



Ministry
of Justice

Review of the introduction of fees in the Employment Tribunals

Consultation on proposals for reform

January 2017



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Consultation on proposals for reform

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

January 2017



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About this consultation

- To:** This consultation is aimed at those who use the Employment Tribunals, including legal professionals and members of the public.
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- Additional ways to feed in your views:** There is an online version of this consultation at:
<https://consult.justice.gov.uk/digital-communications/review-of-fees-in-employment-tribunals>
- Response paper:** A response to this consultation exercise will be published in due course.

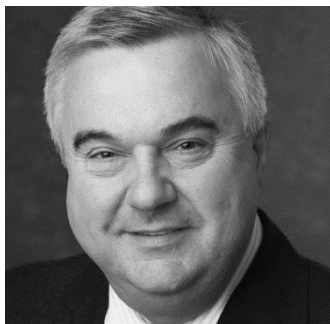
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Foreword



Fees were introduced for proceedings in the Employment Tribunals and the Employment Appeal Tribunal in 2013. Most people would agree that it is better for parties to try to resolve disputes without going to the tribunal. Equally, few would argue with the principle that those who use the Employment Tribunals should make some contribution to the costs of the service, where they can afford to do so.

These, alongside the need to protect access to the tribunal, were the objectives that were set when we introduced fees.

There has been a significant fall in Employment Tribunal claims since then, but it is hardly surprising that charging for something that was previously free would reduce demand. We have consistently said that what was needed was a thorough assessment of the impact of these fees, based on evidence. That is what this review has sought to do.

What this review shows is that the introduction of fees has broadly met its objectives:

- users are contributing between £8.5 million and £9 million a year in fee income, in line with what we expected, transferring a proportion of the cost from the taxpayer to those who use the tribunal;
- more people are now using Acas's free conciliation service than were previously using voluntary conciliation and bringing claims to the ETs combined; and
- Acas's conciliation service is effective in helping people who refer disputes to them avoid the need to go to the tribunal, and where conciliation has not worked, many people go on to issue proceedings in the ETs.

There are, of course, some lessons we can learn. It has become clear that there was a general lack of awareness of the fee remission scheme, and those who did apply found the guidance and procedures difficult to follow. We have taken steps to address these concerns by relaunching the scheme as Help with Fees with improved guidance and simplified application procedure, which has led to a marked increase in the numbers of fee remissions granted. More recently, we have introduced the facility to apply for Help with Fees online, and we have also published revised guidance on the Lord Chancellor's power to remit fees in exceptional circumstances, so that those who are entitled to help receive it.

There is no doubt that fees, alongside the introduction of the early conciliation service, have brought about a dramatic change in the way that people now seek to resolve workplace disputes. That is a positive outcome, and while it is clear that many people have chosen not to bring claims to the Employment Tribunals, there is nothing to suggest they have been prevented from doing so.

This does not mean that there is no room for improvement, and where we have identified issues, we have not been afraid to address them. In particular, the substantial fall in claims, and the evidence that some people have found fees off-putting, has persuaded us that some action is necessary. I believe that the best way to alleviate these impacts is to widen access to the Help with Fees scheme and my proposals are set out in Chapter 8. I have also decided that it is not appropriate to charge fees for certain ET proceedings which are related to payments for the National Insurance Fund and they will, in future be exempt from fees. Full details are set out in the review.

Employment Tribunals are also in the forefront of our vision for a modernised and reformed justice system, which we have developed in partnership with the Lord Chief Justice and the Senior President of Tribunals. The Government is committed to investing more than £700 million to modernise courts and tribunals, and over £270 million more in the criminal justice system.

Our specific proposals for reform of the Employment Tribunals were recently set out in the consultation, published by the Secretary of State for Business, Energy and Industrial Strategy on 5 December. The Government will be considering the responses to consultation carefully and we will bring forward our detailed plans in due course.

Sir Oliver Heald
Minister of State for Justice

Executive summary

1. This document sets out the Government's review of the introduction of fees in the Employment Tribunals (ETs).
2. Our review has assessed the impact of fees in relation to the three objectives set out in the Terms of Reference (see Annex A). These objectives were:
 - (i) Financial: to transfer a proportion of the costs of the ETs to users (where they can afford to pay);
 - (ii) Behavioural: to encourage people to use alternative services to help resolve their disputes; and
 - (iii) Justice: to protect access to justice.
3. This review has considered a wide range of evidence on the income and cost of the ETs; data on case volumes, complaint types and case progression; data on the protected characteristics of people who use the ETs; and published information about Acas's conciliation service, including the evaluation of the introduction of the early conciliation service.
4. Having considered this evidence against the objectives, the Government has concluded that the original objectives have broadly been met:
 - (i) the financial objective: those who use the ETs are contributing around £9 million per annum in fees (which is in line with estimates at the time), transferring a proportion of the cost of the ETs from taxpayers to those who use the Employment Tribunals. Chapter 3 provides full details;
 - (ii) the behavioural objective: while there has been a sharp, significant and sustained fall in ET claims following the introduction of fees, there has been a significant increase in the number of people who have turned to Acas's conciliation service. There were over 80,000 notifications to Acas in the first year of the new early conciliation service, and more than 92,000 in 2015/16. This suggests that more people are now using conciliation than were previously using voluntary pre-claim conciliation and the ETs combined. Our detailed assessment is set out in Chapter 4; and
 - (iii) access to justice: our assessment suggests that conciliation is effective in helping up to a little under half of the people who refer disputes to them (48%) avoid the need to go to the ETs, and where it has not worked, many (up to a further 34%) went on to issue proceedings. Chapter 5 provides further details.

5. We acknowledge that the Acas evaluation of the early conciliation service has identified a group (which we estimate to be between 3,000 and 8,000 people) who were unable to resolve their disputes through conciliation, but who did not go on to issue proceedings because they said that they could not afford to pay. We do not believe, however, that this necessarily means that those people could not realistically afford to pay the fee. It may mean, for example,
 - that paying the fee might involve having to reduce other areas of non-essential spending; or
 - that they were not aware of the help available, or thought they might not qualify for help, under the Help with Fees scheme; or
 - they may have been unaware of the Lord Chancellor's exceptional power to remit fees.
6. Furthermore, we have taken steps to raise awareness of the fee remissions scheme, and to make it simpler to apply, which has led to a marked improvement in the proportion of applications for a fee remission that are granted. Additionally, in July 2016 we introduced the facility to apply for Help with Fees online to further simplify the procedure.
7. Further help is also available, for those who do not meet the financial criteria for help under the standard fee remissions scheme, under the Lord Chancellor's power to remit fees in exceptional circumstances. We have recently published revised guidance on how this power should be applied to clarify the circumstances under which help is available.
8. While there is clear evidence that ET fees have discouraged people from bringing claims, there is no conclusive evidence that they have been prevented from doing so. We have concluded on this basis that the system of ET fees combined with the standard Help with Fees scheme, and underpinned by the exceptional power to remit fees, means that no one should be prevented from bringing a claim to the ETs because they cannot afford to pay.
9. Nevertheless, the review highlights some matters of concern that cannot be ignored. The fall in ET claims has been significant and much greater than originally estimated. In many cases, we consider this to be a positive outcome: more people have referred their disputes to Acas's conciliation service. Nevertheless, there is also some evidence that some people who have been unable to resolve their disputes through conciliation have been discouraged from bringing a formal ET claim because of the requirement to pay a fee. This assessment is reinforced by the consideration given to the particular impact that fees have had on the volumes of workplace discrimination claims, in accordance with the duties under section 149 (1) of the Equality Act 2010 (the detailed assessment is set out in Chapter 7).
10. The Government has decided to take action to address these concerns.
11. We believe that the best way to do so is to extend access to the support available under the Help with Fees scheme. Our proposals would, if implemented, set the gross monthly income threshold for a fee remission at broadly the level of someone earning the National Living Wage. Additional allowances for people living as couples and for those with children, would be maintained under our proposals.

12. These proposals are designed to help those on low incomes and who are therefore more likely to struggle to pay the fees (i.e. those people whose income is just above the current gross monthly income threshold for a full fee remission). Although they have been designed to alleviate the impact of fees on ET claims, HMCTS operates a standard fee remissions scheme for all of its fee charging regimes, with the exception of the First-tier Tribunal (Immigration and Asylum chamber). These proposals would, if implemented, also benefit people on low incomes bringing proceedings in the civil and family courts and in the tribunals where the standard Help with Fees scheme applies.
13. Our proposals also maintain the financial discipline that fees bring to these proceedings, providing people with an incentive to consider alternatives such as Acas's conciliation service, and to weigh the strength of their case against the financial outlay required.
14. We have also concluded that it is not appropriate to charge a fee for three types of proceedings in the ETs which relate to payments from the National Insurance Fund, because conciliation is rarely a realistic option in these types of case, and they often involve employers who are insolvent and are therefore unlikely to be able to satisfy an order for the fee to be reimbursed. The specific proceedings are:
 - references to the ETs related to a redundancy payment from the National Insurance Fund, under section 170 of the Employment Rights Act;
 - complaints that the Secretary of State has failed to make any, or insufficient, payment out of the National Insurance Fund, under section 188 of that Act; and
 - complaints under section 128 of the Pension Schemes Act 1993.
15. From today these proceedings will be exempt from fees.

Public Sector Equality Duty

16. We have also considered the impact of fees in relation to the protected characteristics under the Equality Act 2010 as part of the ongoing Public Sector Equality Duty. There is only limited data available on the protected characteristics of people who bring ET claims other than for gender and the results must therefore be treated with some caution.
17. Having considered the impact of ET fees in relation to the obligations under the Equality Act, we have concluded that:
 - ET fees are not directly discriminatory.
 - There has been no unlawful indirect discrimination from the introduction of ET fees. Any differential impact which may have arisen indirectly from ET fees is justified when considered against the success in transferring a proportion of the cost of the tribunals to users and in promoting conciliation as an alternative means of resolving workplace disputes.
 - It is clear that fees have discouraged some people from bringing ET claims, including discrimination claims, but we have concluded that this has been broadly a positive outcome to the extent that it has helped a significant proportion of people to avoid the ETs by resolving their disputes through conciliation. There is no conclusive evidence that ET fees have prevented people from bringing claims.

- We have also, having regard to the duties under section 149 of the Equality Act 2010, given particularly careful consideration to the fall in the volumes of discrimination claims, and the evidence that some people have been unable to resolve their disputes through conciliation but have been discouraged from bringing an ET claim. This assessment has reinforced our conclusion that some adjustment to the scheme is justified to alleviate the effect that fees have had in discouraging people from bringing claims. For the reasons set out above (see paragraph 11), we consider that an adjustment to the Help with Fees scheme would be the best way to alleviate the impact on those most likely to struggle to pay fees.
18. We have also reviewed the concerns of those who have argued that ET fees have had a particular impact on pregnancy and maternity discrimination, including the Justice Committee and the Women and Equalities Committee. Our assessment of the evidence is that the fall in these types of complaint has been consistently much lower compared to other types of discrimination complaint, and compared to the overall fall in complaints. There is, therefore, no evidence that these types of cases should be treated more favourably in relation to the fees charged.
19. We will continue to monitor ET fees in relation to protected characteristics in accordance with the Public Sector Equality Duty.

House of Commons Justice and Women and Equalities Committees

20. In the Justice Committee's report¹ on their inquiry into Courts and Tribunals Fees and Charges, the Committee made a series of recommendations about fees in the ETs. Specifically, they recommended that:
- (i) the overall quantum of fees charged for bringing cases to employment tribunals should be substantially reduced;
 - (ii) the binary Type A/Type B distinction should be replaced: acceptable alternatives could be by a single fee; by a three-tier fee structure, as suggested by the Senior President of Tribunals; or by a level of fee set as a proportion of the amount claimed, with the fee waived if the amount claimed is below a determined level;
 - (iii) disposable capital and monthly income thresholds for fee remission should be increased, and no more than one fee remission application should be required, covering both the issue fee and the prospective hearing fee and with the threshold for exemption calculated on the assumption that both fees will be paid;
 - (iv) further special consideration should be given to the position of women alleging maternity or pregnancy discrimination, for whom, at the least, the time limit of three months for bringing a claim should be reviewed.

¹ *Courts and tribunals fees*, House of Commons Justice Committee, HC 167, Second Report Session 2016-17, 20 June 2016.

21. The recommendation on pregnancy and maternity discrimination claims was also included in the report of the House of Commons Women and Equalities Committee.²
22. As set out earlier in this report, the Government has decided to take action to address the concerns about the scale of the fall in ET claims, and the evidence that some people have been put off bringing claims because of fees.
23. We have concluded that the fairest and most effective solution is to widen access to the Help with Fees scheme. Our proposals (see Chapter 8) would raise the income threshold at which a full remission was available (subject to meeting the capital test) to broadly the level of a single person working full time on the National Living Wage. It would therefore benefit, if implemented, those people of relatively low means but who may receive only limited help under the current scheme.
24. We therefore accept the Committee's third recommendation. Our response to their specific recommendations is set out in the following sections.

(i) The quantum of fee income

25. The Committee recommended that the overall quantum of ET fees should be substantially reduced. We do not agree with this recommendation.
26. Chapter 4 of this review considers the impact of fees in relation to the financial objective. This confirms that ET fees are generating the level of income that was originally estimated: between £8 million and £10 million per year. Furthermore, fee income of just under £4 million was remitted in 2015/16, so that overall just under 20% of the cost of the ETs is recovered through fees, after taking account of fee remissions.
27. The Government's view is that it is reasonable to expect people to contribute this level of fee income towards the costs of the tribunals, where they can afford to pay. Additionally, the requirement to pay a fee provides a financial discipline, encouraging people to give serious consideration to the alternative sources of help available, such as Acas's free conciliation service, and to weigh carefully the strength and merits of the claim against the financial outlay required.
28. Although the Government has concluded that an adjustment to the scheme is required, we believe that widening access to the support available under the Help with Fees scheme is a better way to do so.

(ii) Fee structure

29. The Justice Committee also recommended that the binary distinction between Type A and B fees should be replaced by either a single fee regime, a three-tier regime or by fees which were based on the value of the claim. We do not accept this recommendation.

² *Pregnancy and maternity discrimination*, House of Commons Women and Equalities Committee, HC 90, First Report of Session 2016-17, 31 August 2016.

30. During the original consultation on introducing fees in the ETs,³ the Government set out two options for the structure of fees which sought to balance four criteria:
 - recover a contribution from users towards the costs of the ETs where they could afford to do so;
 - develop a simple, easy to understand and cost effective fees system;
 - maintain access to justice; and
 - contribute to the efficiency and effectiveness of the system.
31. Having considered the consultation responses carefully, the Government decided to implement a modified version of Option 1 (see paragraph 34 below) which was considered to achieve the best balance of these criteria.
32. We continue to believe that the current structure best meets these criteria. In particular, we believe that it is fair that those who make greater use of the ETs should pay more as a contribution to the overall costs of the system, so that those who bring more complex claims, which consume more tribunal time and resource, should pay more than those who bring simpler claims. The current fees structure also provides an opportunity and incentive for parties, once proceedings have commenced, to continue to negotiate to seek to reach a settlement before the hearing fee is due.
33. For these reasons, we do not believe that it would be reasonable to charge a single flat fee to all types of claim.
34. The three-tier fee structure suggested by the Committee was the basis for Option 1 in the original consultation proposals. Option 1 proposed three separate fees for cases allocated to:
 - the fast track: claims such as a claim for unpaid wages, paid leave and work breaks;
 - the standard track: for example, claims for unfair dismissal; and
 - the open track: all discrimination claims.
35. Having considered the responses to the consultation, the Government decided to proceed with a modified version of this option. In view of specific concerns about charging the highest fees for discrimination claims, the Government decided to implement a two-tier system of fees, under which claims allocated to the fast track attracted Type A fees, and those allocated to the standard and open tracks attracted Type B fees.
36. The current fee structure does therefore broadly reflect the categorisation of ET claims, although modified so that discrimination claims do not attract higher fees than all other types of claim.

³ *Charging fees in the Employment Tribunals and the Employment Appeal Tribunal*, CP 22/2011, Ministry of Justice, December 2011. https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/supporting_documents/chargingfeesinetandeat1.pdf

37. We can see the attractiveness of an approach under which fees are charged as a percentage of the value of the claim. In the original consultation, Option 2 was based on a fee structure which, although it did not propose a fee calculated as a percentage of the value of the claim, proposed that a higher fee would be payable where the claimant sought an award over £30,000.
38. Few respondents to the consultation were in favour of that approach. They pointed out the difficulties in assessing and quantifying the value of a claim at the outset of a case, particularly in an ET case where the claimant may not have legal representation. We believe that the difficulties faced by claimants would be greater under a structure which charged a fee calculated as a percentage of the value of the claim.
39. Neither do we agree that some types of claim, below a certain financial value, should not attract a fee. We believe that the requirement to pay a fee provides the right financial incentive for people to give serious consideration to the strength of the claim and alternative ways of resolving dispute, such as Acas's conciliation service.
40. A further complication is that many ET claims do not seek a financial award (for example, the right to regular work breaks or a written contract of employment) and these types of claim would therefore require a separate fee structure.
41. Overall, we consider that the current fee structure achieves the best balance between the original criteria while maintaining access to justice.

(iii) Fee remissions

42. The Committee recommended that we should increase the capital and income thresholds for a fee remission and simplify the procedure for applying so that only one application for a remission is required.
43. As set out earlier, we agree that an adjustment to the Help with Fees scheme is the fairest and most effective way to alleviate the impact of fees on volumes of claims.
44. We do not believe that it is necessary to increase the disposable capital threshold for a fee remission. In principle, people with savings or other capital assets have access to funding to pay the fee and can therefore afford to pay. If the claim is successful, the tribunal has the power to order the respondent to reimburse the fee. Furthermore, if the claimant has disposable capital, but cannot realistically afford to pay the fee because the capital is required to meet other essential spending, he or she is entitled to help under the Lord Chancellor's exceptional power to remit fees. The revised guidance⁴ on the application of the Lord Chancellor's exceptional power makes clear that in those circumstances a remission must be granted.
45. We agree with the Committee that the gross monthly income threshold should be increased: we believe that this is the fairest and most effective way of targeting those who are most likely to find fees off-putting. Under our proposals, the gross monthly income threshold for a fee remission would be increased from £1,085 to £1,250: broadly the level of earnings for a single person working full time on the

⁴ *How to apply for help with fees*, EX 160A, HMCTS. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508766/ex160a-eng-20160212.pdf

National Living Wage. We also propose to maintain the additional allowances for people living as couples and for those with children.

46. Although these proposals have been designed to alleviate the impact of fees in ET proceedings, Help with Fees applies a standard scheme across all of HMCTS's fee charging jurisdictions, with the exception of proceedings in the First-tier Tribunal (Immigration and Asylum chamber) where a separate fee remissions, waivers and exemption policy applies. These proposals would therefore also benefit people on low incomes bringing proceedings in the civil and family courts and in the other fee charging tribunals to which the Help with Fees scheme applies. Further details of our proposed reforms are set out at Chapter 8.
47. We have separately taken steps to simplify and streamline the Help with Fees scheme, including clearer guidance and a simplified application procedure; and the introduction of the facility to apply for Help with Fees online. We have also updated our guidance to the public and HMCTS staff on the Lord Chancellor's exceptional power to remit fees.
48. We have no current plans to remove the requirement to apply for Help with Fees at each fee payment point but we are considering, in the context of the Court and Tribunals reform programme, opportunities to further simplify and streamline our procedures, and we will consider the Committee's recommendation as part of that programme of work.

(iv) Maternity and pregnancy related claims

49. The Committee recommended that special consideration should be given to the position of women alleging maternity or pregnancy discrimination. Chapter 7 includes an analysis of the impact of fees in relation to discrimination claims, and in particular on claims alleging pregnancy and maternity related discrimination. We found that the fall in pregnancy and maternity related claims was much lower compared with the fall in other types of discrimination claim, and compared with the overall fall in claims more generally.
50. There is no evidence that maternity and pregnancy discrimination claims have been particularly affected by the introduction of fees, and there is therefore no reason that they should be treated more favourably as far as fees are concerned than other types of claim. We do not therefore agree that fees for these types of claim should be reduced. Instead, we believe that any concerns about the impact of fees on these types of claim are better addressed through the proposed adjustment to the Help with Fees scheme, under which support would be targeted to those most likely to struggle to pay the fees.
51. The Government's response to the recommendation on extending the time limit for these types of claim from three to six months was included in the Government response to the report of the Women and Equalities Select Committee, which was published on 26 January 2017.⁵

⁵ *Government response to the House of Commons Women and Equalities Committee report on pregnancy and maternity discrimination*, Cm 9401, January 2017.

Other factors set out in the Terms of Reference

52. Although not a formal objective of the review, it was also hoped that the introduction of fees would improve the efficiency of the tribunal, for example, by giving claimants a financial stake in proceedings which might discourage people from bringing weaker or speculative claims.
53. We have found that there has been little change in the outcomes of cases which progress to a hearing in the ETs, which might have indicated a change in the strength of cases. However, more generally, we believe that the introduction of fees, combined with the introduction of Acas's early conciliation service, has helped to improve the efficiency of system for resolving workplace disputes by focusing the ETs' resources on those claims which require a litigated approach.

Conclusions and proposals for reform

54. Based on the analysis in this review, we have concluded that the three objectives for ET fees have broadly been met, and while it is clear that fees have discouraged people from bringing claims, there is no evidence that they have prevented them from doing so.
55. Nevertheless, the Government recognises that the review has identified some matters which raise concerns about the impact that fees have had. We have therefore decided to take action to address them. In Chapter 8 we set out our proposals to do so by widening access to Help with Fees. We have also decided to exempt from fees certain proceedings in relation to payments from the National Insurance Fund.

