BIS | Department for Business Innovation & Skills

Resolving workplace disputes: A Consultation

IMPACT ASSESSMENT

JANUARY 2011

Title:	Impact Assessment (IA)
Resolving workplace disputes	**IA No:** BIS 0202
Lead department or agency:	**Date: 10/01/2011**
BIS & Ministry of Justice	**Stage:** Consultation
Other departments or agencies:	**Source of intervention:** Domestic
Tribunals Service	**Type of measure:** Other
Acas	**Contact for enquiries:** Amy Newland/Gail Davis 020 7215 6714/3859

Summary: Intervention and Options

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

Throughout the recession claims to employment tribunals have continued to rise markedly to the point where there have been challenges to the system in terms of balancing claims and determinations. Meeting that pressure has cost additional money. At the same time, business continues to believe that the tribunal system is weighted more in favour of the claimant. There is evidence that demonstrates that if disputes are resolved in the workplace this is far less costly to both parties, delivers more positive results in terms of continued employment, and saves money for the Government by reducing demand on the Tribunals Service.

What are the policy objectives and the intended effects?

The intention of these proposals considered together is to:

- Support and encourage parties to resolve disputes earlier, and where possible in the workplace, thereby reducing the number of claims which reach an employment tribunal.
- Ensure that where parties do need to go to employment tribunal, cases are dealt with more swiftly and efficiently to reduce the costs borne by all parties.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Thirteen different policy proposals have been considered: 1) Require all claims to be submitted to Acas in the first instance to offer pre-claim conciliation, 2) Stronger case management powers for weak and unmeritorious cases, 3) Provision of information, 4) Formalising offers to settle, 5) Witness statements to be taken as read, 6) Withdrawing payment of expenses for employment tribunals, 7) Extend the jurisdictions where judges can sit alone, 8) introduce the use of legal officers, 9) Elaborating the overriding objective, 10) Introducing fee charging, 11) Increase qualification periods for unfair dismissal, 12) Introduce financial penalties for employers and 13) Reviewing calculation of limits for employment tribunal awards and redundancy. Proposals 9 and 13 are not assessed further in this impact assessment - proposal 9 refers to the Rules of Procedure, constituting guidance for tribunals and their Judges/Members in relation to the behaviours needed to achieve an overriding objective. Neither is expected to impose burdens, but both will be considered further over the consultation period.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed in 2016
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

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

Signed by the responsible SELECT SIGNATORY:  ..... Date:10 January 2011.....

Summary: Analysis and Evidence

Overarching

Description:

Overarching assessment - summary of costs and benefits

Price base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***Optional***	*High:* ***Optional***	*Best Estimate:*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	5.2		52.4	

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

Costs to employers for familiarisation with changes to unfair dismissal rules (proposal 11), going through pre-claim conciliation (PCC) (proposal 1) and paying penalties (proposal 12). Costs to claimants for going through PCC and to the exchequer for this. Summing costs across all proposals is not possible at this stage, so present values are not given. Total direct costs to employers are approx £20m recurring and £5.2m transition.

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

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate			151.6	

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

Benefits to employers, claimants and the exchequer from fewer cases resulting in full employment tribunal hearings and each hearing likely to cost less in time. Direct benefits to business are approx £108m per annum.

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

Benefits of early dispute resolution for employer/employee relations, workplace productivity, reduced stress.

Key assumptions/sensitivities/risks **Discount rate (%)**

Assessment does not reflect full analysis of interaction effects as too early to attempt. Likely that if a number of proposals are implemented together the total net benefits may be lower due to the combined effect on both case volumes and case costs. Figures given here are the summed costs and benefits across proposals that have been quantified at this stage.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***Yes/No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			Various		
Which organisation(s) will enforce the policy?			Acas, Tribunals Service		
What is the annual change in enforcement cost (£m)?			c£5m reduction		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	Yes/No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	175
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 1

Description:

Proposal 1 - Require all claims to be submitted to Acas in the first instance to offer pre-claim conciliation.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period* ***10 yrs***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***Optional***	*High:* ***Optional***	*Best Estimate: £640m*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	TBQ		24	**231**

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

The cost of pre-claim conciliation (PCC) to the Exchequer is estimated at £7.6m per annum, £14.1m per annum to employers, £2.3m to claimants (employees). The total cost is estimated at £24m per annum.

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

Implementation costs to the Exchequer (Acas) will be considered during the consultation period.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional	1	£34m	**Optional**
High	Optional		£187m	**Optional**
Best Estimate			£98m	**£945m**

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

Savings in the form of avoided time (and admin burden) of dispute resolution occurring after a claim is lodged is estimated at £11.6m per annum for the Exchequer, £69.9m per annum for employers, £16.9m per annum for claimants. The total benefit per annum is estimated at £117m per annum.

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

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

We have assumed that in the absence of policy intervention that 50% of the individuals completing a statement of intent form would have gone on to lodge a employment tribunal claim and that the policy effect is a reduction in claims lodged of 22.3%. Sensitivity analysis is carried out in this impact assessment around the choice of counterfactual, this is represented in the range of benefits expressed above.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***Yes/No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2012		
Which organisation(s) will enforce the policy?			Acas/Tribunals Service		
What is the annual change in enforcement cost (£m)?			c£4m reduction		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 0	**Benefits:** 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	166
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	Yes/No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes/No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes/No	
Human rights Human Rights Impact Test guidance	Yes/No	
Justice system Justice Impact Test guidance	Yes/No	
Rural proofing Rural Proofing Impact Test guidance	Yes/No	
Sustainable development Sustainable Development Impact Test guidance	Yes/No	

[2] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Proposal 2 - Amend ET Rules of procedure to give Employment Judges more robust case management powers

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Transition costs to TS - training / familiarisation (see IA for details). Ongoing costs to TS- processing extra applications; costs to TS/ HMCS of any increase in appeals; increased admin costs. Costs to claimants - discouraged ET claims; greater volume of deposit orders; more cases struck out; losing party of paying higher costs; of making more appeals. Costs to respondents - more appeals; more applications for CMP.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Benefits to TS - fewer cases proceeding to later stages of the ET process, in particular a reduction in time spent on interlocutory, case management and final hearings; more efficient use of resources; higher amounts of monies held on deposits (increase in interest received); to claimants from reduced waiting times; to respondents of responding to fewer claims; reputation benefits if fewer spurious claims are made; to the winning party who could reclaim more costs from the losing party.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumptions – higher limits/more robust powers would act as a disincentive to those bringing weak, speculative or vexatious claims, saving business the cost of responding to and defending such claims; savings to the system if there is a reduction in the number of claims received.

Risks - Claimant could be deterred from bringing claims, whether weak or not. Introducing higher limits/more robust powers might not increase the use of the powers – ultimately judicial discretion must be relied upon to be exercised consistently. Business might therefore continue to believe that weak/vexatious claims are not properly dealt with by the system, irrespective of the powers available.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2012		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[3] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[3] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 3

Description:

Proposal 3 - Amend the ET Rules so as to mandate the provision of additional 'required information' from claimants. ET forms (both ET1and ET3) would be amended as a consequence

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Transition costs to TS - rollout of new forms and provision of hard copies/electronic guidance; familiarisation and training costs incurred by TS/ET users. Ongoing costs to claimants – increased time from completing a statement of loss and expressing greater clarity/ detail in ET1 forms; obtaining external advice when completing statement of loss. Ongoing costs to TS - from increased volume of appeals at EAT stage; possible increase in appeals in Civil Courts could impose costs on HMCS.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Ongoing benefit from a possible reduction in the volume of un-meritorious/weak claims, or to a reduction in the length of time taken to dispose of such claims. Resulting in reduced costs to TS and reduced time, inconvenience and financial costs to parties. Ongoing benefits to parties from more information on claims, enabling them to determine the most appropriate way to conduct cases; reduced waiting times benefiting all users of ETs; and possible increased volume of inter-party settlement.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Requirement to provide additional information would not act as an undue barrier for access.
Tick boxes are helpful for tribunals in interpreting claims/responses, particularly when they come from unrepresented parties.
Unrepresented parties could find it difficult to plead cases sufficiently
Tribunals need to be able to identify and narrow the issues in depute, making the parties understand that extraneous material was largely irrelevant. Tick boxes have a part to play.
Unrepresented parties would have some idea of the claim they are making and why they consider that jurisdiction/line relevant or applicable.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2012		
Which organisation(s) will enforce the policy?			MoJ/Tribunals service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[4] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[4] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 4b

Description:

Proposal 4b - Establish, through ET Rules, a process where formal settlement offers can be made by either party with penalties and rewards, bearing primarily on the size of awards made by ETs.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Ongoing costs consisting of costs to parties in terms of changed settlements/ awards; financial and time costs to all parties in seeking additional advice; additional process costs incurred by parties; costs to TS of running a set-off regime; costs to TS of providing additional hearings, if required; costs to ETs if they face additional requests for costs/ time orders; costs to all parties of additional hearings. Transition costs outlined in more detail in the evidence base.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate				

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

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

Ongoing benefits including benefits to parties as this proposal would affect settlements (this would affect parties in a variety of ways, and is outlined in more detail in the evidence base); savings to Tribunals Service from potentially fewer cases progressing to a hearing ; reduced time and financial cost to parties from potentially fewer cases progressing to a hearing; benefits to all users of ETs from reduced waiting times (if volumes are reduced).

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Consistent and regular judicial interpretation and application is assumed.
Parties and legal representatives may find the system too complex meaning that the proposal fails to achieve its objectives.
The set-off system could mean that parties try to avoid additional costs, meaning that potentially large numbers settle out of court, possibly compromising access to justice.
Aggressive litigation could put pressure on weaker parties, compromising access to justice.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2014		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[5] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[5] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 4c

Description:

Proposal 4c - Establish a process where formal settlement offers can be made by either party with penalties & rewards, bearing primarily on costs/expenses incurred by the parties post formal offer.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Transition costs to TS –including familiarisation/training costs incurred by TS, legal reps & parties (see IA for full details) . Ongoing costs to all parties - costs plus any interest owed; financial/time costs in seeking additional advice; additional process; Ongoing costs to TS - running costs; additional hearings, if required; costs to ETs if they face additional requests for costs/ time orders; to all parties of additional hearings, if necessary; to all TS users of longer waiting times.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Similar to option 4b - Ongoing benefits including benefits to parties as this proposal would affect settlements (this would affect parties in a variety of ways, and is outlined in more detail in the evidence base); savings to Tribunals Service from potentially fewer cases progressing to hearings; reduced time and financial cost to parties from potentially fewer cases progressing to hearings; benefits to all users of ETs from reduced waiting times (if volumes are reduced).

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Consistent and regular judicial interpretation and application is assumed.
Parties and legal representatives may find the system too complex meaning that the proposal fails to achieve its objectives.
The set-off system could mean that parties try to avoid additional costs, meaning that potentially large numbers settle out of court, possibly compromising access to justice.
Aggressive litigation could put pressure on weaker parties, compromising access to justice.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2014		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[6] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[6] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 5b

Description:

Proposal 5b - (Proposal 5a is "do nothing") Introduce a procedural rule which requires a witness's witness statement to be taken as read.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate				

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

No monetised costs were identified

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

Transition costs to Tribunals Service -updating procedural rules familiarisation/training costs incurred by Employment Judges (EJs)/panel members. Potential costs to ETs from being less able to assess weight of witness' evidence; costs to claimants and respondents from potentially worse legal outcomes; EJs may face time costs from having to read witness statements before case is heard (if this is not currently done); other parties may face costs from preparing more authoritative witness statements.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

No monetised benefits were identified.

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

There would be a reduction in average hearing lengths, freeing up resources which can be re-deployed. Current waiting times would be reduced; the number of part-heard cases and cases sent away unheard would also be reduced. Savings to parties, witnesses and representatives from reduced expenditure on travel and time/ inconvenience costs associated with attending hearings.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumed witness statements are prepared in the bulk of E&W cases proceeding to a hearing and so the preferred option does not introduce any new burden on the parties/witnesses.
Based on the experience in the Bristol region (which operates a standard policy of taking witness statements as read), we would expect shorter hearing times. We are unable to quantify the reduction in hearing times, as cases completed per session in the Bristol region may be reduced due to other factors. Could disadvantage unrepresented claimants disproportionately, if their written advocacy is not as strong as the employer's. Judicial discretion will therefore be important to ensure procedural fairness is safeguarded.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			Minimal		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[7] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[7] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 5c

Description:

Proposal 5c - Change procedure allowing a witness statement to be taken as read, but with some discretion for Judges.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

No monetised costs were identified

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

The non-monetised costs of this option would be very similar to the costs of option 5b but it is likely that the costs to witnesses, claimants and respondents would be smaller in magnitude due to the extra flexibility and discretion afforded to Employment Judges.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

No monetised benefits were identified.

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

The non-monetised benefits of this option would be very similar to the benefits of proposal 5b but it is likely that the benefits to witnesses, claimants and respondents would be smaller in magnitude due to the extra flexibility and discretion afforded to EJs.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumed witness statements are prepared in the bulk of E&W cases proceeding to a hearing and so the preferred option does not introduce any new burden on the parties/witnesses.

Based on the experience in the Bristol region (which operates a standard policy of taking witness statements as read), we would expect shorter hearing times. We are unable to quantify the reduction in hearing times, as hearing times in the Bristol region may be reduced due to other factors.

Could disadvantage unrepresented claimants disproportionately, if their written advocacy is not as strong as the employer's. Judicial discretion will therefore be important to ensure procedural fairness is safeguarded.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			Minimal		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[8] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[8] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 6b

Description:

Proposal 6b - (Proposal 6a is "do nothing") Cease payments of expenses to all parties and their witnesses involved in the ET proceedings.

Price Base Year ***N/A***	*PV Base Year* ***N/A***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		£0.3m	**N/A**

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

Ongoing costs consisting of costs to parties of any travel expenses for witnesses they call to give evidence. This is considered to be similar to the amount that would be saved by the Tribunals Service, which would be in the region of £0.3 million per year.

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

Transition costs consisting of costs to the Tribunals Service of changing leaflets and costs to the Tribunals Service of familiarisation and training costs are considered to be minimal. Costs to parties from worse legal outcomes and reduced access to justice; costs to the Tribunals Service of additional enforcement required to ensure witnesses attend ET hearings.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		£0.3m	**N/A**

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

Ongoing benefits to Tribunals Service consisting of annual savings of £280,000 from not paying expenses to witnesses or parties; and admin savings of £10,000 annually. Therefore, total annual savings to Tribunals Service of £0.3 million.

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

Ongoing benefits to Tribunals Service consisting of deterring weak and/ or vexatious claims; and more claims being resolved earlier. Ongoing benefits to parties of more claims being resolved earlier.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Risk that this proposal prevents access to justice, as some parties may simply not have the means to meet their own expenses of attending, regardless of the importance which they attach to the issues behind their claim.

Risk that enforcement actions to ensure that witnesses attend the ET hearing could potentially result in increased costs to the tribunal.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2012		
Which organisation(s) will enforce the policy?			Tribunals Service		
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[9] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[9] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 6c

Description:

Proposal 6c - Cease payment of expenses to all parties and their witnesses but with appropriate exemptions in place to pay expenses under certain circumstances

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		£0.3m	**N/A**

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

Ongoing costs consisting of costs to parties of any travel expenses for witnesses they call to give evidence. This is considered to be similar to the amount that would be saved by the Tribunals Service, which would be in the region of £0.3 million per year.

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

Transition costs consisting of costs to the Tribunals Service of changing forms and leaflets; costs to the Tribunals Service of familiarisation and training costs, costs to parties from worse legal outcomes and reduced access to justice; costs to the Tribunals Service of additional enforcement required to ensure witnesses attend ET hearings.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Ongoing benefits to Tribunals Service consisting of annual savings from not paying expenses to witnesses or parties; and any admin savings. Ongoing benefits to Tribunals Service consisting of deterring weak and/ or vexatious claims; and more claims being resolved earlier. Ongoing benefits to parties of more claims being resolved earlier.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Risk that this proposal prevents access to justice, as some parties may simply not have the means to meet their own expenses of attending, regardless of the importance which they attach to the issues behind their claim.

Risk that enforcement actions to ensure that witnesses attend the ET hearing could potentially result in increased costs to the tribunal.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/01/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			TBC		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[10] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[10] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 7b

Description:

Proposal 7b - (Proposal 7a is "do nothing") add complaints of unfair dismissal to those that must be heard by an employment judge sitting alone in ETs and that a judge should sit alone in all proceedings in the EAT.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Transitional costs consisting of re-designing and printing existing forms and leaflets incurred by Tribunals Service; costs of updating guidance incurred by Tribunals Service; and familiarisation and training costs incurred by EJ's and panel members. Ongoing costs including costs to ET parties of worse legal outcomes; costs to TS from more appeals at EAT stage; costs to HMCS from more second appeals to the Court of Appeal/ Court of Session; costs to parties of longer litigation processes.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	£0.5m		N/A	**N/A**

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

Transition benefits to Tribunals Service from not having to run a panel member recruitment campaign in 2011/12, equivalent to £0.5 million in savings.

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

Ongoing benefits including savings to Tribunals Service from reduction in the use of lay members in ET hearings; and reduction of use of lay members in EAT hearings. Ongoing benefits to parties and representatives from reduced costs of time and inconvenience.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

There is also a risk that outcomes for parties could be (or perceived to be) worse or problems arise in relation to access to justice.

There is a risk that parties may see the introduction of this proposal as a diminution of their right to a trial by their peers and that this might result in an increase in appeals to higher courts (although such appeals can only be made on a point of law, and a very significant proportion of civil litigation involving individual rights is already determined by judges sitting alone in courts).

