure that those who use the ET system, and can afford to pay, do pay a fee as a contribution to the cost of administering their claim/appeal;
- Ensure that the policy does not impede access to justice;
- Ensure that the fee charging process is simple to understand and to administer;
- Examine impacts on equality groups;
- Verify the amount of fee income raised against the models presented in the Impact Assessment and quantify any operational savings.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Evaluation of management information and financial accounting data to assess impacts of the introduction of fees on user groups and their behaviour at the tribunals. This will also be consistent with the HMCTS' annual business planning and performance management process. Where possible we will also seek to conduct research among users and stakeholders. We will also seek to develop a robust forecasting mechanism to inform future fee reviews.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The impact of changes brought about by the introduction of fees will be measured against a baseline of 2010/11 claim volumes. Any future fee level increases will use the previous year's data as the baseline for comparison.

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

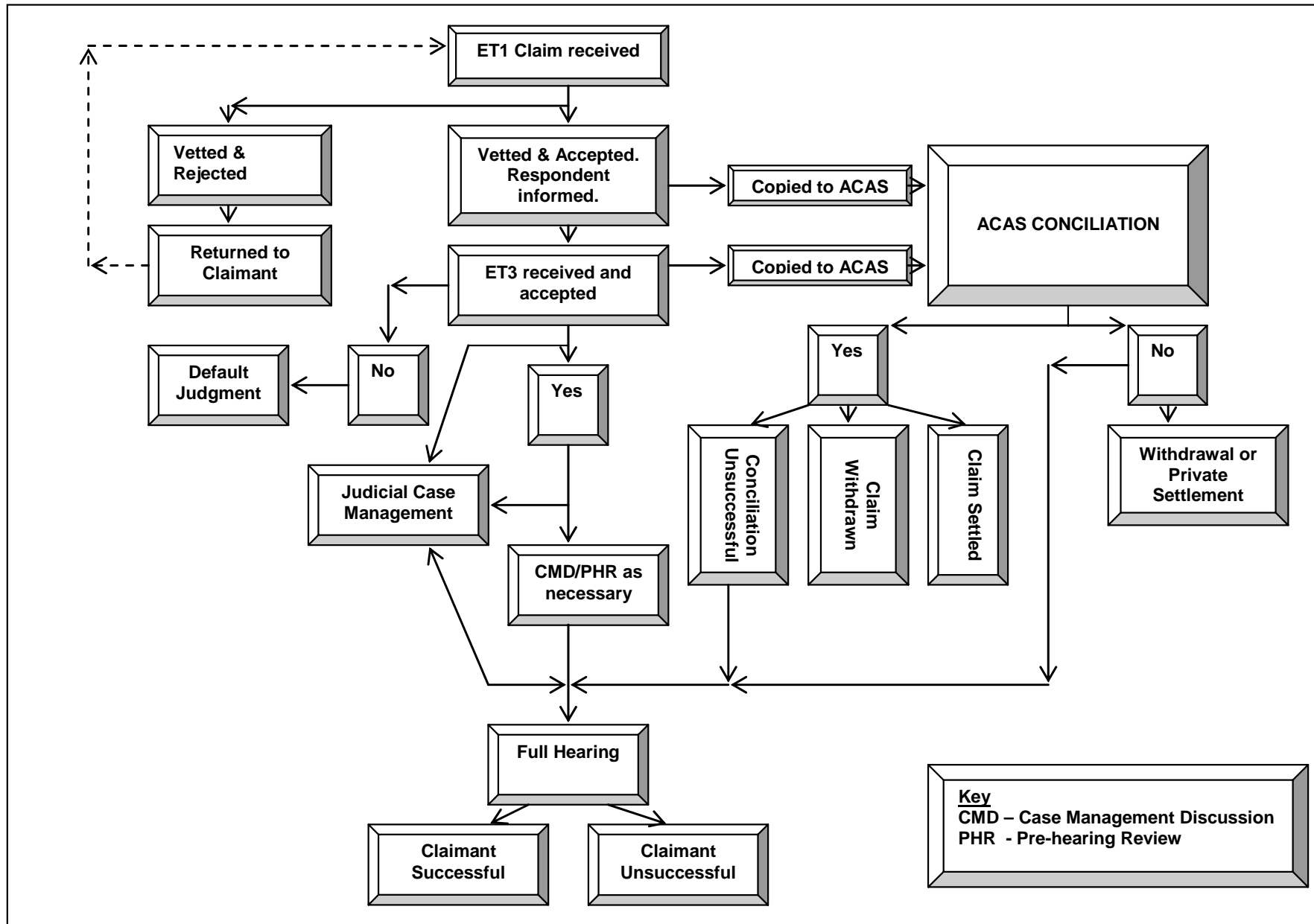
The ETs and EAT will maintain service to users on reduced taxpayer funding, using fee income to balance their budget, without restricting access to justice or disproportionately affecting equality groups and providing users with a service that meets HMCTS service standards.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Use management information and financial accounting data to assess impacts of the introduction of fees on the Tribunal user groups and user behaviour. Where possible we will also seek to conduct research among users and stakeholders.

