

<b>Title:</b> Introducing a fee charging regime into Employment Tribunals and the Employment Appeal Tribunal  <b>IA No: TS 007</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> HM Courts & Tribunals Service Department for Business, Innovation and Skills	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 30/05/2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> tom.matley@hmcts.gsi.gov.uk			

**Summary: Intervention and Options**

RPC Opinion: **AMBER**

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, One-Out?	Measure qualifies as One-Out?
£50m	£6-75m*	£1m	No	NA

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

The Employment Tribunal (ET) and Employment Appeal Tribunal (EAT) provide legally binding decisions on employment law disputes and are fully funded by the taxpayer. Users are not required to make a financial contribution for using either tribunal. Government intervention is needed because taxpayers are currently subject to an excessive financial burden as this free service has become increasingly utilised. Fear of tribunal costs and awards is an issue that has been raised by business stakeholders, particularly in relation to the uncapped nature of discrimination awards. This concern may have been influenced by some of the extremely high figures quoted in the press, which in reality are likely to be exceptions.

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

In line with Government policy generally, the fundamental policy objective is to recover a proportion of the cost of the ET and EAT service from its users who can afford to pay.  
 The intended effects are to ensure that all users who can afford a fee or make a contribution do so, whether they are bringing the claim as an individual or as part of a multiple claim and improve the effectiveness and efficiency of the current system by encouraging employers and employees to resolve workplace disputes as early as possible. There are wider policy objectives addressed by Option 2, i.e to provide business with greater certainty over their maximum liability and improve claimant expectation over the level of award.

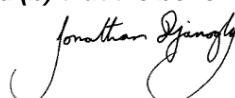
**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0 – Do nothing. Charge no fee and continue to fund the ET and EAT through general taxation.  
 Option 1 – To introduce a fee charging structure where the fee level is based upon the cost depending on the type of claim made and the stage in the proceedings; fee charged at issue and before hearing.  
 Option 2 (ET only) – A fee structure sharing many of the same features as Option 1, but also requiring the claimant to choose whether to seek an award value above or below a threshold; fee charged at issue only.  
 Final proposal – After considering the consultation responses, the Government proposes to introduce the Option 1 fee structure in 2013 with some amendment to reflect issues raised by respondents to the consultation. Option 1 meets the fundamental objective of recovering a proportion of the cost of the ET and EAT from their users who can afford to pay in a timely manner.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 05/2014

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*



Signed by the responsible Minister:

Date: 30/05/2012

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2012/13	PV Base Year 2012/13	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low**: 15	High***: 80	Best Estimate: 50

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1	10	100
High			20	140
Best Estimate	3		15	125

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

Claimants who use the ET and EAT pay circa £7-9m p.a. in fees. Respondents to a claim, some of whom subsequently appeal to the EAT pay circa £1m p.a. in fees. HMCTS spends about £3m to set up the new system, which costs £1-2m p.a. to operate. Lawyers potentially lose up to £9m p.a. in income due to the impact of reduced demand for ET legal advice and representation, but compensating adjustments in the UK market for legal services would limit the actual loss.

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

n/a

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1	15	120
High			30	230
Best Estimate	0		22	170

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

Employees who choose not to bring an ET claim (when they would have done in the base case) avoid the costs of circa £2-6m p.a. overall from making a claim. Employers who do not have to respond to a claim avoid in the region of £2-10m p.a. in costs. Taxpayers gain £8-10m p.a. as their contribution to ET and EAT costs are replaced by user fees. Taxpayers also gain in the region of another £2-6m p.a. in the form of operational savings that HMCTS would obtain due to reduced demand for its services.

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

Appeals from the EAT to the Court of Appeal, to the Court of Session in Scotland and to the UK Supreme Court would likely decline. These savings have not been estimated due to the small numbers involved and uncertainty around the diminishing effects at each appeal stage. Reduced 'deadweight loss' to society as consumption of ET/EAT services is currently higher than would be the case under full cost recovery. Uncertainty around the shape of the demand and supply curves makes estimation difficult

#### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Forecasts of demand for ET/EAT do not exist because structural drivers of user behaviour are not well understood, so a base case is based on historic data taking into account the expected impacts of recently implemented and proposed changes to employment law. Price elasticity of demand for ET and for EAT is unknown, so two scenarios have been used to capture a plausible range of demand responsiveness among employees and employers.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £1m	Benefits: £2-10m	Net: £1-9m	No	IN/OUT/Zero net cost

\*All respondents

\*\* Low demand response scenario

\*\*\* High demand response scenario

# Evidence Base (for summary sheets) – Notes

## References

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

### No. Legislation or publication

- 1 [Tribunals, Courts and Enforcement Act 2007](#)
- 2 [The Employment Tribunals \(Constitution and Rules of Procedure\) Regulations 2004](#)
- 3 [“Resolving Workplace Disputes” consultation response and Impact Assessments, BIS, Nov 2011](#)
- 4 [“Proposals for the Reform of Legal Aid in England and Wales” consultation response, MoJ, Jun 2011](#)
- 5 [“Introducing fees in employment tribunals and Employment Appeal Tribunal” consultation and initial impact assessments, MoJ, Dec 2011](#)

### FINAL PROPOSAL - Annual profile of monetised costs and benefits\* - 2012/13 £m (mid-point between high and low demand response scenarios) (nearest £1m)

	Y <sub>0</sub> 2011/12	Y <sub>1</sub> 2012/13	Y <sub>2</sub> 2013/14	Y <sub>3</sub> 2014/15	Y <sub>4</sub> 2015/16	Y <sub>5</sub> 2016/17	Y <sub>6</sub> 2017/18	Y <sub>7</sub> 2018/19	Y <sub>8</sub> 2019/20	Y <sub>9</sub> 2020/21
<b>Transition costs</b>	3	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	0	16	16	16	16	16	16	16	16	16
<b>Total annual costs</b>	3	16	16	16	16	16	16	16	16	16
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	22	22	22	22	22	22	22	22	22
<b>Total annual benefits</b>	0	22	22	22	22	22	22	22	22	22

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

# Evidence Base

## 1. Background

1.1 Industrial Tribunals in Great Britain were first established by the Industrial Training Act 1964 to consider appeals by employers against training levies imposed under that Act.<sup>1</sup> Since then their scope, procedures and powers have changed and expanded considerably. The Employment Tribunal (ET) currently exists and operates under the Employment Tribunals Act 1996. Their procedures and constitution are currently governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004.<sup>2</sup>

1.2 The Employment Appeal Tribunal (EAT) hears appeals against decisions of the ET on points of law. Since 1 April 2011, the administration of these tribunals has been provided by Her Majesty's Courts & Tribunals Service (HMCTS).

1.3 The ETs are similar to a civil court in that they provide legally binding decisions in disputes between private parties.<sup>3</sup> The tribunal differs from a criminal court where cases are brought on behalf of the State by the Crown Prosecution Service in England and Wales or by the Crown Office and Procurator Fiscal Service in Scotland. Employees and employers who are in a workplace dispute jointly have the choice to resolve the matter between themselves through internal discussion, mediation or conciliation.

1.4 The Advisory, Conciliation & Arbitration Service (Acas) offers an alternative to the ET for resolving workplace disputes, although at present Acas is generally used after a claim has been lodged with the tribunal. Although similar to mediation, the term conciliation is used when an employee is making, or could make, a specific complaint against their employer to an ET. The service is voluntary, provided free of charge and both parties must agree to the process, which involves an independent Acas conciliator discussing the issues with both parties in order to help them reach a better understanding of each other's position and underlying interest. The impartial conciliator encourages the parties in dispute to come to an agreement between themselves, thus avoiding the time and expense of contesting the issue in an ET. Acas conciliated settlements (known as COT3s) are legally binding and commit parties to an agreed course of action; issues that are subject to the COT3 cannot subsequently be brought to a tribunal. Conciliation is available until all matters of liability and remedy have been determined by the Tribunal.

1.5 ETs were originally intended to be a last resort mechanism to resolve disputes between employers and employees. However, concerns have arisen among business groups that ET claims are increasingly being made without first using other less formal methods of dispute resolution. Partly as a response to this, the Department for Business, Innovation & Skills (BIS) and the former Tribunals Service published a joint consultation document in January 2011 entitled, "Resolving workplace disputes", which set out proposals for reforming the system of workplace dispute resolution in Great Britain.<sup>4</sup>

1.6 As part of the reforms, it was announced that the Government would consult on introducing fee-charging into the ET and EAT. Parliament has already made provision for the charging of user fees in tribunals: Section 42 of the Tribunal, Courts and Enforcement Act 2007 empowers the Lord Chancellor to prescribe fees in relation to "anything dealt with" by a tribunal. The relevant secondary legislation must be approved by both Houses of Parliament.

### *Jurisdictions*

1.7 An individual may submit a claim to the ET in one or more "jurisdictions" – i.e., the specific grounds of the employee's complaint against the employer. The main areas are:

- Unfair dismissal
- Unauthorised deductions (formerly Wages Act)

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

<sup>2</sup> *The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004*. The rules are currently under review.

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

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

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

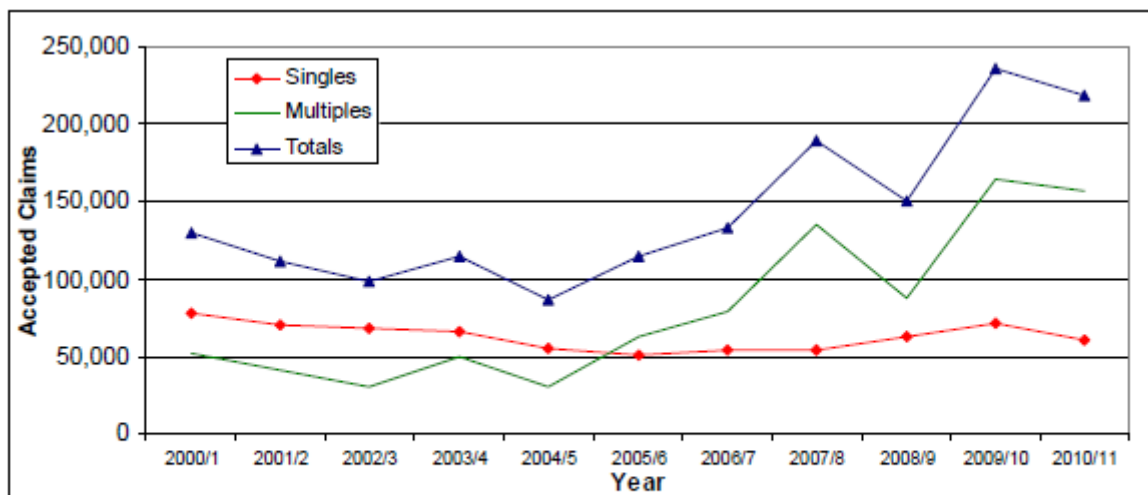
1.8 Claims can be brought under a single jurisdictional complaint (e.g., unfair dismissal alone) or under a number of jurisdictional complaints (e.g., unfair dismissal and sex discrimination). Claims can also be amended or clarified during the course of the ET's proceedings.

### Volume of claims

1.9 ET claims can be classified into two broad categories:

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

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



Note: Figures for 2007-08 are estimated

Source: ET Reports

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

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

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

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

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

### *ET claim process*

1.14 A party making a claim has to present a valid claim form – known as an “ET1 form” – to any one of the 26 local ET offices<sup>7</sup> within a specified period of time of the alleged event. The time limit is generally 3 months, but this period can be longer. For example, there is a 6 months time limit in redundancy payment and equal pay claims. An ET1 form can be presented electronically (over the internet or by e-mail), in hard copy or by fax.

1.15 It is the location of the employer that determines whether the claim will be dealt with in England and Wales or in Scotland. This means that, for an employee who lives in Newcastle upon Tyne and works in Edinburgh, any claim would be handled by the ET in Scotland.

1.16 A party defending a claim (called the respondent) has to present a response form – known as an “ET3” – to the ET office handling the claim within 28 days of receiving the form. If a respondent fails to present a valid ET3 form within that time limit, a default judgment may be issued. This means that an Employment Judge can issue a decision without the claimant having to attend a hearing.

1.17 The flow chart in Annex 2 illustrates how ET claims progress at present. This diagram shows that, once a claim has entered the system, the possible outcomes are:

- the claimant withdraws the application – this may follow contact with Acas or advice from a legal representative;
- the claim is dismissed because it is not within the scope of employment law or because a Pre-Hearing Review found that there was insufficient evidence to progress the case;
- the parties reach a conciliated settlement, where Acas is involved in ratifying the final settlement;
- the parties reach a private settlement outside Acas, either on the basis of a legally binding Compromise Agreement or an “informal agreement”;
- the case is disposed of by way of a default judgment; or
- there is a full ET hearing, whereupon the various elements of the claim are upheld or dismissed.

1.18 Most claims to the ET are brought by an employee against an employer. However, in 2010/11 there were around 500 claims consisting of the following types:

- by employers against a decision of the State – e.g., an appeal by an employer against the issue of prohibition or improvement notice issued by the Health and Safety Executive;
- by employers against a regulatory body – e.g., an appeal against by an employer against the levy assessment of an Industrial Training Board;
- by employees against Government Departments – e.g., an appeal against a decision by the Redundancy Payments Office (an executive agency of BIS) not to make a redundancy or insolvency payment; and
- by a Government Department or agency – e.g., an application by BIS to prohibit a person from running an employment agency.

### *ET Tracks*

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

1.20 The three tracks in the ET are:

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

- i. short
- ii. standard
- iii. open.

1.21 Some claims involve straightforward questions of fact that can be quickly resolved if the case reaches a hearing. For example, a non-payment of wages on termination of or in the course of employment will focus on the terms of contract and what money was paid. Such claims are allocated to the *short track* and are automatically listed for a one hour hearing on receipt of the claim.

1.22 Other types of claims involve more difficult issues and require a greater degree of case management by the judiciary to ensure key points of dispute are identified before hearing. It is also likely that hearings will be lengthier than short track cases. Such claims are allocated to the *standard track* where more case management is required to ready the case for hearing.

1.23 The most legally complex of claims generally require the most amount of judicial and administrative resource to resolve. These claims are therefore allocated to the *open track*. They are discrimination, equal pay and Public Information Disclosure Act claims.

1.24 Where a claim contains two jurisdictional complaints that would be allocated to different tracks, the claim will be allocated to the track which covers the most complex of the issues raised. For example, if a claim contained complaints of non-payment of wages on termination of employment (short track) and a complaint of unfair dismissal (standard track) then the claim would be allocated to the standard track.

1.25 The relationship between the primary jurisdiction and the ET track system is summarised below.

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

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

### Cost of ET

1.27 Claimants are not currently charged for making use of the ET, which is entirely funded by the UK taxpayer. The total cost of administering the ET was £87 million in 2012/13 prices during 2010/11. The table below shows that the largest single component of 48% was the combined judicial cost – mostly related to judges' salaries, fees and expenses (including £10 million on lay members).

Category	2012/13 £m	Share of total
Staff admin	15.4	18%
Other admin	2.7	3%
Estates	14.2	16%
Overheads	11.3	13%
Judicial salaries	24.2	28%
Judicial fees	15.9	18%
Judicial expenses	1.8	2%
Court costs	1.1	1%
<b>TOTAL</b>	<b>86.7</b>	<b>100%</b>

1.28 Based on 2010/11 figures as the most recent year for which outturn data are available, the following table sets out the estimated cost per case (uprated to 2012/13 prices using the UK GDP deflators published on HM Treasury’s website and rounded to the nearest £10) of processes by ET track. The core stages in the ET process are “receipt & allocation” and “hearing”, whereas the other elements are optional in that there is no obligation, for instance, to undergo mediation or to obtain written reasons.