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/Q	**Benefits:** N/Q	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[11] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[11] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 7c

Description:

Proposal 7c: Extend category of cases where judges can sit without wing members to unfair dismissal cases and all EATs; but permit discretion for judges to direct otherwise in appropriate cases.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Transitional costs to TS - re-designing and printing existing forms/leaflets; updating guidance; familiarisation/training costs incurred by EJ's and panel members. Ongoing costs - to ET parties of worse legal outcomes; to TS from more appeals at EAT stage; to HMCS from more second appeals to the Court of Appeal/ Court of Session; to parties of longer litigation processes (it may be that these costs are partially mitigated by enabling Judicial discretion)

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	£0.5m		N/A	**N/A**

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

Transition benefits to Tribunals Service from not having to run a panel member recruitment campaign in 2011/12, equivalent to £0.5 million in savings.

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

Ongoing benefits including savings to Tribunals Service from reduction in the use of lay members in ET hearings; and reduction of use of lay members in EAT hearings. Ongoing benefits to parties and representatives from reduced costs of time and inconvenience.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumed that although there will be provision for a judge to sit with lay members in ET cases under the amended s 4(3) of the Employment Tribunals Act 1996, they will only decide to do so in 50% of cases.
There is also a risk that outcomes for parties could be (or perceived to be) worse or problems arise in relation to access to justice.
There is a risk that parties may see the introduction of this proposal as a diminution of their right to a trial by their peers and that this might result in an increase in appeals to higher courts (although such appeals can only be made on a point of law, and a very significant proportion of civil litigation involving individual rights is already determined by judges sitting alone in courts).

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/Q	**Non-traded:** N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[12] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[12] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 8b

Description:

Proposal 8b - (Proposal 8a is "do nothing") To delegate a limited number of powers to experienced members of the administration

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

Transition costs to Tribunals Service - changes to required forms and leaflets; running a recruitment campaign and any general HR costs; updating guidance and providing training for legal officers. Ongoing costs to claimants and respondents of worse legal outcomes in some or all of cases involved; costs to TS of employing members of administration to undertake a limited range of powers and defending increased number of appeals; costs to HMCS of increased number of appeals.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

There would be benefits to claimants and respondents if routine correspondence is progressed through sooner and cases are potentially heard by judiciary earlier, since this would result in quicker dispute resolution, these benefits would be realised in terms of reduced time and inconvenience costs and reduced expenditure on legal representation. Ongoing benefits to Tribunals Service consisting of savings due to reduced judicial time spent on interlocutory work.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumptions: This would free judiciary to consider other work or even provide them with sufficient time to hear more cases.
Assumptions: Potentially significant savings if qualified legal officers are introduced. However, more information will be gathered though the consultation.
Risk: Decisions made by a qualified legal officer under Rule 10 may be appealed by the parties
Risk: Potential risk of an increase in applications for Judicial Review if the requests are not dealt with correctly by the ET.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			TBC		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[13] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[13] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 8c

Description:

Proposal 8c - To delegate an extended range of powers to a suitably qualified legal officer operating under judicial direction and deal with a range of interlocutory work

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		£1.7m	**N/A**

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

Ongoing costs consisting of costs to Tribunals Service of employing legal officers (including NI and superannuation costs) of £1.7 million.

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

Transition costs consisting of costs to TS of changes to required forms and leaflets; costs to TS of running a recruitment campaign and any general HR costs; costs to TS of updating guidance and of providing training for legal officers. Ongoing costs consisting of costs to claimants and respondents of worse legal outcomes in some or all of cases involved; costs to TS of defending increased number of appeals; costs to HMCS of increased number of appeals.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

There would be benefits to claimants and respondents if routine correspondence is progressed through sooner and cases are potentially heard by judiciary earlier, since this would result in quicker dispute resolution, these benefits would be realised in terms of reduced time and inconvenience costs and reduced expenditure on legal representation. Ongoing benefits to Tribunals Service consisting of savings due to reduced judicial time spent on interlocutory work.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumptions: This would free judiciary to consider other work or even provide them with sufficient time to hear more cases.
Assumptions: Potentially more savings than under proposal 8b due to increased range of activities undertaken by legal officers. However, more information will be gathered though the consultation.
Risk: Decisions made by a qualified legal officer under Rule 10 may be appealed by the parties
Risk: Potential risk of an increase in applications for Judicial Review if the requests are not dealt with correctly by the ET.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			TBC		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[14] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[14] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 8d

Description:

Proposal 8d - To introduce role of a 'Junior' Judge who, in addition to undertaking the full range of case management powers will be able to determine straightforward monetary award claims.

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		£2.6m	**N/A**

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

Ongoing costs consisting of costs to Tribunals Service of employing 'Junior' Judges (including NI and superannuation costs) of £2.6 million.

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

Transition costs consisting of costs to TS of changes to required forms and leaflets; costs to Judicial Appointments Commission of running a recruitment campaign and any general HR costs; costs to TS of updating guidance and of providing training for 'Junior' Judges. Ongoing costs consisting of costs to claimants and respondents of worse legal outcomes in some or all of cases involved; costs to TS of defending increased number of appeals; costs to HMCS of increased number of appeals.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

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

There would be benefits to claimants and respondents if routine correspondence is progressed through sooner and cases are potentially heard by judiciary earlier, since this would result in quicker dispute resolution, these benefits would be realised in terms of reduced time and inconvenience costs and reduced expenditure on legal representation. Ongoing benefits to Tribunals Service consisting of savings due to reduced judicial time spent on interlocutory work

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Assumptions: This would free more senior judiciary to consider other work or even provide them with sufficient time to hear more cases.
Assumptions: Potentially significant savings if 'junior' judges are introduced. However, more information will be gathered though the consultation.
Risk: Potential risk of an increase in applications for Judicial Review if the requests are not dealt with correctly by the ET.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/10/2011		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			TBC		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[15] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[15] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 10

Description:

Proposal 10 - Introduce a fee charging regime into employment tribunals and to the employment appeal tribunal

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***N/A***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate: N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

A detailed description of monetised costs will follow in the full impact assessment.

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

Transition costs to TS -including familiarisation/training costs; (see IA for details). Familiarisation costs to Legal reps and parties. Ongoing costs to TS - operating a fee charging process and a remissions and exemptions policy; costs to parties who would incur a fee from bringing a case to ETs or when appealing a case at EAT stage; costs to other DR services; some users will no longer use the service and they will lose the benefits of the service.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

A detailed description of monetised benefits will follow in the full impact assessment.

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

Ongoing benefits consisting of benefit to Tribunals Service from a stream of revenue from fee-charging; introducing a fee may also generate welfare improvements in terms of increases in both efficiency and equity; introducing a fee would possibly reduce case volumes at ETs reducing costs to Tribunals Service and reducing financial, time and inconvenience costs to parties; users of ETs may also benefit from reduced waiting times.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

There is a risk that if an appropriate remissions and exemptions system is not put in place, introducing a fee could curtail access to justice.

It is assumed that introducing a fee would reduce claim volumes (although we do not estimate the magnitude of the reduction)

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			01/04/2014		
Which organisation(s) will enforce the policy?			MoJ/Tribunals Service		
What is the annual change in enforcement cost (£m)?			TBC		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes/No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[16] Statutory Equality Duties Impact Test guidance	Yes/No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[16] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 11

Description:

Proposal 11 - Increase the qualifying period for unfair dismissal from one to two years

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***£239m***	*High:* ***£304m***	*Best Estimate:* ***£243m***

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low		1	£15.8m	**£136m**
High			£20.1m	**£173m**
Best Estimate	5.2		£17.9m	**£154m**

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

One-off familiarisation costs of £5.2m to employers. £15.8m -£20.1m fewer awards received by claimants per annum (cost to claimants).

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

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low		1	£41.7m	**£350m**
High			£51.6m	**£445m**
Best Estimate			£46.1m	**£397m**

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

Cost savings to employers from time spent on case and advice and representation (£11.1m-£14.1m per annum), fewer awards paid (£15.8m - £20.1m per annum), admin burden savings (£7.4m-£9.4m per annum). Cost savings to claimants of £4.8m-£6.1m per annum. Cost savings to the Tribunals Service £1.5m -£2.0m.

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

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

We assume that there will be 3,700 to 4,700 fewer unfair dismissal employment tribunal claims. Some risk around employee protection, but in practice where there are severe problems employees will have recourse to other jurisdictions.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Options		
From what date will the policy be implemented?			01/04/2013		
Which organisation(s) will enforce the policy?			Tribunals Service		
What is the annual change in enforcement cost (£m)?			c£1.8m reduction		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[17] Statutory Equality Duties Impact Test guidance	No	166
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[17] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 12

Description:

Proposal 12 - Introduce financial penalties for employers

Price Base Year ***2010***	*PV Base Year* ***2010***	*Time Period Years* ***10***	*Net Benefit (Present Value (PV)) (£m)*		
			Low: ***N/A***	*High:* ***N/A***	*Best Estimate:N/A*

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		0	**0**
High	N/A		0	**0**
Best Estimate	N/Q		5.5	**0**

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

If firms comply with the law they will not incur the fine payments hence, estimated cost on business is 0. However, there is a body of evidence, for example in results of employment tribunal cases that suggests well below 100% compliance, and therefore employers are estimated to face £5.5m in financial penalties, which represents a transfer from employers to the exchequer.

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

We have not quantified the implementation cost to the Exchequer this will be explored further during the consultation period.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	0		N/A	**N/A**
High	0	0	N/A	**N/A**
Best Estimate	0		5.5	

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

The penalties are payable to the Exchequer and therefore will generate revenue to the Exchequer.

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

We have not monetised any long term effect on compliance behaviour.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

We have assumed 50% of firms pay the total amount of the award and the remaining amount of the penalty is paid within 21 days; thereby receiving a 50% reduction in the penalty.

Impact on admin burden (AB) (£m):			*Impact on policy cost savings (£m):*	*In scope*
New AB:	*AB savings:*	*Net:*	*Policy cost savings:*	***Yes/No***

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Options		
From what date will the policy be implemented?			01/04/2014		
Which organisation(s) will enforce the policy?			Tribunals Service		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			No		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[18] Statutory Equality Duties Impact Test guidance	No	164
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	170
Small firms Small Firms Impact Test guidance	No	170
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[18] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Employment Relations Research Series No.107 Findings from Survey of Employment Tribunal Applications 2008, found at: http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008
2	Acas Annual Report and Accounts 2009-10, found at: http://www.acas.org.uk/CHttpHandler.ashx?id=2859&p=0
3	Tribunals Service Annual Report and Accounts 2009-10, found at: http://www.tribunals.gov.uk/tribunals/Documents/Publications/TS-AR-09-10-WEB-final.pdf
4	Annual Statistics for the Tribunals Service, 2009-10, found at: http://www.tribunals.gov.uk/tribunals/Documents/Publications/tribs-annual-stats-2009-10c.pdf
5	Latreille, P "Mediation at Work: Of Success, Failure and Fragility", Acas Research Paper 2010, found at: http://www.acas.org.uk/CHttpHandler.ashx?id=2890&p=0

+ "Add another row"

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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

Resolving Workplace Disputes: Overarching IA

Problem under consideration

Throughout the recession employment tribunal claims have continued to rise markedly to the point where there have been challenges to the system in terms of balancing claims and determinations. Meeting that pressure has cost additional money. At the same time, business groups continue to believe that the tribunal system is weighted more in favour of the claimant.

In the financial year 2009-10 there were a total of 236,100 employment tribunal claims accepted, of which 71,300 were single claims (one claimant) and 164,800 were multiple claims (a number of claims against the same employer). The number of single claims has grown consistently over the last 5 years from 51,300 in 2005-06 to 71,300 in the last financial year, while the number of multiple claims has also risen from 63,100 in 2005-06 to 164,800 in the last financial year. It is important to note however that the level of multiple claims can vary significantly year on year due to the varying nature of claims.

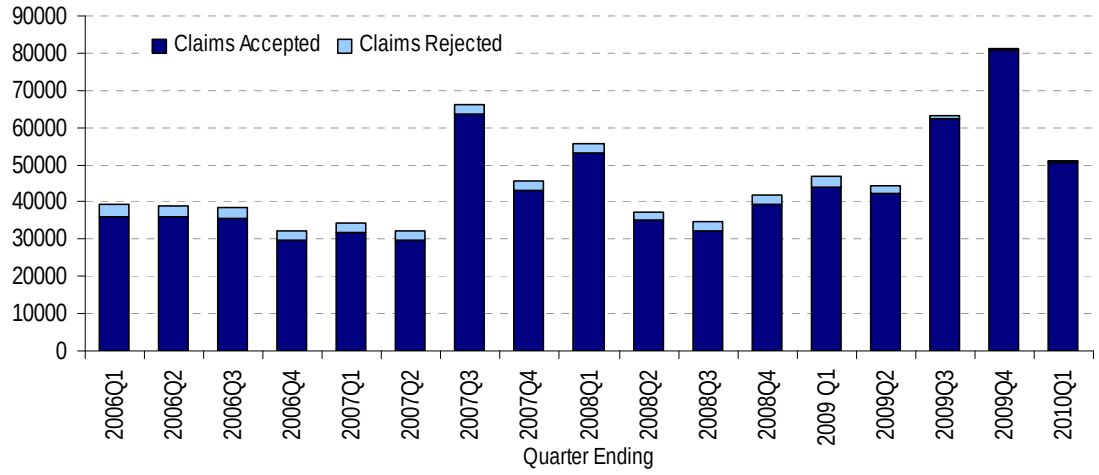
Table A1. Employment tribunal claims accepted by financial year*

Year	Single	Multiple	Total
2005/06	51,300	63,100	114,300
2006/07	54,100	78,600	132,700
2007/08	54,500	134,800	189,300
2008/09	62,400	88,700	151,000
2009/10	71,300	164,800	236,100

Source: Employment Tribunals Service data provided to BIS. * Great Britain, not seasonally adjusted. Figures may not sum due to rounding

Chart A1 shows the total number of claims received by the Employment Tribunals Service broken down by whether the claim was accepted or rejected. In the year 2009-10, 2 per cent of all claims were rejected. This is lower than previously, partly due to a procedural change in 2009 which stopped cases being rejected where there was evidence that not all of the process had been completed.

Chart A1. Quarterly total claims received and claims rejected*



Source: Tribunals Service. * Great Britain, not seasonally adjusted.

There is a body of evidence[19] that demonstrates that if disputes are resolved in the workplace this is far less costly to both parties, delivers more positive results in terms of continued employment and business productivity, and saves money for the Government by reducing demand on the Tribunals Service. The reforms flowing from the independent report by Michael Gibbons published in 2007 are a step in the right direction, seeking to refocus the dispute resolution process on resolving the problem rather than simply ensuring that the statutory 3 steps have been completed, and providing increased access to advice and early conciliation. But there are further reforms which could be made. Business representatives (particularly for SMEs) have been active in calling for a rebalancing of the employment tribunal system. Business groups, including the British Chambers of Commerce, Institute of Directors (IoD), Confederation of British Industry (CBI) and others, have said there should be more clarity and transparency in the system, and action to deter individuals from making unmeritorious claims, as well as reducing the cost and time it takes for cases to be heard.

We believe that the package of reforms contained within this impact assessment represents an effective combination in terms of better informing all parties in the process and thus by avoiding inappropriate use of the process, reducing both the number of claims made to tribunal and the number of claims that proceed to full hearing; and ensuring that cases that do enter the tribunal system are resolved as efficiently and swiftly as possible. Providing parties with the means to resolve disputes without recourse to an employment tribunal obviates the need for employers to respond to the claim made, as well as to incur the costs associated with preparing for and defending the claim at hearing, estimated to average £3,800 per tribunal for employers (see analysis of proposal 1 for more detail on this calculation). And, if

[19] For example, Latreille, P "Mediation at Work: Of Success, Failure and Fragility", Acas Research Paper 2010, found at: http://www.acas.org.uk/CHttpHandler.ashx?id=2890&p=0

increased use of early dispute resolution enables the employment relationship to continue, there are savings arising from maintaining productivity, avoiding recruitment and training costs and wider staff motivation. For those claims that do proceed to hearing, improving the process to reduce the time from claim to determination will also offer savings to business, in terms of staff time and legal costs.

Rationale for Intervention

Information

An employment dispute between an employer and employee is, in many cases, essentially a disagreement on facts and requirements of law. Two parties may elect to proceed to an employment tribunal based on a number of different factors, key of which may be the absence of accurate information about what the process involves, likely outcomes etc. Providing both parties with access to impartial advice and information from a reliable source is the most direct way to tackle the information gap and could help parties decide whether pursuing the matter through tribunal is appropriate, or whether the matter can be resolved by other means. The effects of reliable information are to help resolve disputes and, ultimately, prevent employment tribunal claims which impose large costs on both parties and impact on the economy through lost output.

Efficiency

The question of how to minimise the costs, to all parties, of employment disputes is a key part of how the case for government intervention can be framed. The employment tribunal system acts as a last resort for the resolution of disputes but is highly costly to all three parties involved in the transaction (employer, employee and the government). If there is a way by which disputes could be resolved at a lower cost then all three parties stand to gain.