**Reasons for not planning a review:** [If there is no plan to do a PIR please provide reasons here]

## Annex 2: Employment Tribunal process for claims that are decided at final hearing



## Annex 3 – 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
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

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, 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
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

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
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
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

Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
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
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
(a) Failure of the employer to consult or report about training in relation to a bargaining unit (b) Suffered a detriment on grounds related to recognition of a trade union for collective bargaining	TULR(C)A 1992 s. 70A –70A and Schedule A1 paras 156–157	Level 2	£200	£1000	£500



Descriptor	Basis of claim and ET jurisdiction	Track	Option 1		Option 2
			Issue fee	Hearing fee	Issue fee
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 4: Comparison of 2008/09 Family Resources Survey (FRS) and 2008 Survey of Employment Tribunal Applications (SETA) distributions

### Gender

Survey	Males	Females
FRS	49%	51%
SETA	59%	41%

### Age

Survey	16-24	25-34	35-44	45-54	55-64	65+
FRS	13%	16%	19%	17%	16%	20%
SETA	10%	20%	26%	26%	17%	1%

### Employment status

Survey	Full time working	Part time working	Self employed	Unemployed and looking for work	Retired	Student	Permanently sick/ disabled	Temporarily sick	Looking after home	Other
FRS	41%	12%	7%	3%	22%	3%	6%	0%	4%	3%
SETA	51%	13%	10%	11%	5%	1%	3%	1%	1%	4%

In SETA "Other" includes those unemployed and not looking for work, carer/looking after children, maternity leave and in temporary work.

Employment status relates to the period in which the survey took place.

N.B. All percentages are rounded. SETA results only include definitive responses and so may not be accurate.