Track	Receipt & allocation	Interlocutory	Final hearing	Mediation	Revoke/Review DJs	Dismissal after settlement	Written reasons	Review
Short	£390	£490	£760	£0	£360	£200	£460	£680
Standard	£420	£890	£2,890	£0	£360	£260	£1,200	£1,180
Open	£440	£2,870	£3,380	£2,890	£360	£260	£1,520	£1,760
Variable	44%	62%	90%	100%	92%	50%	86%	90%

1.29 The table also shows the approximate proportions of the estimated average total cost per case by ET stage that is variable – i.e., the element of cost that will vary as the number of cases varies. For example, the cost of mediation (which only takes place in the open track) is a pure variable cost because it solely involves judicial time. Overall, it is currently estimated that variable costs accounted for 69% of the total ET cost in 2010/11.

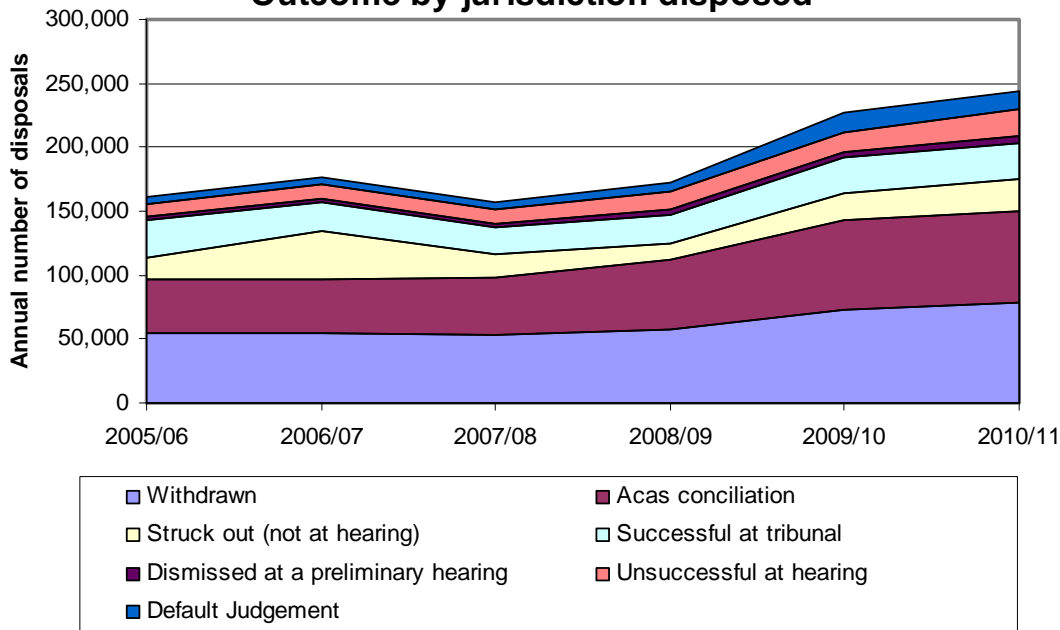
1.30 Historically, the ET and EAT have not produced management information-based estimates of costs per case by stage. The cost estimates have therefore been produced using a new cost model that was developed specifically to support the development and analysis of the proposed fee-charging regime. The cost model is underpinned with a case model using ET statistics and case sampling. This model provides our current best estimate of the costs per case at each main stage, which means that the figures may contain inaccuracies. To improve the cost modelling and support the response to consultation the cost model has been reviewed and updated since the previous impact assessment, including using 2010-11 data and supported with further case sampling data. In the future the cost model will continue to be updated and refined - e.g., to provide representative costs of administering single claims and multiple claims, instead of the weighted averages of all claims that are set out in the preceding table.

### *ET outcomes*

1.31 Since 2005/06 the number of ET claims disposed has averaged about 102,000 per year and fluctuated between 80,000 and 122,000. The composition of outcomes disposed by jurisdiction is illustrated in the following graph.



## Outcome by jurisdiction disposed



1.32 Over this six year period, on average 23% of jurisdictional complaints were resolved at a hearing – over half of which in favour of the claimant. Of all jurisdictional outcomes, an average of 33% were withdrawn by the claimant, 29% were conciliated by Acas, 11% were struck out before a hearing and the remaining 5% were Default Judgments.

1.33 It is important to note, however, that a (single or multiple) claim can contain a number of separate jurisdictional complaints. In recent years there has been an average of 1.9 complaints disposed for every ET claim disposed.<sup>8</sup>

### Employment Appeal Tribunal (EAT)

1.34 The EAT hears appeals on a point of law regarding any decision made by the ET. An appeal can be made against any decision of a tribunal at any time during the course of the claim through the ET, though most appeals relate to the final judgment of the ET. An appeal must generally be made to the EAT within 42 days of the ET decision in question. The EAT has one office in London to which all appeals must be submitted, though hearings also take place in Edinburgh.

1.35 Either party in an ET claim can appeal to the EAT. The party that appeals is called the appellant and the other party to the case is the respondent. The appellant can therefore be either the employer or the employee.

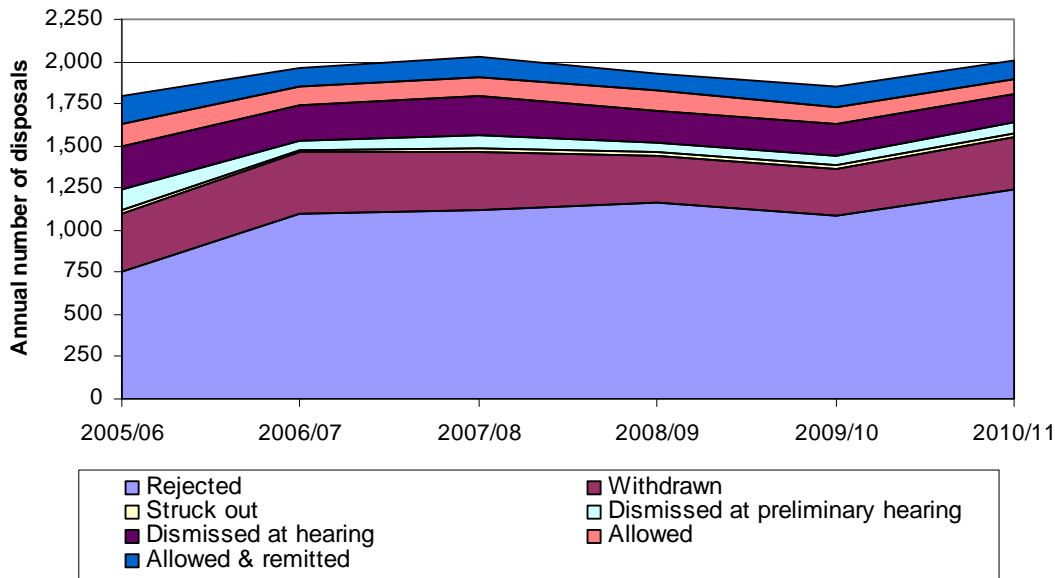
1.36 On receipt of a notice of appeal, the registrar or judge will review it to check that it is properly completed and provides the required supporting evidence. Unlike an ET claim at present, the appeal can be rejected at the outset on the grounds that there is no reasonable prospect of success, although this decision can also be appealed.

1.37 Since 2005/06 the number of appeals disposed has averaged about 1,900 per year and fluctuated between around 1,800 and 2,000. The composition of appeal outcomes since 2005/06 is illustrated in the graph below.

<sup>8</sup> MoJ stats have been preferred over those produced by Acas as they are believed to be more complete, as the Acas Annual Report explains:

*“the figures [of gross claims received] include very few NHS and Local Authority equal pay claims either because they have not been passed to Acas for conciliation (because there appears presently to be little or no prospect of success in conciliation) or because the parties have not requested conciliation. Similarly a significant number of cases lodged at the Employment Tribunals concerning ‘working time’ and unauthorised deductions from wages are not included in these figures because they were not susceptible to conciliation and were struck out.”*

## Outcome by Appeal Disposed



1.38 Over this six year period, on average 26% of appeals were resolved at a hearing – almost half of which in favour of the appellant (either upheld or upheld and remitted back to the ET), while the other half were dismissed at a preliminary or full hearing. Of all appeals disposed, an average of 56% were rejected for being out of time or having no prospect of success, 17% were withdrawn by the appellant and 1% were struck out.<sup>9</sup>

1.39 Unlike ET claims, appeals are not allocated to a track because the complexity of the issue is not determined by the appeal type. All but the most exceptional appeals are listed for 1 day's hearing and most are disposed of within this time. Acas conciliation is not routinely available in the EAT because the parties are appealing a point that has been explored before so the chances of settlement are small.

### Cost of EAT

1.40 Appellants are not currently charged for making use of the EAT, which is entirely funded by the taxpayer. The total cost of administering the EAT was over £2 million in 2012/13 prices during 2010/11. The table below shows that the largest single component was staff administration costs, followed closely by judicial costs (including £0.3 million on lay members).

Category	2012/13 £m	Share of total
Staff admin	1.2	47%
Other admin	0.2	6%
Judicial salaries	0.8	32%
Judicial fees	0.2	9%
Judicial expenses	0.1	4%
Court costs*	0.0	1%
<b>TOTAL</b>	<b>2.5</b>	<b>100%</b>

\* less than £0.05m

<sup>9</sup> Among the reasons for "strike out" in the EAT may be that a claim/response has not been actively pursued or that there has been non-compliance with an order or practice direction.

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

1.42 Based on 2010/11 outturn data as the most recent year available, the following table sets out the cost per appeal (uprated to 2012/13 prices using the UK GDP deflators published on HM Treasury's website and rounded to the nearest £10) by EAT stage. The table also shows that most of the average total cost of appeals by stage is variable. Overall, it is estimated that variable costs accounted for 95% of the total EAT cost in 2010/11. These estimates will be updated and reviewed going forward.

Stage	Receipt & registration	Hearing*
Cost	£320	£4,350
Variable	94%	95%

\* includes interlocutory + pre-hearing

### *Further appeals*

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

#### Cases from EAT, E&W

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

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

1.45 In addition, either party can next make a further appeal to the UK Supreme Court (which replaced the Appellate Committee of the House of Lords in October 2009). Between 2005 and 2009 a total of 8 employment cases were resolved in this manner, of which 7 were disposed during 2006 alone.<sup>10</sup> This total represents less than 0.1% of all EAT decisions handed down over this period.

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

<sup>10</sup> Table 7.5, "Judicial and Court Statistics 2009" ([www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/judicial-annual.htm](http://www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/judicial-annual.htm)).

Court	Permission to appeal	Appeal
Court of Appeal	£235	£465
Court of Session	N/A	£180
UK Supreme Court	£800	£1600 (£800 if permission sought) <sup>11</sup>

## 2. Policy rationale and objective

2.1 Hitherto users of the services provided by the ET and EAT have not had to pay any fees, save for the cost of any legal representation or advice that they choose to engage. The Tribunals, Courts and Enforcement Act 2007, now provides the statutory power which allows Government to set fees in respect of any tribunal, subject to the necessary Parliamentary approval.

2.2 HM Treasury guidance states<sup>12</sup> that: “It is government policy to charge for many publicly provided goods and services. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption.”

2.3 The intention is therefore to comply with this guidance which also states<sup>13</sup> that, “charges within and among central government organisations should be made at full cost including the standard cost of capital”. To this end, the Government consulted on how best to begin charging fees users of the Employment Tribunal and the Employment Appeal Tribunal.

2.4 The fundamental policy aim is to transfer a proportion of the cost of running the ET and EAT from taxpayers to users. The policy objective is to require those users to pay fees where they can afford to do so in order to have their workplace dispute resolved through the ET and EAT process. The introduction of fees into the ET and EAT is also part of a wider Government review of Britain’s employment laws being led by BIS that is designed to improve the efficiency and effectiveness of the ET and encourage employers and employees to work together to resolve workplace disputes at the earliest stage.

2.5 The consultation contained 2 options for respondents to consider. The aim of Option 1 is to transfer some of the cost from taxpayers to users with fee levels that would initially be set at a cost recovery rate of significantly less than 100% net of remissions. The taxpayer contribution would be lower compared to the status quo, but the initial proposed fee levels meant that the taxpayer would still make a significant contribution towards the cost of administering ET claims and EAT appeals. Moreover, even at 100% cost recovery levels the contribution of taxpayers would not be fully removed as they would continue to subsidise those claimants who are eligible for fee remissions.

2.6 The policy aim for Option 2 was wider. In addition to the transfer of some of the cost from taxpayer to user, the Government consulted on whether and how the ET fee structure could be used to provide greater certainty for employers as to their maximum liability in tribunal cases as well as improving claimant expectations of the level of award they would receive. These wider aims would be achieved by requiring claimants to decide whether to seek an award value above or below a threshold, proposed at £30,000. Claimants seeking an award above this threshold would pay a substantially higher fee than those seeking under this threshold. Supporting guidance would be provided to improve claimant expectations on the level of awards with likely outcomes.

2.7 The principle of introducing fees in employment tribunals was opposed by the majority of consultation respondents, although an analysis indicated that a majority of business groups supported the introduction of fees. Those who opposed the introduction of fees expressed the following main objections namely:

- The consultation should have asked for views on the principle of charging for fees and not just the fee structure;

<sup>11</sup> These fees are currently subject to consultation by the MoJ with a response and final decision due this Summer.

<sup>12</sup> Section 6.1.1 of “Managing Public Money” ([www.hm-treasury.gov.uk/psr\\_managingpublicmoney\\_publication.htm](http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm))

<sup>13</sup> Section 6.2.10 of HMT’s “Managing Public Money”.

- It is unfair that only claimants pay the issue and hearing fee;
- The respondent should pay half the fees in order to encourage settlement;
- Fees per se, as well as the proposed levels, will deter legitimate claimants;
- Some claim types should not be subject to fees (e.g. low value claims and discrimination claims);
- The remissions policy will not protect access to justice;
- The low level of enforcement of awards means that successful claimants will be further out of pocket;
- The fee structures proposed are discriminatory with minority groups likely to pay the highest fees; and
- The proposal not to make provision for refunds is unfair.

2.8 The Government has considered the views of respondents to the consultation in reaching its decision to implement the Option 1 structure with amendments and responds to the many detailed policy and practical points raised by respondents in the consultation response. The Government's guiding principle, which aligns to HM Treasury guidance on managing public money, is that it is right and fair that those who seek to utilise the ET contribute to its costs where they can afford to do so. Moreover it is appropriate to charge given the continued availability to free Acas conciliation as well as other methods of dispute resolution. The policy decisions taken are proportionate with this guiding principle, given a successful party can seek to have their fees reimbursed by the unsuccessful party and the availability of the HMCTS remissions system to protect access to justice.

2.9 The Government believes that a fee in advance of the service received offers the best method of ensuring that a fee is paid and that the principle of seeking payment from the party who seeks the benefit of the order remains appropriate given the party verses party nature of the jurisdiction. The amendments made to Option 1 are as a result of the some of the issues raised by respondents as well as further analysis. The Government will review the fee structure to identify any changes needed to the approach.

2.10 As this proposal relates to a change in fees and charges, there is no evidence of the proposal resulting in a change in the level of regulatory activity, and so it is out of scope of 'One-in, One-out' in accordance with the current One-in, One-out Methodology.