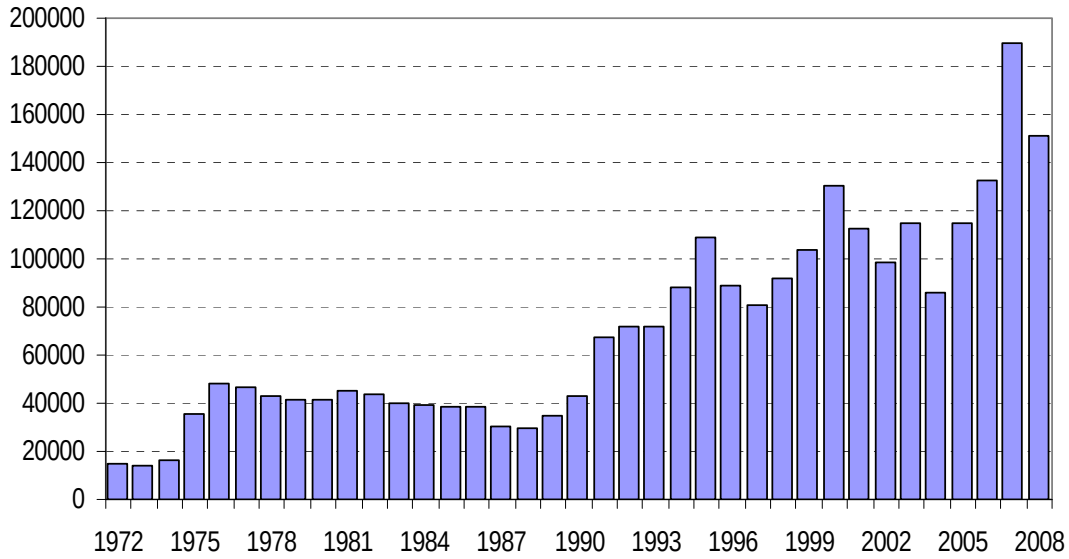
Equity

Intervention can also be justified on the grounds of equity regarding the situation that arises once a government establishes an employment rights system. Given employment disputes primarily arise from disagreements over laws, the creation of more laws and widening employment rights will create the opportunity for a greater number of disputes. This is supported by the trend of employment tribunal claims in chart A2. If the balance of power is inherently weighted towards employers in these cases then government can intervene to equalise the power between employer and employee, and in effect mitigate some of the unintended equity effects of its own policies.

Acas and the Tribunals Service are public providers of an ‘access to justice’ service. Pure private sector providers of conciliation services would most likely concentrate only on the most profitable areas of dispute resolution. One would expect unregulated private sector operators in the conciliation and

arbitration field to exhibit 'cherry-picking' behaviour. Alternatively they may seek profitable margins on their services which have a deterrent effect amongst certain individuals. Therefore it is highly likely that, in the absence of Acas and the Tribunals Service, the prices for smaller sized disputes would be relatively high and some individuals and firms would be discouraged from seeking professional support. Public provision of this service is necessarily inclusive and equitable and reduces the risk of particular groups being disproportionately disadvantaged.

Chart A2. Total registered claims to the employment tribunal (1972-2008)



Source: Statistics for 1972 to 1979 from Employment Gazette, November 1984, p 488. Statistics for 1980 to 1998 from Hawes in Towers and Brown 2000. Statistics for 1999 to end of series from Employment Tribunal Annual reports Appendix 1.

Consultation

Within Government

The Department for Business, Innovation & Skills has developed these proposals in partnership with The Ministry of Justice and The Tribunals Service and have consulted colleagues in Acas and Government Equalities Office.

Public consultation

The Department for Business, Innovation & Skills has informally discussed thinking on proposals to simplify and streamline the employment tribunal system with stakeholders. We are now seeking views from a wide range of stakeholders in a 12-week public consultation on how we might increase the

resolution of disputes within the workplace and on proposals to streamline and simplify the employment tribunal system.

Policy objective

The intention of these proposals considered together is to:

- Support and encourage parties to resolve disputes earlier, and where possible in the workplace, thereby reducing the number of claims that reach an employment tribunal.

- Ensure that where parties do need to go to employment tribunal, cases are dealt with more swiftly and efficiently to reduce the costs borne by all parties.

More needs to be done to support and encourage parties to resolve disputes earlier – where possible, in the workplace, to try and preserve the working relationship between employer and employee, keeping the employee in their job and enabling the employer to continue to benefit from the investment they have made in the individual. But, where the relationship is broken, we want to enable parties to bring matters to a close as effectively as possible; where that is through an employment tribunal, we want cases to move more swiftly to conclusion, so as to contain costs for employers, employees and the Tribunals Service while preserving individuals' access to justice.

The Government also wants to ensure businesses feel more confident about employing people. We want to give more time for employers and employees to build and develop the employment relationship and, where there are concerns or problems, to resolve these rather than end the relationship. This will, we expect, lead to a modest reduction in the number of claims that go to employment tribunal.

Description of proposals being considered

In total there are 13 proposals being considered to meet these policy objectives. The costs and benefits of each proposal are measured against a 'do-nothing' baseline, apart from two proposals where it has been agreed that further impact assessment is not needed at this stage. Some proposals are designed to reduce the number of conflicts that result in ET claims by influencing the behaviour of claimants ultimately in order to ensure early resolution of disputes; or to reduce the resources that ET hearings currently consume to make these hearings more efficient. It is the case, however, that each option will contribute to the delivery of more than one objective.

A more detailed description of each policy can be found in table A2. Each proposal has its own assessment of the impact if it was implemented in isolation (see subsequent chapters). However, this impact assessment also gives initial consideration to the impact of implementing all 13 proposals.

Table A2. Summary description of the 13 policy proposals

Description of policy proposal
1. Early conciliation - require all claims to be submitted to Acas in the first instance, rather than TS. This would allow Acas a specified period (up to 1 month) to offer pre-claim conciliation (PCC) in all cases. Currently, only a relatively small number of those with workplace problems likely to result in a potential claim contact Acas. Of those that are referred into PCC, less than 30% go on to become tribunal claims. Effectively extending PCC to all potential claimants could offer significant savings to business through early resolution, and by identifying speculative, weak & vexatious claims. There is the potential for considerable savings to Government too, with fewer claims proceeding to ET (as Acas is a cheaper, less formal and time-consuming route than litigation through tribunals).
2. Case management powers for weaker and unmeritorious cases – by making the power to strike out more flexible; allowing a judge to be able to issue a deposit order at any stage of the proceedings, to make the deposit order test more flexible and for EAT to be able to make deposit orders; and increasing the deposit and cost limits for weak & vexatious claims from £500 and £10,000 to £1,000 and £20,000 respectively. All of these will help to deter claimants from bringing non-meritorious cases or appeals.
3. Provision of information – to provide additional information about the nature of the claim being made and to include a statement of loss as required for claims involving monetary compensation. This will reduce the number of speculative claims, and for meritorious claims help inform whether a settlement offer is appropriate, saving business and tribunals the time and cost of dealing with a full tribunal hearing.
4. Formalising offers to settle - to develop a process for allowing offers of settlement to be "paid in" to the ET if they are rejected by the party. In the event that the ET subsequently makes a less favourable award, then there is some mechanism for recognising the additional costs incurred by the other party in proceeding to hearing. This is similar to the system that operates in the civil courts (under s.36 of the CPR), but the differences in the way ETs operate present some challenges, including attaching a financial value to the non-financial elements of a remedy (e.g. apology, reference etc).
5. Witness statements to be taken as read in all hearings, resulting in shorter hearings and therefore saved costs for the system and business. This is consistent with the approach used in the civil courts
6. Withdraw the payment of expenses in tribunal hearings, encouraging parties to either settle earlier or reduce the number of witnesses they call, thereby reducing length of hearings. There will also be a small saving to Government from not reimbursing these claims
7. Extend the jurisdictions where judges can sit alone in ETs to include unfair dismissal, and to remove the general requirement for tripartite panels in the EAT, allowing more efficient use of lay member resource
8. Introduce the use of Legal officers to deal with certain case management functions freeing up (more costly) judicial time to concentrate on matters requiring judicial expertise.
9. Overriding objective - to elaborate on the current overriding objective in the ET Rules to expand what is meant by proportionality, to ensure consistency with Civil Procedure Rules.
10. Introduce fee charging mechanisms in employment tribunals, for example where claimants lodge claims (and respondents choose to counter-claim), and/or for parties in claims that proceed to full hearing. This is likely to encourage parties into earlier resolution, and will raise revenue to off-set some of the costs of operating the system.
11. Increase qualification periods for unfair dismissal from one to two years, which would result in some 3,700-4,700 fewer claims being made to tribunal.
12. Introduce financial penalties for employers found to have breached rights to encourage greater compliance. This will result in an immediate benefit to the Exchequer (subject to level of fines compared with collection costs) while, in the longer term, should encourage greater compliance and therefore a reduction in the number of claims to tribunal, leading to reduced costs to business and the system.
13. Review calculation of employment tribunal awards and redundancy payments considering changes to the way some awards and payments' limits are calculated annually.

Source: BIS

Summary of costs and benefits

Table A3 highlights the quantified impacts of the proposals considered in isolation against a do nothing scenario. More detail on these quantified and

the non-quantified impacts of the proposals is given in the individual impact assessments. The proposal to introduce fee charging will be the subject of a separate subsequent consultation and it is too early to give any quantification, though some impact on behaviour would be expected as a decision over whether to pursue a claim is considered in the light of fees to be paid.

Table A3. Recurring costs and benefits per annum

Proposal	Employer		Claimant		Exchequer		Total	
	Cost	Benefit	Cost	Benefit	Cost	Benefit	Cost	Benefit
Proposal 1- Early conciliation	£14,104,276	£69,913,787	£2,316,841	£16,873,084	£7,627,339	£11,556,938	£24,048,456	£98,343,808
Proposal 6 Withdraw the payment of expenses (both options have same net effect)	£150,000		£150,000			£300,000	£300,000	£300,000
Proposal 7 Extend the jurisdictions where judges can sit alone (both options have same net effect)						£500,000	£0	£500,000
Proposal 8 Option A – Introduce the use of legal officers- delegate powers to experienced members of the administration					£1,700,000		£1,700,000	£0
Proposal 8 Option B – Introduce the use of legal officers – delegate powers to suitably qualified legal officers					£2,600,000		£2,600,000	£0
Proposal 11 – Increase qualification period		£38,929,800	£17,929,800	£5,460,000		£1,759,375	£17,929,800	£46,149,175
Policy 12 – Introduce fines for employers	£5,517,188					£5,517,188	£5,517,188	£5,517,188
Total Effect							£49,945,443	£150,810,171
Total Net Effect							£100,864,727	
Total Effect for Employers	£19,771,464	£108,843,587						
Total Net Effect for Employers	£89,072,123							

Source:BIS and MoJ estimates. Some figures have been rounded. Total may not sum to individual parts due to rounding. Where range estimates have been used the midpoint is reported. For proposal 11 Increasing the qualifying period for unfair dismissal from one to two years includes a one off cost of £5,176,600. These figures do not factor in interaction effects. Total estimates assume all policies implemented on the same date.

Familiarisation Costs

All but one of the proposals considered relates to procedures once there is an employment dispute. Each time parties go through a dispute they will be familiarising themselves with the process anyway, and captured within assessments of costs to all parties of employment tribunal claims are assessments of time taken to understand the process (for example, advice and representation). These proposals will not alter marginal costs incurred by employers involved in a dispute.

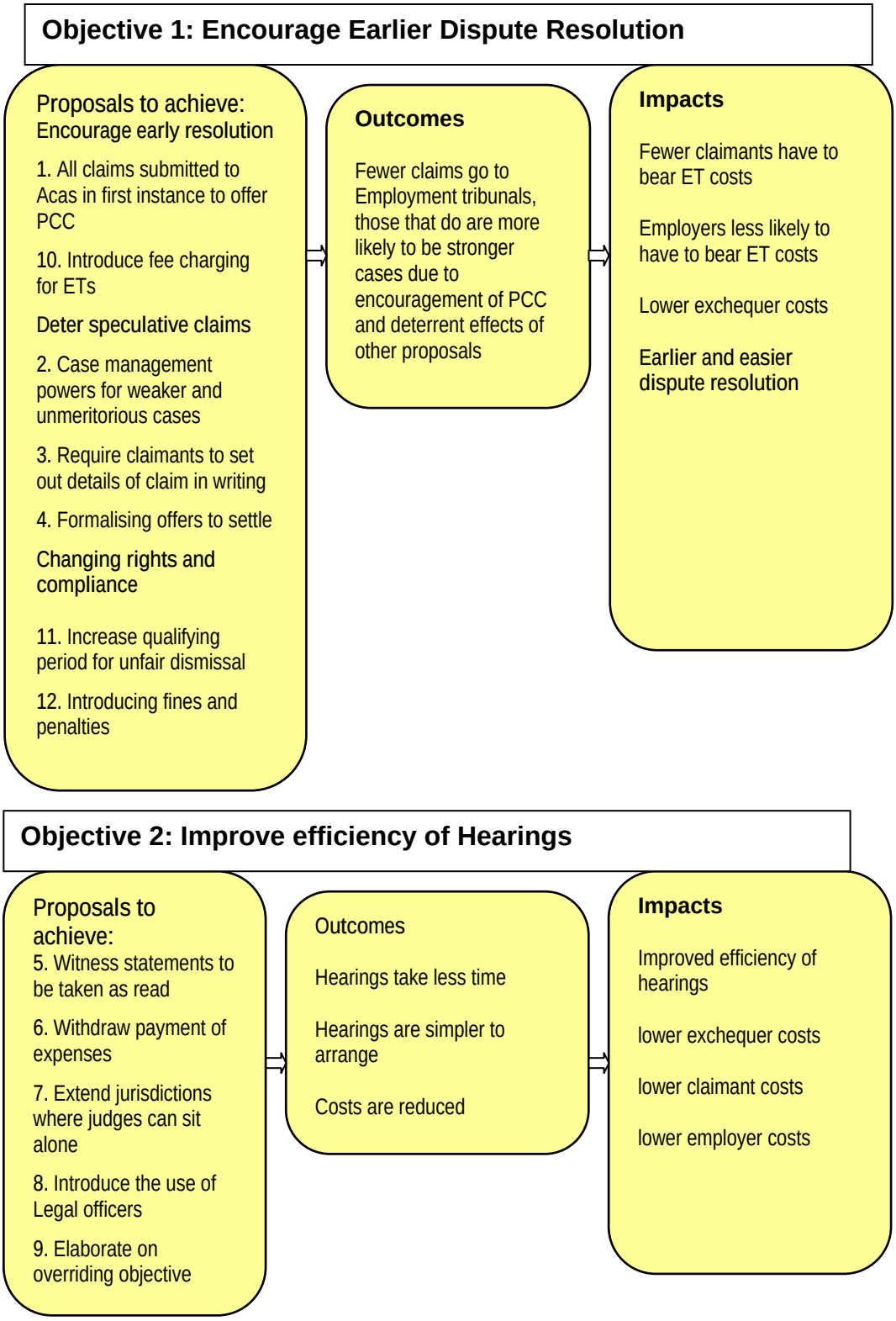
However, proposal 11 is a change to employment rights, which if implemented, increases the qualifying period for unfair dismissal from one to two years. Although a simple change, all employers will need to familiarise themselves with it, something which could give a one-off cost of approximately £5.2 million to employers.

Interactions between proposals

Figure A2 gives a simplified representation of how the proposals considered are likely to have an impact and how they work together. In practice there will be additional impacts, which are discussed in individual impact assessments.

Figure A2 shows that there is a group of proposals (which includes all claims being submitted for pre-claim conciliation, fee charging and increasing the qualifying period for unfair dismissal) that would work to reduce the number of claims coming forward to full employment tribunals. There are in turn a group of proposals that aim to improve the efficiency of the employment tribunal system. In practice some of these proposals will affect both outcomes.

Figure A2. Policy Proposals, their key outcomes and interactions relative to do nothing



Source: BIS

All of the proposals considered here affect one or more of three main outcomes:

- Reducing the number of disputes that result in an employment tribunal claim
- Improving the efficiency of employment tribunals
- Improving the value for money of employment tribunals

The effects of adopting all proposals would be lower (i.e. the total benefits may be lower) than the sum of the individual effects. Starting to consider the interactions means dealing with further reductions to unit costs of employment tribunal hearings and further reductions in hearings.

It is quite possible that some combination of proposals, but not all, are carried forward. Each proposal is considered against a do nothing scenario. However, we have considered all proposals jointly because it is the simplest thing to do, as looking at all possible combinations would not be feasible or proportionate.

Combined, these proposals are likely to reduce the unit costs of employment tribunals and reduce the number of cases that go to tribunal. Many of the individual proposals are not quantified at this stage because of a lack of evidence to be able to assess. These include, for instance, witness statements to be taken as read, which will reduce time taken for hearings and extending the jurisdictions where judges can sit alone to make it simpler to arrange a hearing and less costly.

During the consultation period, we want to improve the available evidence so that both the individual proposals and interaction effects can be more thoroughly assessed. We welcome input from consultees.

Proposals 1 and 11 are individually more substantial proposals and it has been possible to quantify their likely impact. As a result, it is also possible to give an initial estimate of their combined effect. Increasing the qualifying period for unfair dismissal is expected to reduce claims to employment tribunals by between 3,700 and 4,700 per year. If this reduction in claims is fed into the assessment of costs and benefits of offering pre-claim conciliation (proposal 1), then relative to doing nothing, the costs and benefits are illustrated in table A4 (please see individual proposals for more on the methodology). This is a lower net benefit because the PCC treatment would be applied to fewer claims than without changes to unfair dismissal rules.

Table A4. Interactions	Costs £m	Benefits £m	Net benefit £m
Options 1 and 11 combined relative to do nothing – unfair dismissal qualification period is increased to two years and the subsequent reduced volumes of ET claims are all subject to pre-claim conciliation in the first instance	22.3	90.6	68.3

One In One Out

The measures contained within this IA affect firms and therefore are included in the one in one out rule whereby no new regulation can be brought in without other regulation being removed. This IA represents a regulatory out, therefore these proposals are not dependent on seeking a regulatory saving.

Table A5 shows the direct impact to firms based on best estimates. The equivalent annual costs to firms will be £20.4 million and the equivalent annual benefit is £108.8 million. Therefore, the net annual direct benefit to employers is £88.5 million. The 2008 Survey of Employment Tribunal Applications found that 72% of employment tribunal cases were accounted for by the private sector and 8% by the non-profit sector, hence the net annual direct benefit for these sectors is £70.8m.