## Annex 5: Estimated shares of ET claimant population that would receive Remission 3, 2008/09 basis

Disposable monthly income (2008/09 £)	Contribution (2008/09 £)	Contribution (2011/12 £)	Percentage of adult population in band	Cumulative percentage of adult population below upper threshold of band	Disposable monthly income (2008/09 £)	Contribution (2008/09 £)	Contribution (2011/12 £)	Percentage of adult population in band	Cumulative percentage of adult population below upper threshold of band	Disposable monthly income (2008/09 £)	Contribution (2008/09 £)	Contribution (2011/12 £)	Percentage of adult population in band	Cumulative percentage of adult population below upper threshold of band
0-49	0.00	0.00	1.24%	1.2%	630-639	265.00	285.37	0.32%	9.4%	1220-1229	560.00	603.05	0.29%	25.7%
50-59	12.50	13.46	0.04%	1.3%	640-649	270.00	290.76	0.24%	9.6%	1230-1239	565.00	608.44	0.37%	26.1%
60-69	15.00	16.15	0.02%	1.3%	650-659	275.00	296.14	0.27%	9.9%	1240-1249	570.00	613.82	0.25%	26.3%
70-79	17.50	18.85	0.04%	1.3%	660-669	280.00	301.53	0.27%	10.2%	1250-1259	575.00	619.21	0.22%	26.5%
80-89	20.00	21.54	0.03%	1.4%	670-679	285.00	306.91	0.27%	10.4%	1260-1269	580.00	624.59	0.22%	26.8%
90-99	22.50	24.23	0.04%	1.4%	680-689	290.00	312.30	0.27%	10.7%	1270-1279	585.00	629.97	0.29%	27.0%
100-109	25.00	26.92	0.08%	1.5%	690-699	295.00	317.68	0.15%	10.9%	1280-1289	590.00	635.36	0.25%	27.3%
110-119	27.50	29.61	0.05%	1.5%	700-709	300.00	323.06	0.31%	11.2%	1290-1299	595.00	640.74	0.26%	27.6%
120-129	30.00	32.31	0.04%	1.6%	710-719	305.00	328.45	0.26%	11.4%	1300-1309	600.00	646.13	0.23%	27.8%
130-139	32.50	35.00	0.05%	1.6%	720-729	310.00	333.83	0.23%	11.7%	1310-1319	605.00	651.51	0.31%	28.1%
140-149	35.00	37.69	0.04%	1.7%	730-739	315.00	339.22	0.25%	11.9%	1320-1329	610.00	656.90	0.24%	28.3%
150-159	37.50	40.38	0.04%	1.7%	740-749	320.00	344.60	0.29%	12.2%	1330-1339	615.00	662.28	0.29%	28.6%
160-169	40.00	43.08	0.05%	1.8%	750-759	325.00	349.99	0.23%	12.4%	1340-1349	620.00	667.67	0.22%	28.8%
170-179	42.50	45.77	0.06%	1.8%	760-769	330.00	355.37	0.30%	12.7%	1350-1359	625.00	673.05	0.31%	29.2%
180-189	45.00	48.46	0.05%	1.9%	770-779	335.00	360.75	0.31%	13.0%	1360-1369	630.00	678.43	0.30%	29.5%
190-199	47.50	51.15	0.08%	1.9%	780-789	340.00	366.14	0.29%	13.3%	1370-1379	635.00	683.82	0.26%	29.7%
200-209	50.00	53.84	0.07%	2.0%	790-799	345.00	371.52	0.25%	13.6%	1380-1389	640.00	689.20	0.24%	30.0%
210-219	55.00	59.23	0.07%	2.1%	800-809	350.00	376.91	0.27%	13.8%	1390-1399	645.00	694.59	0.25%	30.2%
220-229	60.00	64.61	0.07%	2.2%	810-819	355.00	382.29	0.27%	14.1%	1400-1409	650.00	699.97	0.34%	30.5%
230-239	65.00	70.00	0.04%	2.2%	820-829	360.00	387.68	0.00%	14.1%	1410-1419	655.00	705.36	0.19%	30.7%
240-249	70.00	75.38	0.08%	2.3%	830-839	365.00	393.06	0.54%	14.7%	1420-1429	660.00	710.74	0.23%	31.0%
250-259	75.00	80.77	0.04%	2.3%	840-849	370.00	398.45	0.33%	15.0%	1430-1439	665.00	716.13	0.29%	31.3%
260-269	80.00	86.15	0.09%	2.4%	850-859	375.00	403.83	0.17%	15.2%	1440-1449	670.00	721.51	0.32%	31.6%
270-279	85.00	91.53	0.10%	2.5%	860-869	380.00	409.21	0.27%	15.4%	1450-1459	675.00	726.89	0.24%	31.8%
280-289	90.00	96.92	0.11%	2.6%	870-879	385.00	414.60	0.29%	15.7%	1460-1469	680.00	732.28	0.25%	32.1%
290-299	95.00	102.30	0.10%	2.7%	880-889	390.00	419.98	0.28%	16.0%	1470-1479	685.00	737.66	0.28%	32.4%
300-309	100.00	107.69	0.08%	2.8%	890-899	395.00	425.37	0.27%	16.3%	1480-1489	690.00	743.05	0.26%	32.6%