## **Summary of Consultation Responses**

2.11 A total of 140 responses were received to the consultation. This included 25 from unions and other organisations representing the views of employees, 29 from legal groups and solicitors, 31 responses from business, 25 on behalf of advisory and equality groups, and 30 from other interested parties and individuals.

2.12 Claimants and groups representing their interests came out strongly opposed to the principle of charging fees, and as a consequence many responses disagreed with both options presented in the consultation. These respondents thought the fee proposals and the high level of fees proposed would deter claimants from making claims and that it was unfair that claimants were being asked to pay the majority of fees, particularly given the perceived financial inequality of employee versus employer. They also generally viewed fees as discriminatory.

2.13 Business respondents generally supported both options with a tendency towards Option 2 where they found the idea of a threshold and higher fee attractive. Some were keen that fees acted as a disincentive for claimants to bring weak and vexatious claims. They supported the fact that the claimant would be required to pay the issue and hearing fees, as well as the proposals for limited refunds. They also broadly agreed with the proposals for multiple cases in both options.

2.14 Little consensus could be found on the key issues across the groups, making it difficult to state a clear preference for either of the options, however respondents overall generally seemed to prefer a two stage fee, believing that it offered a second opportunity to encourage parties to consider settlement.

2.15 The majority of business responses were in favour of the threshold proposed in Option 2, but less than half of those responses considered that the Option 2 proposals in general would prove to be an effective method for providing more certainty to business over liability with almost two thirds of business

respondents rejecting the Option 2 proposal overall. Other groups were almost unanimous in rejecting the Option 2 threshold, and were more strongly opposed to the charging of a single fee at issue.

## Main Affected Groups

2.16 The following groups would be affected by the policy proposal:

- Claimants – typically at least one employee or ex-employee, although an employer in a small minority of cases (such as in paragraph 1.18);
- Respondents – typically the employer<sup>14</sup>;
- Appellants – employees or employers who choose to appeal an ET decision;
- HMCTS – the organisation that administers the ET and EAT;
- Taxpayers – the ET and EAT are entirely subsidised by taxpayers at present;
- Lawyers – claimants and respondents sometimes make use of legal advice and representation and
- Advisory, Conciliation & Arbitration Service (Acas) – the publicly funded organisation which offers an alternative to the ET process in that Acas provides a free dispute resolution service to employers and employees.

## 3. Description of options

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

### Base Case - “Option 0”

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

3.3 Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).<sup>15</sup>

3.4 The initial impact assessment published alongside the “*Charging Fees in Employment Tribunals and the Employment Appeal Tribunal*” consultation paper explained at paragraph 3.4 that the base case against which to assess the impacts of ET and EAT fee charging incorporated the impact of proposed reforms to employment law outlined in the “*Resolving Workplace Disputes*” consultation paper published jointly by BIS and the former Tribunals Service in January 2011. At the time of preparing the initial Impact Assessment the Government response to the “*Resolving Workplace Disputes*” consultation had not been published and the IA assumed for modelling purposes that all of the proposals contained in that consultation paper would be introduced and have taken effect by the start of 2013/14. The Government published its response to the consultation paper in November 2011 and whilst not all of the proposals will be in place by 2013/14, it is not thought that there will be any significant impact upon the model used. The measures which have already been introduced or will be in place by 2013/14 include:

- Early conciliation – the requirement that all potential ET claims to be lodged with Acas in the first instance (2014)

<sup>14</sup> The employee would be the respondent where an employer chooses to make a counterclaim (which would only happen in breach of contract complaints).

<sup>15</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The NPV is expressed in real terms and takes into account the fact that society tends to attach a decreasing weight to costs and benefits the further into the future they occur.

- Changes to the ET Rules in relation to cost and deposit orders; witness statements; witness expenses and judges sitting alone in unfair dismissal cases (introduced 2012)
- Further changes to the ET Rules following the fundamental review led by Mr Justice Underhill (2013), and
- The extension of the unfair dismissal qualifying period from one to two years (introduced 2012)

3.5 Legal aid is currently available for (i) advice in the ET (known as “legal help”); and (ii) advice and representation in the EAT. Under the Legal Aid Sentencing and Punishment of Offenders Act 2012 all employment matters will be removed from the scope of legal aid in England and Wales, except for claims in relation to a contravention of the Equality Act 2010 (commonly classed as discrimination claims in ET) – the latter will continue to be supported by legal aid in the same way as at present. These reforms will be implemented in due course. It is not expected that the introduction of ET/EAT fee-charging would have a material impact on the total demand for legal aid in England and Wales, compared to the base case. An exceptional funding scheme is proposed which to ensure the protection of an individual’s rights to legal aid under the European Convention on Human Rights as well as those rights to legal aid that are directly enforceable under European Union law.

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

3.7 The structural drivers of demand for ET and EAT services generally are not well understood at present. In the absence of reliable longer-term forecasts about the future number of ET claims and EAT appeals under the status quo, the first step in defining a suitable base case is to estimate a notional equilibrium – or ‘steady state’ – for the annual number of cases that claimants may bring to the ET during the remainder of the 2010s. According to data published by the former Tribunals Service, there was an annual average of around 165,000 claims accepted by the ET between 2005/06 and 2009/10. This five year period roughly corresponds to the most recent complete business cycle in the UK economy.<sup>16</sup>

3.8 Converting the annual number of ET claims into the relevant number of cases against separate employers is not straightforward. By definition, a single claim involves one claim per employer case – i.e., a ratio of 1:1. However, a multiple is a group of claims against one employer on the same or very similar grounds. On average, according to ET data, there were around 34 claims in each multiple submitted during 2009/10 – i.e., a ratio of 34:1. This was significantly higher than the median due to a limited number of cases involving a large number of claims, as can be seen in the table below.<sup>17</sup>

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

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

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

<sup>18</sup>

3.9 The table shows that 60% of multiples were cases consisting of between 2 and 4 claims against the same employer in the most recent year for which data are available. It has not been possible from the available data to identify the exact number of 2009/10 cases that consisted specifically of 2, 3 or 4 claims, though it appears likely that the median number of claims per case was around 4.<sup>19</sup>

3.10 ET figures show that, averaged over the five year period between 2005/06 and 2009/10, 38% of accepted claims were singles and the remaining 62% were multiples. Applying the relevant ratio of single/multiple claims to cases, it is estimated that the steady state number of ET cases is around 65,500 per year, of which 95% are singles and 5% multiples, as shown in the table below.

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

3.11 The second step in specifying an appropriate base case is to reduce the steady state number of ET cases to take account of the “Resolving Workplace Disputes” (RWD) proposals. Specifically, it has been proposed that all ET claims are submitted to Acas in the first instance. This would allow Acas a specified period to offer Early Conciliation before any case fully enters the ET system, unless one party chooses to opt out. At present, both parties have to opt in to Early Conciliation. BIS estimated in its accompanying impact assessment that making Early Conciliation the default would reduce the annual number of ET cases by around 25%.

3.12 The final step in defining the base case is to make an adjustment for the BIS consultation’s proposal to increase the minimum qualifying period from 1 to 2 years before which an employee is eligible to take an Unfair Dismissal (UD) case against an employer. BIS has estimated that this change would further reduce the annual number of ET cases by around 2,000, taking into account the policy interaction with Early Conciliation.

3.13 Combining these last two steps, the overall effect is summarised in the following table. This shows that, based on the actual figures from 2005/06 to 2009/10, the imputed steady state number of ET cases in ‘Option 0’ is around 47,200 per year if the main “Resolving Workplace Disputes” reforms are implemented.

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

3.14 Comparing the estimated number of steady state ET cases in paragraph 3.10 to the number of EAT cases disposed over the same period shows that around 3% of ET cases resulted in a subsequent

<sup>18</sup> The assumed total multiple cases quoted in this IA for 2010-11 has been recast down from the actual figures received. The rationale for this is to more accurately reflect how we expect claimants to behave had fees been in place i.e. we expect the fee structures to encourage multiple claimants to submit one ET1 form with a list co-claimants annexed as opposed to one ET1 per claimant. The total number of claims remains the same in both the IA and in other publications, but as the total number of cases falls the ratio of claims per multiple case rises.

<sup>19</sup> The maximum number of ET claims in any multiple during 2009/10 was 11,288.



appeal during the five year period in question. Assuming that this rate of appeal is not significantly influenced by the aforementioned BIS reforms, it follows that the imputed steady state number of appeals post-BIS reforms would be around 1,400 per year in the absence of fee-charging. This would represent a reduction of some 25% on the average number of EAT disposals since 2005/06 in any event.

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

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

## FINAL POLICY PROPOSAL

3.16 Subject to Parliamentary approval of the necessary secondary legislation, fees for ET and EAT cases are introduced in 2013 on the basis of:

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

3.17 A number of changes made to the fee structure reflect issues raised by respondents to the consultation. The changes are:

- Two fee levels instead of the proposed three levels;
- Re-allocation of a small number of claims to new levels;
- No separate fee charged for seeking written reasons; and
- A reduction in the number of bands for multiple claims from 5 to 3.

3.18 There have been some changes to the fee levels proposed in the consultation. Fees are initially be set at less than 100% of cost recovery net of remissions. Based on 2010/11 workload data and financial outturn data, it is estimated that the revenue from fee levels proposed (plus fees remitted) would have met approximately 33% of the total costs of providing the ET and EAT overall service.

### *Employment Tribunal fees*

3.18 The issue and hearing fees are initially payable by the claimant as the party seeking the order. The level of fee depends upon the ET’s underlying costs that are themselves a function of: (i) the type of claim made; and (ii) the stage in proceedings reached by the claim.

3.19 The type of claim made initially determines the relevant fee for bringing a complaint to the ET. There are over 60 types of claims that can be made to the ET and it was initially proposed to allocate each claim to one of three “fee levels”. Having considered responses to the consultation as well as the potential equality impacts of the higher level 3, the Government has decided to reduce the number of

levels to just two. A draft list of fee levels to which individual complaints are allocated is set out in Annex 3.

3.20 Where a claim contains two jurisdictional complaints that would have attracted fees at different levels, the fee payable is that appropriate to the most complex of the issues raised. For example, if a claim contained complaints of non-payment of wages on termination of employment (fee Level 1) and a complaint of unfair dismissal (Level 2), then one fee at Level 2 would be payable.

3.21 Fees are payable in advance and act as a trigger for work to be undertaken and thus cost incurred by HMCTS. In the absence of a fee (or a valid remission application), the case would not progress. The ET can strike out or refuse to accept a claim if the fee (or remission) requirement is not met when due.

3.22 There was marginally less opposition to a two stage fee than a single fee from respondents to the consultation, particularly when combined with a lack of refunds for those cases which settle early, believing that it offers a second opportunity to encourage parties to consider settlement. The Government agrees that a two charging point system gives benefits of spreading the cost for the claimant, offering a second opportunity to settle, charging only those that reach the hearing stage and a better representation of where the cost of the service lies (namely at the end of the process).

3.23 The final proposal therefore states that there will be 2 principal fee charging points:

- Issue fee – processing and checking the application as well as issuing the claim to the respondent; allocating the claim to the appropriate track; undertaking pre-hearing work and case management by the judiciary; and
- Hearing fee – listing and conducting a full hearing.

3.24 After further consideration of the revised cost model the fee issue for level 1 was increased to better reflect the updated information on costs.

3.25 After consideration of the responses, the Government has reduced the proposed 3 levels of fees down to 2. Respondents expressed concern that discrimination and equal pay cases were being unfairly charged the highest fee as they had been allocated to level 3 when their cases were not necessarily as complex as some cases in level 2. The cost model also shows that the average costs for levels 2 and 3 cases are in a similar range. Moreover, as the cost model is based on a representative cost of a typical case of its type, some level 2 cases can be as complex and as costly as a level 3, though this is much less likely between level 2/3 claims and level 1 claims. Consequently the Government has combined the claim types in levels 2 and 3 fees into one fee level, which also has the advantage of simplifying the fee structure. The revised level 2 fee therefore now reflects the overall average costs for all claims that were previously included in both level 2 and level 3.

3.26 Based on the revised cost model, and the change referred to above, the fee levels proposed are:

**ET fees payable by the claimant per case (2012/13 prices)**

Fee Level	Issue fee	Hearing fee
Level 1	£160	£230
Level 2	£250	£950

3.27 In general, the further a claim progresses in the tribunal process the higher the costs incurred by HMCTS. Where cases proceed to full hearing significant additional costs are incurred, notably the time of the judiciary and lay members and through the provision of tribunal estate i.e. hearing rooms.

3.28 The following measures proposed in the consultation are retained in the final policy proposal. Respondents pay fees for the following orders they seek namely:

- counterclaim<sup>20</sup> – processing and issuing the counterclaim to the claimant;

<sup>20</sup> The respondent may decide to make a counterclaim in cases where a claimant has brought a breach of contract claim that arose from or was outstanding at the date when employment was terminated.

- setting aside a Default Judgment – asking the judge to overturn a judgment in default that arose because of a lack of a response by the respondent to the ET claim; and
- dismissal of the case after settlement or withdrawal<sup>21</sup> – seeking dismissal of a case requested by the respondent after the case has been settled or withdrawn by the claimant.

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

	Counter-claim	Application to set aside default judgment	Application for dismissal after settlement or withdrawal
Level 1	£160	£100	£60
Level 2	£250	£100	£60

3.29 The consultation proposed that mediation by the judiciary, which is unique to the Employment Tribunal, should attract a fee of £750, and that the respondent should be liable for this fee, given that employers usually pay fees for mediation conducted by Acas or via private companies. Whilst we acknowledge concerns about the level of the fee originally proposed, given the comparable fees charged for other mediation services we do not propose drastically to alter the fee. We will initially reduce the fee by 20% to £600 to encourage use and will monitor the impact on the number of mediations undertaken to see if this should be changed in the future.

3.30 The consultation further proposed that two applications, which can be sought by either party, would be payable by the party that applies:

- a request for written reasons – providing written reasons if the judgment and reasons have been issued orally. This separate fee is not to be pursued. The Government has accepted the argument advanced by many respondents who disagreed with this fee on the grounds that parties are entitled to know why they have won or lost and access to written reasons should be seen as an existing part of the judicial decision-making process of the tribunal. Thus, the cost of administering written reasons is captured within the issue and hearing fees.
- a review – asking the ET to review its own decision. The Government still believes that this proposal is fair and proportionate and retains the fee in the final proposal.

**Fees payable by the party seeking the order per case (2012/13 prices)**

Fee Level	Application for written reasons	Application for review
Level 1	£0	£120
Level 2	£0	£370

*Multiple claims*

3.31 A financial contribution is sought on behalf of all claimants no matter how they commence the proceedings. To achieve this, a slightly different fee system is needed for multiple claims – namely, a case where at least 2 claimants bring a complaint against one employer. The fee payable is based upon: (i) type of claim made; (ii) the stage reached in the proceedings; and (iii) the number of claimants in the multiple. The last of these reflects the fact that some costs incurred by HMCTS in administering multiple claims are driven by the numbers involved in the claim e.g. the number of case records that need to be created in the case management systems.

3.32 The consultation proposed 5 bands of fee level for multiples, depending on the number of claims contained within it. After considering responses to the consultation, and particularly issues around the fluidity of the size of multiples, the final proposal reduces the number of bands to three. The following table sets out the proposed issue and hearing fees payable by multiple claimants per case.

<sup>21</sup> The claim would lapse after a year in any event.