Consultation questions

Question 1: Do you have any specific proposals for reforms to the Help with Fees scheme that would help to raise awareness of remissions, or make it simpler to use? Please provide details.

Question 2: Do you agree that raising the lower gross monthly income threshold is the fairest way to widen access to help under Help with Fees scheme and to alleviate the impact of fees for ET proceedings? Please give reasons.

Question 3: Do you agree with the proposal to raise the gross monthly income threshold for a fee remission from £1,085 to £1,250? Please give reasons.

Question 4: Are there any other types of proceedings, in addition to those specified in paragraph 355, which are also connected to applications for payments made from the National Insurance Fund, where similar considerations apply, and where there may be a case for exempting them from fees? Please give reasons.

Question 5: Do you agree with our assessment of the impacts of our proposed reforms to the fee remissions scheme on people with protected characteristics? Are there other factors we should take into account, or other groups likely to be affected by these proposals? Please give reasons.

1. Introduction

56. The right of access to a tribunal to determine employment related rights was established under the Industrial Training Act 1964. When first established, these were known as Industrial Tribunals but in 1998 they were renamed Employment Tribunals (ETs).
57. Section 42 of the Tribunals, Courts and Enforcement Act 2007 provides the Lord Chancellor with the power to prescribe fees for Tribunals both in the unified tribunal structure, and also (under section 42 (1) (d)) for “added tribunals”. Under the current arrangements, Her Majesty’s Courts & Tribunals Service (HMCTS) is responsible for the administration of the ETs in England and Wales, and in Scotland.
58. In November 2014, the Smith Commission Report recommended that responsibility for the management and operation of reserved tribunals, including the ETs, should transfer to the Scottish Government. The Government has accepted those recommendations and the arrangements for implementing them are being agreed.

The introduction of fees in the Employment Tribunals

59. From their inception, access to the Industrial/Employment Tribunals was provided free of charge.
60. In January 2011, the Government announced that they considered that it was right in principle that those who wished to bring a claim to the ETs and the Employment Appeal Tribunal (EAT) should, where they could afford to do so, pay a fee.
61. Detailed proposals for fees were set out in a consultation exercise published in December 2011.⁶ The consultation ran until 6 March 2012 and a response to consultation was published in July 2012.⁷ This confirmed the Government’s intention to introduce fees but with some modifications to the original plans. In particular, it confirmed that the Government had decided to introduce a two-fee structure in the ETs, rather than a three-fee structure as originally proposed in the consultation. It also confirmed that HMCTS’s standard fee remission scheme would apply to proceedings in the ETs, so that those who qualified would be entitled to have the fee remitted either in part or in full.

⁶ See footnote 3 above

⁷ *Charging Fees in Employment Tribunals and the Employment Appeal Tribunal, Response to Consultation CP22/2011*, Ministry of Justice, July 2012. <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/employment-tribunal-fees-consultation-response.pdf>

62. An Impact Assessment was published alongside the Government Response.⁸ This estimated that the introduction of fees would lead to a reduction in claims of around 0.01% to 0.05% for every £1 in fees, and generate income of between £8 million and £10 million per annum in a steady state.
63. On 25 April 2013 a draft of the Employment Tribunals and the Employment Appeal Tribunal Fees Order (the Fees Order) was laid before Parliament. It was approved by both Houses under the affirmative resolution procedure, and came into force on 29 July 2013.⁹
64. Under these rules, the person bringing proceedings is required to pay the fees although the fee for judicial mediation in the ETs (£600) is paid by the employer. At the same time rules came into effect that provided the Tribunal with the power to order a respondent to reimburse a claimant any fees incurred.

Fees in the Employment Tribunals

65. The Fees Order provided for a two-tier structure for fees:
- Type A fees for simpler and more straightforward disputes, and which consume less Tribunal resource on average. Claims attracting Type A fees include: seeking a written contract of employment; payment of unpaid wages; and applications under the Working Time Directive (for example, entitlement to regular working breaks). For this type of claim, the fees are £160 to lodge the claim and £230 for a hearing;
 - Type B fees apply to cases which are more complex and consume more Tribunal resource on average. Type B claims include: unfair dismissal; discrimination; and equal pay. The fees for Type B claims are £250 to lodge a claim and £950 for a hearing.
66. The types of case attracting a Type A fee were broadly those which are allocated to the short track of the allocations system used in the ETs. As set out in the Government response to consultation,¹⁰ typically these claims require very little or no case management work and are listed for a hearing lasting 1 hour. They consume less tribunal resource than other types of case and therefore cost less.
67. Cases allocated to the open and standard tracks attract the higher Type B fees because they consume more Tribunal resource, and therefore cost more.
68. Claims which include two or more complaints pay one fee. Where a claim includes both a Type A and a Type B complaint, the claim attracts a Type B fee.
69. Many claims received in the ETs are lodged as part of a multiple claim: i.e. claims brought by two or more people against the same employer based on the same, or similar, facts. The Government response to consultation confirmed that these cases are more expensive to administer, but there are efficiencies of scale, so that, for

⁸ See: <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-ia.pdf>

⁹ *The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013*, 2013 No 1892 (the "ET Fees Order").

¹⁰ See footnote 7 above.

example, it is cheaper to administer twenty claims as part of a multiple claim, than twenty single claims. There is therefore a separate fee structure for multiple claims, under which a person bringing a claim as part of a multiple claim will not pay more, and will typically pay less, than the fee for a single claim.

70. Other fees introduced at the same time were:

- an application for a reconsideration of a default judgment: £100;
- an application for a reconsideration of a judgment following a final hearing: £100 (Type A) and £350 (Type B);
- an application for a dismissal following a withdrawal of the claim: £60;
- an employer's contract claim: £160.

71. Fees also apply to appeals to the EAT: £400 to lodge an appeal, and £1,200 for a hearing. There are no separate fees arrangements for multiple claims in appeals to the EAT.

Fee remissions

72. When the ET Fees Order came into effect, it provided that the HMCTS's standard fee remissions scheme would be available for proceedings in the ETs. At the time, a consultation on proposed changes to the fee remission scheme was underway, and in September 2013, the Government Response to consultation was published. It confirmed that the Government intended to:

- establish a single fee remissions scheme operating across all court and tribunal businesses of HMCTS (except proceedings in the Immigration and Asylum Tribunal) and the UK Supreme Court;
- introduce for the first time a disposable capital test; and
- simplify the gross income test by introducing a single tapered income assessment, replacing the three alternative bases of remission which existed under the previous scheme.

73. The new fee remissions scheme came into effect on 1 October 2013.

74. Access to fee remissions is based on an assessment of financial eligibility and the applicant must meet tests of both disposable capital and gross monthly income. Applications are made using the form EX 160¹¹ and guidance is available to help to complete the application (see form EX 160A: *Court and Tribunal fees – Do I have to pay them?*).¹²

75. Further details of the fee remission scheme are set out at Annex C.

¹¹ Form EX 160. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508760/ex160-eng-20160212.pdf

¹² See footnote 4 above.

The Lord Chancellor's power to remit fees in exceptional circumstances

76. The Lord Chancellor has a power to remit any fee specified in a fees order where she is satisfied that there are exceptional circumstances which justify doing so.¹³ This power is exercised on the Lord Chancellor's behalf by HMCTS staff.
77. On 10th October 2016 we published updated guidance on the exercise of the exceptional power to remit to clarify the circumstances under which help is available; in particular, that a fee must be remitted in circumstances where the applicant demonstrates that they cannot realistically afford to pay the fee in question.

Fee remission improvement project

78. Following the introduction of fees, there were a number of complaints that the system of fee remissions was complex and overly bureaucratic, which many people said that they found off-putting. A project has been undertaken to explore whether the scheme could be made simpler for the public to understand and use.
79. In October 2015, the fee remissions scheme was relaunched as Help with Fees. This included:
- a revised, simpler, version of the EX 160A guidance and a simplified application form;
 - a simplified procedure, under which applicants no longer routinely need to provide evidence of income; and
 - the introduction of a digital link to the Department for Work and Pensions with an eligibility calculator to help court staff determine quickly the fee remission to which the applicant is entitled.
80. Since the relaunch of Help with Fees, there has been a marked increase in the numbers of fee remissions granted. Further details are set out in Chapter 2 (see paragraphs 126 to 129). In July 2016, the facility to apply for Help with Fees online was introduced.

Acas's early conciliation service

81. In 2014, as a way of encouraging people to consider conciliation to resolve their dispute, a requirement was introduced for most employment matters that anyone considering bringing a claim to the ETs must first notify Acas to consider whether Acas's conciliation service might help to resolve the dispute. The service, known as Acas's early conciliation service, was introduced in April 2014 and became mandatory in May 2014.

¹³ See, for example, paragraph 16 of schedule 3 to the ET Fees Order.

Justice Committee

82. On 15 July, the House of Commons Justice Committee announced an inquiry into Court and Tribunal Fees and charges. Details of the terms of reference for the review are available on the Committee's page of the Parliament website.¹⁴
83. On 20 June 2016, the Committee reported on its inquiry.¹⁵ Among its recommendations, were recommendations to reduce substantially the fees for ET proceedings, the introduction of fees for respondents and an expansion of the fee remissions scheme. The Government responded to the Committee's report on 9 November 2016 in which we said that we would provide a substantive response to their recommendations on ET fees in this review.¹⁶ Our substantive response to those recommendations is set out at paragraphs 24 to 51 above.

Women and Equalities Committee

84. On 30 August the House of Commons Women and Equalities Committee published a report on their inquiry into Pregnancy and Maternity Discrimination.¹⁷ This also included a recommendation that ET fees for proceedings for pregnancy and maternity discrimination should be substantially reduced. The Government responded to the Committee's report on 26 January 2017 indicating that we would be responding to this specific recommendation in this review.¹⁸ As set out in paragraphs 49 and 50 above, there is no evidence to suggest that pregnancy and maternity related discrimination claims have been more adversely affected by ET fees, and therefore there is no reasons to treat them more favourably for fees than other types of discrimination claim, or other ET claims generally.

The Review

85. On 11 June 2015, the Justice Secretary made a statement announcing the start of the review of ET fees¹⁹ and setting out the Terms of Reference for the review, which are attached at Annex A.
86. The purpose of the review is to consider the impact of the introduction of fees and how successful they have been in meeting the original objectives. In summary, these were:
- (i) to transfer a proportion of the cost of the tribunals from the taxpayer to those who use them;

¹⁴ See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/courts-and-tribunals-fees-and-charges/>

¹⁵ See footnote 1 above.

¹⁶ *Government Response to the Justice Committee's Second Report of session 2016/17, Courts and Tribunals Fees*, Ministry of Justice, November 2016.
<https://www.parliament.uk/documents/commons-committees/Justice/governments-response-to-the-justice-committees-second-report-of-session-2016-17-web.pdf>

¹⁷ See footnote 2 above.

¹⁸ See footnote 5 above.

¹⁹ See: <https://www.gov.uk/government/publications/employment-tribunal-fees-post-implementation-review>.

- (ii) to encourage parties to use alternative mechanisms for dispute resolution, which can often be simpler, cheaper and deliver better outcomes than formal litigation; and
 - (iii) to ensure that access to justice is protected.
87. Although it was not a formal objective, it was also hoped that the introduction of fees would improve the efficiency and effectiveness of the ETs by, for example, giving claimants a financial interest in proceedings and discouraging them from bringing claims with little or no merit.
88. The review did not seek submissions, but a number of stakeholders have contributed written evidence to the review. A list of those who have done so is at Annex B, as well as a summary of the wider evidence we have considered.
89. This review sets out the work that the Government has undertaken, the evidence we have taken into consideration, the assessments we have made on the delivery of the key objectives, and the overall conclusions we have made.

2. Evidence

Introduction

90. This section provides information on the evidence we have considered in this review. The principle sources of evidence we have used are:
- financial information on HMCTS's costs and income from published accounts and internal management information;
 - official Tribunal statistics, published by MoJ each quarter, which include statistics the number of Employment Tribunal claims received (including a breakdown of claims by jurisdictional complaint), the numbers disposed of, analyses of case outcomes, and statistics on fee remissions;²⁰ and
 - Acas's evaluation of the early conciliation service, published in April 2015.²¹
91. This has been supplemented by:
- management information from HMCTS and Acas's published statistics; and
 - information on the protected characteristics of those who have brought claims to the ETs, collected by HMCTS on the ET1 form.
92. A number of people and organisations wrote submitting views on the impact of the introduction of fees. These have been useful in confirming the general and specific concerns of people and organisations with an interest in the ETs and the review.
93. A summary of the people and organisations who contributed to the review, and the evidence they submitted, is set out at Annex B.

Financial information

94. High level financial information on fee income collected, the value of fee remissions granted and the costs of the ETs is published annually in HMCTS's Annual Report and Accounts. This is reproduced at Table 5 at Annex D.
95. We have supplemented this with information taken from HMCTS's management information systems on costs incurred on the project to implement fees in the ETs: see Table 6 of Annex D.

²⁰ See: <https://www.gov.uk/government/collections/tribunals-statistics>

²¹ *Evaluation of Acas Early Conciliation 2015*, Acas, 04/15.
<http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>.

Employment Tribunals caseload

96. Data on the ET caseload, including volumes of receipts, jurisdictional complaints, case progress and case outcomes, is set out at Annex E.
97. The broad approach we have taken in the review has been to compare data for the years preceding and following the introduction of fees. In most cases, where the data are available, we have looked at the year from July 2012 to June 2013 and compared it with the years from October 2013 to September 2014 and October 2014 to September 2015.
98. Data on ET proceedings is collected for claims made either as:
 - a single claim: a claim brought by an individual;
 - a multiple claim case: these are cases which involve claims brought by two or more claimants against the same employer based on the same, or similar facts. In a small number of cases, a single multiple claim case can involve hundreds or thousands of claims;
 - in both cases the claim may allege one or more jurisdictional complaint.
99. The analysis in this review has generally focussed on what has happened in single claims. Multiple claims involving more than two people should generally attract lower fees per claimant than those which apply to single claims because the fees are fixed depending on the number of claimants. As the burden of paying fees is normally shared between those parties, people involved in larger multiple claims should, therefore, be less likely to have been affected by the requirement to pay a fee. It would have been helpful to have been able to include analysis of fees within the multiple claim fee groups (for example, to look at the effect of claims involving 2–10 people, 11–200 people and over 200 people) in order to see whether the effect of fees differed depending on the number of multiple claimants. However, this information is not collected and has not therefore been available to the review.
100. Furthermore, while the number of cases involving multiple claims is relatively stable and has followed the same general trends on volumes of claims, the number of multiple claims within those cases has been more variable. Some multiple cases can involve a very large number of claimants, so that the numbers of people involved in these types of case, and the types and number of jurisdictional complaint they bring, are likely to be subject to greater normal variations over time compared to single claims. Isolating the impact that the introduction of fees has had on the volumes of claims made in multiple claims is therefore more difficult than for single claims.
101. For these reasons, we believe that the impact of the introduction of fees on multiple claims has been no greater than, but is likely to have been less than, the impact on single claims. We have therefore preferred in most cases to concentrate the analysis on single claims which are, we believe, a better measure of the workload of the tribunal.

Case receipts

102. Table 7 of Annex E sets out the number of claims received in the ETs in the years preceding and following the introduction of fees.
103. The comparison shows that over that period:
- the total number of claims (i.e. the number of single and multiple claims) fell by 78% (from around 196,000 in the year to June 2013 to around 44,000 in the year to September 2014) but rose to 75,000 in the year to September 2015 so that they were 62% lower in that year compared with the year to June 2013;
 - the total number of cases fell by 66% (from around 60,000 in the year to June 2013 to around 20,000 in the year to September 2014) and by 68% (from around 60,000 in the year to June 2013 to around 19,000 in the year to September 2015);
 - the total number of single claims fell by 66% (from around 54,000 in the year to June 2013 to around 18,000 in the year to September 2014) and by 68% (from around 54,000 in the year to June 2013 to around 17,000 in the year to September 2015); and
 - the total number of multiple claims fell by 82% (from around 142,000 in the year to June 2013 to around 25,000 in the year to September 2014). In the following year, to September 2015, the number of multiple claims rose to around 58,000, a fall of 60% compared with the year to June 2013.
104. Our analysis of the counterfactual trend in ET receipts (i.e. the number of claims that we would have expected to have received in the ETs had fees not been introduced) concluded that the volume of single claims would have fallen by around eight percent by June 2014 as a result of the improving economy. Further details are considered in Chapter 6 below.
105. The actual fall since fees were introduced has been much greater and we have therefore concluded that it is clear that there has been a sharp, substantial and sustained fall in the volume of case receipts as a result of the introduction of fees.

Type A and Type B claims

106. We have also looked at whether there had been any difference in the impact between jurisdictional complaints classified as either Type A or Type B. These data do not correspond to the number of individuals paying a Type A or Type B fee, as claims can involve more than one complaint. If a claim includes both a Type A and B complaint, the Type B fee is payable.
107. The data on complaint types comparing volumes of Type A and Type B complaints in the year to June 2013 (pre-fees) and the years to September 2014 and September 2015 (the first and second years after fees) are set out in Table 9 of Annex E. These indicate that there was a small difference in the fall in Type A complaints, which fell by 69%, and Type B complaints, which fell by 61% when comparing the year before fees with the year after fees. This difference has continued when comparing the year before fees with the year two years after fees: in the year to September 2015, Type A complaints were 72% lower and Type B complaints 64% lower when compared with the year to June 2013.

Regional impacts

108. The review also considered whether there had been any regional differences in the impact of fees. We looked at single claims received in the seven English regions and Scotland and Wales, and compared the volumes of claims over time. We also compared the fall in a selection of jurisdictional complaints.
109. All regions saw falls in the volumes of claims and complaints similar to the overall fall in England Wales and Scotland over this period: 66% in the first year following fees and 68% in the second year. There have been regional variations, but all were within five percentage points of the overall trend. In both years, London, the South East and Scotland saw falls in claims volumes lower than the national average while the Midlands, North East, South West and Wales saw above average falls in claims.
110. Further details are set out in Tables 10 and 11 of Annex E.

Employment Appeal Tribunal

111. Table 7 of Annex E also provides details of the number of appeals to the Employment Appeal Tribunal (EAT).
112. In the year before fees were introduced (July 2012 to June 2013) there were around 2,200 appeals lodged with the EAT. In the year following the introduction of fees (October 2013 to September 2014) there were 1,400 appeals, a fall of 39%. In the following year there were 1,100 appeals to the EAT, a fall of 53% compared to the year before fees were introduced.

Acas's early conciliation service

113. Annex F sets out published information on Acas's early conciliation service. This review has considered two main sources of information.
114. The first is information on the number of notifications they receive, which is published in Acas's regular statistical bulletins. In the first year of the early conciliation service, Acas received over 83,000 notifications,²² and of these, around 8,500 employees and 9,000 employers refused conciliation. In 2015/16, the second year of operation, Acas received around 92,000 notifications, around 100 notifications more a week than in 2014/15.²³ The 2015/16 bulletin does not provide information on the number of employees or employers refusing conciliation.
115. The other main source of evidence is Acas's evaluation of the early conciliation service.²⁴ Acas's evaluation is based on a survey of claimants, employers and representatives whose early conciliation cases were concluded between September and November 2014, involving over 2,500 interviews.

²² *Early Conciliation Update 4: April 2014 – March 2015*, Acas, 7 July 2015.
<http://www.acas.org.uk/index.aspx?articleid=5352>

²³ *Early Conciliation Update 7: April 2015 – March 2016*, 23 May 2016.
<http://www.acas.org.uk/index.aspx?articleid=5741>

²⁴ See footnote 21.

116. Acas's evaluation found that the introduction of the early conciliation service had been broadly successful. Based on the responses of claimants, the evaluation found that for those who had undertaken early conciliation :
- 31% obtained formal settlement (either through Acas or privately);
 - a further 17% did not obtain a formal settlement but decided not to submit a claim about their dispute, and reported that Acas was a factor in helping them reach this conclusion.
117. Combined, these are described as the Acas "avoidance rate": i.e. in these disputes, Acas has been effective in helping people to avoid the need to issue formal proceedings in the ETs.
118. In the remaining cases (52% of cases that went through early conciliation) Acas was unable to help people avoid formal proceedings. In these cases, the review found that 34% of respondents issued formal proceedings in the ETs, and the other 19% of respondents did not.
119. Of the 19% of respondents who did not issue ET proceedings, a quarter (or around 5% of all respondents) said that fees were a factor in the decision not to litigate. Just under two thirds of those who said that fees were a factor (or around 3% of all respondents to the evaluation) said it was because they could not afford the fee (full details are set out in Table 13 in Annex F).
120. The findings in the review do not match Acas's management information in certain respects. In particular, the evaluation suggests that 31% of people using conciliation obtained a settlement through Acas or privately, whilst the management information shows this is closer to 15%. The review also suggests that around 34% of claimants issue proceedings in the ETs, but the management information shows the percentage is around 22%.
121. There are likely to be a number of reasons for these differences which are considered in paragraphs 163 to 165 below. The effect of both of these differences is to underestimate the proportion of people who did not, or were unable to, conciliate and did not go on to issue proceedings in the ETs.
122. In this review, we have used the findings from the evaluation as this provides a greater level of detail on the outcomes for those individuals who did not resolve their dispute but did not issue proceedings in the ETs. However, our estimate based on this information represents a best case scenario, and we have gone on to consider the effect of using the management information findings, applying the findings from the review about the reasons why people did not settle and did not go on to submit a claim in the ETs to this larger pool of cases: see paragraph 164 and Table 14 (Annex F) for further details.
123. On 23 May 2016, Acas published a further independent study on the early conciliation service.²⁵ This broadly confirmed some of the results of the 2015 study, including that:

²⁵ *Evaluation of Acas conciliation in Employment Tribunal applications 2016*, Research Paper 04/16, May 2016.