310-319	105.00	113.07	0.09%	2.9%	900-909	400.00	430.75	0.32%	16.6%	1490-1499	695.00	748.43	0.22%	32.8%
320-329	110.00	118.46	0.09%	3.0%	910-919	405.00	436.14	0.26%	16.9%	1500-1509	700.00	753.82	0.28%	33.1%
330-339	115.00	123.84	0.10%	3.1%	920-929	410.00	441.52	0.22%	17.1%	1510-1519	705.00	759.20	0.21%	33.3%
340-349	120.00	129.23	0.16%	3.2%	930-939	415.00	446.91	0.28%	17.4%	1520-1529	710.00	764.58	0.28%	33.6%
350-359	125.00	134.61	0.08%	3.3%	940-949	420.00	452.29	0.33%	17.7%	1530-1539	715.00	769.97	0.24%	33.8%
360-369	130.00	139.99	0.16%	3.5%	950-959	425.00	457.67	0.39%	18.1%	1540-1549	720.00	775.35	0.26%	34.1%
370-379	135.00	145.38	0.19%	3.7%	960-969	430.00	463.06	0.24%	18.3%	1550-1559	725.00	780.74	0.28%	34.4%
380-389	140.00	150.76	0.16%	3.8%	970-979	435.00	468.44	0.27%	18.6%	1560-1569	730.00	786.12	0.28%	34.7%
390-399	145.00	156.15	0.21%	4.0%	980-989	440.00	473.83	0.23%	18.8%	1570-1579	735.00	791.51	0.23%	34.9%
400-409	150.00	161.53	0.13%	4.2%	990-999	445.00	479.21	0.32%	19.1%	1580-1589	740.00	796.89	0.23%	35.1%
410-419	155.00	166.92	0.18%	4.3%	1000-1009	450.00	484.60	0.34%	19.5%	1590-1599	745.00	802.28	0.30%	35.4%
420-429	160.00	172.30	0.26%	4.6%	1010-1019	455.00	489.98	0.33%	19.8%	1600-1609	750.00	807.66	0.26%	35.7%
430-439	165.00	177.69	0.16%	4.8%	1020-1029	460.00	495.36	0.31%	20.1%	1610-1619	755.00	813.04	0.24%	35.9%
440-449	170.00	183.07	0.17%	4.9%	1030-1039	465.00	500.75	0.24%	20.4%	1620-1629	760.00	818.43	0.22%	36.1%
450-459	175.00	188.45	0.12%	5.1%	1040-1049	470.00	506.13	0.32%	20.7%	1630-1639	765.00	823.81	0.24%	36.4%
460-469	180.00	193.84	0.18%	5.2%	1050-1059	475.00	511.52	0.29%	21.0%	1640-1649	770.00	829.20	0.24%	36.6%
470-479	185.00	199.22	0.12%	5.4%	1060-1069	480.00	516.90	0.23%	21.2%	1650-1659	775.00	834.58	0.20%	36.8%
480-489	190.00	204.61	0.17%	5.5%	1070-1079	485.00	522.29	0.26%	21.5%	1660-1669	780.00	839.97	0.25%	37.1%
490-499	195.00	209.99	0.21%	5.7%	1080-1089	490.00	527.67	0.29%	21.8%	1670-1679	785.00	845.35	0.26%	37.3%
500-509	200.00	215.38	0.17%	5.9%	1090-1099	495.00	533.06	0.21%	22.0%	1680-1689	790.00	850.74	0.26%	37.6%
510-519	205.00	220.76	0.26%	6.2%	1100-1109	500.00	538.44	0.35%	22.3%	1690-1699	795.00	856.12	0.25%	37.8%
520-529	210.00	226.14	0.22%	6.4%	1110-1119	505.00	543.82	0.30%	22.6%	1700-1709	800.00	861.51	0.27%	38.1%
530-539	215.00	231.53	0.18%	6.6%	1120-1129	510.00	549.21	0.28%	22.9%	1710-1719	805.00	866.89	0.26%	38.4%
540-549	220.00	236.91	0.34%	6.9%	1130-1139	515.00	554.59	0.28%	23.2%	1720-1729	810.00	872.27	0.27%	38.6%
550-559	225.00	242.30	0.30%	7.2%	1140-1149	520.00	559.98	0.24%	23.4%	1730-1739	815.00	877.66	0.13%	38.8%
560-569	230.00	247.68	0.29%	7.5%	1150-1159	525.00	565.36	0.26%	23.7%	1740-1749	820.00	883.04	0.21%	39.0%
570-579	235.00	253.07	0.26%	7.8%	1160-1169	530.00	570.75	0.25%	23.9%	1750-1759	825.00	888.43	0.23%	39.2%
580-589	240.00	258.45	0.25%	8.0%	1170-1179	535.00	576.13	0.29%	24.2%	1760-1769	830.00	893.81	0.21%	39.4%
590-599	245.00	263.84	0.27%	8.3%	1180-1189	540.00	581.52	0.28%	24.5%	1770-1779	835.00	899.19	0.25%	39.7%
600-609	250.00	269.22	0.31%	8.6%	1190-1199	545.00	586.90	0.35%	24.8%	1780-1789	840.00	904.58	0.28%	39.9%
610-619	255.00	274.60	0.23%	8.8%	1200-1209	550.00	592.28	0.26%	25.1%	1790-1799	845.00	909.96	0.19%	40.1%
620-629	260.00	279.99	0.27%	9.1%	1210-1219	555.00	597.67	0.30%	25.4%	1800-1809	850.00	915.35	0.24%	40.4%