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

3.33 This would mean that in a case where 7 claims have been made against the same employer, the 7 claimants collectively would pay 2 times the relevant single claim fee between them. Similarly, if there are 30 claims made against an employer, then all 30 claimants collectively as a case would be liable to pay 4 times the single claim fee. In general terms, therefore, the average fee paid by a claimant in a given multiple would fall as the total number of claims increases.

### Remissions

3.34 The HMCTS civil court remissions policy is adopted in ET and made available for those individuals who cannot afford to pay part or all of any fee.<sup>22</sup> To be eligible an individual claimant must prove either that he is in receipt of certain permitted state benefits or that his household income is below a certain threshold. In line with the civil courts approach, proof of eligibility must be provided on every occasion a remission is sought.

3.35 The eligibility criteria used would be the same as civil courts, so changes will be needed to accommodate the Government's intention to introduce the new Universal Credit in late 2013 which will replace work-related state benefits.<sup>23</sup> Only individuals are able to benefit from fee remission; employers, as corporate bodies, would not be eligible to apply for a remission.

3.36 The proposed remission system is made up of three eligibility criteria.

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

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

If party paying the fee has more than 2 children then the relevant amount of gross annual income is the amount specified in the table for 2 children plus the sum of £2,930\* for each additional child.

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

- **Remission 3** – A full or partial fee remission for an individual based on an income and expenditure means test to calculate the individual's (and if applicable their partner's) monthly disposable income<sup>24</sup>:
  - No fee payable if monthly disposable income is £50 or less;
  - If monthly disposable income is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's monthly disposable monthly income up to a maximum of £50;
  - If monthly disposable income is more than £250, an amount equal to £50 plus one-half of every £10 over £200 of the party's monthly disposable income

<sup>22</sup> [http://www.hmcourts-service.gov.uk/courtfinder/forms/ex160a\\_web\\_1010.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/ex160a_web_1010.pdf)

<sup>23</sup> Little policy detail exists at present ([Universal Credit: welfare that works - DWP](#)).

<sup>24</sup> Monthly household disposable income is defined as net monthly income (after deduction of tax, national insurance contributions and student loan payments) minus fixed allowances (depending on whether the party has a partner and the number of children they have- see table 2 above), housing costs, childcare expenses, child maintenance expenses and payments under a court order

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

Table 2

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

\*The amounts contained in this table for an individual (and couple) are based on the 'Monthly Disposable Income' bands which are used by the Legal Services Commission to calculate how much someone would pay towards their case when assessing Legal Aid.

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

3.37 The Scottish civil courts have a remissions system that differs from the system available in England and Wales. In Scotland remissions are available for those court users in receipt of legal aid, certain state benefits and those on low incomes – as in Remissions 1 and 2 of the England and Wales system summarised above. However, no partial remissions are available at present. The HMCTS civil courts remissions system will be used in Scotland with respect to ET and EAT fee-charging so as to ensure consistency of approach across Great Britain as a whole as well as offering all individuals the benefit of a partial remission.

3.38 A remissions system broadly in line with that in the civil courts is available to individual claimants who participate in a multiple claim. Where the details of the claimants are submitted in the one claim form and no claimants in the multiple claim were entitled to a remission, the full fee is payable. Where a sub-group of claimants in a multiple claim are entitled to a remission, then the remaining claimants in the group would be required to pay the total relevant issue fee. The same principle is adopted when payment of the hearing fee is due i.e., where a sub-group of claimants is not entitled to a remission, responsibility for payment of the hearing fee would rest with that group. No individual claimant in a multiple is required to pay more than the comparable single fee.

3.39 Fees are not designed to impinge on the discretion of the ET judiciary to decide on the merits of cases that are joined together and/or split apart for the purposes of hearing. The consultation response contains further detail of how remissions for multiple cases will work, but the underpinning philosophy is to ensure that any claimant would not be asked to pay more than would otherwise be expected if the tribunal changes the status of their case from a single to multiple or vice versa. The Lord Chancellor would retain a general discretion to remit fees for ET users as for existing court users.

3.40 Claimant groups argued that the complexity of the current system in the civil courts had led in the past to incorrect decisions being made on remission applications, that there were a number of benefits that ought to be included but weren't and that the system should look at an individual's income, not household. Business groups argued that the existing system was too generous and would undermine the main aims of the fees policy.

3.41 Having considered these responses the Government maintains the view that the civil courts remission scheme is suitable in ET to protect access to justice for those who cannot afford to pay the fee. However, given the concerns raised MoJ will undertake a review of remissions as part of the wider review required for the introduction of Universal Credit. Respondents will be able to feed in further with their concerns at that point. The review will aim to produce a single remissions system for courts and tribunals which is simpler to use, more cost efficient and better targeted to ensure that those who can afford to pay fees do so, while continuing to provide access to the courts and tribunal system to those who cannot.

## Refunds

3.42 If, within 6 months of a fee being paid, a claimant can prove that he / she was eligible to a full or partial fee remission at the time of payment, a refund will be provided. No other refunds would be available, although any administrative error such as requiring payment of a fee twice, would be

corrected. The majority of support for the approach of no refunds for hearing fees came from business groups. Some respondents felt that it was unfair to not have the hearing fee refunded when the case was settled. Moreover the lack of refunds would deter settlement in two ways either by the respondent waiting to see if the claimant paid the hearing fee, or by the claimant refusing to settle because they wanted the hearing they had paid for.

3.43 Some of the concern raised by respondents is mitigated by the adoption of two fees payable at issue and before hearing instead of one at issue alone. By seeking the hearing fee 4-6 weeks before the hearing date, perhaps - as suggested by some respondents – after disclosure and the exchange of witness statements, this will offer ample opportunity for parties to settle and provides a reasonable approach.

### *Recovery of fees*

3.44 The successful parties in a case adjudicated by the ET would be able to ask the tribunal for the unsuccessful party to reimburse the fees paid. Responses to the consultation were generally in favour of such a provision, although there were comments on whether it should be a power or an automatic provision in certain circumstances. Tribunal rules<sup>25</sup> already allow the tribunal to award costs<sup>26</sup> in favour of one party where the other party is deemed to have acted “vexatiously, abusively, disruptively or otherwise unreasonably” or where the bringing or conducting of the proceedings has been misconceived.

3.45 Costs are awarded in less than 1% of claims disposed of by an ET at hearing per year. However, an amendment to the rules will ensure that the tribunal has discretion to order the unsuccessful party reimburses the fees incurred by the successful party. It follows that there are likely to be cases where an unsuccessful employer would be obliged by the ET to pay the fees incurred by the claimant(s). Conversely, the tribunal may decide not to make a fees order where this is considered appropriate given the circumstances of the case.

3.46 Other than the existing costs award mentioned above, there would be no general power to award costs in ET cases and there are no plans to extend this as part of the fee-charging regime. The rule would be limited to the reimbursement of fees only by the unsuccessful to the successful party.

3.47 At present, if a successful claimant does not receive the compensation that the ET awards, then he can seek to enforce payment through one of a number of methods. Awards made in England and Wales may be enforced through High Court Enforcement Officers as if they were County Court Judgments through the “ET Fast Track Scheme”.<sup>27</sup> Awards made in Scotland may be enforced by Sheriff Officers. Any fees ordered to be reimbursed by the unsuccessful party would be enforced as part of the enforcement process.

3.48 Moreover, if a person habitually and without reasonable justification initiates proceedings against an employer in the ET, a government law officer<sup>28</sup> may apply to the EAT for an Order declaring that person to be a “vexatious litigant”. This has the effect of barring that person from bringing further proceedings in the ET without the consent of the EAT.

### *Employment Appeal Tribunal (EAT)*

3.49 Only one option was proposed for the EAT in consultation and given the responses to consultation the Government has not changed its proposal. The final proposal is that all fees in the Employment Appeal Tribunal (EAT) would initially be paid by the appellant. The fee depends only on the stage of the proceedings because the costs incurred by the EAT do not depend upon the type of appeal. Multiple claims do not exist in the EAT as all cases are effectively treated as singles.

3.50 It is proposed that there will be just 2 fee-charging points:

- application – checking the application as well as issuing the appeal and some preliminary case management procedures; and
- hearing – listing and hearing the appeal.

<sup>25</sup> Rule 38 et seq of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

<sup>26</sup> Called “expenses” in Scotland.

<sup>27</sup> This scheme was introduced in April 2010.

<sup>28</sup> The Advocate General in England and Wales; the Lord Advocate in Scotland.

3.51 To appeal an ET decision the following fee rates are proposed.

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

	Application	Hearing
Fee	£400	£1,200

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

**REJECTED POLICY PROPOSAL**

3.53 Option 2 presented in the consultation proposed that the claimant would only pay one fee at the issue stage. It stated that there would be four fee levels where the relevant fee rate depended upon the type of claim made and whether the claimant was seeking an award above a threshold, proposed at £30,000 or more. Where a claimant sought an award £30,000 or more, the Level 4 fee would be payable, irrespective of the type of claim made. This would enable the tribunal to award whatever amount it considered appropriate should the claimant be successful, as would happen under Option 1 for all three fee levels.

3.54 The majority of respondents across all groups did not believe that a higher fee should be charged for higher value claims (although a majority of business respondents did). The main reasons were:

- It is a punitive fee punishing those seeking what they are due;
- The higher fee means Government is trying to engineer claimant's choices and make them claim less;
- It will drive those claimants who lodge a claim for over £30,000 into entrenched positions by refusing to settle for an award below the threshold;
- It is not just the wealthy who will be affected, but low paid claimants can receive over £30,000 because awards are not only based on income;
- There is no incentive for those with fee remission to claim below the threshold amount;
- Claimants do not choose to have a higher award, they either have one in fact and law or they do not;
- There appears to be no correlation between the fee and the cost of administering the claim;
- 20 respondents raised the questioned the legality of the threshold; and
- Respondents did not understand why the threshold had been proposed at £30,000.

3.55 In terms of whether the Option 2 proposals generally would meet the stated aims of improving business certainty and claimant expectations, a majority of all groups (including business groups) say it will not. It ought to be noted, however, that respondents were considering the Option 2 proposal as a whole and not merely the threshold aspect. Although a small majority of business respondents were in favour of the threshold, the common criticisms from respondents were:

- Claims can already be quantified by respondents with a reasonable degree of accuracy;
- The threshold could falsely inflate claimants' expectations if opting to pay the level 4 fee where the actual value of their claim falls beneath the threshold;
- It is impossible for the claimant to know the value of the claim at the outset (in particular before witness statements are provided);
- The threshold will do nothing to educate claimants as to the value of the claim which must come from other guidance or advice;
- Most awards are below £30,000 so most will not be affected;
- The high levels of eligibility for remission 3 means that claimants may gamble on the higher amount in any event;
- That the threshold was in breach of EU legislation that prevented a cap on discrimination awards; and
- The threshold as proposed would capture only a small number of total claimants.

3.56 The Government believes that the policy aims of improving certainty for business, and expectations of claimants, are legitimate and worthwhile intentions. However, we are mindful that the Option 2 proposals were rejected across all respondent groups with less than 20% of respondents believing that Option 2 would prove to be an effective means of matching these policy aims.

3.57 Currently, there is little evidence to substantiate that higher income earners generally receive higher value awards made by employment tribunals. We also recognise the concerns raised regarding accurately placing a value on an award at the outset of a claim, and that further work needs to be undertaken to improve the quality of information that will help claimants to properly value their claims.

3.58 Consequently we will not pursue the Option 2 proposals via the fee structure for employment tribunals. However, in order to pursue the aims of improving certainty for business, and claimants' expectations, the Government will look at other options suggested by respondents such as improving the communication and advice available during an employment dispute.

## **4. Costs and Benefits**

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

### **Costs of the final proposal**

#### *Transition Costs*

#### **HMCTS**

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

4.3 The Government continues to consider the way(s) in which service users would pay the relevant fee. A decision will be made taking into account the responses received on this issue. One possibility is to provide for payment to be made to all 26 ET local offices as all local offices can currently receive claims. This would require the local offices to be modernised to ensure that appropriate accounting and financial security requirements are in place.

4.4 An alternative option might be to centralise the making of a claim with the collection and accounting of fees. One centralised system may be more efficient, but would also require secure and timely IT links and communication with local offices where cases would continue to be listed and heard.

4.5 The EAT has one office each in London and Edinburgh, so the implementation issues are less complex with regard to appeals.

4.6 Current estimates of the cost of implementation – essentially project team and business change costs – across the ET and EAT are that they may be in the region of £1.5 million at 2012/13 prices in total, which would mostly be incurred during 2012/13. To account for optimism bias, the upper bound of this estimate is put at £2.5 million. It should be noted that the range of £1.5-2.5 million is a high level estimate and will remain so until suppliers are fully engaged in the procurement process of delivering modified IT systems.

4.7 Some responses to consultation highlighted the possibility that – due to the lower court fees – some claimants may seek to issue at the County or Sheriff Court where they also have jurisdiction to



deal with a particular complaint. The Government does not consider that this is a significant risk or impact due to the following reasons:

- Most jurisdictional complaints that can be dealt with in the courts will be associated with complaints that can't. For example, equal pay claims can be dealt with in both the ET and the courts, but will often be associated with a discrimination claim which can only be dealt with at the Tribunal;
- The final provisions will seek to separate out consideration of the fees from whether a claim has been made "in time". In other words, the imposition of fees will not affect the current position except that an application will have to be accompanied by either a fee or an application for remission. Consequently the longer time limits available for making a claim in the courts ought not to be any more of an encouragement than they are now;
- By issuing in the courts, claimants will open themselves up to wider liability in terms of costs if they were to lose the claim; and
- The differing cost structure in the civil courts where e.g. interlocutory fees are charged, means that depending on the value of the claim, fees will not necessarily be lower than in the ET.

4.8 The Government will, however, closely monitor volumes of claims in the ET for the types of complaints that can be determined in both the courts and Tribunal, and any unexpected changes in volumes will be closely investigated to determine if submitting to the courts instead of the ET is a factor.

### *Ongoing Costs*

#### **Claimants**

4.9 The total cost to claimants per year would be the annual sum of the fees paid by individual claimants, which in turn would be a function of the numbers of claimants at each fee Level, the stage the claim reaches in proceedings and whether the claimant receives a remission.

4.10 It was estimated above that, after the implementation of the proposed BIS reforms, the steady state number of ET cases would be around 47,200 per year, of which 95% would be singles. The following table sets out the notional pattern of ET cases across Fee Levels, assuming that the BIS reforms and the introduction of fee-charging do not alter the 2009/10 distribution within and between single and multiple cases in future years.

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

4.11 It is recognised that ET fee-charging would tend to reduce the estimated 47,200 steady state number of cases per year that would prevail under 'Option 0'.

4.12 It is currently unknown the extent to which paying claimants would respond to the introduction of fees of differing amounts. Previous MoJ research<sup>29</sup> suggests that, among civil court users generally, parties who bring a case are not significantly influenced by the cost of proceedings. Their principal motivations are "getting justice" and "getting a final decision" by making use of the court. Insofar as these conclusions are relevant, the implication is that ET claimants would not be highly price sensitive to fee-charging. Moreover, the "Resolving Workplace Disputes" consultation says that, partly because of the media coverage given to very high value employment tribunals cases, there is evidence that claimants tend to overestimate the potential value of any compensation that would result from their claim.