- seven out of ten (71%) claimants avoided going to court after receiving help from Acas;
- Acas's post-claim conciliation has also been highly successful with eight out of ten users being satisfied with the service; and
- over nine out of ten employers (92%) and a similar percentage of claimants (87%) said that they would use Acas conciliation again.

124. The study also confirmed that some found fees off-putting: around a fifth of people who withdrew their claims gave that as their reason for doing so.

125. As set out earlier, Acas's more recent published statistics show that conciliation continues to be popular and effective, dealing with over 92,000 notifications in the year to March 2016.

Fee remissions

126. Statistics on fee remissions have been collected since fees were introduced in July 2013, and included in the quarterly statistical bulletin. These data are summarised in Tables 15 to 20 of Annex G.

127. Since fees were introduced, the proportion of claims for which a fee remission was granted has increased steadily. For the issue fee:

- the proportion of all claims (both single and multiple) for which a fee remission was granted increased from 15% in the quarter to July – September 2013 to 29% in the quarter January – March 2016.
- the proportion of single claims in which a fee remission was granted (either in part or in full) increased from 13% of all Type A single claims between July – September 2013 to 27% in the quarter January – March 2016. The percentage of successful applications for a fee remission in this category of claims improved from 24% to 64% over the same time period;
- for Type B cases (in single claims) the proportion granted a fee remission increased from 16% to 30% between July – September 2013 and January – March 2016. The proportion of applications for a remission which were successful increased from 29% to 67%;

128. Relatively few claims that are issued progress to a hearing, and the volumes of hearing fees requested is significantly lower than the number of issue fees. The trends over time are therefore liable to greater variation. For those cases which progressed to a hearing, the number of fee remissions granted as a proportion of all claims has increased from 8% in the quarter July – September 2013 to 24% in the quarter January – March 2016 and the number of fee remissions granted as a proportion of applications has improved from 57% to 89%.

129. There has been a marked improvement in the proportion of fee remissions granted since the relaunch of the scheme as Help with Fees in October 2015. In the quarter from January to March 2016, the statistics indicate that there has been an overall improvement of eight percentage points in the number of remissions granted for an issue fee, compared with the same quarter in the previous year (January to March 2015). The improvement has been particularly high for individuals bringing Type A single claims, where the number of applications granted has increased from 182

(January to March 2015) to 291 (in the same period in 2016), and the proportion of claims in which the issue fee is remitted has increased by 11 percentage points (from 16% to 27%).

Protected characteristics

130. Annex H sets out information we have on those who use the ETs about the characteristics protected under the Equality Act 2010. This has been taken from information provided by applicants when completing the ET1 form to issue an ET claim. This is not a mandatory part of the form, and in practice this section is only completed in around a third of cases. For multiple claims, it is only completed by the lead claimant.
131. We have only invited claimants to provide this information since fees were introduced in July 2013, and comparative data is not therefore available for the pre-fees period. To provide a reasonable comparison, we have used data from the Survey of Employment Tribunal Applicants 2013 (the SETA)²⁶ and complemented this with information on characteristics of employees from the Labour Force Survey (the LFS).²⁷ SETA is a periodical survey undertaken by the Department for Business and Skills (as it was when the SETA was last published) of people who bring ET claims, including the types of claim they bring and their characteristics.
132. We have further supplemented this analysis with a study of jurisdictional complaints alleging discrimination and other related complaints (for example, equal pay claims). Our analyses of these data are set out in Chapter 7 of this report.

²⁶ *Findings of the Survey of Employment Tribunal Applicants 2013*, Research Series 177, Dep't for Business Innovation and Skills, June 2014.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf

²⁷ See: <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentbyoccupationemp04>

3. Financial Objective

Introduction

133. The first objective in introducing fees was to transfer some of the cost of the ETs from taxpayers to those who use the ETs. It remains the Government's view that it is reasonable for those who use the ETs to make a contribution to their cost where they can afford to do so.
134. A scheme of fee remissions, known as Help with Fees, is available under which those who qualify for help are entitled to have their fees waived either in part or in full. The Impact Assessment²⁸ published alongside the Government Response to consultation, estimated that the introduction of fees would generate fee income of around £8 million to £10 million per annum in a steady state.
135. Overall, we estimated that introducing the planned fees as set out in the Government Response would recover around a third of the cost of the tribunal taking into account fee remissions.

Analysis

136. Table 5 of Annex D summarises the information on fee income taken from HMCTS's Annual Report and Accounts. In 2013/14,²⁹ HMCTS recovered £4.5 million in fee income and remitted fees worth a further £0.7 million in the eight months of the year during which fees were charged. The full cost of the Employment Tribunals for the full year, including the costs of the Employment Appeal Tribunal, was £76.3 million.
137. In 2014/15,³⁰ the first full year of ET fees, £9 million was collected in fee income, a further £3.3 million in income was remitted under the fee remission scheme. The overall cost of the Employment Tribunals, including the Employment Appeal Tribunal, was a little over £71 million.
138. In 2015/16, the amount collected in fee income reduced to around £8.6 million, with a further £3.9 million remitted. The overall cost of the Employment Tribunals also reduced to £66 million.
139. The introduction of fees required some capital investment in IT systems of around £4.5 million. It also incurred project costs of £0.6 million, and ongoing additional operational costs to process claims, determine applications for fee remissions and account for income, of £0.7 million per annum. These costs are included in the overall costs of the ETs (see Table 5 of Annex D).

²⁸ See footnote 8.

²⁹ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323112/hmcts-annual-report-2013-14.PDF

³⁰ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433948/hmcts-annual-report-accounts-2014-15.pdf, and I particular section 5.2.

140. Our original Impact Assessment estimated that the introduction of fees would achieve a cost recovery rate of around a third, taking into account fee remissions. The actual recovery rate achieved has been much lower: 17% in 2014/15 and 19% in 2015/16. The main reasons for the difference are a combination of two factors:
- the fall in the volume of claims was greater than we had estimated in the Impact Assessment but the fall in Type A claims has been greater than for Type B claims; and
 - the value of fees remitted has been lower than were estimated in the Impact Assessment.

Conclusion

141. Overall, our conclusion is that the introduction of fees has broadly met the main financial objectives set. The level of income generated by fees has been broadly in line with estimates, transferring a proportion of the cost from the taxpayer to users. The cost recovery rate, which takes into account the value of fees remitted, has however been lower than we originally estimated.

4. Behavioural Objective: Encouraging alternative ways of resolving disputes

Introduction

142. The second objective for fees in the Employment Tribunals (ETs) was to encourage people to consider alternatives to the ETs to resolve their disputes. The Government believes that using alternative services, such as conciliation, can be a better way of resolving disputes because they can avoid the stress and cost often associated with adversarial litigation.
143. The Government believed that introducing a requirement to pay a fee would give people a financial interest in proceedings that would encourage them to give serious consideration to alternatives, such as Acas's conciliation service, which is provided free of charge to those who wish to use it. Subsequently, the Government underpinned this objective by also introducing a requirement that anyone considering bringing an ET claim must (with some exceptions) first refer the dispute to Acas to consider whether it would be suitable for conciliation.
144. The service, which is known as Acas's early conciliation service, was introduced in April 2014, and it became mandatory from May 2014.

Analysis

145. To consider how effective these policies have been in encouraging the use of alternative dispute resolution services, we have compared the total number of employment disputes referred to Acas or the ETs before and after the introduction of fees. Specifically we have compared:
- the number of employment related disputes referred either to Acas or to the ETs in the year before fees were introduced when conciliation was optional; and
 - the number of notifications to Acas in the first full year of the new service once it had become mandatory.
146. For this analysis, we believe that it is better to consider the total number of ET cases (i.e. including ET cases involving multiple claims), because Acas's data on conciliation includes notifications only from the lead claimant in multiple claims.
147. In 2012/13 (the last full year before fees were introduced in the ETs) around 23,000 people accessed Acas's voluntary conciliation service. Of these, we estimate that some 17,000 (77%) did not proceed to issue a tribunal claim.
148. In the same year, there were around 61,000 cases lodged in the ETs. Some of these were disputes that had previously been referred to conciliation (some 5,000), and should therefore be excluded from this analysis. We therefore estimate that the total number of employment related disputes that were either notified to Acas or alternatively issued in the ETs was around 78,000 in that year.
149. In 2014/15, the first full year after the introduction of fees, and after the introduction of the early conciliation service, Acas received around 83,000 conciliation

notifications, increasing to over 92,000 notifications in 2015/16. Table 12 of Annex F provide further details.

150. Although the fall in claims received in the ETs has been greater than was estimated in the Impact Assessment,³¹ this analysis suggests that the overall number of employment related disputes is now higher than before the introduction of fees, and more people are referring their disputes to Acas under the early conciliation service than were previously using the voluntary service, or the ETs.
151. Furthermore, prior to the introduction of fees the number of ET claims was already reducing. Our detailed analysis of the existing trends in ET claims suggests that we would have expected the number of claims to have continued to fall due to the improving economic climate: our estimate is that the number of single claims would have fallen to around 37,000 in the three quarters following the introduction of ET fees, compared to 40,000 in the three quarters before fees, an eight percent fall (further information on how we have modelled this is set out in Chapter 6).
152. This might therefore indicate that the overall effect of the Government's reforms to the system for dealing with workplace disputes has been to help more people to seek resolution for their disputes where they were previously unwilling or unable to do so.

Conclusion

153. Our overall conclusion is therefore that, while there was a sharp, significant and sustained drop in the volume of ET claims following the introduction of fees, the combined impact of fees with the mandatory requirement to consider Acas conciliation, has been successful in encouraging people to use alternative dispute resolution services (and specifically Acas's conciliation) to help resolve their disputes.

³¹ See footnote 8.

5. Protecting access to justice

Introduction

154. The third objective in introducing ET fees was to ensure that access to justice was protected.

Analysis

155. In Chapter 4, we set out our conclusion that the introduction of fees in the ETs (in combination with the new conciliation service introduced in May 2014) has been successful in encouraging greater use of alternative dispute resolution services. To determine whether this system has protected access to justice in this Chapter we have reviewed:

- how effective Acas's conciliation service has been in helping to resolve disputes and avoid bringing ET proceedings; and
- what happens in those cases where conciliation has not helped to resolve the dispute.

Acas Conciliation

156. The principal evidence we have considered in assessing the effectiveness of the conciliation service is Acas's evaluation of early conciliation,³² which is summarised in paragraphs 113 to 125 to above and in Tables 13 and 14 of Annex F.

157. The Acas evaluation has an advantage over the Acas published management information because it considers the outcomes of cases in a greater level of detail. It provides information on the outcomes achieved through conciliation, whether the matter proceeded to the ETs and, if the matter did not go to the ETs, the reasons for not doing so.

The findings of the Acas evaluation of early conciliation

158. Generally, the early indications from Acas's evaluation are that the introduction of the early conciliation service has been broadly successful, with over 83,000 notifications referred to Acas in the first year, and over 92,000 in the second year.

159. As set out in Chapter 4, the Acas evaluation identified that Acas helped just under half of those people who referred their disputes to conciliation to avoid ET proceedings (the Acas 'avoidance rate'). This means that Acas feel they have been successful in helping parties to settle the dispute or that Acas was a factor in helping claimants to decide not to submit an ET claim about their dispute. The evaluation also found that for those claimants for whom conciliation had not helped to avoid ET proceedings, more than half went on to issue proceedings in the ETs.

³² See footnote 21.

160. If these results were replicated for all disputes notified to Acas, it would mean that:
- some 26,000 people reached a formal settlement, and a further 14,000 decided not to bring ET proceedings; and
 - around 29,000 people who were not satisfied with the outcome of conciliation went on to issue formal proceedings in the ET.
161. This suggests, following the introduction of fees, that the majority of people with employment related disputes have been able to use the reformed system to access justice, either by successfully using conciliation and avoiding the need for formal ET proceedings; or by going on to pursue a claim to the ETs.
162. The Acas evaluation does, however, show that there were some respondents – around 19% of all respondents (equating to around 16,000 people annually) who were not able to resolve their dispute through conciliation, but did not go on to issue proceedings in the ETs; and that some of these (around 3% of all respondents to the survey) said that it was because they could not afford to pay. Applying these proportions to all employment related disputes referred to Acas, we estimate that this equates to around 2,500 people.
163. As set out in paragraphs 120 and 121 above, the findings of Acas’s review cannot be reconciled to the published statistics or other management information. The two principal areas of difference are:
- Acas’s evaluation suggests that 31% of people using conciliation obtain a formal settlement, Acas’s management information suggests that the percentage is 15%; and
 - Acas’s evaluation suggests that 34% of people who accessed early conciliation and did not settle went on to issue proceedings in the ETs, which equates to around 29,000 cases a year. There were, however, 18,000 cases received in the ETs in 2014/15.
164. In both cases, data from management information is likely to give a more accurate result. The effect of both is that the Acas evaluation produces a lower percentage of people who were unable to resolve the dispute through conciliation, but who do not go on to issue proceedings, than would be indicated if we were to use management information. Our estimate of 2,500 people who said they could not afford to pay therefore represents a best case scenario. We have therefore also calculated an estimate which takes these differences into account, and also removes from our analysis the group of people (17%) who said that Acas helped them to decide not to pursue litigation. In this estimate, the Acas avoidance rate only counts those people who reached a formal settlement. Based on these factors, we estimate that the potential size of the group of people who said that the affordability of fees was the reason why they did not pursue a claim to the ETs would be around 8,000. The details of how we have made these calculations is set out at Table 14 of Annex F.
165. There are likely to be a number of reasons why there are differences between these two sources of evidence:
- there are differences in units of measurement: Acas measure notifications whereas HMCTS measure claims and complaints;
 - the evaluation is based on a sample of claimants, employers and representatives whose early conciliation cases concluded between September

and November 2014, whereas the management information recorded case outcomes, albeit on a more limited basis, from April to December 2014; and

- the evaluation covers the first year of the early conciliation service and it is likely to take longer for it to become fully established. We will therefore continue to monitor the position on outcomes from conciliation to make sure we properly understand the ongoing impact the service is having on access to justice.

Other factors

166. In addition to the general concerns raised about the impact of fees on access to justice, some commentators who submitted evidence to the review raised particular concerns about certain aspects of ET fees. In particular, the Council of Employment judges, and the Presidents of the ETs in England and Wales and Scotland, were concerned that there had been a greater fall in lower value claims (such as unpaid wages, or unpaid annual leave) and claims which did not seek a financial remedy (for example, entitlement to breaks). They argued that this suggested that, at least for some types of case, the fees were disproportionate to what was at stake in the proceedings, and people were deciding that they were not economically worthwhile.
167. Anecdotally, some commentators said that they believed that some employers were taking a harder approach to disputes, and were delaying any negotiations to see whether the claimant would be prepared to pay the fee.
168. The Council of Employment Judges also drew attention to the impact of fees on proceedings relating to payments made from the National Insurance Fund (NIF). The NIF makes redundancy and similar payments generally where the former employer is insolvent, but in certain circumstances a reference must first be made to the ETs. Under the current arrangements, they argued, it was particularly unfair to charge the claimant a fee where there was little prospect of being able to recover it from the insolvent employer.

Assessment of evidence

169. Our assessment of the evidence set out above suggests that, overall, on a best case, conciliation is effective in helping just under half the people who refer their disputes to them to avoid the need to go to the ETs. Of those who are unable to resolve their disputes through conciliation, many people (34% of all people who refer disputes to Acas based on the evaluation of early conciliation) go on to issue proceedings in the ETs.
170. We have therefore broadly concluded that under this reformed system for dealing with employment related disputes, there continues to be effective access to justice through a combination of conciliation and the option to bring proceedings to the ETs if conciliation does not work, supported by Help with Fees and underpinned by the Lord Chancellor's exceptional power to remit fees.
171. We acknowledge that this evidence also indicates that there is currently a group, which we estimate to be between 3,000 and 8,000 people, who say that they are unable to resolve their dispute through conciliation, but who decide not to bring proceedings because they say they cannot afford to pay the fee. We do not, however, accept that this means that they cannot realistically afford to pay. It is not

clear what respondents may have meant when they suggested that there were unable to afford to pay:

- It may, for example, have meant reducing some other areas of non-essential spending in order to save the money;
- alternatively, they may be unaware of, or believe that they would not qualify for, a fee remission; or
- they may have been unaware of the Lord Chancellor's power to remit fees in exceptional circumstances.

172. Since the Acas evaluation was undertaken, the remissions scheme has been simplified, streamlined and relaunched as Help with Fees. This has led to a marked improvement in the proportion of applications granted. Furthermore, the facility to apply for a remission online was introduced in July 2016 to further simplify the application procedure.

173. We have also published revised guidance on the application of the Lord Chancellor's power to remit fees in exceptional circumstances so that those who are entitled to help under the scheme receive it.³³

174. There is some evidence from Acas that some employers are not prepared to engage in conciliation, which some commentators have suggested may be a tactic to see whether the employee is prepared to pay the fee. We continue to believe that it is better for parties to try to resolve their differences through conciliation, or other alternative dispute resolution services, but we accept that it is ultimately a matter for the parties. We believe that the best way to deal with these concerns is through the Tribunal judges' power to order fees to be reimbursed: one of the factors the Tribunal may take into account in deciding whether to make an order is the conduct of the parties.

Proceedings relating to payments from the National Insurance Fund

175. As set out above, some people including the Council of Employment Judges, drew particular attention to the position of people who were required to bring proceedings before the ETs to establish their right to a payment from the National Insurance Fund (NIF).

176. The Redundancy Payments Service administers the statutory scheme by which certain employment related debts are met by the NIF in circumstances where the employer is unable to, in most cases because the employer is insolvent. These payments are governed by sections 166 to 170 and 182 to 190 of the Employment Rights Act 1996 (the "ERA") and sections 123 to 127 of the Pension Schemes Act 1993 (the "PSA").

177. In some cases, the Secretary of State cannot accept an application for a payment from the fund, for example because the existence of the debt, or its amount, has not been sufficiently proved. In those cases, the claimant may make an application to the ETs to satisfy the Secretary of State that a payment is due. These applications are:

³³ See footnote 4.

- a reference to the ETs under section 170 of the ERA, which relates to payments under section 166 of the ERA and covers redundancy payments;
- a complaint to the ETs under section 188 of the ERA which relate s to payments under section 182 of the ERA; and
- a complaint to the ETs under section 126 of the PSA in respect of payments under section 124 of the PSA, covering certain unpaid pension contributions.

178. We agree that the nature of proceedings set out above are different from most proceedings before the ETs. These are generally not matters that can be conciliated: the payments are subject to the statutory scheme and in the circumstances set out above the Secretary of State can only make a payment where an ET has made an order to that effect. Furthermore, most applications are made where the employer is insolvent and the claimant therefore has little or no prospect of recovering the fee from them.
179. For these reasons, we accept that there is in principle a good case for applying a different fees treatment to these applications.
180. It is the case that some applications, particularly those made under section 188 of the ERA, are brought against the Secretary of State who would be able to satisfy an order to reimburse fees. However, we believe that there are benefits in applying a consistent approach to the fees charged for the two sets of applications because it provides clarity and certainty to claimants, and it is also simpler for HMCTS to administer. We have therefore decided to exempt from fees all references to the ETs under section 170 of the ERA and all complaints to the ETs under section 188 of the ERA or section 126 of the PSA. The exemptions will come into effect from today.
181. We would also welcome views on whether there are other types of application related to payments from the NIF which raise similar concerns and where we should also consider whether they should be exempt from fees. We have included a specific question on this in our consultation proposals: Chapter 8 provides further details.

Employment Appeal Tribunal

182. Following the introduction of fees, there has been a fall in the number of appeals to the EAT. This is to be expected, given the significant fall in the volume of claims in the ETs. Compared with the fall in ET claims, the impact on the number of appeals to the EAT has been lower, and slower to take effect. For example, whereas there was a fall of 66% in number of cases (both single and multiple) in the ETs in the year following the introduction of fees, in the same period the fall in the number of appeals to the EAT was 39%.
183. Subsequently, the number of claims in the ETs has stabilised, whereas the volume of appeals has continued to fall. In the second year following the introduction of fees (the year to September 2015), the number of ET claims was 68% lower compared to the year to June 2013, whilst the volume of appeals to the EAT was 53% lower.
184. Our conclusion on the impact of fees on proceedings in the EAT is that the fall in appeals has been in line with expectations given the fall in ET claims.