## Annex 5: Estimated shares of ET claimant population that would receive Remission 3, 2008/09 basis

Disposable monthly income (2008/09 £)	Contribution (2008/09 £)	Contribution (2011/12 £)	Percentage of adult population in band	Cumulative percentage of adult population below upper threshold of band	Disposable monthly income (2008/09 £)	Contribution (2008/09 £)	Contribution (2011/12 £)	Percentage of adult population in band	Cumulative percentage of adult population below upper threshold of band
1810-1819	855.00	920.73	0.22%	40.6%	2400-2409	1,150.00	1238.41	0.20%	51.5%
1820-1829	860.00	926.12	0.21%	40.8%	2410-2419	1,155.00	1243.80	0.16%	51.6%
1830-1839	865.00	931.50	0.19%	41.0%	2420-2429	1,160.00	1249.18	0.18%	51.8%
1840-1849	870.00	936.89	0.27%	41.2%	2430-2439	1,165.00	1254.57	0.12%	51.9%
1850-1859	875.00	942.27	0.19%	41.4%	2440-2449	1,170.00	1259.95	0.12%	52.1%
1860-1869	880.00	947.65	0.18%	41.6%	2450-2459	1,175.00	1265.33	0.09%	52.1%
1870-1879	885.00	953.04	0.23%	41.8%	2460-2469	1,180.00	1270.72	0.15%	52.3%
1880-1889	890.00	958.42	0.19%	42.0%	2470-2479	1,185.00	1276.10	0.17%	52.5%
1890-1899	895.00	963.81	0.24%	42.3%	2480-2489	1,190.00	1281.49	0.19%	52.7%
1900-1909	900.00	969.19	0.18%	42.4%	2490-2499	1,195.00	1286.87	0.20%	52.9%
1910-1919	905.00	974.58	0.19%	42.6%	2500-2509	1,200.00	1292.26	0.14%	53.0%
1920-1929	910.00	979.96	0.26%	42.9%	2510-2519	1,205.00	1297.64	0.15%	53.1%
1930-1939	915.00	985.35	0.27%	43.2%	2520-2529	1,210.00	1303.02	0.16%	53.3%
1940-1949	920.00	990.73	0.20%	43.4%	2530-2539	1,215.00	1308.41	0.16%	53.5%
1950-1959	925.00	996.11	0.24%	43.6%	2540-2549	1,220.00	1313.79	0.11%	53.6%
1960-1969	930.00	1,001.50	0.19%	43.8%	2550-2559	1,225.00	1319.18	0.12%	53.7%
1970-1979	935.00	1,006.88	0.20%	44.0%	2560-2569	1,230.00	1324.56	0.20%	53.9%
1980-1989	940.00	1,012.27	0.25%	44.2%	2570-2579	1,235.00	1329.95	0.13%	54.0%
1990-1999	945.00	1,017.65	0.19%	44.4%	2580-2589	1,240.00	1335.33	0.13%	54.2%
2000-2009	950.00	1,023.04	0.16%	44.6%	2590-2599	1,245.00	1340.72	0.20%	54.4%
2010-2019	955.00	1,028.42	0.19%	44.8%	2600-2609	1,250.00	1346.10	0.14%	54.5%
2020-2029	960.00	1,033.80	0.16%	45.0%	2610-2619	1,255.00	1351.48	0.07%	54.6%
2030-2039	965.00	1,039.19	0.18%	45.1%	2620-2629	1,260.00	1356.87	0.16%	54.7%
2040-2049	970.00	1,044.57	0.14%	45.3%	2630-2639	1,265.00	1362.25	0.14%	54.9%
2050-2059	975.00	1,049.96	0.24%	45.5%	2640-2649	1,270.00	1367.64	0.12%	55.0%
2060-2069	980.00	1,055.34	0.18%	45.7%	2650-2659	1,275.00	1373.02	0.14%	55.1%
2070-2079	985.00	1,060.73	0.12%	45.8%	2660-2669	1,280.00	1378.41	0.12%	55.2%