4.13 Some respondents to the consultation argued that fees will deter potential claimants from using the ET. We cannot predict how claimants will respond to the introduction of fee-charging. The Government considers that the introduction of a fee can improve the effectiveness and efficiency of the system by encouraging parties to think through whether a formal claim needs to be lodged at an employment tribunal, or whether it can be settled informally outside the system (e.g. within the workplace, via mediation or conciliation). A consequence of this effect may be to change the number of

<sup>29</sup> "What's cost got to do with it? The impact of changing court fees on users", Ministry of Justice Research Series 4/07, June 2007 ([www.justice.gov.uk/publications/docs/changing-court-fees.pdf](http://www.justice.gov.uk/publications/docs/changing-court-fees.pdf)).

cases brought to the tribunal but assessing the degree of that change is extremely difficult. We have assumed that those who are exempt from paying will not respond to the new fee and so they will submit a claim with the same probability as at present. For those who will pay the fee, it is assumed that some will decide not to submit a claim, but cannot predict the precise size of this effect.

4.14 In the absence of reliable price elasticity of demand estimates with respect to ET claimants (e.g., derived from a willingness-to-pay survey), two scenarios of demand response are used for modelling purposes. The “low” response scenario assumes that the number of ET cases brought by paying claimants decreases by 0.01% for every pound (£) of fee at 2011/12 prices; this would mean that a £100 fee rate causes demand to fall by 1%, compared to the status quo. In addition, the “high” response scenario assumes that the number of ET cases falls by 0.05% for every pound of fee – i.e., five times faster.<sup>30</sup>

4.15 However, this demand response would not always be uniform under either scenario. Firstly, the proposed application of the HMCTS remissions system so as to protect access to justice for low income groups would mean that claimants whose fees are remitted would have zero price sensitivity. Secondly, where the fees are paid by a trade union, a no-win-no-fee lawyer (more likely in multiple claims) or under household insurance policies such claimants would not alter their behaviour.

4.16 Data on claimants’ incomes are not routinely collected. In order to estimate claimants’ eligibility for HMCTS remissions, results from the 2009/10 Family Resources Survey<sup>31</sup> (FRS) were taken and adjusted by some of the results of the 2008 Survey of Employment Tribunal Applications<sup>32</sup> (SETA) in order to provide an indicative distribution of claimants’ incomes in Britain as a whole. The three variables common to both SETA and the FRS that were used to make the adjustment are listed in Annex 4. The findings suggest that ET claimants were more likely to be male, 35-54 years old, in full-time work or unemployed than the adult population of Britain as a whole that year.

4.17 It can therefore be inferred that 11.1% of the ET claimant population would have been entitled to Remission 1 (passported benefits) and that 12.8% of claimants would have been entitled to Remission 2 (gross annual household income beneath a specific threshold) in 2009/10. The position with regard to Remission 3 (monthly disposable household income of a particular amount) is complex. For instance, 16% of ET claimants would have been entitled to a variable discount on fee rates up to £100 in that year’s prices, whereas 53% of claimants would have benefited from a variable discount on fee rates up to £950<sup>33</sup>. The detailed estimates are set out in Annex 5. There is of course uncertainty around the numbers remitted and for modelling purposes, we have assumed that all those eligible for remissions, will apply and receive the correct remission<sup>34</sup>.

4.18 Consequently, it is assumed that in future years 23.9% of claimants would routinely receive a full remission under Remissions 1 and 2; and it is assumed that a variable proportion of claimants would receive a full or partial remission under Remission 3, depending on the exact fee rate charged. Furthermore, it is assumed for simplicity that these distributions are independent of the fee-charging regime and that claimants in receipt of any type of remission would not alter their behaviour in response to fee-charging.

4.19 If some users’ expected costs of bringing a claim now exceed their expected benefits of doing so, the total volume of cases brought to the ET might reduce. Strictly, we would want to quantify and monetise claimants’ loss of “utility” (i.e., satisfaction), including those ‘Option 0’ claimants who no longer choose to bring cases to the ET under this Option. However, measuring and valuing changes in individuals’ utility is not straightforward. A reasonable approximation would be the total change in economic “consumer surplus”, i.e., the difference between the price that consumers pay and the maximum price that they are willing to pay for the good/service. Consumer surplus is usually closely

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<sup>30</sup> A consequence of these scenario assumptions is that, other things being equal, the price elasticity of demand for ET services gradually increases (in absolute terms) from essentially zero as the fee rate rises (in real terms).

<sup>31</sup> Strictly, the Survey (<http://research.dwp.gov.uk/asd/frs/index.php?page=intro>) encompasses all of the United Kingdom as opposed to just Great Britain. However, Northern Ireland represents around 3% of the UK population ([www.statistics.gov.uk/statbase/Product.asp?vlnk=15106](http://www.statistics.gov.uk/statbase/Product.asp?vlnk=15106)), so it is unlikely to have a significant impact on the FRS results for mainland Britain.

<sup>32</sup> [www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008)

<sup>33</sup> These remission estimates have changed since consultation for two reasons. Firstly, we have used FRS 2009/10 as opposed to 2008/09 data. Secondly, due to a modelling error, we underestimated the number of people who would be eligible for Remission 3. However, this did not significantly change the overall results.

<sup>34</sup> In their response, the TUC offered remission eligibility estimates based on an alternative survey (Understanding Society) although it was unclear from their response, how these estimates were derived.

related to willingness-to-pay, which is the amount of money that would restore an individual's original level of utility.<sup>35</sup> But the exact shape of the underlying market demand curve that is needed to calculate consumer surplus is unknown, so the change in claimants' total costs is used as a rough proxy in this Impact Assessment. Depending on the price elasticity of demand, this change will tend to be an underestimate of the change in consumer surplus and thus in utility. A survey of users of the employment tribunal is currently being planned, which should improve our understanding of user responsiveness to price.

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

## Singles

4.21 The following summary tables set out the estimated annual fee revenue that single claimants would pay at 2012/13 prices with respect to "R3" (Remission 3) and "Other claims" where claimants pay the entire issue fee. The figures are rounded to the nearest £0.1m.

Level 1 issue fee: £160

2012/13 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	5,258	£0.1	16,538	£2.6	<b>£2.8</b>
High response	5,258	£0.1	15,462	£2.5	<b>£2.6</b>

Level 2 issue fee: £250

2012/13 £m	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	3,471	£0.2	8,549	£2.1	<b>£2.3</b>
High response	3,471	£0.2	7,672	£1.9	<b>£2.1</b>

4.22 It was stated earlier that on average 23% of jurisdictional complaints were resolved at a hearing. However, this proportion does not relate directly to ET cases. Based on the 2010/11 ET cost model, the following table sets out the estimated proportions of accepted cases that were listed for a hearing and those that actually received a hearing.<sup>36</sup> The former variable is relevant because that would be the point at which the hearing fee must be paid, whereas the latter is important because it represents the share of cases that were actually heard.

Track	Singles		Multiples	
	Listing	Hearing	Listing	Hearing
Short	8%	5%	8%	6%
Standard	56%	38%	58%	40%
Open	20%	14%	21%	14%
<b>Overall</b>	<b>18%</b>	<b>12%</b>	<b>19%</b>	<b>13%</b>

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

<sup>35</sup> See chapter 3 and appendix 3A of "Cost-Benefit Analysis: Concepts and Practice" (2006) by Boardman *et al* for a more detailed discussion of the relationship between consumer surplus, willingness-to-pay and utility.

<sup>36</sup> If the case is resolved after listing, but before a hearing takes place, then the fee payment would be forfeit.

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

Level 1 hearing fee: £230

2012/13 £m	R3 claims	Payment*	Other claims	Payment	TOTAL
Low response	325	£0.0	855	£0.2	<b>£0.2</b>
High response	313	£0.0	746	£0.2	<b>£0.2</b>

\*Estimate less than £0.05m

Level 2 hearing fee: £950

2012/13 £k	R3 claims	Payment	Other claims	Payment	TOTAL
Low response	1,940	£0.7	913	£0.9	<b>£1.6</b>
High response	1,833	£0.6	500	£0.5	<b>£1.1</b>

4.25 A number of claimants would also apply for a statement of written reasons underlying a judgment and/or for the ET to review its decision. As outlined above, on consideration of consultation responses, the Government’s proposal to charge for written reasons does not form part of the final proposal. Data on the proportion of cases accepted at “ET1” stage that result in an application review are not collected specifically with regard to claimants; they are only available for all ET cases by singles and multiples in 2009/10.

4.26 Based on 2009/10 outturns, it is therefore assumed for modelling purposes that half of the ‘single’ accepted case proportions are attributable to claimants and that these proportions are independent of fee-charging and the BIS reforms. The table below which shows the rounded whole numbers of ET single cases that would be predisposed toward making this application under fee-charging.

2009/10

Single cases	Review	No. of cases (low response)	No. of cases (high response)
Short	0.2%	54	52
Standard	1.5%	106	100
Open	0.6%	55	52

4.27 The following summary tables present estimates of the annual amounts paid by single claimants who would apply for reviews under the final policy proposal. The figures are rounded to the nearest £10k.

Review (singles)

2012/13 £k	Level 1*	Level 2	TOTAL
Low response	£0	£30	<b>£30</b>
High response	£0	£30	<b>£30</b>

\*Estimate less than £5k.

## Multiple Claims

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

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

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

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

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

4.31 Estimating the total costs paid by multiple claimants is challenging due to the interaction of representation, demand response, full/partial remission eligibility and the fee-charging regime proposed for this group of claimants.<sup>37</sup> Given these modelling complexities, a number of simplifying assumptions have been made so as to derive the following summary tables which set out the estimated annual fees that multiple claimants would pay at 2012/13 prices. For instance, it is assumed that multiples that have in excess of 10 claimants would not apply for remissions since they are highly likely to be represented and thus have the fee paid on their behalf already. The figures are rounded to the nearest £0.1m and may not sum exactly.

Level 1 fee

2012/13 £m	Payment at issue	Payment at hearing*	TOTAL
Low response	£0.5	£0.0	<b>£0.5</b>
High response	£0.5	£0.0	<b>£0.5</b>

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

Level 2 fee

2012/13 £k	Payment at issue	Payment at hearing	TOTAL
Low response	£0.4	£0.4	<b>£0.9</b>
High response	£0.4	£0.4	<b>£0.8</b>

4.32 Claimants who participate in a multiple would also be able to apply for a review of the ET's decision. In practice, only one claimant in the multiple – or their representative – would make the application with respect to the case at hand.

4.33 As stated above, data on the proportion of cases accepted at “ET1” stage that result in an application review are not collected specifically with regard to claimants; they are only available for all ET cases by singles and multiples in 2009/10.

4.34 Based on 2010/11 outturns, it is therefore assumed for modelling purposes that half of the ‘multiple’ accepted case proportions are attributable to claimants and that these proportions are independent of fee-charging and the BIS reforms. The table below shows the rounded whole numbers of ET multiple cases that would be inclined to make this application, before taking into account the effect of fee-charging with respect to written reasons and ET reviews.

<sup>37</sup> For instance, in an unrepresented multiple of 10 claimants, the total fee payable would be 3 times the single fee – say, £300 in total or £30 each (i.e., 10% of the single fee). But if 2 claimants were entitled to a full remission, the remaining 8 claimants would be asked to pay the total fee of £300. The cost to each paying claimant would therefore be £37.50 (or 37.5% of the single fee). Similarly, if 5 claimants were entitled to a full remission, then the remaining 5 claimants would be asked to pay £60 each (or 60% of the single fee). One can see that, as the numbers of remitted claimants in a multiple rises, so does the individual cost to the remaining paying claimants. This may conceivably cause them to withdraw from the case due to demand response. The consultation invites views on how best to ensure that no one claimant would pay more than the comparable single fee.

2009/10

Multiple cases	Review	No. of cases (low response)	No. of cases (high response)
Short	0.2%	3	3
Standard	1.6%	5	5
Open	0.7%	3	3

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

Review (multiples)

2012/13 £k	Level 1*	Level 2	TOTAL
Low response	£0	£3	<b>£3</b>
High response	£0	£2	<b>£3</b>

\*Estimate less than £0.5k

## Respondents

4.36 Respondents (i.e., employers) would incur direct costs for using ET if they choose to:

- counterclaim in a breach of contract case;
- apply for a review of the ET's decision;
- request the dismissal of a case after it has been settled or withdrawn by the claimant(s).

4.37 As stated earlier, a counterclaim is a breach of contract complaint made by a respondent against a claimant who has alleged breach of contract. In 2009/10 around 0.7% of all single and multiple ET accepted cases involved a counterclaim. For simplicity, therefore, counterclaims are ignored in this Impact Assessment.

4.38 Furthermore, respondents will now be liable to pay a £600 fee to make use of judicial mediation, although this would only be available in a limited number of claims where the judiciary consider it appropriate<sup>38</sup>. In 2009/10 around 0.6% of all single and multiple ET accepted cases involved this type of mediation. Given the advent of free Early Conciliation by Acas, for modelling purposes it is considered unlikely that respondents would choose to pay such a fee in the event that an open track ET claim still proceeds. For modelling purposes, any revenue from this fee category is therefore assumed to be zero in the Impact Assessment.

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

	Singles		Multiples	
	Revoke or review DJ	Dismissal after settlement, etc.	Revoke or review DJ	Dismissal after settlement, etc.
Short	4.5%	20.3%	4.7%	21.4%
Standard	2.0%	19.7%	2.1%	20.4%
Open	0.3%	20.3%	0.4%	21.3%
<b>Average</b>	<b>3.2%</b>	<b>20.3%</b>	<b>3.4%</b>	<b>21.3%</b>

<sup>38</sup> Currently to be considered for mediation by the judiciary a case must include an unfair dismissal or discrimination complaint and have an estimated hearing duration of 3 days or more

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

	Low response				High response			
	Singles		Multiples		Singles		Multiples	
	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal	Revoke	Dismissal
Short	1,279	5,834	64	293	1,231	5,616	63	289
Standard	140	1,361	7	68	132	1,286	7	66
Open	31	1,815	2	91	29	1,715	2	89
<b>Total</b>	<b>1,450</b>	<b>9,011</b>	<b>73</b>	<b>452</b>	<b>1,392</b>	<b>8,616</b>	<b>72</b>	<b>445</b>

4.41 Respondents – as corporate bodies – would not be eligible for a fee remission, so they would have to pay the entire fee if they request a review/revocation of a Default Judgment or dismissal of a claim that had been withdrawn or settled. As with claimants, the price sensitivity of respondents to different fee rates is unknown at present. It is therefore assumed for modelling purposes that respondents' demand would fall by 0.01% per pound (£) of fee under a "low response" scenario and by 0.05% per £ of fee under a "high response" scenario at 2012/13 prices, regardless of whether the originating claim is a single or multiple.

4.42 Given these assumptions, the following table presents estimates of the annual amounts that respondents would pay under the proposed fee-charging regime. The figures are rounded to the nearest £0.1m and they do not sum exactly.

2012/13 £m	Revoke	Dismissal	<b>Total</b>
Low response	£0.2	£0.6	<b>£0.7</b>
High response	£0.1	£0.5	<b>£0.7</b>

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

2009/10 volumes

All cases	ET review	
	(low response)	(high response)
Short	57	55
Standard	111	105
Open	58	55

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

ET Review

2012/13 £k	Level 1	Level 2	<b>TOTAL</b>
Low response	£10	£60	<b>£70</b>
High response	£10	£50	<b>£60</b>

4.45 It should be noted that a proportion of the costs to respondents from the final policy proposal would fall on the public and voluntary sectors as well as the private sector. According to the last SETA, during 2008 around one in five respondents was in the public sector, one in twelve respondents in the

voluntary sector and the majority of respondents were all in the private sector, as illustrated in the next table.<sup>39</sup>

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

4.46 HMCTS does not routinely collect data on the different sizes of respondents. The latest SETA suggests that in 2008 almost half of all respondents were “large” employers and around a quarter were relatively small, as shown in the following table.<sup>40</sup>

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

4.47 However, uncertainty around the effects of fee-charging at different stages of the ET and EAT process means that it has not been possible to estimate the impact of the final policy proposal by size of respondent.