Overall fall in ET claims

185. Although we have concluded that there is no evidence that people have been prevented from bringing ET claims, we recognise that the review highlights some troubling matters:
- the very stark and substantial fall in the volumes of claims brought to the ETs following the introduction of fees, which has been much greater than originally estimated;
 - the evidence that some people who were unable to resolve their disputes through conciliation nevertheless did not bring a claim to the ETs because they said they could not afford the fee, despite the financial support available; and
 - the assessment, under the Public Sector Equality Duty, of the particular impact that fees have had in discrimination claims (further analysis of which is set out in Chapter 7).
186. The Government recognises that there is room for improvements to the current system of fees and remissions. We have therefore decided to take action to alleviate these impacts.
187. We believe that the best way to alleviate these impacts is to widen access to Help with Fees, and our proposals for doing so are set out in Chapter 8. These proposals would, if implemented, benefit those people who are on low incomes but whose financial circumstances mean that they do not qualify for a full remission under the current scheme, either because they would qualify for a full fee remission, or they would pay less in contributions.
188. The Government also agrees with those commentators, including the Council of Employment Judges, that it is not appropriate to charge fees for three sets of proceedings in relation to payments from the National Insurance Fund. We have therefore decided that these proceedings should be exempt from fees, and this change will come into effect from today.

6. Other factors to be considered in accordance with the Terms of Reference

Introduction

189. The terms of reference also committed to explore four further factors that may have influenced the number of claims received in the ETs. These were:
- a. to evaluate the historic trend in ET cases prior to the introduction of fee and the continuation of this trend following their introduction;
 - b. the impact of the improvement in the economy on the number of people having their employment terminated;
 - c. to assess whether there has been a reduction in weak or unmeritorious claims; and
 - d. whether there has been any impact from changes to employment law.

Evaluating the trend in volumes of ET claims (including improvements in the economy)

190. In 2009/10, at the period immediately following the 2008/09 recession, there were just over 236,000 claims received by the ETs: around 71,000 single claims and around 165,000 multiple claims. Both were the highest number of claims received by the ETs in recent years. Following those high points, the trend in the number of claims received in the ETs fell steadily so that, by 2012/13 (the year before fees were introduced) there were around 192,000 claims overall, of which around 55,000 were single claims.
191. Over this three-year period, the total number of claims fell by 19%, or around 6% per annum. The volume of single claims fell by 23%, or an average of 8% per annum over the same period.
192. There was therefore an established downward trend in ET claims which we believe to be associated with the emerging economic recovery and improving levels of employment.
193. We have considered whether, and to what extent, this trend would have continued, and any other relevant factors that would have had an influence on the volumes of ET claims, whether or not fees had been introduced. This provides the counterfactual (or baseline) against which the impact of fees can be assessed.
194. The principal external factor that we thought was likely to influence the number of ET claims was the improving economic position in the UK. The high point in ET claims coincided with the period immediately following economic recession (in the wake of the 2008 banking crisis). As the UK started to emerge from recession, we saw a gradual fall in ET claims.

195. We undertook an assessment to determine how much further ET claims would have fallen as a result of the improving economy had fees not been introduced. The two variables we believed were most associated with ET single claims were:
- the number of new people claiming Job Seekers' Allowance (JSA): our hypothesis was that increases in JSA were likely to be associated with increases in employment-related disputes, particularly disputes related to redundancy and unfair dismissal; and
 - the level of normalised profits disclosed by companies: our hypothesis was that at times where businesses are under greater economic pressure, they are more likely to cut back on employee benefits, such as overtime, to reduce costs.
196. These variables were those which the Department for Business, Innovation and Skills (BIS) identified as relevant in preparing the Impact Assessment which accompanied the Government response to consultation on Resolving Workplace Disputes.³⁴
197. We found that there was a strong positive correlation between the numbers of people claiming JSA and the number of ET claims and a weak negative correlation between levels of normalised company profits and ET claims, in line with our hypotheses.
198. We have therefore used this model to produce a forecast of the level of ET single claims we would have expected to see, had fees not been introduced. Using this model, we estimate that the volume of single claims would have fallen from around 40,000 between October 2013 and June 2014 to around 37,000 between October 2014 and June 2015. This is a fall of around eight percent.

Improving the efficiency of the tribunal

199. Although it was not a formal objective for the ET fees, we hoped that the introduction of fees would contribute to improving the efficiency of the tribunal. The requirement to pay a fee gives claimants a financial stake in proceedings, and it was suggested that one of the benefits of the improvement in efficiency would be fewer weaker or unmeritorious cases.
200. There is no straightforward way of measuring objectively improvements in relative strengths and weaknesses of cases, and the overall efficiency of the ETs.
201. Although it is not a direct measure of the strength of a case, we considered that an analysis of changes in case outcomes might provide a proxy measure for the strength of a case. For example, an increase in the proportion of successful outcomes might suggest that there had been an increase in the proportion of stronger claims among the caseload.

³⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229953/11-1381-resolving-workplace-disputes-final-impact-assessment.pdf

202. We therefore looked at whether there had been any changes in the outcomes of jurisdictional complaints relating to single claims. Broadly, outcomes fall into three categories:
- successful claims: claims which were recorded as a default judgement in the claimant's favour or which were successful at hearing;
 - claims withdraw or settled: where the claim was withdrawn following settlement between the parties, either as a private settlement, or an Acas negotiated settlement; and
 - unsuccessful: all other outcomes (for example, claims which are unsuccessful at hearing or struck out)
203. We have looked at the trend in outcomes for jurisdictional complaints made in single claims from September 2012 to September 2014. It takes on average 27 weeks (or less for a single claim) to reach a conclusion in the ETs, and to reduce any risk of the results in a particular quarter being skewed, we have looked at a six month rolling average.
204. This analysis is set out at Table 8 of Annex E. We found that there was already an established trend before the introduction of fees under which the proportion of unsuccessful outcomes was increasing, and the proportion of claims settled or withdrawn was falling. Specifically:
- the proportion of unsuccessful outcomes increased from around 20% in October 2012 to over 30% in October 2014;
 - the proportion of cases settled or withdrawn fell from 65% to under 57% over the same period; and
 - there was an initial fall in the proportion of successful claims, from 16% in June 2013 to 12% by January 2014. Subsequently, the proportion of successful outcomes has increased to around 13% (in September 2015).
205. Overall, we have concluded that there has not been a significant change in the outcomes of claims following the introduction of fees.
206. Nevertheless, we do know that there has been a significant increase in number of disputes have been referred to conciliation, and that many disputes are resolved in this way, avoiding the need to refer the matter to the ETs. This has had the effect of reducing the workload of the ETs, which has allowed those resources to be focussed on the smaller number of disputes which require a litigated approach. We therefore believe that it is fair to conclude that this has delivered an improvement in the efficiency of both the ETs, and for those parties who have been able to avoid the cost and stress of formal litigation.

Changes in employment law

207. The Terms of Reference also identified changes in employment law as potentially having an impact on the volumes of ET claims. The main change that has happened during the period under consideration in this review is the introduction of the requirement to consider conciliation before issuing an ET claim. The impact of this change in the way that employment related disputes are handled is considered in Chapters 4 and 5 of this report.

208. Other than early conciliation, the main changes that were made in 2012 (all of which came into force in April 2012):
- The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012 which introduced revised procedure rules in ETs;
 - The Employment Tribunals Act 1996 (Tribunal Composition) Order 2012 which provided for cases of unfair dismissal to be heard by a judge sitting alone; and
 - The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 which extended the qualifying period of continuous employment, from one to two years, necessary to acquire the right not to be unfairly dismissed.
209. It is difficult to discern what impact these measures may have had on the numbers of ET claims following their introduction. Of these, the reform which appears to have had the greatest impact is the extension of the qualifying period for unfair dismissal, although these are a relatively small proportion of the overall ET caseload. There were, for example, 1,000 complaints of unfair dismissal in 2011/12, but 800 in 2012/13, a reduction of 20% in these types of claims, but this made only a marginal contribution to the overall fall in cases during that year. Further, these changes were implemented before the introduction of fees and so any effect on the number of claims would have occurred prior to the introduction of fees.
210. Overall, we have concluded that changes in employment law, other than the introduction of Acas's early conciliation service (which is considered in Chapter 4 above), have had a negligible effect on the number of ET claims after fees were introduced.

Other factors

211. It has also been suggested by some commentators that some people with employment related disputes may have decided to launch proceedings in the County Court because the fees for the small claims track may, in some cases, be lower than for the ETs, and it has a very similar costs shifting regime so there is a similarly low risk that the claimant would be ordered to pay the respondent's costs should the claim be unsuccessful. The County Court retains jurisdiction to deal with certain contractual employment disputes.
212. HMCTS management information systems do not record information centrally on cases allocated to the small claims track at a level of detail which would allow us to identify employment-related claims. We do not therefore have any data to determine whether there has been an increase in these types of case in the County Court. Although there is no evidence that people have transferred claims to the County Court, we think there are reasons why it is unlikely to have been a significant factor:
- the County Court has only a very limited jurisdiction for employment matters; and
 - only money claims with a value of less than £3,000 would in practice be cheaper to pursue in the County Court rather than the ETs.
213. Overall, we are satisfied that it is unlikely that there has not been a significant change in the number of claimants issuing employment disputes in the County Court.

7. Public Sector Equality Duty

Introduction

214. Section 149 of the Equality Act 2010 (the Act) establishes the Public Sector Equality Duty (PSED). This came into force on 5 April 2011 and requires public authorities, in the exercise of their functions, to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Summary of findings

215. This Chapter sets out our assessment of the impact of fees in relation to these duties.

216. Our conclusions are that:

- ET fees are not directly discriminatory.
- There has been no unlawful indirect discrimination from the introduction of ET fees. Any differential impact which may have arisen indirectly from ET fees is justified when considered against the success in transferring a proportion of the cost of the tribunals to users and in promoting conciliation as an alternative means of resolving workplace disputes.
- The evidence is clear that fees have discouraged some people from bringing ET claims, including discrimination claims, but there is no conclusive evidence that ET fees have prevented people from bringing claims.
- Nevertheless, having regard to the duties under section 149 of the Equality Act 2010, this assessment has reinforced the Government's view that some adjustment to the scheme is desirable to alleviate the effect that fees have had in discouraging ET claims generally, including workplace discrimination disputes.

217. The Government has therefore decided to take action. We consider that an adjustment to the fee remissions scheme would be the best way to support those most likely to struggle to pay fees. Our detailed proposals are set out in Chapter 8.

Background

218. An Equalities Impact Assessment was prepared and published alongside the Government response to consultation on 13 July 2012 setting out the analysis undertaken of the anticipated impact fees would have.³⁵
219. In summary, the assessment was that the introduction of fees:
- did not amount to direct discrimination;
 - was unlikely to result in anyone suffering a particular disadvantage. Although we could not rule out the possibility that they might have a greater impact on some people with particular protected characteristics than those who do not share that characteristic, we considered that this would be mitigated by the availability of fee remission, Acas conciliation and the power to reimburse fees in successful claims. Overall we did not believe that fees amounted to indirect discrimination;
 - was unlikely to cause someone to be treated unfavourably as a consequence of their particular disability;
 - was not considered to have any risk of victimisation or harassment from the plans;
 - could potentially have an impact on the duty to advance equality of opportunity if fees led to people with protected characteristics being prevented from bringing claims, but that the mitigating factors protected access to justice; and
 - was likely to have a neutral impact on fostering good relations.
220. In this section of the report we set out the work we have done under the PSED to review the actual impact fees have had in relation to the characteristics protected under the Act.
221. Some commentators have expressed particular concern about the impact of fees on new and expectant mothers. For example, in their joint research paper, the Equalities and Human Rights Commission, and the (then) Department for Business Innovation and Skills raised concerns that fees might be discouraging women from pursuing discrimination claims related to pregnancy or maternity.³⁶ In particular, their study found that 5% of respondents to their survey who had considered, but decided against, taking proceedings said that the reason was that they could not afford the fee.³⁷ This lends some further support to the findings of the Acas evaluation of early conciliation, which also identified that 5% of respondents said that they had not brought proceedings because they could not afford to pay. The report also found that fewer than half of mothers that sought advice regarding financial support to pursue an employment tribunal claim (46%) reported that there were not advised that employment tribunal fees can be reduced or removed entirely.³⁸ This supports the early feedback that we received on low levels of awareness of fee remissions

³⁵ See: <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-eia.pdf>

³⁶ *Pregnancy and Maternity-Related Discrimination and Disadvantage, Experiences of Mothers*, Equalities and Human Rights Commission and Department for Business, Innovation and Skills, March 2016 (page 149).

³⁷ *Idem* (page 149).

³⁸ *Idem* (page 151).

generally: the steps we have taken to raise awareness of Help with Fees are set out at paragraphs 78 to 80 above.

222. The concerns set out in the EHRC's report on pregnancy and maternity related discrimination have been echoed in the recent reports of the Justice Committee, in their report on Court and Tribunals Fees and Charges,³⁹ and the Women and Equalities Committee in their report on pregnancy in the workplace.⁴⁰ We have therefore also included an assessment of the impact of fees on pregnancy and maternity claims as part of this review.

Data used to undertake the PSED analysis

223. To assess the protected characteristics of those using the ETs we use information collected on the ET1 form. For gender this has been collected since April 2012 and our analysis is based on data to end March 2016. In multiple claims, this section of the ET1 form is only completed by the lead claimant, and we therefore limit this analysis to single claims only.
224. Our analysis of the information on protected characteristics other than gender uses data collected in the period from the introduction of fees in July 2013, which was when this information started to be collected. These data are only available for the period to 31 March 2015, and we have been unable to include in our analysis data on protected characteristics (other than gender) after this date because those data were deleted after four months in accordance with our data retention policy. Unfortunately, an anonymised version of these datasets was not retained at the time, and they are not therefore available to us for this review. The data continue, however, to be collected as part of the application procedure and they will be reported in future Tribunals statistical bulletins.
225. When carrying out the analysis of the impact on each protected characteristic, all references to people who have paid a fee means those who paid the issue fee in full and does not include those who received a remission either in full or in part. Excluding those who paid in part does not make a substantive difference to the overall analysis presented as the numbers of partial remissions granted for Employment Tribunals proceedings are very low.
226. The protected characteristics questionnaire is not mandatory and, in 2014/15, only 34% of single case claimants responded to the questionnaire. There is, therefore, a risk that the information provided by those who complete this part of the form may not be representative of all claimants.
227. With the exception of gender, we do not have information on protected characteristics from this source for the period before fees were introduced. Instead we have used data from the Survey of Employment Tribunal Applicants (SETA) 2013 to provide a comparison.⁴¹ This is a periodical survey, which aims to provide information on the characteristics of the parties in, and the key features of, ET cases. The 2013 survey conducted 4,000 interviews based on a random sample of single claims disposed of between 3rd January 2012 and 4th January 2013, and is

³⁹ See footnote 1.

⁴⁰ See footnote 2.

⁴¹ See footnote 26.

representative of single claims concluded in this period. Because the two comparative periods draw on different data sources, there is a further risk that the changes in protected characteristics over time are misrepresented. However, until the next SETA is completed, we will not have information from the same data sources over time as a comparison.

228. We have further supplemented this analysis by comparing the characteristics of claimants in the ETs with the characteristics of the general workforce population to understand whether certain protected characteristics are over- or under-represented in the ETs. Where possible we have used published Office for National Statistics (ONS) data from the Labour Force Survey (LFS) covering the period from August 2013 (the first full month after fees were introduced) to March 2015.
229. We have used the general workforce population as a proxy for the pool of people able to bring ET claims. The LFS data include data on all people in the workforce, including those in employment and self-employed people (see Table 24) but these data cannot be broken down to correspond precisely with the cohort of people who are able to bring employment related disputes to the ETs. In any event, that cohort will be different depending on the type of ET claim being brought. Nevertheless, we consider that the LFS workforce data provide the best available approximation of the protected characteristics of people in the workforce.
230. The ONS does not regularly publish statistics breaking down the UK workforce by marital status or religion. Therefore, to analyse these characteristics we have used the LFS publication from January to March 2015 which does include these data. As the data in Tables 28 and 29 show, changes over time in the make-up of the UK workforce are relatively small and we therefore believe that only using one quarter's data provides a meaningful comparison.
231. Further, the LFS does not cover questions relating to pregnancy, sexual orientation⁴² and gender reassignment for the workforce, and so we cannot evaluate these protected characteristics to see whether they are over- or under-represented in the UK workforce. In order to make a comparison for sexual orientation we have instead used experimental statistics in the Integrated Household Survey 2014,⁴³ which presents findings on the sexual orientation of the UK adult population between January and December 2014.
232. Finally, we have also considered the changes in the number of complaints alleging discrimination and other similar types of complaint (for example, equal pay) which are associated with certain protected characteristics (see paragraphs 319 to 323 below).

⁴² The LFS does include a question on sexual identity but this is only included in ONS research datasets.

⁴³ See: www.ons.gov.uk/ons/dcp171778_418136.pdf

A (i) Eliminating unlawful discrimination

233. Our analysis under the duty under this part of the Act (section 149 (1) (a)) comprises three elements: the extent to which ET fees might amount to (i) direct discrimination; (ii) indirect discrimination; and (iii) might deter people from asserting their rights in relation to a discrimination claim at an ET.

1. Direct discrimination

234. Under the ETs fees regime, the same fee is charged to all claimants, depending on whether their claim includes a Type A or Type B complaint. Claimants are not treated less favourably because they share a protected characteristic, and there is therefore no direct discrimination.

2. Indirect discrimination

235. We consider below, in relation to each relevant protected characteristic, whether fees may have had a differential impact on those sharing a protected a characteristic so as to put them at a particular disadvantage when compared to persons who do not share that characteristic. We then go on to consider whether any such impact can be justified as a proportionate means of achieving a legitimate aim.

236. We believe that there are two principal areas in which the introduction of fees may have had a differential impact which could be argued to have given rise to a particular disadvantage:

- firstly, it could result in the financial burden of fees being more likely, on the face of it, to fall on people with certain protected characteristics (the “financial impact”);
- secondly, it might have been associated with a greater reduction in claims brought by people with a protected characteristic (the “claims volumes” impact).

237. Our assessment considers each protected characteristic under the PSED in relation to these impacts. The data are set out at Annex H. It is worth pointing out that these two approaches will always produce different results: the first approach considers the impact of fees in relation to the protected characteristics of people who have brought ET proceedings since fees were introduced and have therefore paid the fee; the second considers the changes between the protected characteristics of people bringing ET claims before and after fees were introduced. So, for example, if the introduction of fees was found to have led to an increase in the proportion of claims brought by people from BAME groups, this would mean that people in this group had borne a greater financial burden of fees, but it would also mean that people in non-BAME groups would have borne the impact of the fall in volumes of claims.

238. We have more information about the gender of people who bring ET claims, and the legal challenges to the ET fees order have focussed primarily on the impact of fees in relation to the gender of claimants. For these reasons, our analysis of the impact of fees on gender is more detailed than we have undertaken for other protected characteristics.

(i) Gender

239. This section considers the impact of fees in relation to gender. Table 21 at Annex G sets out information on the number of single ET claims brought by men and women before and after the introduction of fees, alongside the breakdown for the workforce as a whole (taken from the LFS).⁴⁴ Tables 22 and 23 break down this information into the proportions of Type A and B complaints brought by men and women over the same period. Table 24 provides a breakdown of the workforce by gender and employment status over time, taken from the LFS.

The financial impact

240. Since the introduction of fees the proportion of single claims brought by women to the ETs was 45%, with 55% made by men.⁴⁵ In comparison, over the same period, women made up 47% of the workforce, according to the LFS, and men made up 53%.⁴⁶ The proportion of men and women in the workforce has remained stable throughout the period under review. These data indicate that the volumes of claims brought by men and women broadly reflects their representation in the workforce and that overall financial impact of ET fees has been broadly neutral.

241. Fees for Type B proceedings are higher than for Type A proceedings, and we have also therefore considered whether there has been a difference in the impact of fees between men and women depending on the type of fee paid. There are two ways of approaching this question:

- the first is to consider the proportions of Type A and Type B complaints that have been brought by men and women since the introduction of fees (see Table 22);
- the other is to consider, for men and women, the proportions of the complaints that they brought that comprised Type A complaints and Type B complaints (see Table 23).

242. The data in Table 22 show that between July 2013 and March 2016, for those claims in which a fee was paid:

- men brought 60% of single claims involving Type A complaints, and women brought 40% of those types of claims; and
- men brought 51% of single claims involving Type B complaints and women brought 49% of them.

243. When compared to the workforce (53% men and 47% women) these data suggest that the impact of Type A fees has been greater on men than women, and, although there appears to have been a greater impact on women bringing Type B complaints than men, the difference is small (between two and three percentage points).

244. Table 23 presents an alternative analysis of the breakdown of types of ET claims brought by men and women. These show while both genders were more likely to bring claims involving Type B complaints than Type A complaints, women brought

⁴⁴ See footnote 27.

⁴⁵ This excludes some claims where no gender was specified. These made up around 1% of claims since the introduction of fees.

⁴⁶ <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork>, Table A05

proportionately more claims involving Type B complaints than men. In the period following the introduction of fees:

- 48% of single claims made by men who paid a fee involved Type A complaints and 52% of single claims made by men involved Type B complaints; whereas
- 39% of single claims made by women involved Type A complaints, and 61% of single claims made by women involved Type B complaints.

245. The data from the LFS show that the gender breakdown of the workforce has remained stable before and after the introduction of fees, and that there has been no change in the workforce that might cause a change in the proportions of Type A and Type B complaints brought by men and women. As Type B complaints attract a higher fee, the data indicate that on both bases the financial burden of paying the Type B fee has been greater for women than men, and this indicates that there has therefore been a greater financial disadvantage to women from the introduction of fees.

246. For these reasons, we have concluded that the financial impact of ET fees has been:

- broadly neutral overall between men and women; but
- the impact of Type A fees has been greater on men than women; and
- the impact of Type B fees has been greater on women than men, although the difference is relatively small.