Table A5. Summary of Equivalent annual costs and benefits (direct impact)

Proposal	Equivalent annual cost (£m)	Equivalent annual benefit (£m)	Equivalent net benefit (£m)
Proposal 1- Early conciliation	£14,104,276	£69,913,787	£55,809,511
Proposal 6 options a and b– Withdraw the payment of expenses	£150,000		-£150,000
Proposal 7 options a and b– Extend the jurisdictions where judges can sit alone			£0
Proposal 8 Option A – Introduce the use of legal officers (delegate powers to experienced members of the administration)			£0
Proposal 8 Option B – Introduce the use of legal officers			£0
Proposal 11 – Increase qualification period	£601,394	£38,929,800	£38,328,406
Policy 12 – Introduce fines for employers	£5,517,188		-£5,517,188
Total Effect for Employers	£20,372,857	£108,843,587	
Total Net Effect for Employers	£88,470,730		
Total Net Effect for Private Sector and Non-Profit Employers	£70,776,584		

Source:BIS and MoJ estimates, net effect for private sector employers uses proportion of ET cases found to be from private (72%) and non-profit sector (8%) employers in SETA 2008. These figures do not factor in interaction effects..

Conclusion

This Impact Assessment considers a number of proposals to meet policy objectives of encouraging earlier dispute resolution and ensuring a more

efficient employment tribunals system. This overarching assessment takes an initial look at how the proposals work in combination, but it is too early to fully assess the interactions given uncertainty about which proposals are likely to go forward, lack of evidence and the need to develop each proposal as a result of consultation.

Proposal 1. Require all claims to be submitted to Acas in the first instance

Problem under consideration

The problem under consideration is the tendency in the current statutory dispute resolution arrangements in Great Britain for disputes to develop unnecessarily into employment tribunal claims. The evidence suggests that this leads to the system costing too much for all parties, both in terms of money and time. There is therefore an argument for policy changes that result in a greater number of disputes being resolved at the earliest opportunity.

Policy objective

The policy change considered in this impact assessment is the requirement that all prospective ET claims be submitted to Acas in the first instance to allow Acas to offer pre-claim conciliation (PCC). This policy change will now be referred to as 'front-loading PCC'. The policy objective is to encourage early resolution of disputes and minimise the costs involved for all parties by reducing the number of claims going to an employment tribunal.

Rationale for intervention

Much of the costs incurred in pursuing and defending employment tribunal claims could be saved if more claimants and employers were made aware of PCC. This lack of information about the option for potential claimants to engage in PCC can be considered as a market failure. There is an argument for Acas, as an independent body, to attempt to correct this market failure. By providing the opportunity for claimants to resolve their dispute as early as possible, government intervention in the form of front-loading PCC can increase the efficiency of the dispute resolution system and reduce the costs incurred by all parties. This implies an allocation of resources which is more socially optimal.

The current system

In this impact assessment, the term 'claimant' refers to the employee and the term 'respondent' refers to the employer in the dispute.

Cases are separated by track: fast, standard and open. Fast track cases mainly centre on claims where an employer has failed to pay a statutory or contractual entitlement, or failed to grant statutory rights to time off work in certain circumstances. Standard track cases are most commonly claims of unfair dismissal, while open track cases comprise all those involving allegations of workplace discrimination or detriment associated with public interest disclosures. Broadly speaking, 'track' serves as a proxy for the

differing levels of complexity typically found in cases of each category (fast track being on average the least complex; open track the most), and is also indicative of differences between the average duration (and therefore cost) of tribunal hearings for cases in the categories concerned which are not resolved in conciliation. The distribution of net cases by track is displayed in table 1.1:

Table 1.1. Track Distribution	Fast	Standard	Open
Proportion of cases by track	26%	46%	28%

Source: Acas

Total cases can be separated into single and multiple cases. Single cases involve a single claimant. Multiple cases are where a number of people bring a case against one employer on the same or very similar grounds and they are processed together. Large multiple cases are generally not benefitting from the current PCC referral system. However, a significant number of smaller multiples (three or less claimants) are included in the referral system as it is currently configured.

Many employees who are considering a claim to the employment tribunal call the Acas Helpline before doing so. Some of them obtain information from the Helpline which leads them to decide not to pursue a claim. Those who remain intent on pursuing their case further may be referred for PCC where the Helpline Adviser considers that the circumstances are appropriate (for example, the employer is not insolvent). If the parties engage in PCC, and the conciliator brokers a formal agreement to settle the dispute, the claimant will waive the right to pursue the matter in the employment tribunal. Conciliators also receive direct approaches, requesting PCC, mainly from potential respondents or from representatives. There are currently many claimants who either do not know about PCC or decide to lodge a claim without using the service. There is also a limit on the number of PCC cases that Acas has the capacity to undertake. From April 2009 to April 2010 this limit was **10,000** cases. In April 2010, the limit was increased to **20,000** cases.

Claimants are under no obligation to call the Acas Helpline or engage in PCC before they make an ET claim. However, after the claim has been lodged, Acas will in virtually all cases contact both parties (or their representatives) to offer the opportunity to engage in individual conciliation (IC) with a view to seeking an agreed resolution. If IC is unsuccessful, or if one side or the other elects not to take part, the claimant can choose either to withdraw their claim or to have it determined in an employment tribunal hearing.

Default judgement hearings represent a small proportion of the total number of hearings. A default judgement hearing is where the claimant and the respondent fail to be present at the hearing itself or where the employer fails to respond to the ET1 form.

Analysis of costs and benefits

The policy change

We propose to require details of all potential ET claims to be submitted to Acas in the first instance to allow Acas to offer pre-claim conciliation in all cases. This will also provide an early opportunity for claimants to gain an appreciation of the issues involved in their potential claim and obtain information on other relevant factors such as the way awards are calculated in the jurisdiction concerned. There will be savings to business as they will not be required to complete an ET3 response form unless PCC fails and the claim is formally submitted to TS.

The proposal envisages that claimants would submit key details of their dispute (using a shortened version of the ET1 claim form) to Acas within the relevant time limit. Acas would have no role in determining whether the claim was in time or not: merely to acknowledge receipt and record when that took place. This effectively date stamps the case to allow TS to decide whether to accept or reject the claim on these grounds subsequently if it is not resolved in PCC. The clock for the time limit applicable would therefore be stopped at the point the shortened claim form was received by Acas. Acas would have a specified period (likely to be up to a month) after receipt of the claim to attempt to conciliate the dispute. If successful, a legally binding settlement would be signed by both parties, or an informal agreement reached, and no claim would then be brought. If unsuccessful, the claimant would decide whether to lodge their claim with the tribunal. In such cases, at the end of the prescribed period Acas would write to the claimant certifying that the PCC stage had been completed and that a claim could be lodged with TS. The claimant would need to provide TS with a copy of the certification for their claim to be accepted. It is proposed that PCC would be free at the point of use to claimants.

In the course of PCC, Acas conciliators will assist employees to identify issues relating to their eligibility to claim (eg qualifying service, employee status, time limits etc) and some employees can be expected to abandon their potential claims once they appreciate how these issues apply to their circumstances. However Acas will have no role to vet claims for acceptance / rejection, and it is therefore likely that some jurisdictional issues will still need to be addressed by the Tribunals.

Methodology

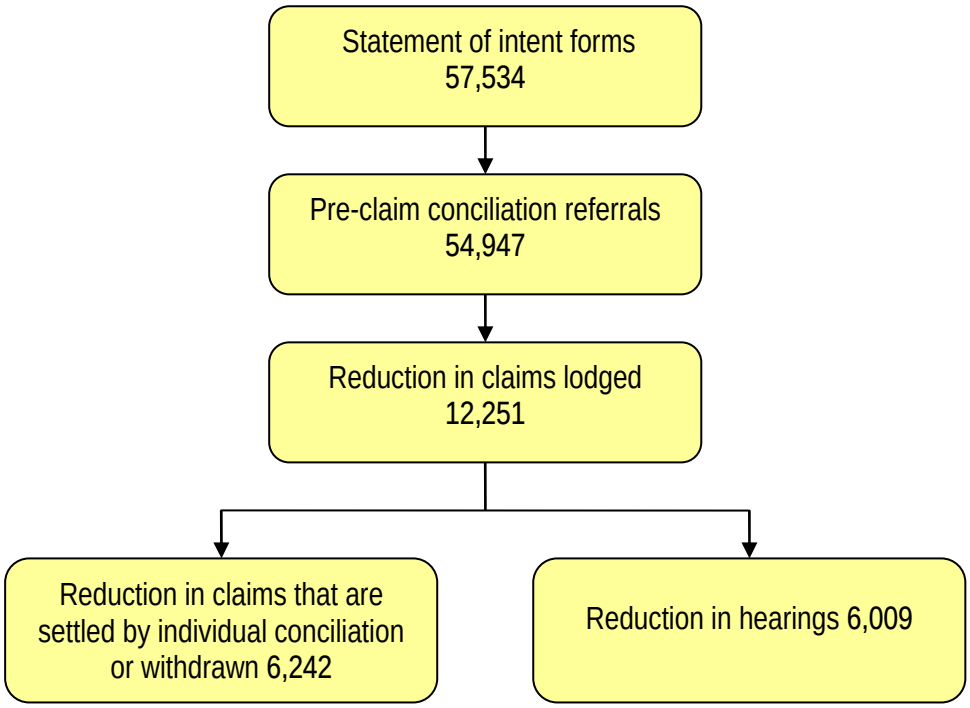
This impact assessment provides an estimate of the costs and the benefits of referring all cases to pre-claim conciliation (PCC) relative to a counterfactual (described in more detail below, but is a scenario where there is some PCC, as currently).

The costs and benefits to the claimant, the employer and the Exchequer are considered separately. The modelling of this impact assessment involves

following the volume of claims and the costs incurred at each stage of the dispute resolution system. The effect of the proposal is determined by calculating the increase in the volume of PCC cases and the reductions in the volumes of claims lodged, IC cases and employment tribunal hearings.

The volume of claims at each stage of the dispute resolution system is estimated using various flow parameters. These flow parameters represent the proportion of claims that either pass through or 'drop out' of the system (the claimant either settles or withdraws their case), based on volumes from Acas management information. A summary of how increasing the provision of PCC is expected to lead to a reduction in employment tribunal claims if the proposal is taken forward is presented in chart 1.1. Numbers are based on current caseloads and the impact of existing pre-claim conciliation arrangements.

Chart 1.1. Summary of how increasing Pre-Claim Conciliation is expected to lead to fewer employment tribunal claims



Source: BIS estimates. Totals may not sum to individual parts due to rounding.

Volumes of cases by track at each stage of the dispute resolution system are represented in Table 1.2:

Table 1.2. Annual Case Volumes	Fast	Standard	Open	Total
Statement of intent to lodge a claim	14,959	26,466	16,109	57,534
Insolvent respondents	1,496	1,059	32	2,587
Referred to PCC	13,463	25,407	16,077	54,947
PCC take-up[20]	7,607	13,847	8,215	29,669
Reduction in claims lodged	3,002	5,665	3,585	12,251
Reduction in IC take-up	2,251	4,249	2,688	9,188
IC settled/withdrawn	1,128	2,983	2,132	6,242
All hearings	1,874	2,682	1,453	6,009
Default judgement hearings	414	140	13	568
Full hearings	1,460	2,542	1,439	5,441

Source: BIS estimates, Acas, Tribunals Service, SETA 2008

The costs in this impact assessment are measured in terms of the costs of an increase in the volume of PCC cases .The benefits of the policy are measured in terms of the decrease in the volume of cases that proceed to the lodging of the claim, individual conciliation (IC) and/or an employment tribunal hearing, due to the 'treatment effect' of increased PCC usage. The decrease in the volume of such claims will result in cost savings to the claimant, the employer and the Exchequer.

Unit costs

Using a variety of sources, which include the Survey of Employment Tribunal Applications (SETA 2008) and wage data from the Annual Survey of Hours and Earnings (ASHE 2009) it is possible to construct typical costs to claimants, employers and the exchequer of going through various stages of the employment tribunals process (unit costs).

In most cases, the values taken in the construction of the unit costs are median values from SETA and ASHE. This is because with mean values a few large numbers (e.g. high wages and high tribunal hearing durations) mean a skewed data distribution, leaving mean values significantly higher than medians. The median values are therefore most representative.

Two of the unit costs used are the costs of the employer and the claimant's time. These unit costs are calculated by multiplying the median number of hours spent on the case by the median hourly wage of the manager, director or claimant. In earlier stages of the dispute resolution system, it would typically be the case that a manager will participate on behalf of the respondent. However, if the case proceeds to IC or an employment tribunal hearing, a director may also become involved in the case. Costs to the

[20] These estimates are based on PCC take-up rates for the 2009/10 financial year. Acas Management Information for the first half of 2010/11 shows a marked improvement on these rates, implying that the proportion of prospective claims "treated" by PCC are higher with a resulting positive effect on the marginal impact of PCC.

employer at the later stages of the dispute resolution system therefore reflect the cost of time spent on the case by both managers and directors.

Other unit costs include the cost of advice and representation for the claimant and the employer and the costs of travel and communication incurred by the claimant.

The unit costs to Acas of PCC and individual conciliation broadly cover wage costs although include a very small element of overheads. Costs to the Tribunals Service are purely based on wage costs. **For the final impact assessment we will be considering further the treatment of overheads so that a more accurate reflection of costs is presented in the impact assessment.** Table 1.3 shows the unit costs used in this impact assessment:

Table 1.3. Unit Costs

	£	Source
PCC - short track	187	Acas
PCC - standard and open track	250	Acas
Median hourly wages - all employees (used for claimant)	13.7	ASHE
Median hourly wages - managers	26.1	ASHE
Median hourly wages - directors	47.8	ASHE
ET1 administration	14.2	BIS estimate
PCC advice and representation for employer	267	Acas
ET3 form filling	2,000	PwC admin burdens data
Individual Conciliation - short track cost to Acas	117	Acas
IC - standard track cost to Acas	186	Acas
IC - open track cost to Acas	230	Acas
IC case management cost to Acas	16	Acas
IC advice and representation costs for employer	1,599	BIS calculation on SETA & ASHE
IC travel and loss of earnings costs for claimant	73	As above
IC advice and representation costs for claimant	501	As above
Short track hearing administration (per day exchequer costs)	14	BIS estimate
Standard & open track hearing admin (exchequer costs)	103	BIS estimate
Judicial wage (per day)	634	Tribunals Service
Lay member wage (per lay member, per day)	228	Tribunals Service
Full hearing advice and representation costs for employer	2,076	SETA
Full hearing advice and representation costs for claimant	857	SETA

Note: SETA and ASHE figures are adjusted for RPI inflation, so values are 2010 prices. Some figures are rounded

Table 1.4 illustrates rounded cost estimates for employers, claimants and the exchequer from full employment tribunal hearings and cases resolved at Individual conciliation.

Table 1.4: Summary of Unit Cost Estimates

	Employment Tribunal Hearing	Individual Conciliation
Employer	£3,800	£3,000
Claimant	£1,500	£1,200
Exchequer	£1,900	£350

Source: BIS estimates from Acas, Tribunals Service, SETA and ASHE data

Stage 1

The total number of cases suitable for PCC at the beginning of the dispute resolution system is assumed to be **77,534**. This figure is the number of **potential claims** that enter the dispute resolution system and is assumed to remain unchanged between the current system and the system with front-loading PCC implemented. This figure represents **63,250** single and **14,284** multiple claims. Using historic data from Tribunals Service and Acas, BIS estimate that there will be 100,000 multiple claims (affecting 100,000 claimants) and that on average there are around 7.0 claimants per multiple case. This equates to around **14,284** multiple cases. The number of PCC cases in 2010-2011 will be **20,000** and this is factored in when considering the the number of PCC cases if front-loading PCC was not implemented. Therefore, 20,000 cases are initially subtracted from 77,534 to determine the volume of cases that are affected by the policy. This gives a total number of **57,534** cases. We model a total of **14,959** fast track cases, **26,466** standard track cases and **16,109** open track cases entering the dispute resolution system.

There will be some implementation and ongoing costs for Acas to process the statement of intent forms. Before publication of the final impact assessment we will be quantifying these costs. Over the consultation period we will be able to gather more evidence to inform these cost estimates.

Stage 2

Claimants cannot engage in PCC if the respondent is insolvent. Cases involving insolvent respondents are therefore subtracted from the total number of cases for the purposes of quantification of costs and benefits in this impact assessment. It is envisaged that claimants whose employers appear to be insolvent will initially send the shortened claim form to Acas, but that when it is established that the employer is not in a financial position to

conciliate these cases would quickly move to submission of an employment tribunal claim or be withdrawn.

Stage 3

The new policy would result in all other cases (regardless of track) automatically being referred to PCC. This is the main difference between the new policy and the previous policy. Whether PCC is actually undertaken is still a decision made by the claimant and the respondent. The costs to the Exchequer, employers and claimants of the increase in PCC volumes are then estimated using actual PCC take-up rates. The cost of a single unit of PCC is then used to estimate the total cost to the Exchequer of increased PCC volumes. The unit cost for fast track is **£200.26,** standard track **£267.04** and open track **£292.91**. These cost figures have been provided by Acas. Costs of additional PCC cases to the employer and the claimant are measured in terms of time costs and advice and representation costs, using the unit costs mentioned above.

Stage 4

It is next necessary to calculate the marginal effect of PCC (ie the reduction in claims lodged due to the effect of PCC referrals). An estimate can be derived using Acas PCC management data and taking the proportion of all PCC cases that result in an ET1 claim being lodged (**27.7 per cent**) and subtracting the proportion of cases where an ET1 claim was lodged for cases where PCC does not progress (with the exception of unprogressed cases that are resolved after an initial discussion) which is **41.9 per cent**. The negative of the difference produces a figure for the marginal effect of PCC (-1 x (27.7 per cent - 41.9 per cent) = 14.2 per cent). This way of estimating the counterfactual needs to be treated with caution due to the fact that most of the "control" group will actually have had some 'treatment' within the part of the PCC process that they went through."

To account for some partial treatment within the control group we have increased the counterfactual to **50 per cent**. This translates to an estimated marginal effect of a **22.3 per cent** reduction in claims being lodged. Within this impact assessment this forms a 'central estimate'. This reflects a very modest counterfactual as under the policy change individuals that will be offered PCC will have filled in a statement of intent form indicating that they intend to lodge an employment tribunal claim. This can be seen as a more definitive declaration of intent than under the current system (where intention is expressed verbally to an Acas Helpline Adviser), so a higher proportion of those offered PCC under the policy change would be expected to otherwise proceed to submit a claim.