4.48 To reiterate an earlier point, a respondent who is unsuccessful at an ET or EAT hearing may be ordered to pay the fees previously incurred by the claimant, so there may be additional costs for respondents. Equally, however, an unsuccessful claimant may be ordered to pay the fees incurred by the respondent. The proposed power for the tribunal to order the unsuccessful party to pay the fees of the successful party is ignored in this Impact Assessment.

## Appellants

4.49 It was estimated earlier that, following enactment of the proposed BIS employment law reforms, the notional steady state number of appeals disposed may be around 1,400 per year (some 25% less than the average number between 2005/06 and 2009/10) during the remainder of the 2010s. This was on the basis that around 3% of ET accepted cases produced an appeal in the recent past.

4.50 This annual total would be further reduced under fee-charging because the total number of ET cases that could give rise to appeal would be lower and because of demand response due to the introduction of EAT fees. The exact number of appeals that would be made under the final policy proposal is therefore uncertain. However, the following table presents rounded estimates of the number of single and multiple ET accepted cases under fee-charging.

Accepted ET1 cases

Fee level	Low response		High response	
	Singles	Multiples	Singles	Multiples
Short	28,714	1,373	27,639	1,354
Standard	6,923	332	6,540	325
Open	8,934	428	8,440	419
<b>Total</b>	<b>44,571</b>	<b>2,133</b>	<b>42,619</b>	<b>2,098</b>
	<b>46,705</b>		<b>44,717</b>	

4.51 Assuming the 3% rate of appeal remains stable and is independent of ET fee-charging and the BIS reforms, then the number of ET cases that would be predisposed to make an appeal would be around 1,300-1,400 per year, depending on the demand response scenario. The estimated range does not take into account the demand response effect of EAT fee-charging and the distinction between single and multiple claims does not exist in the EAT.

<sup>39</sup> Table 2.5, SETA 2008. The percentages refer to the share of respondents by total number, not by outcome of claim or by size.

<sup>40</sup> Table 2.5, SETA 2008. The percentages refer to the share of respondents by size of organisation, not by outcome of claim or by sector.



4.52 The next table sets out the approximate proportions of all appeals brought by ET claimants (i.e., employees) and ET respondents (i.e., employers) and the proportions of all appeals disposed at a hearing over recent years.<sup>41</sup> It shows that claimants brought twice as many appeals as respondents and that, having brought an appeal, claimants were then more likely to drop out before a hearing for a number of reasons. This information is necessary because it is only individuals who would be eligible for a fee remission.

Year	Received by EAT		Disposed at hearing	
	Respondent	Claimant	Respondent	Claimant
2006/07	36%	64%	46%	54%
2007/08	35%	65%	49%	51%
2008/09	33%	67%	45%	55%
2009/10	30%	70%	38%	62%
2010/11	28%	72%	39%	61%
<b>Average</b>	<b>32%</b>	<b>68%</b>	<b>43%</b>	<b>57%</b>

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

Year	Respondent	Claimant
2006/07	35%	23%
2007/08	39%	22%
2008/09	34%	21%
2009/10	34%	24%
2010/11	31%	19%
<b>Average</b>	<b>35%</b>	<b>22%</b>

4.54 Assuming the same “low”/“high” demand response scenarios for both claimants and respondents who choose to appeal an ET decision and assuming the same distribution among those eligible for remissions as listed in Annex 5, the next summary table presents estimates of the annual revenue that appellants would pay at 2012/13 prices, based on the average distributions set out above which are also assumed to be stable and independent of fee-charging and the BIS reforms. The figures are rounded to the nearest £0.1m.

2012/13 £m Scenario	Application		Hearing		Total payment
	Respondents	Claimants	Respondents	Claimants	
Low response	£0.2	£0.2	£0.2	£0.1	<b>£0.6</b>
High response	£0.1	£0.2	£0.1	£0.1	<b>£0.4</b>

## HMCTS

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

4.56 The figures in the next table are initial estimates of the average additional staff resource costs that would be required to account for fees and to process remissions; they have been produced specifically for the purposes of modelling within this Impact Assessment. In addition, there would be other costs associated with the introduction of fee charging (e.g., estate and IT costs) and these have been also included in the overall Impact Assessment. The figures in the table are not therefore an estimate of the total future unit cost of this work, which would be higher. Moreover, the variation in the estimated costs for dealing with different types of remissions is based on an assumption of a future business processing model within the employment jurisdiction. The cost estimates listed in the table

<sup>41</sup> England & Wales only. Figures for 2005/06 are excluded due to data quality issues.

have been updated to 2012/13 prices and then rounded up to the nearest whole number of pounds to allow for a measure of optimism bias.<sup>42</sup> The estimates will be updated and refined going forwards.

Transaction	2012/13 £
Fee collection	£7
Remission 1	£7
Remission 2	£10
Remission 3	£12

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

#### Low response

2012/13 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.1	£0.2	£0.2	<b>£0.5</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.1</b>	<b>£0.2</b>	<b>£0.3</b>	<b>£0.6</b>

\*Estimate less than £0.05m

#### High response

2012/13 £m	Remission 1*	Remission 2	Remission 3	Fee collection	TOTAL
Claimants	£0.0	£0.1	£0.2	£0.2	<b>£0.5</b>
Respondents				£0.1	<b>£0.1</b>
<b>TOTAL</b>	<b>£0.0</b>	<b>£0.1</b>	<b>£0.2</b>	<b>£0.3</b>	<b>£0.5</b>

\*Estimate less than £0.05m

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

4.59 It is further estimated that there would be around £0.7 million per year in other business costs, e.g., related IT and estate costs for extra staff. This additional annual cost already includes a degree of optimism bias; the estimate will be refined in the coming months. The annual total cost to HMCTS is therefore put at £1-2 million at 2012/13 prices.

## Taxpayers

4.60 Compared to the status quo, UK taxpayers would not incur any additional costs under the final policy proposal.

## Lawyers

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

4.62 The following table presents estimates (rounded to the nearest £100) of the average cost to each claimant and respondent of legal advice and representation in the ET.<sup>43</sup> It is important to note that these figures are averages across all claimants and respondents, regardless of whether they individually obtain legal advice and representation and regardless of the stage of proceedings reached when the claim is disposed.

<sup>42</sup> Strictly, Remission 3 involves the provision of a full or partial remission and collection of the outstanding fee. The £20 cost per transaction is an average estimate across Remission 2 and 3 due to data limitations, so the 'true' cost of Remission 2 is slightly less than £20 and Remission 3 is slightly more than £20.

<sup>43</sup> The estimates have been provided by BIS and are based on various data sources.

2012/13 £	Overall average
Cost to claimant	£700
Cost to respondent	£2,200

4.63 The next table presents rounded estimates of the notional loss in annual income that lawyers would experience as a group due to the potential reduction in demand for legal advice and representation in ET matters.<sup>44</sup> The figures are rounded to the nearest £1m and should be only be interpreted as order-of-magnitude estimates.

2012/13 £	Low response	High response
Loss of income	£2	£9

4.64 It must be noted that the potential loss of some £2-9 million in total income per year at 2012/13 prices implicitly assumes that there are no other opportunities for legal services elsewhere in the UK economy that affected lawyers could meet. This is considered an over-estimate as in reality, the market for lawyers would adjust toward a new equilibrium, thereby offsetting at least some of the potential loss among this group. It is difficult to quantify the size of any market adjustment and the assumed loss in income of this group is therefore best considered as a pessimistic outcome, but it is included here because it is a possible distributional impact.

## Acas

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

4.66 Conceivably, the introduction of fee-charging may encourage an additional rise in the demand for Acas services (e.g., helpline, individual conciliation) as prospective claimants substitute away from the formal ET/EAT system, compared to the base case. This is more likely with respect to single claimants than multiple claimants as the latter are effectively less price sensitive – i.e., lower fee paid per claimant on average, essentially all large multiples represented.

4.67 There is uncertainty about whether and to what extent ET and EAT fee-charging would induce such a substitution effect beyond the introduction of Early Conciliation that is already incorporated in the base case.

### Summary of costs

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

2012/13 £m	Low response	High Response
Claimants*	£9	£8
Respondents*	£1	£1
HMCTS	£1	£1
Taxpayers	£0	£0
Lawyers	£2	£9
<b>TOTAL</b>	<b>£13</b>	<b>£19</b>

\* includes relevant appellants

4.69 Based on a number of assumptions, the table shows that the total annual cost to society of fee-charging would be around £13-19 million per year at 2012/13 prices. It is higher under the “high” demand response scenario largely because of the dominance of the notional income loss to lawyers as a group.

<sup>44</sup> Given its much smaller caseload, the impact on reduced demand for legal advice and representation in the EAT is ignored.

As explained earlier, however, this loss would in reality be significantly less due to a compensating adjustment in the UK market for legal services, but the potential impact is included here for the sake of clarity.

## **Benefits of the final policy proposal**

### *Ongoing benefits*

### **Claimants & Appellants**

4.70 Although not a benefit compared to the base case (as fee-charging does not exist at present), a sub-group of ET claimants and EAT appellants would receive full or partial fee remission if they individually meet one of the three existing remission criteria – i.e., in receipt of a passported state benefit (Remission 1), having a gross annual household income beneath a specific threshold (Remission 2) or a monthly disposable household income being assessed as £50 or more (Remission 3). These remissions are granted so as to protect access to justice among low income households and individuals.

4.71 The prevailing HMCTS civil courts remission system is extended to the ET and EAT. The following summary table presents estimates of the total fee remissions given to claimants and appellants as a group. The figures are rounded to the nearest £0.1m.

2012/13 £m	Remission 1	Remission 2	Remission 3	<b>TOTAL</b>
Low response	£1.6	£1.8	£2.9	<b>£6.4</b>
High response	£1.6	£1.8	£2.9	<b>£6.2</b>

4.72 The preceding table shows that, given all of the preceding assumptions, in the absence of the remissions system, HMCTS would notionally receive in the region of an additional £6m. However, it is expected that most of this group of claimants would not apply if no remissions system was in place.

4.73 Compared to the base case, ET claimants as a group would benefit from avoiding the various costs involved with making a claim – including the cost of any legal advice and representation – due to the expected reduction in demand for ET services. The next table presents an estimate (rounded to the nearest £100) of the average gain to claimants of not pursuing an ET claim.<sup>45</sup>

2012/13 £	Overall average
Gain to claimant	£1,300

4.74 It is important to note that this figure is an average across all claimants, regardless of whether they individually obtain legal advice and representation and regardless of the stage of proceedings reached when the claim is disposed. The next table presents estimates of the approximate gain that claimants would collectively experience due to the reduction in this group's demand.<sup>46</sup> The figures are rounded to the nearest £1m and should be viewed as order-of-magnitude estimates.

2012/13 £m	Low response	High response
Total gain	£2	£6

### **Respondents**

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

4.76 The next table presents an estimate rounded to the nearest £100 of the average gain to respondents of not having to defend an ET claim.<sup>47</sup>

<sup>45</sup> The estimates have been provided by BIS and are based on various data sources.

<sup>46</sup> Given its much smaller caseload, the impact of reduced demand for appeals to the EAT is ignored.

<sup>47</sup> The estimates have been provided by BIS and are based on various data sources.

2012/13 £	Overall average
Gain to respondent	£3,800

4.77 It is important to note that this figure is an average across all respondents, regardless of whether they individually obtain legal advice and representation and regardless of the stage of proceedings reached when the claim is disposed. The next table presents estimates of the approximate gain that respondents would collectively experience due to the reduction in this group's demand.<sup>48</sup> The figures are rounded to the nearest £1m because they are only order-of-magnitude estimates.

2012/13 £m	Low response	High response
Total gain	£2	£10

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

## HMCTS

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

4.80 The economic benefit to HMCTS is the operational savings that would result from the reduced demand for claims and appeals at the ET and EAT respectively.<sup>49</sup> The following table sets out estimates of what would be the annual cost of operating the ET and EAT under the base case and what would be the change in total cost due to reduced user demand. The figures are rounded to the nearest £0.1m, but they should not be regarded as precise at this level of aggregation and they may not sum exactly.

2012/13 £m	Steady state	Low response	High response
E.T.	£45.4	-£1.6	-£4.7
E.A.T.	£2.1	-£0.2	-£0.8
<b>TOTAL</b>	<b>£47.5</b>	<b>-£1.7</b>	<b>-£5.5</b>

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

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

## Taxpayers

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

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

<sup>48</sup> Given its much smaller caseload, the impact of reduced demand for appeals to the EAT is ignored.

<sup>49</sup> Strictly, one would measure the change in "producer surplus" – namely, the difference between the price that a firm receives and the price at which it would be willing to sell particular quantities of the good/service. The expected decline in demand brought about by the introduction of fee-charging would also technically reduce producer surplus, but since the exact shape of the supply curve is unknown and since HMCTS is an entirely publicly funded body, the fall in annual operating costs are represented here as a gain to the organisation and ultimately to taxpayers.

2012/13 £m	Fee income	Cost saving	TOTAL
Low response	£10	£2	£11
High response	£9	£6	£14

4.85 The table suggests that taxpayers' total gain in the region of £11-14 million per year at 2012/13 prices under the proposed fee-charging regime.

## Lawyers

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

## Acas

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

## Wider benefits

4.88 The ET and EAT are completely subsidised by the taxpayer at present. Their services are therefore provided free of charge to users, which means that consumption is higher than would be the case under full cost recovery. Economic theory holds that in a conventional market this higher level of consumption results in a technical 'deadweight loss' to society as the additional gain to consumers and producers is outweighed by the additional cost to the taxpayer.<sup>50</sup> Reducing the extent of public subsidy through fee-charging would tend to lower these technical deadweight losses, other things being equal.

4.89 However, uncertainty about the exact shape of the demand and supply curves for ET and EAT services means that it is not possible to produce a reliable estimate of the overall gain in economic efficiency that fee-charging may bring about.

### *Summary of benefits*

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

2012/13 £m	Low response	High Response
Claimants	£2	£6
Respondents	£2	£10
HMCTS	£2	£6
Taxpayers*	£10	£9
Lawyers	£0	£0
<b>TOTAL</b>	<b>£15</b>	<b>£30</b>

\* avoided contribution due to fee income raised

4.91 Based on a number of assumptions, the table suggests that the total gain to society from the proposed fee-charging regime would be some £15-30 million per year at 2012/13 prices. It is higher under the "high" demand response scenario partly because of the dominance of the gain to respondents (i.e., employers) as a group who avoid the various costs – including legal advice and representation – of dealing with an ET claim, compared to the base case.

### *Net Impact of the final policy proposal*

<sup>50</sup> This assumes that there are no positive externalities from consumption. In other words, ET and EAT use does not lead to gains to society that exceed the sum of the gains to consumers and producers of these services.