The claims volumes impact

247. We have also considered the possible impact of fees on the volumes of single ET claims brought by men and women over time. Although there has been a significant reduction in the number of single claims since the introduction of fees, Tables 22 and 23 suggest that this has resulted in only small changes to the proportions of claims brought by men and women either overall or in relation to Type A and Type B complaints.

248. For example, in the year to June 2013 (the year before fees) 44% of single claims were brought by women and 56% were brought by men, but in the two and a half years following the introduction of fees (to March 2016), the proportion of single claims brought by women was 45%, and those brought by men was 55% (see Table 21). Similarly, when disaggregated:

- the proportion of women who brought single claims involving one or more Type A complaint fell from 41% in the year before fees to 40% in the two subsequent years, returning to 41% in the six months to March 2016. The proportion of those types of claim brought by men increased from 59% to 60% in 2013/14 and 2014/15, returning to 59% in the six months to March 2016 (see Table 22);
- the proportion of women who brought single claims comprising at least one Type B complaint increased from 47% in the year before fees to 49% in the year following the introduction of fees, and to 50% in the second year, remaining at 50% in the six months to March 2016. Over the same period, the proportion of those claims brought by men fell from 53% in the year before fees to 51% in the first year, 50% in the second year and 50% in the six months to March 2016 respectively.

249. Throughout the period (i.e. both before and after the introduction of fees) the proportions of claims overall, and the proportions of Type A claims, issued by women has been lower than the proportion of women in the workforce (47%), and those issued by men have been higher proportional to their representation in the workforce (53%). For Type B claims, before the introduction of fees the proportions of Type B claims brought by men and women reflected their representation in the workforce, but subsequently the proportions of these claims brought by women has increased, and those brought by men have fallen, by three percentage points.
250. Table 23 provides an alternative analysis which considers the changes in the percentages of Type A and B complaints brought by men and women in single claims. These indicate both men and women are bringing proportionately more Type B complaints, and proportionately fewer Type A complaints following the introduction of fees:
- in the year before fees, 47% of single claims brought by women comprised Type A complaints and 53% were Type B complaints. In the period following the introduction of fees, the proportion of claims brought by women involving Type A complaints had fallen to 38% in the first and second years following the introduction of fees, and to 39% in the six months to March 2016. The proportion of claims brought by women involving Type B complaints has increased to 62% and 61% respectively in those periods.
 - similarly, in the year before fees, 53% of single claims brought by men comprised Type A complaints and 47% were Type B complaints, but in the period following their introduction, the proportion of Type A claims brought by men has fallen to between 47% in the first year and to 48% in the second year and the six months to March 2016, whereas the proportion of those claims that were Type B complaints had increased to 53% and 52% in those periods.
251. This may be partly explained by the changes in the proportions of Type A and Type B claims brought. As set out earlier in this review, Type A single claims (i.e. those proceedings which attract a Type A fee) have fallen by more than Type B claims. Type A claims were 69% lower in the first year after fees (compared with the year before fees) and 72% in the second year, whereas Type B claims were 61% and 64% lower over the same periods.
252. These data suggest that the impact of fees on the volumes of Type A claims has been greater on women, because on both approaches set out above, they have brought fewer Type A claims than men compared with the year before fees were introduced. The impact on Type B claims, which attract higher fees has been greater on men when considered on both bases. It is however important to highlight that the changes are relatively small:
- the fall in the proportion of Type B claims brought by men (and the increase for women) is between 2 and 3 percentage points; and
 - the difference in the increase in the proportion of all Type B claims brought by men and women is three percentage points (the proportion for men increased by between five and six percentage points compared with between eight and nine percentage points for women).

(ii) Race

253. This section considers whether there is any evidence of particular disadvantage in relation to the protected characteristic of race.

The financial impact

254. Table 25 provides data on the ethnicity of people who brought ET claims in the period from July 2013 to March 2015 in which a fee was paid. This indicates that around 24% of people who brought an ET claim in that period identified themselves as coming from an Black, Asian or other minority ethnic (BAME) background, of which 10% identified themselves as Asian, 10% as Black,⁴⁷ 2% mixed and 2% other. 76% of ET claimants identified themselves as white. In comparison, the LFS indicates that around 11% of the workforce identify themselves as coming from an ethnic minority background (5% Asian, 2% Black, 1% mixed and 2% other) and 89% of the workforce identified themselves as white.⁴⁸

255. These data indicate that the financial impact of fees has been greater on people from BAME backgrounds compared with the impact on people who are white. In particular, the impact has been greater on people who identify themselves as Asian, Black and from mixed ethnic groups compared with their representation in the workforce.

The claim volumes impact

256. Prior to the introduction of fees, we did not collect data on the racial characteristics of ET claimants. Our assessment of the impact of fees on the volumes of claims issued is based on a comparison of data collected on the ET1 form (for the period after fees) with information from SETA 2013 which we have used to estimate the characteristics of users in the period before the introduction of fees. Some care therefore needs to be taken in drawing firm conclusions based on data from different sources.

257. It is also important to note that SETA 2013 does not provide a breakdown of characteristics among the main ethnic groups, and we cannot therefore rule out the possibility that there may have been different impacts on particular minority ethnic groups.

258. Bearing those caveats in mind, SETA 2013 indicates that 16% of survey respondents identified themselves as a member of a minority ethnic group before fees were introduced, whereas 24% of respondents identified themselves as a member of a minority ethnic group since the introduction of fees. This suggests that people among minority ethnic groups have brought proportionately more claims since the introduction of ET fees and that, on the face of it, the impact on claims volumes has been greater for people who identified themselves as white compared to people from other ethnic backgrounds.

⁴⁷ Black, African, Caribbean and Black British.

⁴⁸ <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork>, Table A09

259. Overall, when considered against the impact of fees on the volumes of claims brought, we have concluded that there is the potential for people from a white background to have been put at a particular disadvantage.

(iii) Disability

260. This section considers whether there is any evidence of particular disadvantage in relation to the protected characteristic of disability. Information on the disability status of claimants is summarised at Table 26.

The financial impact

261. Based on the information provided on the ET1 claim form, the proportion of people between July 2013 and March 2015 who paid a fee for a single claim and who identified themselves as having a disability was 27%. In comparison, the proportion of the workforce who identified themselves as disabled in the LFS was 10%.

262. These data suggest that ET fees have had a greater financial impact on people with disabilities compared with people who do not have a disability.

The claims volumes impact

263. According to SETA 2013, some 19% of claimants identified themselves as having a disability in the period before fees were introduced, but as set out in paragraph 261 above, in the year following fees, 27% of people identified themselves as having a disability.

264. Based on these data, it does not appear that the introduction of fees has resulted in a particular disadvantage for people with disabilities in relation to the impact of fees on volumes of claims.

(iv) Age

265. This section considers whether there is any evidence of particular disadvantage in relation to the protected characteristic of age. Information on the age of people making ET claims is set out at Table 27 of Annex H. Again, we only have a limited ability to make a meaningful comparison on the protected characteristic of age because the SETA survey only looks at whether claimants were older or younger than 45 and the Labour Force Survey uses different age bands compared to the information provided by ET claimants on the ET1 form.

The financial impact

266. The data indicate that the age profile of people bringing ET claims between July 2013 and March 2015 was generally older than the age profile of the general workforce. We have found that people in the lowest age group (under 25) were under-represented among people who brought ET claims: while they made up 12% of the workforce,⁴⁹ they brought 5% of ET single claims where a fee was paid. Those in older groups (between 35 and 64) brought proportionally more claims: 72% of ET single claimants who paid a fee were in this age group, compared to 61% of the workforce.

⁴⁹ <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork>, Table A05 SA

267. Overall, we have concluded that there is potential for there to have been a financial disadvantage to people in older age groups from the introduction of fees.

The claims volumes impact

268. The data we have on the age of ET claimants from the SETA 2013 is limited to whether the claimant was older or younger than 45. Before fees were introduced, SETA 2013 indicated that around 48% of claimants were under 45 and 52% were older.
269. Our analysis of the age of claimants, based on information provided in the ET1 form, suggests that the proportion of claims brought by people under 45 and who paid a fee was 50% (two percentage points higher than before fees) and the corresponding proportion of claimants over 45 was 50% (two percentage points lower than before fees).
270. Bearing in mind the limitations of the data on which this analysis is based, we do not believe we can draw any firm conclusions on whether the introduction of fees has had a disparate impact on the volume of ET claims brought when considered in relation to the protected characteristic of age.

(v) Religion

271. This section considers whether there is any evidence of particular disadvantage in relation to the protected characteristic of religion. Information on religious beliefs is set out at Table 28. Those who have completed this section of the ET1 claim have provided a wide range of different faiths and religious beliefs.⁵⁰ For the purposes of this analysis, we have limited our analysis to the four main religions or beliefs and those who indicated they held no belief, which between them represent around 98% of those who completed this section of the ET1 form.

Financial impact

272. Table 28 provides a breakdown of the religions and beliefs of those who have brought ET claims since the introduction of fees. These data indicate that financial impact of fees has been mainly borne by those who identify themselves as Christian. They have brought 63% of claims in which the full fee has been paid, although the LFS indicates that they make up only 55% of the workforce. Other groups adversely affected by fees are Muslims, who make up 7% of ET claimants, but only 3% of the workforce, and to a lesser extent, those who identify themselves as Sikhs, who represent 3% of ET claimants compared with 2% of the workforce.
273. Our analysis suggests that there has been a particular financial disadvantage to Christians, Muslims and (to a very limited extent) Sikhs.

⁵⁰ Excluding Christian denominations and no religion, 43 different religions and beliefs have been cited.

The claims volumes impact

274. Table 28 also provides a breakdown of the religious beliefs of ET claimants in the period before fees were introduced, which have been estimated using information from the SETA 2013. SETA 2013 only provides a breakdown between Christian, Other religion and No religion and our analysis of the impact of fees is therefore limited to these groups. These data suggest that:
- the proportion of ET claimants who said that they were Christian has increased from 58% before fees to 63% following fees;
 - the proportion of ET claimants holding another religious or other belief increased from 9% before fees to 13% after fees;
 - and the proportion of ET claimants holding no religious or other belief has fallen from 30% to 24%
275. Based on this analysis, and bearing in mind the limitations of this analysis, we have concluded that the introduction of fees has, on the face of it, had a disproportionate impact in relation to the volume of claims on people who identify themselves as holding no religious belief.

(vi) Marriage and civil partnership

276. We have considered the impact of fees on the protected characteristics of marriage and civil partnership. These data are set out at Table 29. While data from ET claimants and SETA 2013 distinguish between those who are in a civil partnership and those who are no longer in one, the LFS does not and we have therefore removed civil partnerships from the workforce comparison in this analysis. As people in civil partnerships make up 0.4% of the workforce, we do not believe that this affects the results.

The financial impact

277. The proportion of ET claimants in a legally registered partnership since fees were introduced is 56%, and those who are not in a legally registered partnership made up 44% of ET claimants. In comparison, the proportion of people in the workforce who are in a registered partnership is 53%, and those not in one make up 46% of the workforce. These data suggest that there has been a greater impact on people in a registered partnership, although the difference is small.

The claims volumes impact

278. Before the introduction of fees, people in legally registered partnerships made up 52% of people bringing ET claims, according to SETA 2013, compared with 56% following the introduction of fees. People not in a legally registered partnership made up 47% of ET claimants before fees, but this has fallen to 44% afterwards.
279. These data therefore suggest that there has been a small negative impact on people who are not in legally registered partnerships compared with people who are married or in a civil partnership.

(vii) Sexual orientation

280. This section considers whether there is any evidence of particular disadvantage in relation to the protected characteristic of sexual orientation. Data on the protected characteristic of sexual orientation is set out at Table 30. This considers the impact of fees on those who describe themselves as heterosexual or straight, compared to those who describe themselves as gay, lesbian, bisexual or have another sexual identity.

Financial impact

281. The data collected from the ET1 claim form indicates that 96% of ET single claimants who issued proceedings and paid a fee between July 2013 and March 2015 identified themselves as heterosexual or straight and 4% identified themselves as gay, lesbian, bisexual or having another sexual identity.

282. The LFS does not collect information on the sexual orientation of people in the workforce. For this reason, we are unable to use it to assess the impact of fees on people in relation to the protected characteristic of sexual orientation. However, the Office for National Statistics (ONS) does report on the sexual identity of adults in the UK as part of the ONS sexual identity project. This survey found that 93% of adults in the UK in 2014 identified their sexual identity as heterosexual/straight and 2% of adults identified themselves as gay, lesbian, bisexual or other sexual identity. A further 4% answered 'Don't know/ refuse' and 1% did not respond to the question.

283. In view of the proportion of people who did not respond, did not know or refused to answer this question, relative to the proportion who identified themselves as gay, lesbian, bisexual or other sexuality, we do not believe it is not possible to draw any firm conclusions on the financial impact of fees in relation to the protected characteristic of sexual orientation.

Claims volume impact

284. Our analysis suggests that there has been little change in the sexual orientation of people bringing ET claims following the introduction of fees:

- around 94% of claimants identified themselves as heterosexual or straight before the introduction of fees, compared to 96% following fees; and
- 3% identified themselves as gay, lesbian bisexual or having another sexual identity compared to 4% after fees.⁵¹

285. Taking into account the limitations of the data sources used for this comparison, we do not believe we can draw firm conclusions of a particular disadvantage from the impact of fees on the volume of claims in relation to sexual orientation.

(viii) Other protected characteristics

286. We do not collect information on gender reassignment, of people making ET claims and we cannot therefore undertake an assessment of the impact of fees in relation to this protected characteristic.

⁵¹ A further 3% answered 'Don't know' or did not answer.

Analysis of protected characteristics using the remissions scheme

287. From the information provided by claimants filling in their protected characteristics on the ET1 form we have made the following conclusions about those more likely to be entitled to a remission at the issue fee stage based on their protected characteristics (Tables 31 to 38):

- (i) Gender: women were more likely to receive a remission compared to men (26% of single complaints compared to 23%);
- (ii) Race: those identifying themselves as from an ethnic minority background were more likely to receive a remission compared to those identifying as white (26% of single complaints compared to 22%). Within ethnic minorities those identifying themselves as Black/ African/ Caribbean/ Black British or from mixed or multiple ethnic groups were most likely to receive a remission (30%), whereas those identifying as Asian/ Asian British were least likely to receive a remission (19%);
- (iii) Disability: those identifying themselves as having a disability were more likely to receive a remission than those who did not have a disability (26% of single complaints compared to 23%);
- (iv) Age: those under 25 were most likely to receive a remission (43% of single complaints lodged by those under 25). The likelihood of receiving a remission then broadly reduces with age;
- (v) Religion: those identifying as Sikh were least likely to receive a remission (12% of single claims compared with 25% overall) and people identifying themselves as Christian (23%) and Hindu (22%) were also slightly less likely to receive a fee remission. Muslims (30%, those with other religious or other beliefs (28%) and those with no religion or belief (29%) were most likely to receive a remission.
- (vi) Marriage and civil partnership: those who were in a legally registered partnership were less likely to receive a remission (16%) compared to those who were not (33%);
- (vii) Sexual identity: those identifying as gay, lesbian, bisexual or other sexual identity were slightly more likely to receive a fee remission compared to those identifying as heterosexual/ straight (27% of single complaints compared to 24%).

Analysis by type of complaint

288. We acknowledge that there are limitations in the analysis of claimants' characteristics based on the analysis set out above. In particular, the section of the ET1 form is only completed by a relatively small proportion of claimants and may not therefore be representative of claimants as a whole.

289. We have therefore supplemented the analysis of the impact of ET fees by considering the changes in the numbers of claims which include a complaint alleging discrimination and other complaints typically associated with certain protected characteristics, such as claims for equal pay. As set out earlier in this publication, an ET claim may comprise one or more different complaints (for example, a complaint of sexual discrimination and a complaint in relation to equal pay). These complaints are described as "jurisdictional complaints" and data on jurisdictional complaints are included in the quarterly Tribunals statistical bulletin.

290. Furthermore, there have been concerns expressed about the problems that new and expectant mothers face in the workplace, and that the introduction of fees has had a particular impact in preventing them from bringing pregnancy and maternity claims to the ETs. These have featured in the joint report of the Equalities and Human Rights Commission and the (then) Department for Business Innovation and Skills on maternity and pregnancy discrimination;⁵² the Justice Committee in their report on court and tribunal fees;⁵³ and the Women and Equalities Committee in their report on pregnancy and maternity discrimination.⁵⁴ We have therefore also gone on to consider the impact of fees on these types of complaint, even though pregnancy and maternity status is not a relevant protected characteristic in relation to indirect discrimination.
291. Table 39 of Annex G sets out a comparison of the percentage fall in the number of complaints in each of these categories in the year to September 2013 (the first year after fees were introduced), alongside the fall in all discrimination complaints and the overall fall in all complaints, compared with the year to 30 June 2013 (the year before fees were introduced). It provides these data for complaints made in single claims, and in all claims. Table 40 provides these data for the year to 30 September 2015 (the second year after fees) compared with the year before fees.
292. As these tables show, the fall in complaints of discrimination made in single claims, which exclude the impact of multiple claims, is broadly in line, or lower, than the overall fall in jurisdictional complaints. Comparing the year to June 2013 with the year to September 2014 single claims involving discrimination complaints fell by 56% on average, compared to 62% for all single jurisdictional complaints. The greatest fall was in complaints of sexual orientation discrimination (65%), and the smallest fall was for complaints of maternity and pregnancy dismissal (39%). This trend is the same when considering the fall in the second year after fees were introduced (comparing the year to June 2013 with the year to September 2015).
293. There are some types of discrimination claims which are typically brought as multiple claims, in particular most complaints of equal pay and sex discrimination claims are brought as multiple claims. In these cases there is a risk that focussing entirely on single claims would be misleading.
294. For sex discrimination claims, the trend in single complaints has been broadly in line with the overall trend in single complaints, but the fall has been higher when looking at all complaints (including those made in multiple claims). Comparing the year to June 2013 to September 2014 all sex discrimination complaints fell by 83%, whereas the fall in all discrimination complaints was 72% and the fall in all jurisdictional complaints was 68%. There is a similar differential when comparing the year to June 2013 with the year to September 2015: the fall in all sex discrimination complaints was 71% whereas the fall in discrimination complaints was 32% (mainly because there was an increase of 349% in age discrimination claims) and the overall fall in jurisdictional complaints was 52%.

⁵² See footnote 36.

⁵³ See footnote 1.

⁵⁴ See footnote 2.

295. Complaints involving equal pay disputes followed a similar pattern when comparing the year to June 2013 with the year to September 2014: they fell by 75% compared to the overall fall of 68%. However, comparing the year to June 2013 with the year to September 2015 equal pay complaints only fell 26%, compared to the overall fall of 52%. This is due to a large number of multiple complaints made between July and September 2015.
296. The trend in equal pay and age discrimination complaints demonstrates the additional volatility of multiple claims which makes it more difficult to ascertain the underlying impact of fees on claims lodged with the ETs. The greater volatility of multiple claims means there are likely to be greater differences in volumes between time periods which are due to normal variation. Furthermore, people bringing complaints made in multiple claims pay no more, but will typically pay less, than those bringing single claims, and in some cases financial support is provided by Trades Unions. For these reasons, we believe that it is fair to conclude that any differences in the numbers of complaints made in multiple claims are unlikely to be due to the effect solely or mainly of fees.
297. These data do not support the concerns about the impact of fees on new and expectant mothers. As Tables 39 and 40 show, the fall in the volumes of pregnancy and maternity related discrimination claims has been consistently lower than for other types of discrimination claim, and the fall in claims overall. There is therefore no evidence that these types of discrimination claim have been more greatly affected by fees and therefore should be treated more favourably under the fee regime than other types of discrimination claim.
298. Although there have been significant falls in the number of discrimination and other similar complaints, when considering single claims (which we believe to be a better measure of the impact of fees) the impact of fees does not appear to have led to a greater fall in these types of complaint, compared to the overall fall in all complaints. Furthermore, although there have been greater falls in some types of discrimination complaints when all complaints (including those made in multiple claims) are considered, for example, sex discrimination claims, we believe, for the reasons set out above that this is unlikely that this is attributable solely or mainly to the introduction of fees.

Summary of findings: indirect discrimination

299. Our analysis of the impact of fees has identified that there is evidence of disparate impacts in respect of people with certain protected characteristics that could amount to a particular disadvantage. The principal impacts of fees that we have identified in this assessment are summarized below:

Gender: the overall financial impact of fees has been neutral, but there is evidence that the financial impact of the higher Type B fees has been greater for women compared with men, although the difference is relatively small.

The impact of fees on the volumes of claims brought by men and women has also been broadly neutral overall, but there is evidence of a greater impact on men from the introduction of Type B fees, although the difference is also relatively small.

Race: our analysis indicates that the financial impact of fees has been greater on people from BAME backgrounds, and in particular people who are Black or of mixed

race who were five times more likely to bring proceedings, and Asian people twice as likely, compared with their representation in the workforce. The impact on volumes of claims appears to have been greater for people from white British backgrounds.

Disability: our assessment is that there has been a greater financial impact from fees on disabled people, who were three times more likely to bring proceedings (in which a fee was paid) compared to their representation in the workplace. There is no evidence of a disparate impact in relation to the volume of ET claims brought by disabled people.

Age: the introduction of fees has had a greater financial impact on older people (those aged between 35 and 64) compared with those in other age groups but we have not been able to draw any firm conclusions on the impact of fees on the volume of claims, given the limitations of the data sources.