This marginal effect of PCC is then applied as a flow parameter to the volume of appropriate PCC referrals to determine the reduction in ET1 claims lodged. On average, a higher PCC referral rate results in a larger reduction in claims lodged. The policy of requiring all claims to go through Acas therefore has the

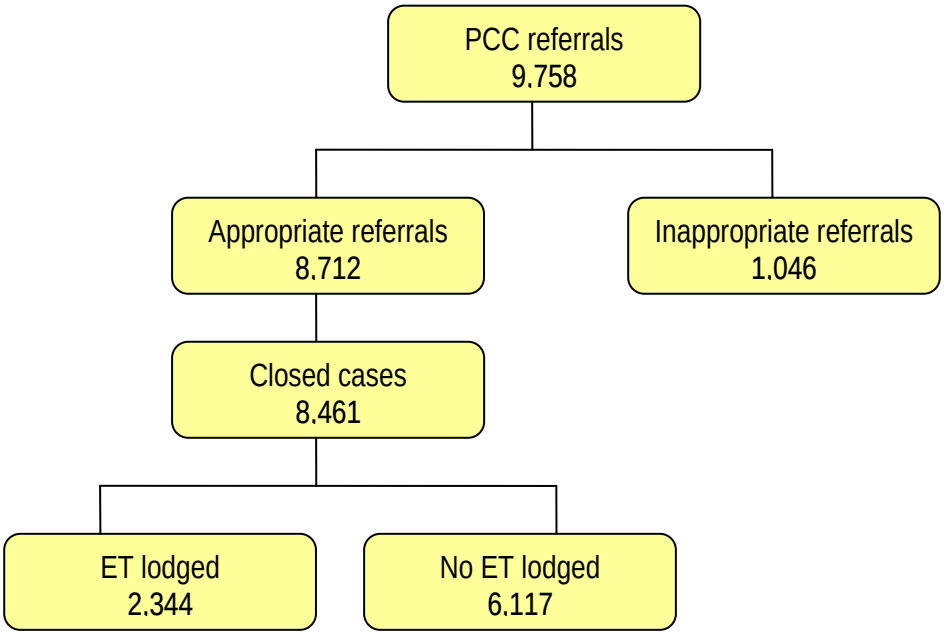
benefit of savings made from fewer ET1 claims lodged, since there are administrative and time costs associated with this. It is estimated that the cost to businesses of filling out an ET3 form is **£2000**[21].

Box 1.1: The counterfactual and estimated policy effect

It is essential to estimate a counterfactual (the proportion of employment tribunal applications that would have occurred in the absence of PCC intervention) in order to estimate the policy effect of PCC.

Acas management information (see figure 1) for the first year of operation of PCC showed that around **27.7 per cent** (2,344 / 8,461) of closed cases resulted in an employment tribunal claim being lodged within 3 months of PCC ending under the same employment dispute.

Figure 1. Volume flows within PCC between April 2009 and March 2010



Source: Acas management information

The 27.7 per cent reflects the observed outcome of existing policy. To estimate the effect of the policy we must subtract the counterfactual. As it is not possible to observe the counterfactual once a policy intervention takes place we must estimate the counterfactual.

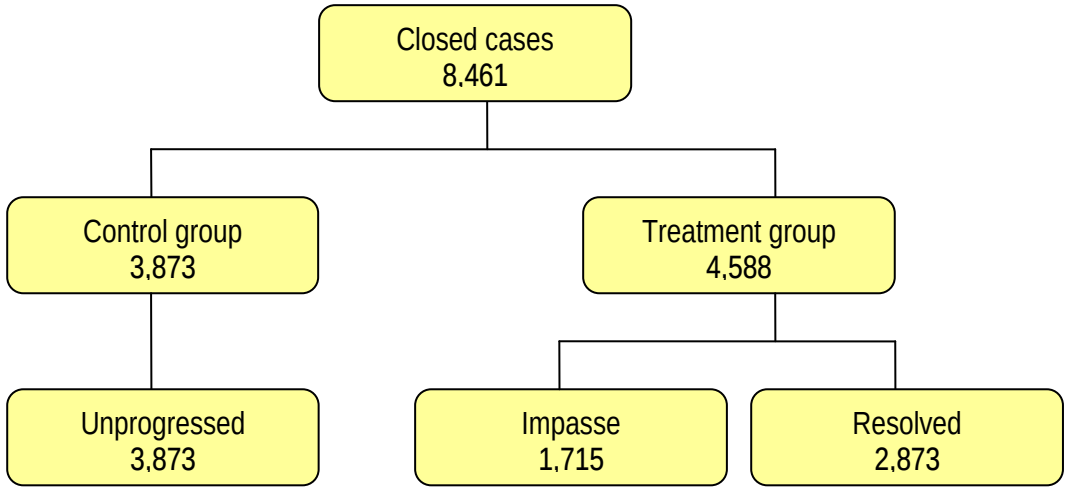
Using Acas PCC management information we know that using case outcomes in 2009/10 there were **3,873** closed cases which were 'unprogressed' either because the claimant or employer was unwilling to participate in PCC, the case was inappropriate or was unprogressed for other reasons. We use this group of claimants to form a 'control group' who did not take part in PCC. We

[21] Source: PricewaterhouseCoopers admin burdens measurement exercise.

know that in total there were 2,344 employment tribunal claims lodged from individuals with closed cases in 2009/10. Acas management information shows that for the control group **41.9 per cent** of cases resulted in an ET claim being lodged. We adjust this figure for the control group upwards to **50 per cent** to account for partial treatment of the control group.

Figure 2 below sets out statistics on case volumes and more information on case volumes by outcome can be found in table 4.

Figure 2. Case volumes of PCC covering 6/4/09 to 31/03/10



Source: BIS analysis of Acas management information

The difference between the 'ET rate' for all PCC cases (27.7 per cent) and the ET rate for the control group (50 per cent) provides an estimate of the policy effect of PCC (**22.3 per cent** reduction in ET claims lodged).

The methodology used here is not flawless as the control and treatment groups were not assigned randomly and there may be some self selection issues which potentially bias the results. Most importantly, a high proportion of the control group will in fact have had some "treatment" in the PCC process in the form of initial discussion about their case with a conciliator . As a result the individuals concerned may decide, for example, to not pursue their claim any further. For this reason we increased this figure for the counterfactual to **50 per cent** to account for some 'partial treatment' of the control group. We believe that this reflects a conservative adjustment.

The estimated policy effect of **22.3 per cent** may still be an underestimation as under the policy change claimants will have to complete a statement of intent form indicating that they would like to lodge an ET claim before being offered PCC.

As there is great uncertainty around the counterfactual sensitivity analysis is carried out later on in this impact assessment to illustrate the policy impact under alternative counterfactuals.

Table 1.5. PCC outcomes recorded in paradox / caseflow (referrals / cases completed 6/4/09 – 31/03/10)

Outcome	Total	As a percentage of total
Unprogressed - claimant unwilling	535	6%
Unprogressed - respondent unwilling	1,437	17%
Unprogressed - inappropriate (all)	1,046	12%
Unprogressed - other	855	10%
Sum of 'control group'	3,873	46%
Unprogressed – resolved in initial discussion*	296	3%
Resolved - COT3	1,998	24%
Resolved - otherwise	579	7%
Impasse - no resolution	1,111	13%
Impasse - ran out of time	604	7%
Sum of 'treatment group'	4,588	54%
Total	8,461	100%

Source: Acas management information. * This outcome category was only introduced in early September. Some outcomes recorded in previous months have been retrospectively adjusted, but only the figures from October onwards should be regarded as representative.

Stage 5

After lodging a claim, the claimant may choose to undertake individual conciliation (IC). We do not know the exact proportion of claims lodged that result in IC but we estimate this to be **75 per cent**. If a case progresses to IC, additional costs are incurred by all three parties. Unit costs for Acas of IC per cleared case for each track is as follows: open track is **£81.70, £146.00** for standard track and **£244.74** for open track. These unit cost figures were provided by Acas. Unit costs of IC by track and costs associated with case management are used to estimate cost savings to the Exchequer. Cost savings to the employer are measured in terms of time costs and advice and representation costs. The cost of time spent on the case multiplies the number of hours spent on the case with the mean hourly wage of managers and directors from ASHE 2009. Costs incurred by the claimant at IC include not only time costs and advice and representation costs but also costs associated with travel, communications and loss of earnings. Front-loading PCC will therefore have the benefit of cost savings made due to fewer IC cases.

Stage 6

Claimants may take their case to an employment tribunal hearing if they choose not to engage in IC or if they do engage in IC but it is unsuccessful in resolving their dispute. It is assumed that the number of cases that reach a hearing is the sum of all cases that are unresolved at IC that progress to a hearing (including those that do not engage in IC).

The number of cases that are unresolved at IC and progress to a hearing is estimated as the difference between the reduction in claims lodged and the

volume of IC cases that are settled or withdrawn. The volumes of claims that progress to hearings are **6,009** across all tracks.

An important benefit of front-loading PCC is the cost saving made due to fewer default judgement and full hearings. Cost savings for the Exchequer are measured mainly in terms of the time spent on administration, preparation and the writing up of the case, as well as the time spent at the hearing itself by judges and lay members. Cost savings for the employer and the claimant are measured in terms of time spent and also advice and representation. Less time is spent on administration and preparation for default judgement hearings than for full hearings.

Given this assessment of likely claims volumes and information in Table 1.3, estimates have been made of costs and benefits to the exchequer, the employer and the claimant. The total costs and benefits of this impact assessment are summarised in Table 1.6.

Table 1.6. Costs & Benefits	Exchequer	Employer	Claimant	Total
Costs				
Total cost of PCC	£7,627,339	£14,104,276	£2,316,841	£24,048,456
Total costs	£7,627,339	£14,104,276	£2,316,841	£24,048,456
Benefits				
Total ET1 savings	£173,441	£27,133,588	£1,939,345	£29,246,374
Total savings from fewer IC cases	£1,462,215	£27,266,061	£10,763,112	£39,491,388
Total case management savings	£644,346	£0	£0	£644,346
Total short-track hearing savings	£1,055,256	£437,932	£216,963	£1,710,150
Total default judgement hearing savings	£28,457	£31,440	£9,017	£68,914
Total full hearing savings	£8,193,223	£15,044,767	£3,944,647	£27,182,636
Total benefits	£11,556,938	£69,913,787	£16,873,084	£98,343,808
Net Benefits	£3,929,599	£55,809,511	£14,556,243	£74,295,352
Net Benefits (rounded to the nearest £m)	£4,000,000	£56,000,000	£15,000,000	£74,000,000

Source: BIS estimates, Acas, Tribunals Service, SETA 2008, ASHE 2009

The additional cost that results from front-loading PCC is the cost of the increase in the volumes of PCC and implementation costs to process the statement of intent forms (not currently quantified). The total cost of this is estimated to be approximately **£24m** (across the Exchequer, employers and claimant). Costs to employers are calculated by multiplying the time taken by wage costs by the anticipated volume of cases.

The benefits of this impact assessment are measured entirely in terms of the cost savings made due to fewer cases that progress to stages of the dispute resolution system after PCC. Total benefits are estimated to be approximately **£98m**. Therefore, total benefits net of total costs are estimated to be

approximately **£74m**. The net present value of front-loading PCC over a ten year period, with a discount rate of 3.5% is **£639m**.

Sensitivity analysis

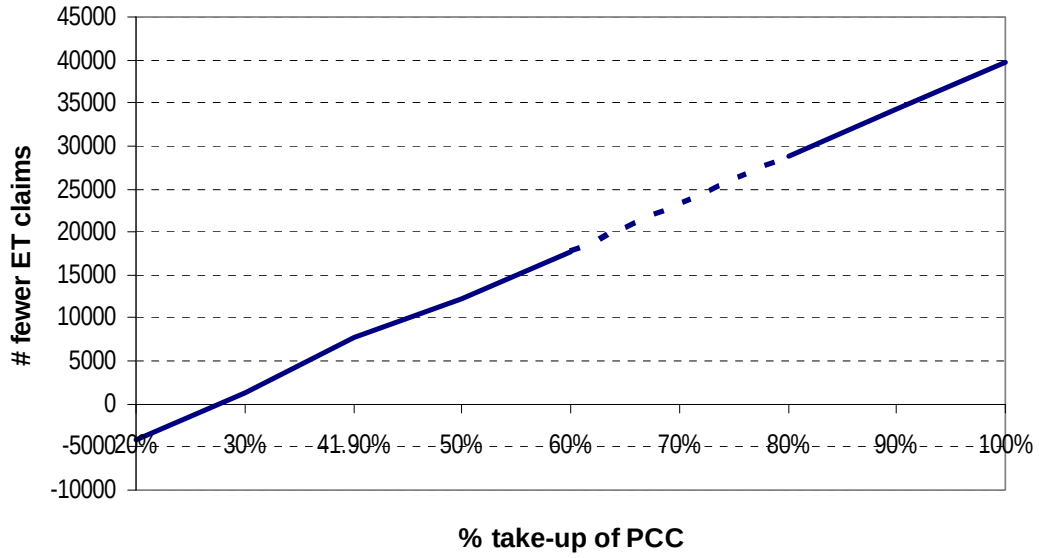
As discussed earlier there is great uncertainty around the counterfactual. Table 1.7 below presents the reduction in claims and subsequent total costs and benefits for a range of counterfactuals. Chart 1.2 shows that the cost-benefit modelling depicts a linear relationship between the counterfactual and estimated reduction in claims lodged. The chart extends the counterfactual to 100% to show the reduction in claims if all individuals who complete a statement of intent form were assumed to go on and lodge a claim.

Table 1.7: Results of Sensitivity Analysis

	% Counterfactual assumption				
	20%	42%	50%	70%	100%
Reduction in ET claims (%)	-7.7%	14.2%	22.3%	42.3%	72.3%
Reduction in ET claims (#)	-4,233	7,801	12,251	23,241	39,725
IC settled/withdrawn (#)	-2,157	3,975	6,242	11,842	20,241
Reduction in hearings (#)	-2,076	3,826	6,009	11,399	19,484
Total cost £m	24,048,456	24,048,456	24,048,456	24,048,456	24,048,456
Total benefit £m	-33,978,529	62,616,777	98,343,808	186,558,700	318,881,037
Net benefit £m	-58,026,985	38,568,321	74,295,352	162,510,244	294,832,581

Source: BIS estimates

Chart 1.2. Reduction in claims against the counterfactual



Source: BIS estimates

Risks and assumptions

The modelling of this impact assessment assumes that the effectiveness of PCC in reducing the number of claims lodged remains unchanged if front-loading PCC is implemented. There is a risk that PCC becomes less effective if less time is spent on each case due to the large increase in the number of PCC cases after front-loading PCC – (this is a risk associated with the funding that PCC receives). If this were the case, there would be a reduction in the benefits of savings made from fewer cases resulting in formal disputes.

The impact assessment also assumes that the unit cost of PCC remains unchanged after front-loading PCC. There is a possibility that the unit cost of PCC may rise if Acas has to conciliate a large increase in cases and PCC is emphasised as the main Acas service. This would increase the total additional cost of front-loading PCC. On the other hand unit costs of PCC may also fall due to economies of scale and because the statement of intent form potentially reduces the time spent by conciliators extracting information orally about the dispute which can be time consuming. This would reduce the cost of PCC provision.

Wider impacts

The proposal of front-loading PCC may have additional costs and benefits that are beyond those that are quantified in this impact assessment. There is a possibility that front-loading PCC could result in PCC being emphasised as the main Acas individual dispute resolution service. The greater emphasis placed on PCC may result in changes in employer and claimant behaviour at

hearings (encouraging earlier dispute resolution). It can be argued that front-loading PCC may change the attitudes of claimants and respondents to the resolution of disputes in general. This may result in wider impacts on the dispute resolution system.

Interaction with other policy changes

The requirement that all ET claims be submitted to Acas in the first instance to allow Acas to offer PCC in all cases is one of twelve possible policy changes to the dispute resolution system that are currently being considered. If front-loading PCC is implemented, there are likely to be interaction effects with any other proposals that are also implemented.

Front-loading PCC is a proposal that is designed to encourage early dispute resolution. There are two other proposals that are also designed to encourage early dispute resolution: introducing fee charging for employment tribunal claims (to lodge and for listing and hearing) and the formalising offers to settle option. If either or both of these policies are implemented in addition to the proposal which this impact assessment concerns, the effects on the dispute resolution system may be over and above the sum of the individual effects of these proposals.

A number of the proposals being considered are designed to reduce the cost of employment tribunal hearings. If any one or a combination of these proposals is implemented in addition to front-loading PCC, then the benefits of the latter proposal are expected to decrease. The reason for this is that the benefits of this impact assessment include the cost savings made due to fewer hearings. Therefore, if the cost of a hearing falls, cost savings from fewer hearings also fall and the result would be a total net benefit lower than the £93m estimated in this impact assessment. Proposals aimed at reducing the cost of hearings will have no impact on the cost of PCC and so it is expected that the total net benefits of this impact assessment would also decrease.

Other proposals are designed to reduce the number of cases that enter the dispute resolution system. If one or a combination of these proposals is implemented, it is likely that the volumes of cases at each stage of the dispute resolution system will be lower than the volumes of cases that this impact assessment estimates. This is likely to reduce both the costs and the benefits of front-loading PCC. However, under the assumption that the flow parameters and unit costs remain unchanged, the total net benefit of this impact assessment should remain unchanged.

Any interactions between front-loading PCC and the other policy changes will of course depend on whether these policy changes actually have their intended effects once implemented. It is important to note that not all employers and claimants behave in a way that is easily predictable. Certain combinations of proposals may have unintended effects.

Proposal 2. Case management powers for weaker and unmeritorious cases

The Government believes that more needs to be done to support and encourage workers and employers to resolve workplace disputes as early, as amicably and as effectively as possible.