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

2012/13 £m	Low response	High Response
Claimants	-£7	-£2
Respondents	£1	£9
HMCTS	£0	£4
Taxpayers*	£10	£9
Lawyers	-£2	-£9
<b>TOTAL</b>	<b>£2</b>	<b>£11</b>

\* avoided contribution due to fee income raised

4.93 Compared to the base case, ET claimants who are not entitled to a full or partial remission would be worse off (though successful ET claimants who win their claims at a hearing would not be financially worse off if the tribunal orders the respondent to reimburse the successful party's fees). ET claimants who are entitled to a full remission would see no change. Although some claim-related costs would be avoided due to reduced demand for tribunal services, these would be more than offset by the impact of fee-charging, even taking remissions into account, for the group of claimants as a whole.

4.94 Respondents (i.e., employers) would be generally better off as a group. While some new costs would arise from the imposition of certain fees, these are more than offset by the avoidance of claim-related costs due to reduced demand for tribunal services, other things being equal.

4.95 HMCTS as an organisation would tend to be better off. It would incur new costs from the introduction and administration of an ET/EAT fee payment and remission system, but these would tend to be offset by a reduction in the demand for tribunal services.

4.96 UK taxpayers collectively would be unambiguously better off because their subsidy would be partly replaced by the income raised from user fees. Taxpayers would also benefit from the decline in demand for tribunal services, compared to the base case, although this element has been captured separately as a benefit to HMCTS for the purposes of illustration.

4.97 Lawyers as a group may be worse off, although in reality the UK market for legal service would adjust, which means that the notional loss of income would probably be lower than the figures suggested here.

4.98 Overall, the quantified net benefit to society of the final policy proposal would be around £2-11 million per year at 2012/13 prices. However, it must be noted that this estimated range is subject to uncertainty and that it includes the estimated impact on lawyers that is a pessimistic outcome.

## 5. Risks and Assumptions

5.1 ET and EAT statistical data are subject to detailed checks and validation prior to its publication to ensure that data is accurate. All statistical data included in this Impact Assessment is based on figures up to 2010/11 because at the time of development this was the latest available information. For our notional equilibrium, we have chosen to use volume data from 2005/06-2009/10. Thus any short-term fluctuations in volumes will impact on the outcomes described in the IA.

5.2 Reliable long-term forecasts of demand for ET and EAT services do not exist because the underlying drivers of user behaviour are not well understood at present. A notional equilibrium based on recent historic data has been derived so as to infer a base case of what would happen over the coming years in the absence of fee-charging and given the proposed BIS reforms to employment law. In reality, the status quo level of demand could be higher or lower than indicated during any given year.

5.3 The price elasticity of demand for ET and EAT services is unknown because fee-charging has never existed. Two scenarios have been used to represent what is currently considered to be a plausible

range of price sensitivity, but the risk remains that users (who would not benefit from a fee remission) would react more strongly than is currently anticipated.

5.4 Consultation responses highlighted the possibility of “strategic behaviour”, such as respondents refusing to negotiate on settlements until the claimant has paid the hearing fee. Whilst such strategic behaviour could occur, it is impossible to predict or quantify. So, for modelling purposes, this Impact Assessment assumes that users of the Employment Tribunals will not act in this way to the introduction of fees.

5.5 The number of individual claimants who would receive a full or partial fee remission have been estimated using results from the 2009/10 Family Resources Survey, which is a comprehensive dataset of around 24,000 private households in the UK (the inclusion of Northern Ireland households is not believed to be significant), plus an adjustment to reflect some characteristics of the ET claimant population. As well as possibly failing to produce an accurate distribution of ET claimants’ incomes in 2008/09, it is unknown how stable this estimated distribution would be in future years. The additional use of simplifying assumptions in the Impact Assessment means that, in general, there is a risk that the number of claimants and appellants who would qualify for a full or partial remission could be significantly higher or lower than estimated.

5.6 The Department for Work & Pensions (DWP) has announced plans to introduce a Universal Credit in late 2013. This may also affect the number of claimants and appellants who would be entitled to a full or partial fee remission given the use of passported state benefits in the current civil courts remission system. In addition, the scope of the HMCTS civil courts remission system may itself change in future years. The outcome and any proposals which impact on ET and EAT fee-charging will be considered and addressed if necessary.

5.7 BIS has consulted on various reforms to Britain’s system of employment dispute resolution. While the Impact Assessment has sought to take account of these proposals in formulating a base case, there remains a risk that – depending on the precise options taken forward – the number of ET and EAT cases submitted could differ significantly from the estimates presented, even in the absence of fee-charging. The possible impact on the average total cost of processing an ET claim at each stage is estimated to be relatively modest at around £1 million p.a. at today’s prices in total. This effect has therefore been ignored in the Impact Assessment. However, the average costs of the ET and EAT have been explicitly adjusted to take account of the reforms for this document.

5.8 It is proposed that if an ET claimant is successful at a hearing, then the tribunal can order the respondent to reimburse any fees paid. However, if the claimant is unsuccessful at a hearing, then the tribunal can order the claimant to reimburse any fees paid by the respondent. Given that in any year this reimbursement would apply simultaneously to sub-groups of claimants and respondents, this effect has been ignored. Fee income from counterclaims and the benefit to ET claimants and respondents from lower demand for appeals have also been ignored given the relatively small volumes involved.

5.9 The policy intention is to include a discretionary power for the Lord Chancellor to be able to exempt claimants from paying fees in exceptional or compelling circumstances. This exception has not been included in the Impact Assessment.

5.10 It is not currently expected that there would be any significant changes in workplace behaviour beyond the reduction in demand for ET and EAT services as a result of fee-charging.

5.11 Given all the assumptions and risks articulated above, it is important to note that the estimates of annual fee revenue paid by claimants, respondents and appellants as well as any HMCTS operational savings may in reality be higher or lower than indicated in the Impact Assessment.

## **6. Enforcement and implementation**

6.1 The fees order will provide that, without either payment or supporting evidence for either full or partial remission, a claim will not proceed beyond an appropriate point. If the fee is paid or a full or partial remission granted, the claim would continue on receipt of the contribution and clearance of funds. If no fee or application for fee remission is received all received paperwork will be returned and the claimant is advised of the fee due and the remission system.



6.2 This means that debt recovery would not arise and that HMCTS would not incur any significant costs if the relevant fees are not paid when due. Payment and money handling systems would be designed to minimise the opportunity for fraud.

6.3 The proposed policy falls outside the scope of the “One In, One Out” rule because it relates to the introduction of user fees by a public body – namely, HMCTS – for cost recovery purposes only.

## **7. Specific Impact Tests**

### **Equalities Impact Test**

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

### **Competition Assessment**

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

### **Small Firms Impact Test**

7.3 Any enterprise with employees could potentially have a dispute with one of its employees that ends up being resolved at an Employment Tribunal. The proposals apply to all enterprises irrespective of their size.

7.4 Assessment of the potential impact of additional capacity on small firms has relied on the Department for Business, Innovation and Skill’s Small Firms Impact Assessment Guidance (January 2009). Although the last SETA found that a majority of claims brought involved larger employers<sup>51</sup> as the respondent, around a quarter of all respondents were smaller businesses – i.e., less than 25 employees across the organisation as a whole.

7.5 This group of employers would be affected by the introduction of fee-charging to the extent that, if a claimant succeeds at a hearing, they may be ordered to meet the cost of the fees incurred by the claimant, in addition to their existing liability to meet the cost of the award as well as their own cost of defending the case. Small firms would, additionally, be required to pay a user fee if they choose to appeal against an ET decision or to bring a counterclaim against the claimant in a breach of contract case.

7.6 The potential impact of these proposals on small firms should be mitigated by proposals set out in BIS’s “Resolving Workplace Disputes” consultation document which are intended to benefit all employers by streamlining and simplifying the employment tribunal system. Moreover, small firms would benefit from the expected fall in the total number of ET cases that the introduction of fee-charging would bring about, other things being equal.

### **Carbon Assessment**

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

### **Other Environment**

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

### **Health Impact Assessment**

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<sup>51</sup> According to table 2.5 of SETA 2008, around 73% of respondents by size of organisation had 25 or more employees.

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

## **Human Rights**

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

## **Justice Impact Test**

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

## **Rural proofing**

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

## **Sustainable Development**

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

# Annex 1: Post Implementation Review (PIR) Plan

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

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

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

The review will seek to:

- Ensure that those who use the ET system, and can afford to pay, do pay a fee as a contribution to the cost of administering their claim/appeal;
- Ensure that the remissions system acts ensures that only those who can afford to pay a fee do so;
- Ensure that the fee charging process is simple to understand and to administer;
- Examine impacts on equality groups; and
- Verify the amount of fee income raised against the models presented in the Impact Assessment and quantify any operational savings.

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

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

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

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

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

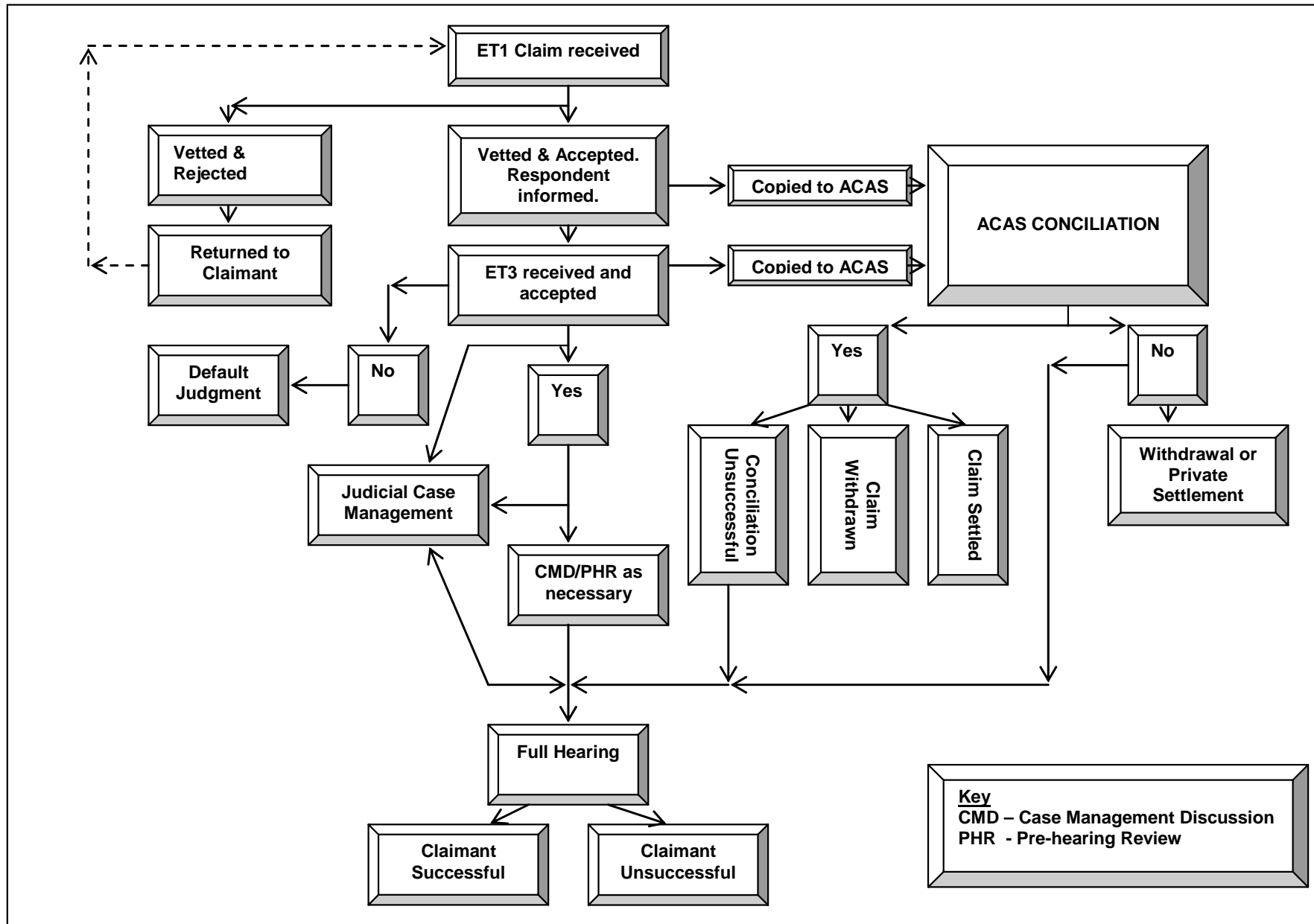
The ETs and EAT will maintain service to users on reduced taxpayer funding, using fee income to balance their budget, without restricting access to justice or disproportionately affecting equality groups and providing users with a service that meets HMCTS service standards.

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

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

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

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



## Annex 3: Draft schedule of fee levels to which ET complaints are to be allocated

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffer a detriment and/or dismissal resulting from a failure to allow an employee to be accompanied or to accompany a fellow employee at a disciplinary/grievance hearing	ERelA 1999 s.10–12	Level 2	£250	£950
Application for a declaration that the inclusion of discriminatory terms/rules within certain agreements or rules causes the aforesaid to be invalid	E A 2010 s.145 and 146(1)	Level 1	£160	£230
Application by an employee, their representative or trade union for a protective award as a result of an employer's failure to consult over a redundancy situation	TULR(C)A 1992 s.188–189	Level 2	£250	£950
Breach of Contract	Breach of contract and s.3 ETA 1996 & SI 1994/1623 and (in Scotland) SI 1994/1624	Level 1	£160	£230
Failure of the employer to consult with an employee representative or trade union about a proposed contracting out of a pension scheme	Reg 4 of OPS(CO)R 1996	Level 1	£160	£230
Application or complaint by the EHRC in respect of discriminatory advertisements or instructions or pressure to discriminate (including preliminary action before a claim to the county court)	E A 2010 s.13–14, 19, 26–27 and 120	Level 1	£160	£230
Suffered a detriment, discrimination, including indirect discrimination, harassment or victimisation or discrimination based on association or perception on grounds of age	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, and discrimination based on association or perception, harassment or victimisation and/or dismissal on grounds of disability or failure of employer to make reasonable adjustments	E A 2010 s.13–15, 19 – 21, 26–27, 120 and Schedule 8	Level 2	£250	£950