Religion and belief: the financial impact of fees appears to have been greater for those who identify themselves as Christians and Muslims, and to a more limited extent, Sikhs. Our assessment of the impact of fees on the volumes of claims is necessarily more limited, but appears to indicate that those holding no religious or other beliefs have been more greatly affected by the introduction of fees.

Marriage and civil partnership: our analysis suggests that the financial impact of fees has been greater for people in registered legal partnerships, and the impact on volumes of claims greater on people not in legally registered partnerships, although the differences are small.

Sexual orientation: there are limitations to the data we have on the sexual orientation of people making ET claims, and we have therefore been unable to draw any firm conclusions about the financial and claims volume impact of fees on this protected characteristic.

Indirect discrimination: justification

300. As there is evidence of indirect discrimination, we have gone on to consider whether it can be justified as a proportionate means of achieving a legitimate aim. The objectives for the introduction of fees were threefold:

- (i) to transfer a proportion of the cost of the tribunals to users (financial);
- (ii) to encourage the use of alternative dispute resolution services, including Acas conciliation (behavioural); and
- (iii) to protect access to justice.

301. This review of ET fees is an assessment of how successful the introduction of fees has been in meeting those objectives. Our detailed assessment is set out in Chapters 3, 4 and 5, and are summarised below.

(i) The financial objective

The Government's view when fees were introduced in the ETs was that it was reasonable for users to pay a contribution towards the costs of the tribunal through fees. The justification was that fees introduced a financial discipline by giving the claimant (who could afford to pay) a financial incentive to balance the costs and

benefits of litigation, and to consider alternative services, before committing to litigation which can be both stress and expensive not only for the claimant, but also for the respondent.

302. Our assessment is that fees have been broadly successful in meeting the financial objective. ET fees are generating the level of income anticipated, and have therefore successfully transferred a proportion of the costs of the ETs to users, although the cost recovery level is lower than we had estimated. Further details are set out in Chapter 3.
303. There is evidence that the charging of Type B fees has had a greater impact on women than men, and is therefore indirectly discriminatory. The original justification for this approach was that the proceedings subject to Type B fees were typically more complex, took longer on average to complete and therefore consumed on average greater amounts of Tribunal resource. We continue to take the view that those whose cases consume more of the Tribunals' resources should (where they can afford to do so) pay more as a contribution to the costs of the service based both on the type of claim pursued and its progression through the ET system (through the charging of separate fees for issue and hearing).
304. Generally, the evidence suggests that while fees have had a differential impact, the differences have been relatively small. However, in three cases, the evidence indicates that the difference in relation to the financial impact of fees has been significant. Specifically, people who are Black or of mixed race were five times more likely to bring proceedings in which a fee was paid, Asian people twice as likely, and disabled people three times more likely to bring proceedings.
305. Having considered these factors, the Government believes that the financial objective of transferring some of the costs burden of the employment tribunals from the taxpayer to the user, where they can afford to pay, remains a legitimate aim. Our assessment (see Chapters 3 to 5) highlights the benefits that the introduction of fees has brought. Fees provide the financial discipline necessary to encourage people to make appropriate choices about how to resolve their disputes. This also encourages people to consider alternative ways of settling their disputes, which was another objective for fees (this is considered from paragraph 311 below). In view of the benefits that have been delivered by the fees, we believe that any indirect discrimination is justified.
306. We have considered whether this aim could be achieved by alternative means, but we have concluded that it could not. The introduction of fees requires those who use the ETs to make a financial contribution to their cost. Charging fees to start and progress court and tribunal proceedings is a longstanding and well-established way in which people pay to have access to these services. Furthermore, we believe that a fee which is set in relation of the cost of the proceedings is a fair basis for calculating the charge for access to the ETs.
307. We have also considered whether it would be more proportionate to charge different, lower, fees for ET proceedings, or to transfer some of the burden of fees to respondents. The result of reducing fees would reduce the income generated by fees, and thereby reduce the proportion of cost transferred to users from the taxpayer. Respondents' fees were considered during the original consultation and rejected because it would be unique for proceedings in England and Wales and that it was not reasonable to require respondents to pay a fee to defend a claim over which they had no influence.

308. Finally, we have considered whether it is proportionate to charge the current scheme of ET fees given the very high financial impact on Black people and people of mixed race, Asian people and disabled people. We do not consider that it would be appropriate to charge different fees to people in these groups to mitigate the impact on them. *Managing Public Money*⁵⁵ makes clear that different groups of customers should not be charged different amounts for a service costing the same.⁵⁶ Neither, for the reasons set out in paragraph 307 above, do we think it appropriate to charge a different, lower scale of fees to all users to mitigate the impact on these groups because this would not meet the financial and behavioural objectives for fees.
309. We are further reassured that the fee scheme remains a proportionate means of achieving these aims because the impact of fees on the volumes of claims brought by people in these groups has been lower compared to people who do not share these characteristics. Black and mixed race people, Asian people and people with disabilities have not been discouraged from bringing proceedings to the extent that people who do not share those characteristics have. Furthermore, people who are Black, of mixed race or disabled are among the groups more likely to qualify for a fee remission and therefore more likely to benefit from the proposals to widen access to the Help with Fees scheme, should they be implemented.
310. Our detailed proposals for consultation are set out in Chapter 8 and our assessment of these proposals under the PSED is set out in the Equalities Statement published alongside this review and consultation.
- (ii) *The behavioural objective*
311. The Government also wanted to use fees to encourage people to consider alternative ways of resolving their employment disputes. While the Government accepts that conciliation is unlikely to be able to resolve every dispute, we believe that it is right that employees and employers should, where possible, seek to find a private resolution, avoiding the expense and stress often associated with adversarial litigation.
312. The requirement to pay a fee provides a financial incentive for a person contemplating litigation to consider alternative solutions, and Acas's conciliation service is provided free of charge. To complement the financial incentive, it became a requirement, in May 2014, that anyone contemplating bringing proceedings to the ETs must first consider conciliation.
313. The evidence (see Chapters 4 and 5) shows that these policies have brought about a dramatic transformation in the way that workforce disputes are handled. Over 90,000 people referred their disputes to Acas last year, more than the combined total of people who used conciliation and the tribunal combined in the year before fees were introduced. Our assessment, based on the findings of the Acas review of the early conciliation service,⁵⁷ is that conciliation helps up to just under half of those who refer their disputes to Acas to avoid bringing tribunal proceedings.

⁵⁵ *Managing Public Money*, HM Treasury, July 2013 (annexes revised August 2015)

⁵⁶ *Idem*: see paragraph 6.3.6.

⁵⁷ See footnote 21.

314. The Government's conclusion is that the benefits that fees, combined with early conciliation, have brought provide a strong justification for any indirect discrimination that has resulted.
315. We have also considered whether there might be an alternative to fees that would achieve this aim in a more proportionate way, including whether early conciliation alone would achieve the same aim. We have not been able to identify an alternative means of achieving the aim. Furthermore, we believe that the combination of fees (which provide the necessary financial incentive) and early conciliation is more effective at encouraging people to give serious consideration to conciliation (or other alternative dispute resolution services) and achieves better results than would be achieved by early conciliation alone.

(iii) Access to justice

316. The third objective was to protect access to justice so that those who could not resolve their disputes through conciliation were able to use the ETs to assert their employment rights.
317. Our conclusion is that the objective has broadly been met, and although we accept that the Acas evaluation identified some people who said that they were unable to issue ET proceedings because of the fee, we do not, for the reasons set out in Chapter 5, accept that this necessarily means that they cannot afford to pay. Nevertheless, this PSED assessment of the impact of fees has reinforced the Government's view that action is justified in the light of the much greater fall in claims, and the evidence that fees have been off-putting for some people. The action we are taking to address these impacts are set out in Chapter 8.

Conclusion – justification

318. Although our analysis indicates that the introduction of fees in the ETs may have resulted in indirect discrimination, the Lord Chancellor has concluded that this is justified because ET fees are, for the reasons set out above, a proportionate means of achieving a legitimate aim.

1. Impact of fees on volumes of equality-related claims

319. The analysis set out earlier in this Chapter has considered whether fees are directly discriminatory, and whether they have had a differential impact in relation to protected characteristics which might amount to direct or indirect discrimination. This section considers the impact of fees on people's ability to bring discrimination claims. Employment Tribunals are the forum in which employment rights, including the right not to suffer discrimination, can be asserted, if these disputes cannot be resolved without recourse to litigation. The ETs are therefore a crucial mechanism for enforcing such rights, and ensuring they are respected, so that discrimination is eliminated. For similar reasons, ETs also have a part to play in ensuring that equality of opportunity is advanced and good relations are fostered.

320. In the Equalities Impact Assessment that was published alongside the Government response to consultation in 2012,⁵⁸ the Government acknowledged that the introduction of fees was likely to lead to a reduction in the volume of claims but concluded that the availability of fee remissions meant that fees would not deter good or arguable claims.
321. As this review has established, there has been a sharp, significant and sustained fall in the volume of claims received in the ETs following the introduction of fees: complaints alleging discrimination and other complaints typically associated with discrimination claims have also fallen significantly (see Tables 38 and 39 for further details). However, for the same reasons as set out in our analysis of the fall in ET claims, we do not believe that this necessarily means that people have been prevented from bringing discrimination claims.
322. The Government has, however, decided to take action to address the troubling fall in ET claims, which has been much greater than anticipated, and the evidence that some people have found fees off-putting (see paragraph 185 of Chapter 5). Our view is reinforced by this assessment undertaken for the PSED of the impact that fees have had on the volumes of discrimination claims (under section 3 above).
323. For the reasons set out earlier, we consider that adjustments to the fee remissions scheme is a better way of alleviating the impact than a reduction in fee levels because this would benefit people on lower incomes (i.e. those just above the current threshold for a fee remission). This is the group of people who we believe are the group most likely to find it hard to pay fees and who are therefore more likely to have been discouraged from bringing claims than people with higher incomes. Our detailed proposals are set out in Chapter 8.

A (ii) Protection from harassment and victimisation

324. This section considers the impact of fees in relation to the duty to have regard to the need to protect people from harassment and victimisation in relation to a relevant protected characteristic: gender; race; disability; age; religion or belief; sexual orientation; and gender reassignment.
325. We do not consider there to be a risk of harassment or victimisation from the charging of fees in the ETs.

B Advance equality of opportunity

326. We have considered how the charging of fees in the ETs may have an impact on the need to advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it. The protected characteristics relevant to this part of the duty (section 149 (1) (b)) are: gender; race; disability; age; religion or belief; maternity and pregnancy; sexual orientation; and gender reassignment.

⁵⁸ See footnote 35.

327. Access to the ETs is not just important for the purpose of eliminating discrimination. The proper enforcement of rights also has an important role to play in advancing equality of opportunity and fostering good relations. This section sets out the assessment of the impact of fees having regard to the duty to advance equality of opportunity (under section 149 (1) (b) of the Act).
328. We believe that this duty raises issues very similar to those in relation to the duty to have regard to the need to eliminate discrimination (see section A) above. In particular, based on the availability of conciliation (which is free of charge to users) help under the Help with Fees scheme (including the improvements made to the scheme) and underpinned by the Lord Chancellor's exceptional power to remit fees, the Government has concluded that fees do not prevent access to the ETs for those who realistically cannot afford to pay.
329. Nevertheless, after careful consideration of the evidence and as set out in section A above, we have concluded that some adjustment to the fee remissions scheme is justified to alleviate the impact that fees have had in discouraging people from bringing claims. We consider that this will, in turn, further the advancement of equality of opportunity for those with certain protected characteristics compared with those who do not share them.

C Foster good relations

330. This section considers the duty to foster good relations: see section 149 (1) (c) of the Act. There are eight relevant protected characteristics to this duty which are the same as under section 149 (1) (b) (advance equality of opportunity).
331. One of the Government's objectives in introducing fees in the ETs was to encourage people to use alternative services, and in particular conciliation. One of the reasons for encouraging conciliation is that we believe that it can be effective in resolving disputes, while avoiding the expense and anxiety often associated with adversarial litigation, and which can lead to the breakdown in working relationships between employees and employers.
332. The evidence from this review indicates that this objective has broadly been met. There has been a dramatic shift to people using conciliation, and this has been effective in helping many people who use it to avoid the ETs. For this reason, to a limited extent, we believe that the introduction of fees, combined with the action we are taking to alleviate the impact that fees have had, are helping to foster good relations between people with protected characteristics, and those who do not share them.

Overall conclusions

333. Having considered the impact of ET fees in relation to the obligations under the Equality Act, the Lord Chancellor has concluded that:
- ET fees are not directly discriminatory.
 - There has been no unlawful indirect discrimination from the introduction of ET fees. Any differential impact which may have arisen indirectly from ET fees is justified when considered against the success in transferring a proportion of the cost of the tribunals to users and in promoting conciliation as an alternative means of resolving workplace disputes.
 - The evidence is clear that fees have discouraged some people from bringing ET claims, including discrimination claims, but there is no conclusive evidence that ET fees have prevented people from bringing claims.
 - Nevertheless, having regard to the duties under section 149 of the Equality Act 2010, this assessment has reinforced the Government's view that action is justified to alleviate the effect that fees have had in discouraging ET claims generally, including workplace discrimination disputes.
 - We consider that an adjustment to the fee remissions scheme would be the best way to achieve this outcome. Our detailed proposals are set out in Chapter 8.
334. We will continue to monitor the equality impacts of the introduction of ET fees to help understand if there have been any unintended consequences of the policy.

8. Consultation: proposals for adjustments to the fee remissions scheme

Introduction

335. The Government has decided to take action to address the concerning issues identified in this review of the introduction of fees in the ETs.
336. There are two areas where we believe that an adjustment to the current fees regime is justified. The first is to address the sharp and substantial fall in ET claims. Our detailed analysis of the impact of the introduction of fees in the ETs is set out at Chapter 5. Although we believe that the fall in ET claims is a broadly positive outcome, the overall scale of the fall, which has been much greater than estimated at the time ET fees were introduced, is troubling.
337. There is also evidence that some people have been discouraged from bringing claims because of the fee. Our assessment of the impact of fees under the PSED has reinforced the Government's conclusions on the overall impact of ET fees.
338. For these reasons, the Government has decided to take action.
339. We believe that the best way to target the reforms is to make adjustments to the fee remissions scheme. Fee remissions are means tested, which means that our proposals to widen access to the scheme would benefit those on lower incomes, but whose gross monthly income is above the current thresholds. Under these proposals, more people would be exempt entirely from fees, and others would contribute less towards the fee. Our specific proposals are set out in below.
340. The other area where action is necessary relates to ET proceedings about payments from the National Insurance Fund, which we have decided should be exempt from fees. Further details are set out in Chapter 5.

Help with Fees

341. The Help with Fees scheme helps to ensure that access to the courts and tribunals is protected by ensuring that those on low incomes who would otherwise be unable to afford to pay the fee are not prevented from bringing the claim. The scheme operating in the ETs is HMCTS's standard fee remissions scheme that applies in the civil and family courts, as well as the other tribunals where fees are charged, except for the First-tier Tribunal (Immigration and Asylum chamber) where separate arrangements apply.
342. When fees were first introduced in the ETs, a number of concerns were raised that awareness of the availability of fees remissions was poor, and that many people did not understand what they meant. They also told us that the procedure for applying was difficult and the guidance was confusing, which they feared some may find off-putting. These concerns were also reflected in the joint report of the Equalities and Human Rights Commission and the (then) Department for Business, Innovation and Skills on pregnancy and maternity-related discrimination, which highlighted a

general lack of awareness of the help available among new and expectant mothers.⁵⁹

343. To address these concerns HMCTS undertook the fee remissions improvement project. In October 2015 fee remissions were re-launched as Help with Fees with improved guidance, a simpler application form and a streamlined application procedure. This has had a positive effect on fee remissions, with a measurable increase in applications, which have, in the case of the issue fee, increased by eight percentage points. Since July 2016, people have also been able to apply for a fee remission online.
344. We will continue to look for opportunities to improve the fee remissions scheme so that those who are entitled to help get it, and we would welcome views on how that could be best achieved.

Question 1: Do you have any specific proposals for further reforms to the Help with Fees scheme that would help to raise awareness of remissions, or make it simpler to use? Please provide details.

Reform of fee remissions

345. We have concluded that an adjustment to the current fee remissions scheme is the best way to alleviate the impact that fees have had on the volume of ET claims, including discrimination claims.
346. To qualify for a fee remission, the claimant must meet tests of both disposable capital and gross monthly income. These tests are described in more detail in Annex C.
347. Under the disposable capital test, anyone bringing an ET claim with disposable capital of £3,000 or more is not eligible for a fee remission. Certain types of capital are disregarded for the purposes of Help with Fees, including the main dwelling, pension lump sums, and compensation payments paid following a court order or with a view to settling court proceedings.
348. Some people have argued that redundancy and similar employment related lump sum payments should also be disregarded in the disposable capital test. However, we believe that it is right that people who wish to bring ET proceedings should use their savings and other capital to pay their contribution to the costs of the system. The fee can be recovered from the respondent where the proceedings are successful. Further support may be available under the Lord Chancellor's exceptional power to remit fees for those who do not qualify for Help with Fees because they do not meet the disposable capital test, but may for other reasons not be able to afford to pay: for example, because they may need those savings to meet other essential outgoings.
349. For these reasons, we do not believe that adjusting the capital test would be the best way to alleviate the impact of fees. Instead, we believe that it would be better to consider adjustments to the gross income test, and specifically to raise the gross monthly income threshold for a fee remission. The gross monthly income threshold is the point at which a full remission is available (assuming that the applicant meets

⁵⁹ See footnote 36.

the disposable capital test) and beyond which people must start to make a contribution towards the fee. We believe that this is the fairest approach because it would benefit people on low incomes, but whose income is just above the current threshold, and are therefore currently expected to pay at least something towards the fee.

350. Although these proposals have been designed to alleviate the impact of fees on people bringing proceedings to the ETs, HMCTS operates a standard scheme for all of its fee charging jurisdictions, with the exception of proceedings in the First-tier Tribunal (Immigration and Asylum chamber) where a separate fee exemption, waiver and remissions policy applies. The proposals would therefore, if implemented, also benefit people on low incomes bringing proceedings in the civil and family courts and in other tribunals where the Help with Fee scheme applies.

Specific proposal

351. Details of the current fee remissions scheme are set out in Annex C. The current gross monthly income threshold for a single person is £1,085 , and our proposal is to raise the lower threshold for a fee remission from £1,085 to £1,250 for a single person. £1,250 is approximately the gross monthly income that a single person (over the age of 25) working full time for the National Living Wage (NLW) would earn. This is based on someone working 40 hours per week at a rate of £7.20 per hour. We believe that this is an appropriate level at which to set the threshold for a full fee remission above which the person is required to make a contribution to the fee.
352. We propose to maintain the same differentials as currently apply for couples (an additional £160 of gross monthly income per month) and for those with children (an additional £245 of gross income per month per child).
353. The specific thresholds we are proposing to introduce are set out in Table 1 below.

Table 1: Proposed low threshold for a fee remission under the gross monthly income test.

Gross monthly income with:	Single		Couple	
	Current	New	Current	New
No children	£1,085	£1,250	£1,245	£1,410
One Child	£1,330	£1,495	£1,330	£1,655
Two Children	£1,575	£1,740	£1,575	£1,900
£245 for each additional child				

354. Although our proposal is based on setting the threshold at the level of a single person earning the NLW, we are not proposing to increase it annually in line with increases to the NLW. This is consistent with our approach to fees generally, which are not subject to annual increases. Instead we propose to keep the level of fees and remissions in the ETs under regular review.

Question 2: Do you agree that raising the lower gross monthly income threshold is the fairest way to widen access to help under Help with Fees scheme and to alleviate the impact of fees on ET claims? Please give reasons.

Question 3: Do you agree with the proposal to raise the gross monthly income threshold for a fee remission from £1,085 to £1,250? Please give reasons.

National Insurance Fund proceedings

355. The Government has decided that certain proceedings in the ETs relating to payments made from the National Insurance Fund should be exempt from fees. Those proceedings are:
- references to the ETs under section 170 of the Employment Rights Act 1996;
 - complaints to the ETs under section 188 of that Act ;and
 - complaints to the ETs under section 126 of the Pension Schemes Act 1993.
356. The reason that the Government believes that these types of claim should be exempt from fees is because, unlike other types of ET claim:
- the claimant generally does not have the option of referring the matter to conciliation to avoid formal proceedings. The relevant Act requires a reference to the ETs in those circumstances; and
 - in most cases, the employer who is liable for the payments being guaranteed by the NIF, is insolvent, and therefore the employee has no realistic prospect of recovering the fee from the employer.
357. Although there are some types of application under which the Secretary of State for Business, Energy and Industrial Strategy could be ordered to reimburse the fee, we believe that seeking to distinguish between different types of application would add unnecessary complexity to the fee charging regime. We are therefore persuaded that the case for reform is so strong that we have decided to exempt all such proceedings from fees.
358. We would however welcome views on whether there are other types of proceeding in relation to National Insurance Fund payments, where similar considerations apply, and which there may also be a case from exempting them from ET fees.

Question 4: Are there any other types of proceedings, in addition to those specified in paragraph 355, which are also connected to applications for payments made from the National Insurance Fund, where similar considerations apply, and where there may be a case for exempting them from fees? Please give reasons.

Impact Assessment and Equalities Statement

359. An impact assessment has been prepared and is published alongside this review.
360. We have also prepared an Equalities Statement which sets out our assessment of the impact that the proposed changes to the fee remissions scheme would have in relation to the characteristics protected under the Equality Act 2010. This has also been published alongside this review.