However, some cases will inevitably be presented to employment tribunals (ETs). Some will be legitimately presented (i.e. because there is a reasonable case that deserves consideration before an independent judicial tribunal), and some not (for example because they are vexatious, clearly weak or otherwise misconceived).

It is perceived (specifically among the business, employer and legal community[22]) that the ET system does too little to deter weak or unmeritorious cases, and/or that it fails to deal robustly enough with such cases when they are presented to ETs. We are considering ways to ensure ETs and their judiciary and panel members have as flexible and robust case management powers to deal with cases proportionately and fairly, especially where those cases do not merit full or further consideration.

In this Impact Assessment, we consider proposals which would enhance the powers that Employment Judges and ETs currently have to deal with claims that are (or are potentially) weak, unmeritorious (so with little or no reasonable prospect of success, as judged by the ET) or even vexatious (i.e. brought merely to annoy an opponent, or in a manner that is frivolous).

Currently, where an ET considers that a case brought before it is either weak or vexatious, the tribunal has powers to dismiss or 'strike out' that claim (or any part of it; or in a response or part of response):

- Rule 18(7) of the ET Rules lists five circumstances in which an Employment Judge can strike out a claim/response/part (see sub paragraphs (b) to (f) inclusive at Annex 2). A significant power here is the power to strike out a claim or response on grounds that it is scandalous, or vexatious or has no reasonable prospect of success (as per sub rule (b)). Under Rule 18(6) and Rule 19, these powers can only be exercised when appropriate notice has been issued to any parties affected. The notice given must give the parties the opportunity to request that the order under consideration be considered at a hearing, and if such a request is made, no order can be made otherwise than at a hearing. This is slightly different to the strike out powers in the civil courts in England & Wales under the Civil Procedure Rules, Part 3, where no such notice or hearing is necessarily required; and

[22] See British Chambers of Commerce report – Employment Regulations: Up to the job? (March 2010); and Employment Lawyers' Association report – Employment Tribunals survey 2010

- Rule 13(1)(b) affords the power to Employment Judges, acting on their own initiative or on the application of a party, to strike out a claim or response (or any part thereof) on grounds of non-compliance with any rule, practice direction or order. While this power must also be exercised at a pre-hearing review, Employment Judges can make 'unless orders'[23] under Rule 13(2) otherwise than at a hearing, or at a different type of hearing. This order could direct that, unless some step is taken within a specified period of time (e.g. filing further information about a claim/response), the claim/response should stand as automatically struck out. Non-compliance with the unless order would therefore lead to strike out, without the need for further confirmation from the ET, or for any further hearings(s), subject to the usual rights in respect of Review or appeal applications.

Table 2.1 shows the total ET claims disposed of (e.g. heard by an ET, settled between the parties or withdrawn prior to a hearing) in the last three financial years, and whether they were dismissed at a preliminary hearing or struck out not at hearing. While an average of 11% of jurisdictional claims disposed of have been struck out or dismissed over the last three years, it cannot be assumed that all of those strike-outs/dismissals were related to weak or unmeritorious claims. While the core strike out powers do relate to cases which have no reasonable prospect of success[24], there are provisions under Rules 25 and 25A to dismiss, at the request of the respondent, cases that have been withdrawn or cases which have settled through Acas. It is likely that at least some cases where the parties agree a settlement between themselves will actually be meritorious (hence an acceptance of responsibility and offer of settlement), so could not be categorised as unduly weak or unmeritorious. It is not possible to estimate the proportion which was dismissed following withdrawal or settlement. Therefore, the proportion of disposals struck out and dismissed overestimates the strike-outs/dismissals related to weak or unmeritorious cases.

Table 2.1

Year	Total jurisdictions disposed of	Dismissed at preliminary hearing	Struck out not at a hearing	% of disposals struck out/ dismissed
2007/8	157,500	3,800	17,600	14%
2008/9	172,900	3,400	12,000	9%
2009/10	227,000	4,600	20,100	11%
Average	185,800	3,900	16,600	11%

Source: ET Annual Statistics, figures rounded to the nearest hundred.

[23] An Unless Order is an order from a judge in terms that, unless a party specified in the order does something (e.g. files further information) by a specified date, then a specified sanction will apply. The sanction applies automatically on non-compliance. So, an order could direct that, unless a claimant provides further information about the details of his claim by date X, then his claim will stand as struck out as it appears to have no reasonable prospect of success.

[24] Rule 18(7)(b)

In addition, the tribunal has powers:

- to require a financial deposit from a claimant and/or a respondent as a condition of being allowed to pursue a matter as part of their case, or the case as a whole. If the party fails to succeed on that case, the whole or part of the deposit may be lost. Deposit orders are made under Rule 20. The rule caps the amount of the deposit at £500 per matter (so could be applied to several matters as part of a case, with a cap of £500 per matter). The Rule also lays down the criteria which must be met before an Employment Judge can make a deposit order, namely that the order must be made at a pre-hearing review and that the Employment Judge must be satisfied that the claimant/respondent has "little reasonable prospect of success" in pursuing the relevant matter/case; and

- to award costs against a party. The costs (or, in Scotland, expenses) provisions are set out in Rules 38 to 47. Costs orders can only be made against a party who is legally represented. Where no lawyer is acting, an ET can make a 'Preparation time order' instead. Although complicated, the provisions broadly allow an award to cover fees, disbursements or other expenses incurred (whether under the costs or preparation time provisions) where, for example, a party has conducted proceedings in a manner that is vexatious, abusive, disruptive or otherwise unreasonable or misconceived. Although the preparation time orders are more limited in scope, both types of order are statutorily limited to a cap of £10,000. If an ET consider that a higher costs award should be made, reference can be made to a civil court, where a more substantial order can be made (if and as appropriate).

Rationale

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this context, Government intervention is required to reduce inefficiencies in the way that ET processes currently operate. There is a view that weak, vexatious or un-meritorious claims are brought to ETs. In particular, it is perceived that the current provisions available to ETs and its judiciary to deal with such cases do not sufficiently deter claimants from bringing weak, un-meritorious or vexatious claims; or empower ETs to manage them robustly to an early disposal. It is argued that establishing stronger, more credible and more widely-used deterrence mechanisms would reduce the volume of these ET claims whilst safeguarding access to justice for claimants who bring

legitimate cases (whose claims might proceed less expeditiously and/or effectively because of the presently high volumes of claims in the system).

There is a perception that the current system of deposits and costs powers is not credible or widely enforced. The table below shows the instances in which such orders have been made in each of the last three financial years, relative to the number of jurisdictional claims that actually went to a hearing (whether a full hearing or where dismissed at an earlier hearing). Data included in the tables below relate to costs awards made under Rules 39 and/or 40 of the ET Rules; but do not include preparation time orders made under Rules 43 and/or 44. The former can only be made where the party receiving the costs award is (or has at the relevant times been) legally represented. The latter can only be made where there is no legal representative acting for the receiving party.

Table 2.2

Year	Disposal of *claims* made at a hearing*	Disposal of *cases* made at a hearing*	Deposit orders made	Costs awarded against clmts	Cost awarded against respnts	Total no of costs awards made
2007/8	35,210	17,200	**Approx average of 209 per year****	327	134	461
2008/9	40,572	18,600		265	102	367
2009/10	58,800	21,700		324	88	412
Average	42,591	19,200		315	123	438

Source: Tribunals Service ET Annual Statistics * 'Hearing' includes cases taken to final hearing (whether the claimant was successful or not) and those dismissed at a preliminary hearing. ** Stats not currently available. But for calendar years 2007 and 2008, information fro management statistics suggests that 418 deposit orders were made by ETs

Table 2.3 breaks down those costs awards for the last full year for which figures have been collated, 2009/10.

Table 2.3

Costs	Awarded against respondent	Awarded against claimant
<£200	4	30
£200 - £400	15	36
£401-£600	14	52
£601-£800	8	12
£801-£1000	10	37
£1001-£2000	18	52
£2001-£4000	15	40
£4001 - £6000	1	26
£6001-£8000	0	9
£8001-£10000	2	29
£10000+	1	0
All	88	324
Maximum award*	£13,942	
Median award	£1,000	
Average award	£2,288	

Source: Tribunals Service ET Annual Statistics * One claim attracted costs against two respondents totalling £13,942

Employment tribunals do, therefore, have case management and other powers at their disposal. But it is clear that there are some limits to the circumstances in which such powers can be exercised, whether in relation to the test that must be satisfied prior to the application of the power; or to the type of hearing at which the power can be exercised; or otherwise.

Further, some groups have commented publicly on the relatively low number of instances in which these case management powers are exercised, given the particularly high number of cases that are being brought before ETs. For example, the British Chambers of Commerce, in its report, Employment Regulations: Up to the job?, suggested that although ETs have powers to levy deposit orders, for example, "the experience of our lawyers and business members suggests that these powers are rarely used". A specific recommendation was made that "more should be made of the deposit scheme"[25].

Similar analysis was included in the Employment Lawyers' Association report, Employment Tribunal Survey 2010, in respect of costs orders and strike out orders. According to the ELA survey, 83% of lawyers were concerned that the application of judicial discretion on costs applications was exercised inconsistently; whereas 89% held similar views in respect of strike out applications[26].

Anecdotal evidence from lawyers and other employer representatives further suggests that there is a perception that such powers are under utilised; and that if greater use was made of them, the system as a whole would benefit from a reduction in unduly weak or unmeritorious cases. We intend to test whether this anecdotal evidence is robust during the public consultation process.

However, there is a risk that case management powers and sanctions could be used as a threat by a party in a more powerful bargaining position (typically an employer) to dissuade the other party from engaging with the formal ET process. If costs sanctions or strike out powers are threatened, for example, a prospective party may conclude that the risk of pursuing the claim is too great. This would therefore act as a barrier to accessing justice.

Further, the level of awareness of the costs regime varies quite a lot between employers and claimants, which suggests that ETs are asked to exercise their powers inconsistently too.

For example, SETA 2008 shows lower levels of awareness of the existing cost regime amongst claimants compared with employers (Table 2.4). Awareness was particularly high among employers from large organisations as 86% of employers from organisations with 250 or more employees said they were aware of the implications of the cost regime in employment

[25] See Chapter 4, pages 30-31: http://www.britishchambers.org.uk/zones/policy/press-releases_1/relentless-flow-of-employment-law-is-stifling-uk-competitiveness-says-bcc.html

[26] See page 14 of the 2010 survey results: http://www.elaweb.org.uk/medialibrary.axd?id=23594935

tribunals. Those with previous experience of ET cases were also more likely than other employers to be aware of the cost regime - 79% of those with previous experience of ET cases knew of the penalties attached to the cost regime. This finding shows that more than half of all claimants are unaware of the current cost regime and therefore would continue to lodge claims regardless of the increased limits.

Table 2.4: Awareness of cost regime

	Employer	Claimant	All
Whether aware of cost regime	%	%	%
Yes	67	44	55
No	30	53	42
Don't know	3	3	3
weighted	2,007	2,020	4,027
unweighted	2,007	2,020	4,027

Source: SETA 2008. Based on all claimants and employers

Broadly, though, greater flexibility in the circumstances which these case management orders could be made (while retaining the important safeguards of such orders being made by the independent and expert judiciary, in furtherance of the overriding objective of dealing with cases justly, and with the appropriate Review and appeal mechanisms in support) could help to strengthen the credibility and deterrent effect of case management powers in employment tribunals. This would meet the concerns of tribunal users, reducing the cost associated with weak or unmeritorious claims, without compromising justice or fairness.

Affected Stakeholder groups, Organisations and Sectors

The proposal would be likely to impact on:

- **claimants** – some claimants may have cases disposed of (including dismissed or struck out) at earlier stages. If claimants cause more appeal/Review applications to be made (because of a lack of faith in the fairness of the system, or otherwise), then those claimants would face additional cost in making and pursuing such applications. More generally though, claimants who bring legitimate and meritorious cases could enjoy a better service from an ET which is able better to focus its resources on more meritorious cases. Accordingly, waiting times should fall for claimants who need to proceed to a full hearing. There is a risk, however, that some meritorious claims will not be pursued because of the deterrent effect from case management powers or sanctions. This would represent a cost to those prospective claimants who feel unable effectively to access the justice system;
- **respondents** – employers could save some of the time and expense associated with defending unmeritorious actions brought against them. Similarly, with less unmeritorious cases in the system, respondents in legitimate cases may also enjoy a

better, swifter and more effective end-to-end experience in the ET system;

- **representatives** including lawyers and trade union reps – if the tribunal process speeds up and becomes more efficient, lawyers and other representatives would be able to deal with their case loads more quickly and be able to predict more clearly how long such processes might take;
- **Acas** – may deal with fewer Individual Conciliation cases if less claims proceed through the ET process, therefore becoming better able to focus resources on the most deserving cases;
- **ET judges and members** –Employment Judges are likely to have an increased number of applications from parties seeking the exercise of new powers. This would be balanced against the envisaged net reduction in case loads more generally, and so the lower demand for judicial resources in unmeritorious cases (e.g. at pre-hearing reviews); and
- **ET staff** and those involved in the administration of tribunals more widely – the administration is likely to have to process more interlocutory work, and in particular to process applications made by parties to the ET for the exercise of case management powers/sanctions; and the processing of judicial orders in response to those applications. The appeal rates, and requests for review may also rise, impacting on the work of Tribunal offices. However, an anticipated net reduction in the cost burden to the Exchequer is anticipated.

Cost and Benefits

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 proposals. The costs and benefits of each proposal 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 sensibly 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.

Option A – Do nothing – Retain current procedures in place to enable Employment Judges or ETs to address weak or unmeritorious cases (base case).

This is the do-nothing option. Under this scenario, the current procedural rules would remain in place to enable Employment Judges or ETs to address weak or unmeritorious cases.

Case management powers to address weak or unmeritorious cases would remain the same, as would their deterrent effect on weak or unmeritorious claims.

Businesses would continue to bear costs from having to file responses, and possibly attend hearings of weak, un-meritorious and vexatious cases. The Tribunals Service would also continue to incur costs from hearing these cases.

The "do-nothing" option is compared against itself and therefore its costs and benefits are necessarily zero, as is its Net Present Value (NPV)[27]

Option B – Amend ET Rules of procedure to give Employment Judges more robust case management powers to deal with weaker or unmeritorious cases and in particular to (a) bolster the existing strike-out provisions; (b) vary the circumstances in which a judge can make an order for payment of a deposit as a condition of being allowed to pursue a claim/matter/case; and (c) revise the present costs and deposit caps to allow judges to make more robust orders (preferred proposal).

Description

Building on the case management powers currently available to Employment Judges and ET under the ET Rules, this proposal would provide additional powers (subject to the existing review, appeal and variation provisions under the Rules[28]) to:

(a) to strike out a claim, or any part of that claim (or, indeed, response), on grounds that it has no reasonable prospect of success, as exercisable by an ET (including by an Employment Judge sitting alone, and whether on its own initiative or at the invitation of a party) –

i. at hearings other than pre-hearing reviews, so including Case Management Discussions; and

ii. without hearing the parties or giving them the opportunity to make representations (but subject to the right of any party affected by an order and not

[27] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

[28] Decisions made by ETs are subject to the Review procedures (as per Rules 33 to 37), so long as the relevant criteria is satisfied. In those and any other cases, an appeal may also lie to the Employment Appeal Tribunal where a decision has been made by an ET. In addition, wherever an order is made of the ET's own initiative without inviting representations from the parties, parties affected by that order have the right under Rule 12(2)(b) to seek to have such orders varied or revoked. The proposals listed under Option 1 would have these safeguards applied, to help to ensure procedural fairness in individual cases. These provisions are analogous to those on the Civil Procedure Rules.

given the opportunity to make representations or to be heard to make those representations[29]);

(b) Employment Judges having the power to make deposit orders otherwise than at a hearing, or at hearings other than pre-hearing reviews;

(c) extending those 'deposit' powers to the EAT also, on the same basis as they would be exercised in the ET;

(d) consideration of whether it would be possible to amend the test to be met before deposit orders can be made, in both the ET and the EAT, whether changing the test itself or introducing clear criteria underneath the present test (e.g. consideration of the number of claims previously issued by the party; clarity and strength of claims pleaded; the likely costs to the parties of continuing to litigate against the value/importance of the claim) to assist Employment Judges in applying deposit orders more effectively. It would be a matter for consultation how, if at all, such a proposal would move forward in terms of detail;

(e) an increase in the maximum level of the deposit order that can be made, from £500 per matter (i.e. claim/response or part thereof) to £1000. This would raise the deterrent effect of the deposit regime, and so help to make the ET system more effective at preventing weak, un-meritorious and vexatious claims; and

(f) a doubling of the current cap on costs awards and preparation of time orders from £10,000 to £20,000. Again, this would be designed to deter unduly weak cases

The raising of the caps on deposits and costs is not linked to inflation or to any other measure. It is proposed on the assumption that the current caps are insufficient and that an increase by some factor is therefore appropriate. We intend to seek evidence during the public consultation on whether the proposed doubling is appropriate, why, and what the risks, costs and benefits of alternatives are.

Costs of option B

The following costs have not been quantified but it is anticipated that we would seek to identify the magnitude during the public consultation process.

[29] Existing appeal rights to the EAT would be preserved. Further, the right to seek a formal Review of any decisions made under this revised power would be exercisable by any party under Rule 34; and the right currently afforded under Rule 12(2)(b), i.e. where a party would be entitled to apply to have an order varied or revoked, would be extended to the revised strike-out power. So a full suite of safeguards would exist. But the flexibility of an ET to deal with cases appropriately would also be enhanced.

Transitional costs

There would be costs to the Tribunals Service (taxpayer funded) – in particular in respect of training required for judges, members and staff. The cost would include the cost of designing the training package, the cost of providing the necessary training and support, and the cost of taking judges/members and staff out of the system to receive the necessary training (or to read the material provided).

There would be costs to the Tribunals Service from producing new leaflets and guidance to guide users through the ET/EAT process. These leaflets and guidance would be available in hard copy format and online.