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffered a detriment and/or dismissal resulting from requiring time off for other (non-work but not Health and Safety) duties, study, training or seeking work	ERA 1996 s.46–48, 102–103, 105, 108 and 111	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of religion or belief	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sexual orientation	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Application by the Secretary of State for Business, Innovation & Skills to prohibit a person from running an Employment Agency	Employment Agencies Act 1973 s3A and 3C	Level 1	£160	£230
Failure to provide equal pay for equal value work	E A 2010 s.64, 120, 127 and 128	Level 2	£250	£950
Failure of the employer to consult with an employee rep. or trade union about a proposed transfer	TUPE 2006 Reg 13–15	Level 2	£250	£950
Suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure	ERA 1996 s.47E, 80F–80G 94 and 104C FWR 2002	Level 2	£250	£950
Application by an employee that an employer has failed to pay a protected award as ordered by a tribunal	TULR(C)A 1992 s.190 and 192	Level 1	£160	£230
Failure to pay remuneration whilst suspended from work for health and safety reasons whilst pregnant or on mat. leave	ERA 1996 s.67–68D and 70	Level 1	£160	£230
Failure to provide a written statement of terms and conditions and any subsequent changes to those terms	ERA 1996 s.1, 4, 8 and 11	Level 1	£160	£230
Suffered less favourable treatment and/or dismissal as a fixed term employee, than a full time employee or, on becoming permanent, failed to receive a written statement of confirmation from employer	FTE 2002 Regs 3, 6 to 9	Level 2	£250	£950
Failure to allow time off for trade union activities or duties, for ante-natal care or for public duties	TULR(C)A 1992 s.168–170; ERA 1996 s.50, 55 and 56	Level 1	£160	£230
Failure to provide a guarantee payment	ERA 1996 s.28–34	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Failure to pay remuneration whilst suspended for medical reasons	ERA 1996 s.64 and 70	Level 1	£160	£230
Failure to allow time off to seek work during a redundancy situation	ERA 1996 s.52	Level 1	£160	£230
Failure of an employer to comply with an award by a tribunal following a finding that the employer had previously failed to consult about a proposed transfer of an undertaking	TULR(C)A 1992 s.188, 188A, 190 and 192	Level 1	£160	£230
Failure to allow or to pay for time off for care of dependants, union learning representatives duties, pension scheme trustee duties, employee representatives duties, young person studying/training and European Works Council duties	ERA 1996 s 57A to 63C TICER 1999 Reg 25, 26, 27	Level 2	£250	£950
Failure to provide a written pay statement or an adequate pay statement	ERA 1996 s.8, 9 and 11	Level 2	£250	£950
Failure to provide a written statement of reasons for dismissal or the contents of the statement are disputed	ERA 1996 s.92 and 93	Level 2	£250	£950
Appeal against an enforcement, improvement or prohibition notice imposed by the HSE or Environmental Health Inspector, or by the Environment Agency	REACH Regs 2008, reg 21 or HSWA 1974 s.24(2) or COMAH 1999 s.18	Level 1	£160	£230
Failure to pay for or allow time off to carry out Safety Rep duties or undertake training	Health & Safety at Work etc Act 1974 s.48 and 80 SRSC 1977 Reg. 4, 11; HSCE 1996 Reg. 7, Sch. 1	Level 1	£160	£230
Suffer a detriment, dismissal or redundancy for health and safety reasons	ERA 1996 s.44, 48, 94, 100, 105 and 111	Level 2	£250	£950
Application for interim relief	ERA 1996 s.128 or TULR(C)A 1992 s161–167	Level 2	£250	£950
Failure by the SOS to make an insolvency payment in lieu of wages and/or redundancy	ERA 1996 s182 and 188	Level 1	£160	£230
Appeal against the levy assessment of an Industrial Training Board	Relevant Industrial Training Levy Order – either Construction or Engineering Construction Board	Level 1	£160	£230

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



Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of race or ethnic origin	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffer a detriment and/or dismissal for refusing to work on a Sunday	ERA 1996 s.45, 48, 94 101, 105 and 111	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sex, marriage and civil partnership or gender reassignment	E A 2010 s.13–14, 16, 18, 19, 26–27 and 120	Level 2	£250	£950
Suffered less favourable treatment and/or dismissal as a temp. employee than a full time employee	FTE Regs 2002	Level 2	£250	£950
Suffer discrimination in obtaining employment due to membership or non-membership of a trade union; or refused employment or suffered a detriment for reasons related to a blacklist.	TULR(C)A 1992 s.137 and 139 ERA 1999 s.104F ERA 1999 (Blacklist) Regs 2010 (SI 2010/493)	Level 2	£250	£950
Suffer a detriment and/or dismissal relating to being, not being or proposing to become a trade union member	TULR(C)A 1992 s.145A–145C, 146–147 and 152–160 ERA 1996 Part X	Level 2	£250	£950
(a) Failure of the employer to consult or report about training in relation to a bargaining unit (b) Suffered a detriment on grounds related to recognition of a trade union for collective bargaining	TULR(C)A 1992 s.70A –70A and Schedule A1 paras 156–157	Level 2	£250	£950
Suffer discrimination in obtaining the services of an employment agency due to membership or non-membership of a trade union	TULR(C)A 1992 s.138 and 139	Level 2	£250	£950
Suffered a detriment and/or dismissal due to exercising rights under the Tax Credits Act	ERA 1996 s.47D, 48, 104B, 105, 108–109 and 111	Level 2	£250	£950
Unfair dismissal after exercising or claiming a statutory right	ERA 1996 s.104, 105, 108–109 and 111	Level 2	£250	£950
Unfair dismissal on grounds of capability, conduct or some other general reason including the result of a transfer of an undertaking	ERA 1996 s.98 and 111	Level 2	£250	£950

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

## Annex 4: Comparison of 2009/10 Family Resources Survey (FRS) and 2008 Survey of Employment Tribunal Applications (SETA) distributions

### Gender

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

### Age

Survey	16-24	25-34	35-44	45-54	55-64	65+
FRS	12%	16%	19%	17%	15%	20%
SETA	10%	20%	26%	26%	17%	1%

### Employment status

Survey	Full time working	Part time working	Self employed	Unemployed and looking for work	Retired	Student	Permanently sick/ disabled	Temporarily sick	Looking after home	Other
FRS	40%	12%	7%	4%	22%	3%	5%	0%	4%	3%
SETA	51%	13%	10%	11%	5%	1%	3%	1%	1%	4%

In SETA "Other" includes those unemployed and not looking for work, carer/looking after children, maternity leave and in temporary work.  
Employment status relates to the period in which the survey took place.

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

## Annex 5: Estimated shares of ET claimant population that would receive Remission 3, 2009/10 basis

Disposable monthly income (2009/10 £)	Contribution required (2009/10 £)	Contribution required (2012/13 £)	Share of adult population in band	Cumulative share of population below upper limit	Disposable monthly income (2009/10 £)	Contribution required (2009/10 £)	Contribution required (2012/13 £)	Share of adult population in band	Cumulative share of population below upper limit	Disposable monthly income (2009/10 £)	Contribution required (2009/10 £)	Contribution required (2012/13 £)	Share of adult population in band	Cumulative share of population below upper limit
0-49	0.00	0.00	12.49%	12.5%	630-639	265.00	285.37	0.18%	23.20%	1220-1229	560.00	603.05	0.23%	37.6%
50-59	12.50	13.46	0.14%	12.6%	640-649	270.00	290.76	0.42%	23.62%	1230-1239	565.00	608.44	0.28%	37.8%
60-69	15.00	16.15	0.16%	12.8%	650-659	275.00	296.14	0.19%	23.81%	1240-1249	570.00	613.82	0.21%	38.1%
70-79	17.50	18.85	0.10%	12.9%	660-669	280.00	301.53	0.24%	24.05%	1250-1259	575.00	619.21	0.22%	38.3%
80-89	20.00	21.54	0.09%	13.0%	670-679	285.00	306.91	0.18%	24.23%	1260-1269	580.00	624.59	0.18%	38.5%
90-99	22.50	24.23	0.13%	13.1%	680-689	290.00	312.30	0.26%	24.49%	1270-1279	585.00	629.97	0.25%	38.7%
100-109	25.00	26.92	0.14%	13.3%	690-699	295.00	317.68	0.25%	24.74%	1280-1289	590.00	635.36	0.20%	38.9%
110-119	27.50	29.61	0.15%	13.4%	700-709	300.00	323.06	0.21%	24.95%	1290-1299	595.00	640.74	0.22%	39.1%
120-129	30.00	32.31	0.12%	13.5%	710-719	305.00	328.45	0.16%	25.11%	1300-1309	600.00	646.13	0.25%	39.4%
130-139	32.50	35.00	0.12%	13.6%	720-729	310.00	333.83	0.23%	25.34%	1310-1319	605.00	651.51	0.18%	39.5%
140-149	35.00	37.69	0.16%	13.8%	730-739	315.00	339.22	0.25%	25.59%	1320-1329	610.00	656.90	0.23%	39.8%
150-159	37.50	40.38	0.14%	13.9%	740-749	320.00	344.60	0.21%	25.81%	1330-1339	615.00	662.28	0.22%	40.0%
160-169	40.00	43.08	0.14%	14.1%	750-759	325.00	349.99	0.24%	26.05%	1340-1349	620.00	667.67	0.24%	40.2%
170-179	42.50	45.77	0.13%	14.2%	760-769	330.00	355.37	0.20%	26.25%	1350-1359	625.00	673.05	0.16%	40.4%
180-189	45.00	48.46	0.19%	14.4%	770-779	335.00	360.75	0.28%	26.53%	1360-1369	630.00	678.43	0.19%	40.6%
190-199	47.50	51.15	0.13%	14.5%	780-789	340.00	366.14	0.28%	26.81%	1370-1379	635.00	683.82	0.27%	40.9%
200-209	50.00	53.84	0.14%	14.7%	790-799	345.00	371.52	0.27%	27.08%	1380-1389	640.00	689.20	0.15%	41.0%
210-219	55.00	59.23	0.21%	14.9%	800-809	350.00	376.91	0.27%	27.34%	1390-1399	645.00	694.59	0.09%	41.1%
220-229	60.00	64.61	0.20%	15.1%	810-819	355.00	382.29	0.26%	27.60%	1400-1409	650.00	699.97	0.23%	41.3%
230-239	65.00	70.00	0.18%	15.2%	820-829	360.00	387.68	0.22%	27.82%	1410-1419	655.00	705.36	0.24%	41.6%
240-249	70.00	75.38	0.20%	15.4%	830-839	365.00	393.06	0.16%	27.99%	1420-1429	660.00	710.74	0.23%	41.8%
250-259	75.00	80.77	0.13%	15.6%	840-849	370.00	398.45	0.19%	28.17%	1430-1439	665.00	716.13	0.21%	42.0%
260-269	80.00	86.15	0.16%	15.7%	850-859	375.00	403.83	0.21%	28.39%	1440-1449	670.00	721.51	0.16%	42.2%
270-279	85.00	91.53	0.11%	15.8%	860-869	380.00	409.21	0.19%	28.58%	1450-1459	675.00	726.89	0.18%	42.3%
280-289	90.00	96.92	0.19%	16.0%	870-879	385.00	414.60	0.24%	28.81%	1460-1469	680.00	732.28	0.19%	42.5%
290-299	95.00	102.30	0.17%	16.2%	880-889	390.00	419.98	0.24%	29.06%	1470-1479	685.00	737.66	0.21%	42.8%
300-309	100.00	107.69	0.22%	16.4%	890-899	395.00	425.37	0.30%	29.36%	1480-1489	690.00	743.05	0.22%	43.0%
310-319	105.00	113.07	0.16%	16.6%	900-909	400.00	430.75	0.23%	29.58%	1490-1499	695.00	748.43	0.18%	43.2%
320-329	110.00	118.46	0.18%	16.8%	910-919	405.00	436.14	0.25%	29.83%	1500-1509	700.00	753.82	0.24%	43.4%
330-339	115.00	123.84	0.16%	16.9%	920-929	410.00	441.52	0.31%	30.14%	1510-1519	705.00	759.20	0.21%	43.6%
340-349	120.00	129.23	0.15%	17.1%	930-939	415.00	446.91	0.22%	30.36%	1520-1529	710.00	764.58	0.19%	43.8%
350-359	125.00	134.61	0.25%	17.3%	940-949	420.00	452.29	0.27%	30.63%	1530-1539	715.00	769.97	0.18%	44.0%
360-369	130.00	139.99	0.23%	17.5%	950-959	425.00	457.67	0.24%	30.87%	1540-1549	720.00	775.35	0.18%	44.2%
370-379	135.00	145.38	0.17%	17.7%	960-969	430.00	463.06	0.34%	31.22%	1550-1559	725.00	780.74	0.18%	44.3%
380-389	140.00	150.76	0.24%	18.0%	970-979	435.00	468.44	0.20%	31.41%	1560-1569	730.00	786.12	0.20%	44.5%
390-399	145.00	156.15	0.18%	18.1%	980-989	440.00	473.83	0.26%	31.68%	1570-1579	735.00	791.51	0.24%	44.8%
400-409	150.00	161.53	0.17%	18.3%	990-999	445.00	479.21	0.28%	31.95%	1580-1589	740.00	796.89	0.19%	45.0%
410-419	155.00	166.92	0.19%	18.5%	1000-1009	450.00	484.60	0.27%	32.22%	1590-1599	745.00	802.28	0.19%	45.2%
420-429	160.00	172.30	0.19%	18.7%	1010-1019	455.00	489.98	0.25%	32.47%	1600-1609	750.00	807.66	0.25%	45.4%
430-439	165.00	177.69	0.20%	18.9%	1020-1029	460.00	495.36	0.27%	32.74%	1610-1619	755.00	813.04	0.15%	45.6%
440-449	170.00	183.07	0.17%	19.1%	1030-1039	465.00	500.75	0.16%	32.90%	1620-1629	760.00	818.43	0.21%	45.8%
450-459	175.00	188.46	0.23%	19.3%	1040-1049	470.00	506.13	0.25%	33.15%	1630-1639	765.00	823.81	0.21%	46.0%
460-469	180.00	193.84	0.15%	19.4%	1050-1059	475.00	511.52	0.28%	33.42%	1640-1649	770.00	829.20	0.21%	46.2%
470-479	185.00	199.22	0.18%	19.6%	1060-1069	480.00	516.90	0.31%	33.73%	1650-1659	775.00	834.58	0.15%	46.3%
480-489	190.00	204.61	0.21%	19.8%	1070-1079	485.00	522.29	0.25%	33.98%	1660-1669	780.00	839.97	0.24%	46.6%
490-499	195.00	209.99	0.24%	20.1%	1080-1089	490.00	527.67	0.18%	34.16%	1670-1679	785.00	845.35	0.25%	46.8%
500-509	200.00	215.38	0.23%	20.3%	1090-1099	495.00	533.06	0.22%	34.38%	1680-1689	790.00	850.74	0.22%	47.0%
510-519	205.00	220.76	0.17%	20.5%	1100-1109	500.00	538.44	0.19%	34.57%	1690-1699	795.00	856.12	0.16%	47.2%
520-529	210.00	226.14	0.17%	20.6%	1110-1119	505.00	543.82	0.27%	34.83%	1700-1709	800.00	861.50	0.14%	47.4%
530-539	215.00	231.53	0.19%	20.8%	1120-1129	510.00	549.21	0.30%	35.14%	1710-1719	805.00	866.89	0.15%	47.5%
540-549	220.00	236.91	0.22%	21.0%	1130-1139	515.00	554.59	0.26%	35.39%	1720-1729	810.00	872.27	0.20%	47.7%
550-559	225.00	242.30	0.28%	21.3%	1140-1149	520.00	559.98	0.30%	35.69%	1730-1739	815.00	877.66	0.13%	47.8%
560-569	230.00	247.68	0.26%	21.6%	1150-1159	525.00	565.36	0.21%	35.90%	1740-1749	820.00	883.04	0.17%	48.0%
570-579	235.00	253.07	0.14%	21.7%	1160-1169	530.00	570.75	0.29%	36.19%	1750-1759	825.00	888.43	0.22%	48.2%
580-589	240.00	258.45	0.26%	22.0%	1170-1179	535.00	576.13	0.19%	36.38%	1760-1769	830.00	893.81	0.19%	48.4%
590-599	245.00	263.84	0.28%	22.3%	1180-1189	540.00	581.52	0.23%	36.61%	1770-1779	835.00	899.19	0.12%	48.5%
600-609	250.00	269.22	0.26%	22.5%	1190-1199	545.00	586.90	0.24%	36.85%	1780-1789	840.00	904.58	0.15%	48.7%
610-619	255.00	274.60	0.30%	22.8%	1200-1209	550.00	592.28	0.27%	37.12%	1790-1799	845.00	909.96	0.25%	48.9%
620-629	260.00	279.99	0.19%	23.0%	1210-1219	555.00	597.67	0.22%	37.3%	1800-1809	850.00	915.35	0.16%	49.1%

\* each range ends with .99p