361. Overall, we believe that these proposals would have a largely positive impact on the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited under the Equality Act 2010. The ETs are an important forum for the determination of discrimination and related claims, and these proposals would be the most effective way of alleviating any undue discouragement that the requirement to pay fees may have on those considering bringing discrimination and related claims.
362. Nevertheless, we have gone on to consider whether the proposals could give rise to unlawful discrimination or other prohibited conduct under the Act.
363. We do not consider the proposals would give rise to direct discrimination.
364. Our assessment is that there is potential for some people with protected characteristics to be put at comparative disadvantage if these proposals were implemented. The disadvantage is that they would be less likely to qualify for a fee remission, and would therefore have to pay more in fees compared to people who did not share those characteristics.
365. Broadly we believe that women, people from Black and mixed ethnic backgrounds, disabled people, younger people (those under 45) and people who are unmarried or not in civil partnerships are more likely to qualify for a fee remission, and would therefore be more likely to benefit from these proposals, if they were implemented. Those who could be said to experience a comparative financial disadvantage are therefore: men; people from Asian backgrounds and, to a lesser extent, white people; older people (those aged 45 and over); and people who are married or in a civil partnership.
366. To the extent that these proposals would put people who share a protected characteristic at a particular disadvantage, we believe that this would be justified as a proportionate means of alleviating the substantial and sustained fall in the volumes of ET claims, including discrimination claims. Further details are set out in the Equalities Statement.
367. We also believe that the measures would have a broadly positive impact on promoting equality of opportunity and fostering good relations between people with protected characteristics and those who do not share them.

Question 5: Do you agree with our assessment of the impacts of our proposed reforms to the fee remissions scheme on people with protected characteristics? Are there other factors we should take into account, or other groups likely to be affected by these proposals? Please give reasons.

About you

Please use this section to tell us about yourself

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

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

Contact details/How to respond

Please send your response by 14 March 2017 to:

Michael Odulaja
Ministry of Justice
Court and Tribunals Fees Policy
Post Point 3.39
102 Petty France
London SW1H 9AJ

Tel: 020 3334 4417

Email: mojfeespolicy@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

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

Alternative format versions of this publication can be requested from Michael Odulaja at the address set out above.

Publication of response

A paper summarising the responses to this consultation will be published in due course.

Representative groups

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

Confidentiality

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

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

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

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

Annex A: Terms of Reference for the Review

To review the impact of the introduction of fees in the Employment Tribunals and the Employment Appeals Tribunal, including the scheme of fee remissions, to determine how successful this has been in achieving the original objectives:

- Financial: to transfer a proportion of the costs from the taxpayer to those who use the tribunal where they can afford to do so;
- Behavioural: to encourage parties to seek alternative ways of resolving their disputes; and
- Justice: to maintain access to justice.

To gather the evidence to support this analysis, including, where available, data and research on:

- the take up of alternative dispute resolution services, including the numbers of people using ACAS's conciliation services and the impact of mandatory notification of a dispute;
- the volumes of claims received and how cases progress in the Employment Tribunals and Employment Appeal Tribunal, including outcomes – settlements and withdrawals, cases determined by a substantive hearing;
- data on fee remissions, including applications made, applications granted and applications refused;
- financial information, including income received from fees, the costs (including implementation costs) incurred in setting up systems to charge and collect the fees and savings delivered;
- the characteristics of those who use the Employment Tribunals and Employment Appeals Tribunal, in particular users with protected characteristics; and
- other research, both Government and external evidence, relevant to resolving workplace disputes.

To consider other factors that influenced trends in the number of Employment Tribunal cases:

- evaluate the historic downward trend in ET cases prior to the introduction of fees, and continuation of this trend following the introduction.
- the impact of the improvement in the economy on the number of people having their employment terminated.
- to assess whether there has been a reduction in weak or unmeritorious claims; and
- whether there has been any impact from changes to employment law.

To make recommendations for any changes to the structure and level of fees for proceedings in the Employment Tribunals and the Employment Appeals Tribunal, including recommendations for streamlining procedures to reduce costs.

Annex B: Contributions to the review

List of people and organisations who have provided written views and evidence to the review

Submissions to the ET fees review were received from the following people and organisations.

The Employment Law Bar Association

Mr Justice Langstaff, President of the Employment Appeal Tribunal

Judge Shona Simon, President of the Employment Tribunal (Scotland)

Judge Brian Doyle, President of the Employment Tribunal (England and Wales)

The Employment Lawyers' Association

The Council of Employment Judges

Citizen's Advice

The Law Society

Those submissions have been published alongside this review.

Other evidence and research considered during the review

Pregnancy and maternity-related discrimination and disadvantage: first findings, surveys of employers and mothers, the Department for Business, Innovation and Skills and the Equality and Human Rights Commission, July 2015.

Pregnancy and maternity-related discrimination in the workplace: recommendations for change, Equality and Human Rights Commission, March 2016.

Annex C: Fee remissions financial criteria

Fee remissions are available based on an assessment of the applicant's, and where relevant, his or her partner's means. The test considers disposable capital and gross monthly income.

Disposable capital

A party will only qualify for a fee remission if he or she satisfies the disposable capital test. The party will only qualify if his or her disposable capital and that of his or her partner (unless they have a contrary interest in proceedings) is below a specified threshold, which are determined according to the fee. For a fee of £1,000 or less, the party would only be eligible for a fee remission if the household's disposable capital was less than £3,000.

If the party (or his or her partner) is aged 61 or over, there is a fixed threshold for disposable capital of £16,000 regardless of the fee that would otherwise be payable. Further details are set out at Table 2 below.

All items of a capital nature must be disclosed unless they are excluded under the ET Fees Order. The main items of capital that are disregarded in the assessment of eligibility for a fee remission are: the party's only or main dwelling; tools of trade; the capital value of a business; capital held in personal or occupational pension schemes; and any payments made following a determination by the court, or in settlement of proceedings, for medical negligence or personal injury.

Anyone who does not meet the disposable capital test is automatically ineligible for a fee remission, regardless of his or her income.

Table 2: Disposable capital thresholds

Fee	Disposable capital
Up to an including £1,000	£3,000
£1,001 to £1,335	£4,000
£1,336 to £1,665	£5,000
£1,666 to £2,000	£6,000
£2,001 to £2,330	£7,000
£2,331 to £4,000	£8,000
£4,001 to £5,000	£10,000
£5,001 to £6,000	£12,000
£6,001 to £7,000	£14,000
£7,001 or more	£16,000

Gross income

If an applicant qualifies under the disposable capital test, the amount of any fee remission is determined by applying the gross monthly income test. If the applicant has a partner, the test takes into account household income unless the partner has a contrary interest in the proceedings.

An applicant is entitled to a full fee remission if his or her monthly income is below the lower threshold (see Table 2 below). There are higher limits for people living as couples, and for each child. Those whose household income is above the lower threshold, but below the upper threshold (see Table 3) must pay a contribution of £5 for every £10 of income above the threshold, up to the value of the fee. Those whose income is above the upper threshold are not entitled to a fee remission.

Certain welfare benefits are disregarded from the income test (see pages 10 and 11 of the EX 160A guidance).⁶⁰ If the applicant, or his or her partner, is in receipt of the following benefits, they are treated as having income below the lower threshold and are therefore entitled, subject to meeting the capital test, to a full fee remission. Those welfare benefits are:

- Income related Employment and Support Allowance;
- Income support;
- Income based Jobseeker's Allowance;
- Pension Credit guarantee credit; and
- Recipients of Universal Credit with earnings of less than £6,000 per annum.

Table 3: Gross monthly income test for a full remission

Gross monthly income with:	Single	Couple
No children	£1,085	£1,245
One Child	£1,330	£1,490
Two Children	£1,575	£1,735
£245 for each additional child		

Table 4: Gross monthly income test for a partial remission

Gross monthly income with:	Single	Couple
No children	£5,085	£5,245
One Child	£5,330	£5,490
Two Children	£5,575	£5,735
£245 for each additional child		

⁶⁰ See footnote 4.

Annex D: Employment Tribunals financial information

Extract from the HMCTS Annual Report and Accounts 2013/14, 2014/15 and 2015/16

Table 5: Income and Expenditure in Employment Tribunals

Year	Gross Income	Income foregone via Remission	Net Income	Expenditure	Net surplus/ (deficit)	Gross surplus/ (deficit)	Fee Recovery
	£'000	£'000	£'000	£'000	£'000	£'000	
2012/13 ⁶¹				(75,000)	(75,000)	(5,000)	
2013/14	5,149	(680)	4,469	(76,364)	(71,895)	(71,215)	7%
2014/15	12,377	(3,339)	9,038	(71,428)	(62,390)	(59,051)	17%
2015/16	12,477	(3,910)	8,567	(65,844)	(57,277)	(53,367)	19%
Total	35,052	(8,038)	27,014	(295,584)	(268,570)	(260,532)	13%

Source: HMCTS Annual Report and Accounts

Table 6: Project expenditure

	2012/13 (£m)	2013/14 (£m)	Total (£m)
Resource	0.4	0.2	0.6
Capital	1.2	3.2	4.4
Business as Usual Ongoing Costs	0.0	0.7	0.7

⁶¹ Expenditure on Employment Tribunals in 2012/13 is an estimate. This was the year before fees were introduced in the Employment Tribunals and expenditure was not therefore separately disclosed in the Fee Income note to the Annual Accounts.

Annex E: Employment Tribunals and Employment Appeal Tribunal caseload

Table 7: Employment Tribunals: claims received

		Employment Tribunal					Employment Appeal Tribunal
		Total Claims Accepted	Single claims	Multiple claim cases	Total cases	Multiple claims	
2012/13	Q2 (July – Sept)	47,789	13,445	1,580	15,025	34,344	576
	Q3 (Oct – Dec)	45,710	13,933	1,562	15,495	31,777	573
	Q4 (Jan – March)	57,737	13,739	1,533	15,272	43,998	527
2013/14	Q1 (April – June)	44,334	12,727	1,172	13,899	31,607	573
	Q2 (July – Sept)	39,660	10,904	1,034	11,938	28,756	454
	Q3 (Oct – Dec)	10,842	4,969	485	5,454	5,873	346
	Q4 (Jan – March)	10,967	5,619	435	6,054	5,348	348
2014/15	Q1 (April – June)	8,533	3,714	393	4,107	4,819	340
	Q2 (July – Sept)	13,609	4,178	427	4,605	9,431	330
	Q3 (Oct – Dec)	18,831	4,335	593	4,928	14,496	273
	Q4 (Jan – Mar)	20,335	4,193	508	4,701	16,142	264
2015/16	Q1 (April – June)	12,744	4,314	436	4,750	8,430	263
	Q2 (July – Sept)	23,069	4,281	280	4,561	18,788	265
	Q3 (Oct – Dec)	17,920	4,223	298	4,521	13,697	203
	Q4 (Jan – Mar)	29,298	4,117	281	4,398	25,181	239
Year before fees (2012/13 Q2 to 2013/14 Q1)		195,570	53,844	5,847	59,691	141,726	2,249
Year after fees (2013/14 Q3 to 2014/15 Q2)		43,951	18,480	1,740	20,220	25,471	1,364
Percentage change		-78%	-66%	-70%	-66%	-82%	-39%
Second year after fees (2014/15 Q3 to 2015/16 Q2)		74,979	17,123	1,817	18,940	57,856	1,065
Percentage change		-62%	-68%	-69%	-68%	-59%	-53%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 8: Employment Tribunals: case progression and outcomes ⁶²

		Successful (%)	Unsuccessful (%)	Settled/ Withdrawn (%)
2012/13	Q3 (Oct – Dec)	15.1	19.8	65.0
	Q4 (Jan – March)	15.8	20.5	63.8
2013/14	Q1 (April – June)	15.8	22.2	62.1
	Q2 (July – Sept)	13.7	24.5	61.8
	Q3 (Oct – Dec)	12.0	25.7	62.3
	Q4 (Jan – March)	11.6	26.0	62.3
2014/15	Q1 (April – June)	12.4	26.8	60.8
	Q2 (July – Sept)	12.8	29.0	58.3
	Q3 (Oct – Dec)	13.0	30.2	56.8
	Q4 (Jan – March)	13.2	29.4	57.4
2015/16	Q1 (April – June)	13.2	29.6	57.2
	Q2 (July – Sept)	12.7	29.8	57.5

Source: HMCTS Management Information

⁶² At the time the analysis was carried out, we were not able to estimate effectively case outcomes for claims issued after September 2015 because over 25% of claims had not at that stage reached a conclusion.

Table 9: Type A and Type B jurisdictional complaints in single claims⁶³

		Type A	Type B
2012/13	Q1 (April – June)	15,721	15,262
	Q2 (July – Sept)	15,845	15,295
	Q3 (Oct – Dec)	16,301	15,667
	Q4 (Jan – March)	15,961	16,114
2013/14	Q1 (April – June)	15,010	14,738
	Q2 (July – Sept)	12,058	12,957
	Q3 (Oct – Dec)	5,144	6,465
	Q4 (Jan – March)	6,029	7,302
2014/15	Q1 (April – June)	4,088	5,012
	Q2 (July – Sept)	4,394	5,586
	Q3 (Oct – Dec)	4,579	5,623
	Q4 (Jan – March)	4,415	5,347
2015/16	Q1 (April – June)	4,517	5,595
	Q2 (July – Sept)	4,272	5,595
	Q3 (Oct – Dec)	4,348	5,427
	Q4 (Jan – March)	4,344	5,136
Year before fees (2012/13 Q2 to 2013/14 Q1)		63,117	61,814
First Year after fees (2013/14 Q3 to 2014/15 Q2)		19,655	24,365
Percentage change		-69%	-61%
Second year after fees (2014/15 Q3 to 2015/16 Q2)		17,783	22,160
Percentage change		-72%	-64%

Source: HMCTS Management Information

⁶³ This does not include some complaints that were not assigned to be Type A or Type B. This amounts to around 2% of all jurisdictional complaints.

Table 10: Percentage change in the number of single claims by region (year to June 2013 and the year to September 2014)

		London	Midlands	North East	North West	Scotland	South East	South West	Wales
2012/13	Q2 (July – Sept)	3,324	1,857	1,730	1,485	1,078	2,014	1,299	620
	Q3 (Oct – Dec)	3,231	2,130	1,761	1,504	1,129	2,167	1,345	595
	Q4 (Jan – March)	3,416	1,939	1,653	1,501	1,045	2,050	1,298	589
2013/14	Q1 (April – June)	3,134	1,864	1,504	1,439	1,071	1,902	1,268	545
	Q2 (July – Sept)	2,739	1,530	1,290	1,271	956	1,588	1,024	506
	Q3 (Oct – Dec)	1,239	669	568	590	465	756	479	203
	Q4 (Jan – March)	1,422	748	671	622	556	857	518	225
2014/15	Q1 (April – June)	996	557	417	377	322	558	350	137
	Q2 (July – Sept)	1,103	586	457	429	385	679	375	164
	Q3 (Oct – Dec)	1,221	564	463	435	439	662	368	183
	Q4 (Jan – March)	1,104	540	500	461	342	695	380	171
2015/16	Q1 (April – June)	1,224	558	487	482	407	645	351	160
	Q2 (July – Sept)	1,146	548	492	533	399	652	337	174
	Q3 (Oct – Dec)	1,124	575	478	466	382	669	370	159
	Q4 (Jan – March)	1,133	553	456	447	358	665	346	169
Year before fees (2012/13 Q2 to 2013/14 Q1)		13,105	7,790	6,648	5,929	4,323	8,133	5,210	2,349
First year after fees (2013/14 Q3 to 2014/15 Q2)		4,760	2,560	2,113	2,018	1,728	2,850	1,722	729
Percentage change		-64%	-67%	-68%	-66%	-60%	-65%	-67%	-69%
Second year after fees (2014/15 Q3 to 2015/16 Q2)		4,695	2,210	1,942	1,911	1,587	2,654	1,436	688
Percentage change		-64%	-72%	-71%	-68%	-63%	-67%	-72%	-71%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 11: Percentage change in the number of single claims by jurisdiction and region

	London	Midlands	North East	North West	Scotland	South East	South West	Wales
Comparing year to June 2013 with the year to September 2014								
Breach of Contract	-62%	-64%	-70%	-66%	-59%	-60%	-66%	-71%
Unpaid Wages	-71%	-75%	-76%	-71%	-67%	-74%	-75%	-74%
Working Time Regulations	-69%	-74%	-73%	-69%	-66%	-70%	-71%	-67%
Unfair Dismissal	-62%	-65%	-68%	-64%	-56%	-63%	-64%	-66%
Discrimination ⁶⁴	-56%	-56%	-55%	-56%	-54%	-53%	-56%	-62%
Comparing year to June 2013 with the year to September 2015								
Breach of Contract	-63%	-72%	-74%	-70%	-66%	-63%	-72%	-72%
Unpaid Wages	-71%	-77%	-77%	-70%	-66%	-74%	-76%	-76%
Working Time Regulations	-71%	-76%	-74%	-71%	-66%	-70%	-78%	-69%
Unfair Dismissal	-66%	-72%	-72%	-70%	-62%	-67%	-74%	-71%
Discrimination	-54%	-61%	-56%	-59%	-52%	-54%	-62%	-55%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

⁶⁴ Discrimination includes complaints of age, disability, religious, sexual orientation, racial and sexual discrimination and complaints of equal pay.

Annex F: Information on Acas's early conciliation service

Table 12: Summary of numbers of conciliation notices and ET claims 2012/13

Disputes	2012/13	2014/15	2015/16
Conciliation notifications to Acas	22,630	83,423	92,172
Less: Acas notifications which progress to an ET claim	(5,162) ⁶⁵	(18,341)	(18,243)
ET cases received	60,982	18,341	18,243
Total employment disputes accessing dispute resolution	78,450	83,423	92,172

Table 13: Estimated outcomes of employment disputes based on Acas's early conciliation evaluation (rounded to nearest 1,000)⁶⁶

Outcome	Evaluation responses (%)	Extrapolated to whole population
Total number of notifications to Acas	100	83,000
Claimants who have been able to access justice	81	69,000
<i>Settled (either through Acas COT3 or private)</i>	31	26,000
<i>Those who took part in early conciliation and did not reach a settlement but decided not to submit an ET claim about their dispute, and reported that Acas was a factor in helping them reach this conclusion</i>	17	14,000
<i>Claimants who issued proceedings in the ETs</i>	34	29,000
Claimants who did not settle during early conciliation but decided not to submit an ET claim about their dispute and did not report Acas was a factor in their decision	19	16,000
<i>Claimants who said fees were not a factor in the decision</i>	14	12,000
<i>Claimants who said fees were a factor in the decision</i>	5	4,000
<i>Claimants who said they said they could not afford to pay</i>	3	3,000
<i>Claimants who gave another reason</i>	2	2,000

⁶⁵ This is an estimate based on the fact that on average 77% of conciliation claims in 2012/13 did not progress to the ET, and that 23% therefore did.

⁶⁶ Figures may not sum due to rounding.

Table 14: Estimated outcomes of employment disputes combining Acas management information with Acas evaluation outcomes (rounded to nearest 1,000)⁶⁷

Outcome	Proportion (%)	Extrapolated to whole population
Total number of notifications to Acas	100	83,000
Claimants who have been able to access justice	37	31,000
<i>Settled (either through Acas COT3 or private)</i>	15	13,000
<i>Claimants who issued proceedings in the ETs</i>	22	18,000
Claimants who did not settle but did not progress to a tribunal	63	53,000
<i>Claimants who said fees were not a factor in the decision</i>	47	39,000
<i>Claimants who said fees were a factor in the decision</i>	16	14,000
<i>Claimants who said they said they could not afford to pay</i>	10	8,000
<i>Claimants who gave another reason</i>	7	5,000

⁶⁷ Figures may not sum due to rounding.