2080-2089	990.00	1,066.11	0.15%	46.0%	2670-2679	1,285.00	1383.79	0.14%	55.4%
2090-2099	995.00	1,071.50	0.19%	46.2%	2680-2689	1,290.00	1389.18	0.13%	55.5%
2100-2109	1,000.00	1,076.88	0.18%	46.3%	2690-2699	1,295.00	1394.56	0.09%	55.6%
2110-2119	1,005.00	1,082.26	0.16%	46.5%	2700-2709	1,300.00	1399.94	0.11%	55.7%
2120-2129	1,010.00	1,087.65	0.22%	46.7%	2710-2719	1,305.00	1405.33	0.13%	55.9%
2130-2139	1,015.00	1,093.03	0.20%	46.9%	2720-2729	1,310.00	1410.71	0.09%	55.9%
2140-2149	1,020.00	1,098.42	0.17%	47.1%	2730-2739	1,315.00	1416.10	0.14%	56.1%
2150-2159	1,025.00	1,103.80	0.21%	47.3%	2740-2749	1,320.00	1421.48	0.18%	56.3%
2160-2169	1,030.00	1,109.19	0.19%	47.5%	2750-2759	1,325.00	1426.87	0.11%	56.4%
2170-2179	1,035.00	1,114.57	0.16%	47.7%	2760-2769	1,330.00	1432.25	0.18%	56.5%
2180-2189	1,040.00	1,119.96	0.21%	47.9%	2770-2779	1,335.00	1437.63	0.12%	56.7%
2190-2199	1,045.00	1,125.34	0.16%	48.0%	2780-2789	1,340.00	1443.02	0.13%	56.8%
2200-2209	1,050.00	1,130.72	0.13%	48.2%	2790-2799	1,345.00	1448.40	0.13%	56.9%
2210-2219	1,055.00	1,136.11	0.15%	48.3%	2800-2809	1,350.00	1453.79	0.08%	57.0%
2220-2229	1,060.00	1,141.49	0.16%	48.5%	2810-2819	1,355.00	1459.17	0.10%	57.1%
2230-2239	1,065.00	1,146.88	0.17%	48.6%	2820-2829	1,360.00	1464.56	0.13%	57.2%
2240-2249	1,070.00	1,152.26	0.18%	48.8%	2830-2839	1,365.00	1469.94	0.16%	57.4%
2250-2259	1,075.00	1,157.65	0.20%	49.0%	2840-2849	1,370.00	1475.33	0.09%	57.5%
2260-2269	1,080.00	1,163.03	0.26%	49.3%	2850-2859	1,375.00	1480.71	0.09%	57.6%
2270-2279	1,085.00	1,168.41	0.21%	49.5%	2860-2869	1,380.00	1486.09	0.09%	57.7%
2280-2289	1,090.00	1,173.80	0.09%	49.6%	2870-2879	1,385.00	1491.48	0.15%	57.8%
2290-2299	1,095.00	1,179.18	0.13%	49.7%	2880-2889	1,390.00	1496.86	0.15%	58.0%
2300-2309	1,100.00	1,184.57	0.12%	49.8%	2890-2899	1,395.00	1502.25	0.13%	58.1%
2310-2319	1,105.00	1,189.95	0.18%	50.0%	2900-2909	1,400.00	1507.63	0.07%	58.2%
2320-2329	1,110.00	1,195.34	0.16%	50.2%	2910-2919	1,405.00	1513.02	0.12%	58.3%
2330-2339	1,115.00	1,200.72	0.19%	50.4%	2920-2929	1,410.00	1518.40	0.09%	58.4%
2340-2349	1,120.00	1,206.11	0.13%	50.5%	2930-2939	1,415.00	1523.79	0.10%	58.5%
2350-2359	1,125.00	1,211.49	0.16%	50.6%	2940-2949	1,420.00	1529.17	0.06%	58.5%
2360-2369	1,130.00	1,216.87	0.10%	50.7%	2950-2959	1,425.00	1534.55	0.08%	58.6%
2370-2379	1,135.00	1,222.26	0.20%	50.9%	2960-2969	1,430.00	1539.94	0.13%	58.7%
2380-2389	1,140.00	1,227.64	0.24%	51.2%	2970-2979	1,435.00	1545.32	0.07%	58.8%
2390-2399	1,145.00	1,233.03	0.10%	51.3%	2980-2989	1,440.00	1550.71	0.12%	58.9%