There would be costs to the Tribunals Service in terms of communicating with external groups or users, delivery partners and other stakeholders, including regular ET users, and third sector advice agencies.

There would be costs to ET/EAT users owing to the need to familiarise themselves with the changes to processes.

There would be familiarisation costs to other stakeholders, in particular on the legal profession, on advice agencies, on trade unions and employer representatives and on repeat users (who are more likely to be respondent businesses, rather than individual claimants).

Ongoing costs

There would be costs to the Tribunals Service from processing an increased volume of applications seeking the exercise of the new case management powers from parties. These extra applications would mean additional work for administrative staff and for judges/panels.

There would be costs to the Tribunals Service and possibly HMCS from any consequential rise in appeal requests, and/or Review applications[30], which would again need to be administered and determined/disposed of by staff and Employment Judges.

There would be administrative costs to the Tribunals Service if the volume of deposits ordered increase.

There would be increased costs to the Tribunals Service if the volume of 'unless' orders made by judges[31] increases. Although the sanction of an unless order takes effect automatically on non-compliance (once the time for compliance has expired), in practice ET offices tend to refer files to an Employment Judge for confirmation as to next steps (e.g. should the case be marked as dismissed etc). This means that an increase in the number of

[30] Review applications are made under the existing Rule 34. In specified circumstances, a party can ask the judge or panel to review a decision made. In response to that application, the judge/panel may confirm, vary or revoke the judgment or order made.
[31] Unless orders are explained at para [8], second bullet, and footnote [3], above.

unless orders made, assuming there will be some level of non-compliance, will entail files to be referred to Employment Judges for confirmation of next steps. This would mean cost to the Tribunals Service, both in respect of staff time and judicial time.

There would be costs to claimants who are discouraged/ deterred from commencing ET claims/appeals, given the various sanction powers that might be applied. This could reduce access to justice and lead to worse outcomes for some claimants in meritorious cases.

There would be costs to claimants/appellants who face a greater volume of deposit orders. Even if this money is not forfeited it would in any event entail a loss of interest (or incur an interest charge, if the money was borrowed) during the period that the tribunal held the funds as a deposit.

There would be costs to claimants who have more claims struck out if Employment Judges use new powers more. While the appeal mechanisms in place should prevent any access to justice problems, this could adversely affect legal outcomes in cases.

There would be costs to the losing parties (claimants or respondents) who are ordered to pay more in costs wherever Employment judges exercise those new powers against them. Claimants/respondents could be ordered to pay up to £20,000 in costs, compared to the current level of £10,000. If the winning party incurs costs over £10,000, the losing party could face an additional cost of reimbursing these costs. Though it is currently possible that more than £10,000 can be awarded in costs, these costs would have to be awarded by a Civil Court rather than an ET; it is therefore expected that more losing parties could have to reimburse costs over £10,000.

There would be costs to claimants who make more appeals and/or Review applications, incurring cost in preparing and pursuing those applications

There would be costs to respondents who may have to respond to (or make) appeal/review applications

There would be costs to respondents who may have to make more applications for the exercise of new case management powers, so incur cost of preparation and lodgement of such applications.

Benefits of option B

The following benefits have not yet been quantified but it is anticipated that we would seek to identify the magnitude during the public consultation process.

Transitional benefits

No transitional benefits have been identified.

Ongoing benefits

There would be benefits to the Tribunals Service from fewer cases proceeding to later stages of the ET process, in particular a reduction in time spent on interlocutory/case management and final hearings. This could result from fewer weaker or unmeritorious cases being commenced in the first place, and/or because of a higher disposal rate at earlier stages where weaker cases are struck out, or otherwise withdrawn/settled. This would result in savings to the Tribunals Service.

There would be benefits to the Tribunals Service, and ultimately to tribunal users, from more efficient use of ET resources (judges and accommodation) to more meritorious cases, so helping to process such cases more swiftly[32].

There would be benefits to the Tribunals Service from higher amounts of monies held on deposit (increase in interest received).

There would be benefits to claimants from quicker access to hearings through shorter waiting times for claimants who have legitimate and meritorious claims (whether or not the claimant goes on to succeed fully in his claim).

There would be benefits to respondents of responding to fewer claims, or fewer unmeritorious claims. This would reduce the financial costs that businesses face in investigating claims, obtaining advice, completing forms and attending hearings. This would also reduce the time spent by businesses in completing these activities, freeing up these resources for potentially productive business use.

There would be benefits to respondents generally if fewer spurious claims are made. This is because fewer businesses would face the reputational damage caused by adverse publicity following an ET claim. In a recent business report[33], the issue was explained as follows;

> "The reputation of a business can be damaged by employees' evidence at Tribunal, even if it turns out to be fabricated and the employer wins the case. This is because Tribunal cases may be reported at any stage and, as the employee presents first, journalists are able to report salacious accusations, without waiting to hear the employers' rebuttal and the judgement. Even the main media law textbook states, "employment Tribunals provide a large number of good stories." Cases are often widely reported - especially if the stories centre on allegations of sex discrimination or harassment. For example, on November 11th 2009, it was widely reported that Ms Wimmer, a woman making a £4m claim against her former employer, had been with her employer when he had taken a scantily-clad escort into a

[32] The Tribunals Service Key Performance Indicator (KPI) for ETs relates to the number of singles claims heard within 26 weeks of lodgement of the ET1 form. This KPI may be easier to meet, given the envisaged reduced pool of cases likely to need to proceed to full hearing.
[33] BCC Report (Employment Regulation: Up to the job? March 2010), Chapter 4, page 31.

business meeting. This was reported before the employer had given a reply."

There would be benefits to the winning party who would be able to reclaim more costs from the losing party. Although these powers are already available, under these proposals for the winning party could be reimbursed some/all of the expenses incurred as part of the ET process up to £20,000 compared to the present maximum of £10,000. This would benefit winning parties who face legal costs of over £10,000. Though it is currently possible to be awarded costs of over £10,000 by a Civil Court, it is expected that enabling an ET to award these costs could increase the volume of costs over £10,000 being awarded.

Key assumptions/sensitivities/risks

It is assumed that the exercise of case management powers and sanctions would be treated by the ETs as all other powers: i.e. in the interests of dealing with cases justly, and fairly. While respondents might be able to ask for sanctions to be applied, it would be for the ET to exercise those powers. Accordingly, it is also assumed that ET decisions made could not routinely be challenged (or allowed to be challenged) through appeals or reviews in a way that adds a disproportionate strain on the system.

It is also assumed that judicial powers would be exercised consistently, so that the system is as predictable as possible for parties and representatives to navigate. Of course, the balance between consistency on the one hand and doing justice in individual cases on the other is a difficult one to achieve.

It is assumed that higher limits and more robust powers would act as a disincentive to those bringing weak, speculative or vexatious claims.

In terms of **risks:**

- claimants may overweight the probability of large losses leading to some meritorious claims being deterred. These proposals could have adverse effects on workplace outcomes and access to justice;

- if the number of costs awarded doesn't change, there could be little/no change in the level of claims. This may mean that the savings to TS and businesses may not materialise); and

- enforcement may not be perceived as credible (given that costs/deposits etc are rarely awarded anyway), or claimants may not be very aware of the costs regime, it might be that the deterrent effect does not arise, or at least might be delayed in so doing.

Proposal 3. Provision of information, require claimants to set out details of claim in writing

It is perceived, specifically among the business/employer community, that the employment tribunal system does too little to deter weak or unmeritorious cases, and/or that is fails to deal robustly enough with such cases when they are presented to ETs.

Accordingly, the practice and procedure in ETs is being considered, with a focus on streamlining the system so that it is as swift, user-friendly and effective as possible. Proportionate dispute resolution is central. A particular focus of this work is to ensure as much information as is proportionate is provided earlier in the process, helping parties to determine whether to attempt to fight, settle or withdraw from a case; and helping the tribunal manage the disposal of weaker cases. This should mitigate the costs for all parties involved in ET cases; and ensure that value for money is achieved in the way that ETs are administered.

In this Impact Assessment, we consider proposals which are designed to clarify the relative merits of cases at earlier stages, so helping the:

- parties to make better and more informed decisions about whether to contest a claim or not (and, if not, whether to attempt to settle a claim, and on what grounds); and

- ET and the parties to understand what issues are in dispute, and so how best to manage a case to effective disposal, as quickly as possible, where it cannot or does not get settled or withdrawn.

The ET Rules as they currently stand require certain information to be provided at the beginning of a case. In summary:

(a) Rule 1(4) obliges a claimant to set out five sets of details when bringing an ET case, namely each claimant's name, each claimant's address, each respondent's name, each respondent's address and the "details of the claim". Collectively, this information is termed as the "required information";

(b) accordingly, the ET1 (claim) form, sets out a series of 'tick boxes' at Section 5.1 (where the claimant is asked to identify the broad headings or 'jurisdictions' under which they are seeking to claim), and to "set out the background and details of [the] claim" in a free-text box at Section 5.2;

(c) Rule 4(3) is an equivalent to Rule 1(4) but applies to respondents, rather than claimants. The information required to be given by a respondent is the full name of the respondent,

the full address of the respondent, whether or not the respondent wishes to resist the claim in whole or in part, and if the respondent wishes to so resist, on what grounds; and

(d) accordingly, the ET3 (response) form provides a free-text box for the respondent to set out, wherever appropriate, the grounds on which he intends to resist the claim brought against him.

Rule 4(4) also permits a respondent to apply to the ET for additional time in which to lodge their response. And under Rule 10(2)(b), a respondent could apply to an Employment Judge for the making of an order requiring the claimant to provide additional information. But at present, there is no clear mechanism which allows the respondent to receive more information from the claimant during the period in which a respondent must complete and lodge the ET3 form. Any respondent who fails to lodge an ET3 form within the relevant period of time is at risk of having default judgment entered against them under Rule 8. This means that, irrespective of how spurious the respondent considers the claimant's claim to be, a full ET3 is usually completed and lodged – which carries costs to the respondents.

Moreover, the current requirement to set out details, whether of the claims sought to be made or the grounds on which such claims are to be resisted, is a broad one. The phrase "details of the claim" is not further defined in the Rules, and so – if there is any dispute about whether the information provided is of sufficient detail – it will be a matter of interpretation for ETs in each case. Lack of specificity could, arguably, translate into a lack of clarity (for both parties) about exactly what should be provided – and in particular what degree of detail is required.

In part, however, the lack of specificity reflects the fact that some users of ETs (both respondents but more usually claimants) might not be represented, nor would they have sought advice[34]. Imposing too high a standard on unrepresented or inexperienced parties before a claim/response becomes valid could represent an undue barrier to accessing the justice system. In part, it also reflects the more inquisitorial nature of the ET, as opposed to the civil courts. The Tribunal's role includes providing assistance to ensure that parties are "on an equal footing"[35], i.e. ensuring that one party is not disadvantaged because he lacks representation or advice (including in respect of completing forms), where the other party might have the benefit of that support. Also, when looking to ensure fairness[36] in the proceedings, an ET would seek to ensure that the process does not unduly disadvantage parties – if the Rules were to require excessive technical detail, a party who is unable to articulate the full basis of their case on paper might be similarly unable to access justice fully.

[34] The SETA 2008 data shows, for example, 42% of claimants do get help with the ET1 form, with 45% of these getting help from a lawyer. But that leave a majority of claimants who do not access any advice or support when completing the form. And the ET system is founded on the basis that any need to obtain advice should be minimised, so as to help to optimise access to the system.
[35] Regulation 3(2)(a) of the ET Constitution & Rules regulations 2004
[36] Regulation 3(2)(c).

A balance is always required. While the ET's overriding objective, to deal with cases justly[37], must be safeguarded, it also seems clear that any party wishing to bring or defend a case should be expected to explain why. It is for that reason that the current rules mandate the provision of the "required information", before a claim can be brought. Whether the right balance is currently achieved is the issue. As things stand, for example, an ET claimant does not have to specify or particularise (at least at the ET1 stage) the extent of any financial or other loss which forms part of his claim – which in effect goes to the heart of the remedy being sought. In the civil courts, where a monetary loss is claimed, this detail would need to be set out as part of the claim form process. The provision of more specific information, and in particular some estimate about the value of the claim being made, at earlier stages of the ET process, may help parties to understand the true nature of a claim, its relative merits, and so accordingly how best they should deal with it (e.g. by contesting it, by accepting it, or by attempting to negotiate terms of settlement).

Rationale

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this case, the Government is intervening to improve efficiency. There are arguably inefficiencies in the way that ETs currently operate: the absence of more detailed requirements about the provision of information within claim forms means that respondents are not completely able to determine how best to respond (e.g. contest the case in full, accept responsibility for the claim in full, or attempt to offer settlement terms). It is argued that this causes more cases to proceed further through the ET system, including to final hearing, than might otherwise be necessary. Accordingly, parties to ETs incur large time and financial costs and the Tribunals Service does not obtain value for money from the ET system.

Affected Stakeholder groups, Organisations and Sectors

The proposal would be likely to impact on:

- **claimants** – more specific requirements to set out the details of claims made to ETs would mean a shift in the burden of

[37] Regulation 3 of the ET (Constitution & Rules etc) Regulations 2004 (as amended)

providing information to an earlier stage of the process. While much of the same information would need to be given in any case proceeding to a full hearing, front-loading that requirement would mean more claimants are put to the work (not all of whom would get to the final hearing stage);

- **respondents** – with more specific information provided up-front about the nature and value of the claim brought against them, respondents would be able to determine how best to proceed on a more informed basis;
- **representatives** including lawyers and trade union reps – representatives would be able to advise clients more effectively about the pros and cons of contesting cases or attempting to negotiate settlement terms, and may also see an increase in the volume of certain work due to claimants' potentially requiring more legal advice to fill in the ET forms. However, if more cases settle at an early point, representatives will also experience less work going to hearings in ETs;
- **ET judges and members** – assuming that the information provided is useful to the ET (which essentially means that the draft rules and forms need to ensure that the right information is asked for, clearly, and that clear guidance is given to parties giving that information), the judiciary could be better able to manage cases towards final disposal, where that management is required. Although time might be required to read the additional material provided, cases that require judicial attention would ordinarily require provision of the information envisaged under this proposal anyway. So rather than adding time to the process, the requirement for up-front provision of information is likely to save time for ET panels and judges, because no new directions would have to be given to collate and file it;
- **ET staff** and those involved in the administration of tribunals more widely – less cases are likely to proceed as far into the ET system, and so the resource demands for final hearings is likely to diminish. This would reduce the cost to the Exchequer of administering the system.

Cost and Benefits

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 sensibly 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.

Option A – Do nothing – Procedural rules would not be amended to mandate the provision of more information at earlier stages of the process; nor would ET forms be amended (base case)

This is the do-nothing option. Under this scenario, the current procedural rules would remain unchanged and no changes would be made to the ET1 or ET3 form. No further guidance or criteria would be set out to explain the kind of information that an ET would find necessary in order to understand and deal with a claim; nor would parties necessarily need to set out the value of any claim from the earliest point in the proceedings.

Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV) [38]

Option B – Amend the ET Rules so as to mandate the provision of additional 'required information' from claimants. ET forms (both ET1and ET3) would be amended as a consequence (preferred option)

Description

Option 1 seeks to address criticisms[39] of the system concerning the lack of information about the nature of some ET claims, and so the lack of opportunity respondents have to assess whether it would be more cost-effective and/or otherwise advantageous e.g. to settle the case, or fight it. Accordingly, Option 1 would in summary mean that:

(e) the required information under Rule 1(4) would be extended to mandate the provision of a Statement (or Schedule) of Loss with the claim form;

(f) the ET1 claim form itself would be amended so as to make clearer that, if any tick box is selected to identify a jurisdictional claim (e.g. discrimination of one sort or another, or unfair dismissal), then the claimant must provide specific information to explain the background and details of that particular complaint;

(g) Rule 4 would be amended to allow respondents, where they consider that insufficient information has been provided to justify any claim, to apply to the ET to seek an 'unless order' that, for example, unless the claimant provides sufficient information[40]

[38] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.
[39] See, for example, BCC report, chapter 4 page 32, where evidence from BCC members suggests that employers cannot "make a proper assessment of cost and risk and act accordingly", given the lack of detail provided in some cases.
[40] 'Sufficient' being interpreted by the ET, and only ever against the requirements imposed on all claimants by the amended rules

within a set period of time, the claim would stand as struck out and no further action would be necessary on the part of the respondent[41]. If that application is accepted, the 'unless' order would be made, with an explanation of what the Claimant must do, and by when, in order to comply with the basic requirements of the Rules. If the application is rejected, the respondent would be ordered to lodge a full response, within a set period of time and the claim would be managed as appropriate thereafter; and

(h) the ET3 form would be suitably amended, so as to provide a formal mechanism for the application for an 'unless order' to be sought.

Costs of Option B

Transitional costs

There would be costs to the Tribunals Service in terms of any costs associated with system design, rollout of new forms, and the provision of hard copy and electronic guidance for tribunal users.

The Tribunals Service would incur any training and familiarisation costs that Employment Judges, panel members and other ET staff would require. Since this proposal would be a substantial change from the status quo, these costs would be significant; and

There would be cost to ET users (and in particular regular users – more typically representatives/lawyers, and potentially some employers, who might receive more claims particularly when they employ larger number of staff) associated with awareness training on the new procedures, and how they would operate. While the proposed reforms would not introduce any particular complexity, and indeed would probably streamline the system for respondents, it would be important for users to understand the changes made.

Ongoing costs

The principal cost of the proposals insofar as the Rule 1 requirement information and changes to the ET1 form are concerned would fall to prospective claimants. Specifically:

There would be costs to claimants of completing a Statement of Loss which would be a new mandatory requirement at this stage of the process. Given the detail and structure it requires, claimants may incur substantial time costs.