Annex G: Fee Remissions Statistics

Table 15: Issue fees requested, fees paid in full and remissions awarded, Q2 2013/14 to Q3 2015/16

Financial Year	Quarter	Fee requested					Full issue fee paid					Remission awarded (full or partial)				
		Single		Multiple		Total	Single		Multiple		Total	Single		Multiple		Total
		A	B	A	B		A	B	A	B		A	B			
2013/14	Q2	724	2,467	44	70	3,305	424	1,508	35	44	2,011	95	392	4	8	499
	Q3	1,419	5,612	140	190	7,361	944	3,847	121	164	5,076	158	758	6	10	932
	Q4	1,468	5,531	146	176	7,321	964	3,701	133	164	4,962	213	943	5	7	1,168
2014/15	Q1	814	3,209	93	117	4,233	550	2,144	85	109	2,888	132	636	4	6	778
	Q2	957	4,222	144	171	5,494	669	2,878	131	155	3,833	160	890	5	9	1,064
	Q3	1,007	3,993	326	195	5,521	730	2,696	314	175	3,915	160	898	7	12	1,077
	Q4	1,118	4,094	372	169	5,753	777	2,601	355	149	3,882	182	1,022	9	13	1,226
2015/16	Q1	1,242	3,764	265	138	5,409	915	2,389	254	115	3,673	182	993	3	11	1,189
	Q2	1,014	3,880	129	128	5,148	696	2,523	108	109	3,435	189	1,021	9	10	1,229
	Q3	963	4,060	1346	175	5,333	636	2,606	126	162	3,530	232	1,179	7	11	1,423
	Q4	1,074	3,742	117	120	5,053	694	2,341	95	94	3,224	291	1,132	18	20	1,461

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 16: Issue fees paid, remission applications and remissions awarded as a proportion of issue fees requested, Q2 2013/14 to Q4 2015/16

Financial Year	Quarter	Full issue fee paid					Remission applications					Remission awarded (full or partial)				
		Single		Multiple		Total	Single		Multiple		Total	Single		Multiple		Total
		A	B	A	B		A	B	A	B		A	B			
2013/14	Q2	59%	61%	80%	63%	61%	55%	55%	34%	49%	55%	13%	16%	9%	11%	15%
	Q3	67%	69%	86%	86%	69%	49%	48%	31%	27%	48%	11%	13%	4%	5%	13%
	Q4	66%	67%	91%	93%	68%	50%	48%	26%	19%	47%	15%	17%	3%	4%	16%
2014/15	Q1	68%	67%	91%	93%	68%	47%	46%	17%	21%	45%	16%	20%	4%	5%	18%
	Q2	70%	68%	91%	91%	70%	44%	46%	17%	28%	44%	17%	21%	3%	5%	19%
	Q3	72%	68%	96%	90%	71%	39%	44%	6%	19%	40%	16%	22%	2%	6%	20%
	Q4	69%	64%	95%	88%	67%	42%	49%	9%	30%	45%	16%	25%	2%	8%	21%
2015/16	Q1	74%	63%	96%	83%	68%	37%	47%	11%	28%	42%	15%	26%	1%	8%	22%
	Q2	69%	65%	84%	85%	67%	39%	43%	22%	21%	41%	19%	26%	7%	8%	24%
	Q3	66%	64%	93%	93%	66%	42%	44%	13%	14%	42%	24%	29%	5%	6%	27%
	Q4	65%	63%	81%	78%	64%	43%	45%	24%	30%	44%	27%	30%	15%	17%	29%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 17: Remissions applications received and remission applications awarded for the issue fee, Q2 2013/14 to Q4 2015/16

Financial Year	Quarter	Remission applications					Remission awarded (full or partial)					Remissions as a proportion of applications				
		Single		Multiple		Total	Single		Multiple		Total	Single		Multiple		Total
		A	B	A	B		A	B	A	B		A	B			
2013/14	Q2	396	1,365	15	34	1,810	95	392	4	8	499	24%	29%	27%	24%	28%
	Q3	695	2,708	44	52	3,499	158	758	6	10	932	23%	28%	14%	19%	27%
	Q4	737	2,664	38	34	3,473	213	943	5	7	1,168	29%	35%	13%	21%	34%
2014/15	Q1	383	1,489	16	25	1,913	132	636	4	6	778	34%	43%	25%	24%	41%
	Q2	418	1,938	24	48	2,428	160	890	5	9	1,064	38%	46%	21%	19%	44%
	Q3	393	1,749	19	38	2,199	160	898	7	12	1,077	41%	51%	37%	32%	49%
	Q4	474	2,005	32	50	2,561	182	1,022	9	13	1,226	38%	51%	28%	26%	48%
2015/16	Q1	455	1,762	28	38	2,283	182	993	3	11	1,189	40%	56%	11%	29%	52%
	Q2	392	1,672	28	27	2,119	189	1,021	9	10	1,229	48%	61%	32%	37%	58%
	Q3	409	1,799	18	25	2,251	232	1,179	7	11	1,429	57%	66%	39%	44%	63%
	Q4	458	1,691	28	36	2,213	291	1,132	18	20	1,461	64%	67%	64%	56%	66%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 18: Hearing fees requested, fees paid in full and remissions awarded, Q2 2013/14 to Q4 2015/16

Financial Year	Quarter	Fee requested					Full hearing fee paid					Remission awarded (full or partial)				
		Single		Multiple		Total	Single		Multiple		Total	Single		Multiple		Total
		A	B	A	B		A	B	A	B		A	B			
2013/14	Q2	76	79	3	1	159	42	19	3	1	65	1	12	0	0	13
	Q3	421	1,282	20	28	1,751	250	495	12	11	768	14	125	1	1	141
	Q4	639	2,629	45	100	3,413	362	1026	31	61	1,480	27	329	0	5	361
2014/15	Q1	622	2,934	67	80	3,703	296	1071	49	31	1,447	38	580	0	4	622
	Q2	502	2,393	50	92	3,037	247	846	30	51	1,174	42	554	3	2	601
	Q3	514	2,547	37	98	3,196	270	909	24	39	1,242	61	610	1	2	674
	Q4	589	2,722	99	79	3,489	327	1005	49	25	1,406	52	635	3	3	693
2015/16	Q1	568	2,325	73	85	3,051	304	825	27	32	1,188	46	535	1	5	587
	Q2	743	2,548	79	73	3,443	390	902	39	25	1,356	60	675	1	8	744
	Q3	554	2,821	79	41	3,495	234	957	49	23	1,263	95	741	2	4	842
	Q4	617	2,701	56	64	3,438	285	854	25	22	1,186	130	687	4	10	831

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 19: Hearing fees paid, remission applications and remissions awarded as a proportion of issue fees requested, Q2 2013/14 to Q4 2015/16

Financial Year	Quarter	Full issue fee paid					Remission applications					Remission awarded (full or partial)				
		Single		Multiple		Total	Single		Multiple		Total	Single		Multiple		Total
		A	B	A	B		A	B	A	B		A	B			
2013/14	Q2	55%	24%	100%	100%	41%	7%	23%	0%	0%	14%	1%	15%	0%	0%	8%
	Q3	59%	39%	60%	39%	44%	10%	19%	5%	21%	17%	3%	10%	5%	4%	8%
	Q4	57%	39%	69%	61%	43%	12%	22%	2%	12%	19%	4%	13%	0%	5%	11%
2014/15	Q1	48%	37%	73%	39%	39%	11%	26%	6%	6%	23%	6%	20%	0%	5%	17%
	Q2	49%	35%	60%	55%	39%	13%	30%	10%	8%	26%	8%	23%	6%	2%	20%
	Q3	53%	36%	65%	40%	39%	15%	28%	3%	6%	25%	12%	24%	3%	2%	21%
	Q4	56%	37%	49%	32%	40%	13%	28%	5%	10%	24%	9%	23%	3%	4%	20%
2015/16	Q1	54%	35%	37%	38%	39%	11%	27%	3%	12%	23%	8%	23%	1%	6%	19%
	Q2	52%	35%	49%	34%	39%	11%	30%	1%	16%	25%	8%	26%	1%	11%	22%
	Q3	42%	34%	62%	56%	36%	20%	29%	4%	15%	27%	17%	26%	3%	10%	24%
	Q4	46%	32	45%	34%	34%	24%	28%	7%	19%	27%	21%	25%	7%	16%	24%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Table 20: Remissions awarded and remission applications for the hearing fee, Q2 2013/14 to Q3 2015/16

Financial Year	Quarter	Remission applications					Remission awarded (full or partial)					Remissions as a proportion of applications				
		Single		Multiple		Total	Single		Multiple		Total	Single		Multiple		Total
		A	B	A	B		A	B	A	B		A	B			
2013/14	Q2	5	18	0	0	23	1	12	0	0	13	20%	67%	0%	0%	57%
	Q3	43	245	1	6	295	14	125	1	1	141	33%	51%	100%	17%	48%
	Q4	76	569	1	12	658	27	329	0	5	361	36%	58%	0%	42%	55%
2014/15	Q1	67	765	4	5	841	38	580	0	4	622	57%	76%	0%	80%	74%
	Q2	67	708	5	7	787	42	554	3	2	601	63%	78%	60%	29%	76%
	Q3	78	709	1	6	794	61	610	1	2	674	78%	86%	100%	33%	85%
	Q4	74	750	5	8	837	52	635	3	3	693	70%	85%	60%	38%	83%
2015/16	Q1	65	625	2	10	702	46	535	1	5	587	71%	86%	50%	50%	84%
	Q2	83	754	1	12	850	60	675	1	8	744	72%	90%	100%	67%	88%
	Q3	112	813	3	6	934	95	741	2	4	842	85%	91%	67%	67%	90%
	Q4	151	763	4	12	930	130	687	4	10	831	86%	90%	100%	83%	89%

Source: Tribunal and Gender Recognition Statistics Quarterly, July to September 2016

Annex H: Data on characteristics protected under the Equality Act 2010

Part 1: Comparison of financial and claims volumes effects

This section sets out data on single ET claims broken down by protected characteristic. All data presented in the tables after the implementation of fees looks at the proportions based on those claimants who paid a full issue fee and excludes those who were remitted either in part or in full.

Table 21: Gender of ET claimants, single claims

Financial Quarter	Employment Tribunals		Total in employment ⁶⁸	
	Female	Male	Female	Male
2012/13 Q1	45%	55%	47%	53%
2012/13 Q2	44%	56%	47%	53%
2012/13 Q3	44%	56%	47%	53%
2012/13 Q4	43%	57%	47%	53%
2013/14 Q1	44%	56%	47%	53%
2013/14 Q2	46%	54%	47%	53%
2013/14 Q3 ⁶⁹	44%	56%	47%	53%
2013/14 Q4	45%	55%	47%	53%
2014/15 Q1	43%	57%	47%	53%
2014/15 Q2	46%	54%	47%	53%
2014/15 Q3	46%	54%	47%	53%
2014/15 Q4	45%	55%	47%	53%
2015/16 Q1	44%	56%	47%	53%
2015/16 Q2	46%	54%	47%	53%
2015/16 Q3	48%	52%	47%	53%
2015/16 Q4	45%	55%	47%	53%
<hr/>				
Year before fees (July 2012 to June 2013)	44%	56%	47%	53%
First year after fees (October 2013 to September 2014)	45%	55%	47%	53%
Second year after fees (October 2014 to September 2015)	45%	55%	47%	53%
<hr/>				
Whole period after fees (October 2013 to March 2016)	45%	55%	47%	53%

Source: HMCTS Management Information

⁶⁸ Employment consists of employees, self-employed people, unpaid family workers and people on government supported training and employment programs.

⁶⁹ From 2013/14 Q3 (October to December 2013) we have looked at the proportion of men and women bringing claims who have paid a fee.

Table 22: Gender of claimants by fee type of complaint, single claims

Gender	Type A				Type B			
	Year to June 2013	Year to Sept 2014	Year to Sept 2015	6 months to March 2016	Year to June 2013	Year to Sept 2014	Year to Sept 2015	6 months to March 2016
Female	41%	40%	40%	41%	47%	49%	50%	50%
Male	59%	60%	60%	59%	53%	51%	50%	50%
<i>Unweighted base⁷⁰</i>	62,900	14,618	11,604	5,240	61,594	19,101	14,967	6,733

Source: HMCTS Management Information

Table 23: Fee type of complaint by gender of claimants, single claims⁷¹

Case Type	Male				Female			
	Year to June 2013	Year to Sept 2014	Year to Sept 2015	6 months to March 2016	Year to June 2013	Year to Sept 2014	Year to Sept 2015	6 months to March 2016
Type A	53%	47%	48%	48%	47%	38%	38%	39%
Type B	47%	53%	52%	52%	53%	62%	62%	61%
<i>Unweighted base</i>	69,753	18,595	14,480	6,444	54,741	15,124	12,091	5,529

Source: HMCTS Management Information

⁷⁰ Unweighted base refers to number of single complaints when looking at data from the Employment Tribunals and individuals when looking at workforce data.

⁷¹ Data for the year to June 2013 looks at all single complaints, whereas data for the periods after fees look at single claims for which a fee was paid.

Table 24: Breakdown of workforce by employee type over time

Gender	All in employment			Employees			Self-employed		
	April to June 2013	April to June 2014 ⁷²	April to June 2015	April to June 2013	April to June 2014	April to June 2015	April to June 2013	April to June 2014	April to June 2015
Female	47%	46%	47%	49%	49%	49%	30%	32%	32%
Male	53%	54%	53%	51%	51%	51%	70%	68%	68%
<i>Unweighted base</i>	<i>29,721,295</i>	<i>30,537,415</i>	<i>30,950,304</i>	<i>25,282,622</i>	<i>25,724,158</i>	<i>26,240,026</i>	<i>4,162,377</i>	<i>4,573,137</i>	<i>4,506,171</i>

Source: HMCTS Management Information

⁷² There is a small difference between the figures in Table 4 for April to June 2014 and Table 1 2014-15 Q1. This is because the statistics use different ONS publications reporting on employment. Table 1 uses dataset A05, whereas Table 4 uses dataset EMP04.

Table 25: Racial characteristics of claimants

Ethnicity	Proportion of ET claimants		Proportion of workforce
	SETA 2013 survey	Post fees ^{73,74}	
Asian / Asian British		10%	5%
Black / African / Caribbean / Black British	16% ⁷⁵	10%	2%
Mixed / multiple ethnic groups		2%	1%
Other ethnic group		2%	2%
White	82%	76%	89%
<i>Unweighted base</i>	1,988	14,217	-

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 26: Disability status of claimants

Disability Status	Proportion of ET claimants		Proportion of workforce
	SETA 2013 survey ⁷⁶	Post Fees	
Does not have a disability	79%	73%	90%
Has a disability ⁷⁷	19%	27%	10%
<i>Unweighted base</i>	1,988	16,199	-

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

⁷³ In this Table, and the following tables in this section, the period “post fees” covers the period from 29 July 2013 to 31 March 2015.

⁷⁴ Post fees data excludes claimants who answered ‘Don’t Know/Refuse to Answer’.

⁷⁵ SETA 2013 only considers three categorisations: White, Minority Ethnic Groups and Don’t Know/Refused/Missing. 16% therefore represents ET claimants from all minority ethnic groups.

⁷⁶ The proportions in SETA 2013 may not sum to 100% as the category of “don’t know/missing/refused” is not included in the tables in this report.

⁷⁷ For ET claims, a person is considered disabled if they indicate that they consider themselves disabled when completing the relevant section of the questionnaire. In the Labour Force Survey and in SETA 2013, a person is disabled if they meet the Equality Act 2010 definitions of a disability.

Table 27: Age of claimants

Age	Proportion of ET claimants		Proportion of workforce
	SETA 2013 survey ⁷⁸	Post Fees	
Under 25		5%	12%
25–34	48%	20%	23%
35–44		25%	
45–54		29%	61%
55–64	52%	18%	
65 and over		3%	4%
<i>Unweighted base</i>	1,988	17,496	-

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 28: Religion of claimants

Religion	Proportion of ET claimants		Proportion of workforce
	SETA 2013 survey ⁷⁹	Post fees	
Christian	58%	63% ⁸⁰	55%
Other religion ⁸¹	9%	13%	8%
<i>Muslim</i>	-	7%	3%
<i>Hindu</i>	-	3%	2%
<i>Sikh</i>	-	1%	1%
<i>Other</i>	-	2%	3%
No religion	30%	24%	37%
<i>Unweighted base</i>	1,988		92,035

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

⁷⁸ The SETA 2013 only covered two age categories: those under 45 and those 45 and over.

48% represents all people aged under 45 and 52% represents all people aged 45 and over.

⁷⁹ The SETA 2013 only looked at three categories for religion: Christian, Other religion and No religion.

⁸⁰ There were 16 different types of Christian denomination provided by survey respondents on the ET1 form. These have been combined together to form one Christian category for this analysis.

⁸¹ There were a total of 43 different “other religions or beliefs” provided by survey respondents on the ET1 form (excluding Christian denominations and No religion entries).

Table 29: Marital status of claimants

Marital Status	Proportion of ET claimants		Proportion of workforce ⁸²
	SETA 2013 survey	Post Fees	
All in a legally registered partnership	52%	56%	53%
All not in a legally registered partnership	47%	44%	46%
<i>Unweighted count</i>	<i>1,988</i>	<i>16,602</i>	<i>95,941</i>

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 30: Sexual orientation of claimants

Sexual Orientation	Proportion of ET claimants		Proportion of population ⁸³
	SETA 2013 survey	Post fees	
Heterosexual, straight	94%	96%	93%
Gay, lesbian, bisexual or other sexual identity	3%	4%	2% ⁸⁴
<i>Unweighted count</i>	<i>1,988</i>	<i>16,868</i>	<i>168,221</i>

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

⁸² Data from the LFS does not provide a breakdown of whether people were currently or previously in a civil partnership, so are excluded from these figures. However, they only make up 0.4% of the workforce and so their omission does not skew the overall results.

⁸³ The LFS does not seek information on sexual orientation, so we compare the proportion of claimants using the ETs with the overall population, taken from the ONS Sexual Identity Project.

⁸⁴ A further 4% answered 'Don't know/ refuse' and 1% did not respond to the question.

Part 2: Comparison of proportions of ET claims in which a fee was paid or remitted

This section provides data on the proportion of claims in which a fee to issue proceedings was paid and those for which a fee remission was granted broken down by protected characteristic.

Table 31: Proportion of claims paid or remitted by gender, October 2013 to March 2016

Issue fee outcome	Female	Male
Fee paid	69%	73%
Fee remitted	26%	23%
Other	4%	4%
<i>Unweighted base</i>	<i>50,538</i>	<i>58,707</i>

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 32: Proportion of claims paid or remitted by race, July 2013 to March 2015

Issue fee outcome	Asian / Asian British	Black / African / Caribbean / Black British	Mixed ethnic	Other ethnic	White	Total
Fee paid	81%	69%	69%	74%	78%	77%
Fee remitted	19%	30%	30%	25%	22%	23%
Other	1%	0%	0%	0%	0%	0%
	<i>1,709</i>	<i>2,069</i>	<i>505</i>	<i>417</i>	<i>13,796</i>	<i>18,496</i>

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 33: Proportion of claims paid or remitted by disability, July 2013 to March 2015

Issue fee outcome	Does not have a disability	Has a disability	Total
Fee paid	76%	74%	75%
Fee remitted	23%	26%	24%
Other	0%	0%	0%
<i>Unweighted base</i>	<i>15,578</i>	<i>5,890</i>	<i>21,468</i>

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 34: Proportion of claims paid or remitted by age, July 2013 to March 2015

Issue fee outcome	Under 25	25–34	35–44	45–54	55–64	65 and over	Total
Fee paid	56%	71%	75%	78%	83%	77%	75%
Fee remitted	43%	28%	25%	22%	16%	22%	24%
Other	0%	1%	0%	0%	0%	1%	0%
<i>Unweighted base</i>	1,484	4,914	5,826	6,523	3,851	678	23,276

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 35: Proportion of claims paid or remitted by religion, July 2013 to March 2015

Issue fee outcome	Christian	Other Religion	No Religion	Total
Fee paid	77%	73%	71%	75%
Fee remitted	23%	26%	29%	25%
Other	0%	1%	0%	0%
<i>Unweighted base</i>	13,529	2,877	5,660	22,066

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 36: Proportion of claims paid or remitted broken down for other religion, July 2013 to March 2015

Issue fee outcome	Muslim	Hindu	Sikh	Other
Fee paid	70%	78%	86%	71%
Fee remitted	30%	22%	12%	28%
Other	0%	0%	2%	1%
<i>Unweighted base</i>	1,572	564	250	491

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 37: Proportion of claims paid or remitted by marital status, July 2013 to March 2015

Issue fee outcome	In a legally registered partnership	Not in a legally registered partnership	Total
Fee paid	84%	67%	75%
Fee remitted	16%	33%	24%
Other	0%	0%	0%
<i>Unweighted base</i>	11,066	10,989	22,055

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Table 38: Proportion of claims paid or remitted by sexual orientation, July 2013 to March 2015

Issue fee outcome	Heterosexual, straight	Gay, lesbian, bisexual or other sexual identity	Total
Fee paid	75%	72%	75%
Fee remitted	24%	27%	25%
Other	0%	1%	0%
<i>Unweighted count</i>	21,539	917	22,456

Source: Optional protected characteristics questionnaire collected via the MOJ online Employment Tribunal fees system on the ET1 form

Part 3: Discrimination complaints

The following analysis is taken from HMCTS's management information. Table 39 compares the number of jurisdictional complaints made in the year to June 2013 with the year to September 2014 and Table 40 compares the period to June 2013 with the year to September 2015.

Table 39: Comparison in changes in volumes of jurisdictional complaints, year to June 2013 compared to year to September 2014

Jurisdictional complaint	Fall in complaints in single claims	Fall in complaints in all claims
All discrimination complaints	-56%	-72%
<i>Age discrimination</i>	-58%	-45%
<i>Disability discrimination</i>	-53%	-55%
<i>Religious discrimination</i>	-59%	-64%
<i>Sexual orientation discrimination</i>	-65%	-67%
<i>Equal pay</i>	-58%	-75%
<i>Race discrimination</i>	-56%	-59%
<i>Sex discrimination</i>	-61%	-83%
<i>Pregnancy dismissal</i>	-39%	-39%
Other (non-discrimination) complaints	-63%	-67%
All complaints	-62%	-68%

Source: HMCTS Management Information

Table 40: Comparison in changes in volumes of jurisdictional complaints, year to June 2013 compared to year to September 2015

Jurisdictional complaint	Fall in complaints in single claims	Fall in complaints in all claims
All discrimination complaints	-56%	-32%
<i>Age discrimination</i>	-63%	349%
<i>Disability discrimination</i>	-51%	-55%
<i>Religious discrimination</i>	-61%	-66%
<i>Sexual orientation discrimination</i>	-71%	-72%
<i>Equal pay</i>	-59%	-26%
<i>Race discrimination</i>	-55%	-55%
<i>Sex discrimination</i>	-62%	-71%
<i>Pregnancy dismissal</i>	-43%	-45%
Other (non-discrimination) complaints	-67%	-57%
All complaints	-66%	-52%

Source: HMCTS Management Information

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