There could be additional costs to some claimants of obtaining external advice when completing a statement of loss. External advice would not be

[41] The exercise of these powers by the ET as envisaged is contingent upon proposals in other parts of the consultation package being implemented.

essential. Strong and simple guidance has already been produced by the Tribunals Service – and would be issued automatically in future – to assist claimants needing to provide such information. Identifying and setting out what loss has been suffered should be straightforward, when following this guidance, in many of the simpler cases in ETs. However, it is anticipated that some claimants would turn to legal advisors, Acas or other representatives for assistance, particularly in less straightforward cases. This could mean an increase in the number of claimants seeking advice[42], and/or in the amount of assistance they require. These costs have not yet been quantified but we will seek to quantify the magnitude of them during the public consultation process.

The form changes would require claimants to set out greater detail about their claim in their ET1 forms. This means that claimants would have to spend more time drafting their ET1 forms prior to lodging them with tribunals. This would impose an additional time cost on claimants.

ETs may also incur costs in reading and analysing an increased volume of information in individual cases. However, the cases that tend to be considered by Employment Judges/ET panels in detail tend to be those that require hearings or particular case management. And ETs often direct parties to provide information of the sort envisaged under this proposal in such cases. Of course, the ET would then read and analyse the material, as necessary, once provided. So it is not expected that the additional burden would be significant.

ETs could also incur costs in dealing with new applications, lodged on the revised ET3 form, seeking the provision of further and better information from the claimant. Employment Judges would be asked to make more orders, in the form of 'unless orders'. ETs would also need to process that additional work, going to and coming from the Employment Judge. In England & Wales, however, it is common practice to send all case files to an Employment Judge once an ET3 form is lodged, and the judge considers (and deals with) the file at that point. The increased burden here will not relate to the number of files going to a judge, therefore, but that the judge may be asked to look into more questions of detail (e.g. whether further information should be provided by either party) and make more directions/orders at an earlier stage.

In any case where an 'unless order' for the provision of further information is made, it would be open to the parties affected by the order to apply to have that order reviewed, revoked, varied or set aside (i.e. under provisions in the Rules as they exist at the moment). It is anticipated that 'review' etc applications would be made, particularly where a party (and in particular a claimant) was dissatisfied with the directions given by an Employment Judge. This would mean additional costs to the Tribunals Service as there would be an additional volume of work for the tribunal to process and for the EJs and panel members to determine.

[42] Some claimants might approach lawyers/advisors where previously they would not have done. But claimants with more complicated cases will often need to access legal/other advice to help them fight their case. The fact that greater clarity is required up-front means that settlement chances increase and case management is easier. This is set out more fully in the Benefits section.

Further, if the outcome of the review application was unsatisfactory for one or other of the parties, some appeals may be lodged to the EAT, at least in the short to medium term after the introduction of the new process, because some parties might perceive that that the Rules have been incorrectly applied. There is clear case law on the use of sanction powers, in the ET system and in the wider civil court system. It is assumed that this case law would apply to the exercise of discretion in ETs and to the consideration of that discretion in any subsequent appeal proceedings.

The cost incurred by ETs in relation to reading and analysing additional information may similarly be incurred by respondents and representatives. Further, respondents would have to be engaged in any subsequent Review and/or appeal proceedings, which would also incur cost.

Respondents would also incur costs in any cases where they seek further and better information, via the revised ET3 form, but where the tribunal refuses that application and instead directs them to complete and lodge a full ET3 response with the tribunal. However, this is not work to which the respondent would be put over and above the usual requirements placed on a respondent in a case. In this scenario, the respondent would have argued that further information was required from the claimant, but the ET would have disagreed with that request. Accordingly, the respondent would be required to provide the information in response to the claim that they should have lodged in the first place.

Based on the assumption that some cases may settle earlier as a result of this Option, legal representatives would experience lower case volumes going to ET hearing stage. It is expected that these costs would be minimal and have not been quantified.

Benefits of Option B

Transitional benefits

2. No transitional benefits have been identified.

Ongoing benefits

The key benefit from this proposal is that claimants and respondents would be able to determine (on an informed basis) the most appropriate way to conduct cases, and from an earlier stage. This is because the value of the claim (what the claimant thinks they have lost, and what they want as compensation – whether monetary or otherwise) would be clearer in the minds of both parties, and so provide a clearer basis for negotiation between parties. As the BCC report quoted previously refers, “this would allow employers to make a proper assessment of cost and risk and act accordingly”[43].

[43] BCC report, chapter 4 page 32, where evidence from BCC members suggests that employers cannot “make a proper assessment of cost and risk and act accordingly”, given the lack of detail provided in some cases.

In addition, it is anticipated that there could be fewer weak or vexatious cases remaining in the system after the respondent has been given the opportunity to seek an order for the provision of further information in cases suspected to be weak or vexatious. As a result, there would be benefits to Tribunals Service from hearing a reduced volume of cases, and consequently to the parties in legitimate claims who could access a better service.

There would be benefits to respondents in terms of reduced time, inconvenience and financial costs associated with responding to weak or vexatious claims

In turn, it is anticipated that this may reduce waiting times for ETs, benefiting all service users, with the pool of cases requiring a hearing being smaller and so ETs able to list the individual cases sooner.

Based on the assumption that some claimants and respondents may obtain extra legal advice from filling in ET1 forms and any statement of loss, legal representatives may see an increase in the volumes of certain work. These benefits are not expected to be significant and have not been quantified.

Key assumptions/sensitivities/risks

It is assumed that judicial orders (for example in response to requests for unless orders to compel the provision of further information) would be reasonable and justifiable, and not limiting in terms of access to justice. It is further assumed that, on this basis, appeal routes would not be (nor could they be) abused, so that decisions made would not be challenged (or allowed to be challenged) in a way that adds a disproportionate strain on the system.

There is an assumption, made in reliance on the evidence provided by employer organisations and others, about the nature of the problem cited and the fact that any problem of ‘weaker’ cases needs to be tackled. While it is clear that the system could benefit from more flexibility in the ways that powers are exercised, as any system could, it must be tested during consultation whether there is a pool of spurious cases that requires action.

It is assumed that there is clear case law on the use of sanction powers in the ET system and in the wider civil court system. It is assumed that this case law would apply to the exercise of discretion in ETs and to the consideration of that discretion in any subsequent appeal proceedings.

There are risks inherent with this Option that claimants may find it difficult to explain their claims and would therefore be unnecessarily deterred from bringing meritorious claims to the ET. Therefore there is a risk that claimants would be unable to access justice in the same way as currently.

Summary of options

Option B looks to be advantageous, when compared against the do-nothing option. It appears to meet some or all of the objectives set out in this Impact

Assessment. However, impacts would need to be quantified further, during and after the public consultation process, to ensure that the proposed approach would indeed lead to sufficient net savings and/or wider benefits.

Proposal 4 – Incentivising the making and acceptance of formal settlement offers

Government is seeking to encourage and facilitate the increased use of settlements brokered between the parties as early as possible. This helps to divert parties from ET proceedings (or at least reduce the time those formal proceedings last), so saving time and money; and it reduces the cost of administering the system, which is borne by the Exchequer.

There are already ways in which the end-to-end employment dispute resolution system seeks to facilitate settlements between the parties. These include:

- the Advisory, Conciliation and Arbitration Service (Acas), which has a statutory duty to offer conciliation in the vast majority of claims that come before ETs. Acas currently offers two main types of service in this regard – Individual Conciliation, which is offered after an ET claim is lodged with, or 'accepted' by the ET, and Pre-Claim Conciliation (see proposal 1 on extending this), which is offered before a formal ET claim is submitted;

- negotiations between workers and their employers (or former employers) can also lead to compromise agreements. These agreements are legally binding, and relate to the termination of employment. It usually provides for a severance payment by the employer, in return for which the employee undertakes not to pursue any claim he may have to an employment tribunal; and

- alternative dispute resolution (ADR) is becoming more widely available elsewhere too. Private sector mediators offer the chance to negotiate confidentially, out of the glare of the public ET process.

The civil courts in England & Wales and in Scotland have procedures designed to facilitate early settlement where cases have been issued, but are awaiting trial. Both systems are based on what are colloquially described as Calderbank Offers, after an English family law case determined by the Court of Appeal[44].

In essence, the English and Scottish approaches are the same. Where a party makes a formal settlement offer to another party, and that offer is rejected but the person to whom the offer was made fails to do any better at trial than the settlement terms offered, the court can sanction the 'offeree' for unreasonably refusing a sensible offer. The rationale here is that parties should be incentivised not to draw out litigation longer than is necessary by unreasonably rejecting settlement offers. Each jurisdiction has slightly different processes (summarised below), but the sanctions (typically relating

[44] Calderbank v Calderbank [1976] Fam 93

to the costs/expenses that can be awarded against the party who fails to match or better a settlement offered to them) are broadly the same. In:

- **England & Wales**, Part 36 of the Civil Procedure Rules contains the provision governing formal offers to settle, including the scheme of penalties and rewards which encourage the making (and acceptance) of such offers. As well as formal offers, the Part 36 mechanism facilitates 'payments into court', where the offeror lodges with the court a sum equivalent to the terms of the offer made (to demonstrate the seriousness of the offer) and the offeree then has to accept the offer (by claiming the money) or reject it (in which case the funds sit with the court until the case is determined); and

- **Scotland**, the courts adopt the Judicial Tender system. Unlike in E&W, only defenders (the equivalent of respondents to ET proceedings) can make Tender offers to pursuers (or claimants). Under the E&W CPR, either party can make the offer to any other. A further distinction is that, in Scotland, payments into court are not part of the system, so Tenders relate purely to formal offers made between the parties.

In terms of powers of sanction, at least insofar as E&W civil courts are concerned, the basic rule now provides for two situations:

(a) a claimant fails to obtain a judgment more advantageous than a defendant's Part 36 offer; or

(b) the judgment given against the defendant is at least as advantageous to the claimant as the proposals contained in the claimant's Part 36 offer.

Where (a) applies, the court would, unless it considers it unjust to do so, order that the defendant is entitled to his costs from the date on which the relevant period expired, plus interest on those costs.

Where (b) applies, the court would, unless it considers it unjust to do so, order that the claimant is entitled to interest on the whole or part of any sum of money awarded at a rate not exceeding 10 percentage points above base rate for some or all of the period starting with the date on which the relevant period expired; costs on an indemnity basis from that date; and interest on those costs at a rate not exceeding 10 percentage points above base rate.

ETs are different from the civil courts in many respects. Not least, the usual civil court approach to costs shifting, where the default rule means a party who loses a case must pay the costs of the other side (because the need to go to court was caused by the losing party pushing a case that should not have been pushed). However, as was recently noted in Lord Justice

Jackson's Review of Civil Litigation Costs[45]: "because of the costs regime, there [is] no equivalent to CPR Part 36 in relation to employment tribunals. This meant that there [is] less pressure on parties to accept reasonable settlement offers"[46].

Rationale

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this case, the Government is intervening to improve efficiency. It is argued that there is an inefficiency in the way ETs currently operate. The absence of a 'set-off' mechanism to encourage more (and earlier) inter-party settlements means that more cases proceed further through the ET system, including to final hearing, than might otherwise be the case. There is the potential for reductions in the financial and time costs that parties currently bear. These proposals could also contribute to achieving value for money in the way that ETs are currently administered.

It is thought that these proposals are necessary because of perceptions (specifically among the business/employer community) that the costs and complexity of the tribunal system prevent firms from hiring staff, which negatively impacts the UK's growth strategy. It is also an important consideration that, with constrained public finances, the Government needs to ensure value for money in the services that it provides – including the running of courts and tribunals.

Table 4.1 demonstrates that a significant proportion of the claims received and accepted by ETs each year are marked as settled or withdrawn, whether through Acas intervention or otherwise. However, a significant number of claims also proceed to hearings. After the existing external ADR routes have been exhausted, there are few incentives built into the ET procedural framework (as it currently stands) to facilitate settlement as an attractive alternative to bringing the matter before a tribunal at a hearing.

[45] See Final Report, in particular Chapter 41 (from page 420): http://www.judiciary.gov.uk/NR/rdonlyres/8EB9F3F3-9C4A-4139-8A93-56F09672EB6A/0/jacksonfinalreport140110.pdf

[46] See Interim Report, Volume 1, Chapter 10, para 4.3: http://www.judiciary.gov.uk/NR/rdonlyres/D2C93C92-1CA6-48FC-86BD-99DDF4796377/0/jacksonvol1low.pdf

Table 4.1. ET cases accepted, disposed and methods of disposal

Claims disposed of by year	Claims accepted	Jurisdictional mix of Claims accepted	Jurisdictional mix of Claims accepted - excluding resubmitted multiples	Claims disposed	Jurisdictional mix of Claims disposed	Jurisdictional mix of Claims Conciliated by Acas	Jurisdictional mix of Claims Otherwise withdrawn	Jurisdictional mix of Claims Disposed of at hearing*
2007-2008	189,300	297,000	230,200	81,600	157,500	46,000	52,600	31,400
2008-2009	151,000	266,500	206,000	92,000	173,000	55,200	57,400	37,200
2009-2010	236,100	392,800	258,200	112,400	227,000	70,600	73,000	42,800
Average 2007-10	**192,100**	**318,800**	**231,500**	**95,300**	**185,800**	**57,300**	**61,000**	**37,100**

Source: Tribunals Service. *Hearing disposals includes claims that were successful and unsuccessful at full hearings; figures rounded to the nearest hundred.

Despite significant numbers of cases disposed of being conciliated successfully or otherwise withdrawn, a significant number still proceed all the way to a full hearing. On average over the last three years, 22,400 cases (adjusted for multiple jurisdictions per claim) proceeded to a full hearing (this figure increases to 30,700 if cases dismissed at a preliminary hearing and default judgements are included). The Survey of Employment Tribunal Applications (SETA) 2008 suggested that in some of these cases, settlement offers had been made – but the party to whom the offer was made decided to reject that offer and instead take the case before the tribunal at a hearing.

According to SETA, at the time these offers were made, 47% of claimants were hopeful that they would get more than what was being offered if the case was decided at the ET; 29% thought they would receive the same as the offer; and only 4% less than the final offer. Claimants who were made an offer, but did not accept it, were asked why this was the case. 29% said it was because they felt that not enough money was offered. Only 6% said that their claim had never been about money or money was not important to them. These findings suggest that the vast majority of parties who receive a settlement offer compare the settlement offer against what they think they might 'get' at an ET hearing.

In other parts of the civil justice system, there are mechanisms to facilitate the making of those settlement offers, and which encourage parties to consider such offers reasonably, with that encouragement reinforced by a system of penalties and rewards.

Affected Stakeholder groups, Organisations and Sectors

The proposal would encourage more cases lodged with ETs to settle before a hearing is necessary, so it would be likely to impact on:

- **claimants and respondents** – who would potentially be able to avoid costly and complicated hearings altogether, and/or who would potentially benefit from a system which administers fewer

cases to full hearing and so may get earlier hearing dates as a result;

- **representatives** (including lawyers and trade union reps) – who may benefit from quicker listing of cases as a result of fewer cases requiring hearings; they could also see changes to the work required in cases, or to the overall volume of cases. In particular, fewer cases progressing to hearing, or to such lengthy hearings, may reduce the fee income of some representatives[47];
- **ET judges and members** – who would be required to address questions of penalties and rewards in appropriate cases;
- **ET staff** and the administration more generally – who would have to administer the new process, but in a context of potentially fewer cases requiring the full range of the administrative services offered.

Cost and Benefits

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 sensibly 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

Option A – Do nothing (base case) - Retain current procedural rules

This is the “do-nothing” option. Under this scenario, the current procedural rules would remain unchanged and no incentives would be put in place to facilitate earlier settlement of cases.

The number of hearings proceeding to a full hearing would remain at its current level or continue to rise, imposing costs on claimants and respondents. There would be no incentives to negotiate amicable settlements between parties, drawing out the litigation process and decisions would continue to be imposed on parties where they needed to resort to an ET hearing. Further, there would be continuing pressure on the employment tribunals budget at a time when the overall budget is heavily constrained.

[47] There is a potential argument that those advising clients (in return for a fee) may have a vested interest in advising those clients against early settlement in order to continue charging fees. We have no evidence that this is an issue in the present system, either in respect of ETs or more widely. Moreover, there are regulatory frameworks in place (for lawyers, overseen by the framework of the Legal Services Board in E&W, and by independent bodies in Scotland) to minimise any such abuse, were it ever to occur.

The “do-nothing” option is compared against itself and therefore its costs and benefits are necessarily zero.

Option B – Establish, through ET Rules, a process where formal settlement offers can be made, analogous to the Scottish system of Judicial Tenders and the E&W civil court model under CPR Part 36 – with penalties and rewards bearing primarily on the size of awards made by ETs

Under this option, ET Rules would provide for a mechanism to facilitate the making of formal settlement offers by either party.

The model proposed is, broadly, a hybrid between the Scottish Judicial Tender and the E&W Part 36 approaches. In summary:

- like the system in Scotland, formal offers to settle would be lodged with the ET and with the offeree. That offer would be lodged using a template ET form (although the details of that offer would be kept confidential from the judge or panel which would determine the claim, so as not to risk prejudicing the outcome of the case). However, no payment-in would be possible (unlike the Part 36 model);

- like in E&W, the formal offer could be made by either party (i.e. claimant or respondent) and at any stage (although the later in the process an offer is made and/or accepted, the lower any reward/sanction would be);

- as with both the E&W and Scottish mechanisms, the offer made can relate to the whole or any part of a case – so for example to a claim under one jurisdictional heading, but not others; or a claim against one respondent, but not others; or a claim about one particular action alleged to have occurred, but not others); and

- where an offer was accepted, that would mean the relevant claim (or part of claim) was marked as ‘disposed’, so no further ET process would be necessary. However, if the offer was not accepted, the parties could rely on it after the point at which final judgment had been given by the ET. It would be at that point that the ET panel would be asked to consider the details of the offer made, and to determine what (if any) sanction/reward should apply.

Under this Option, the **size of the award** would be the prime focus. Accordingly:

- where a respondent made a formal settlement offer to a claimant and the claimant rejected it, if the claimant failed to obtain a judgment more advantageous than a respondent's offer, the ET would be empowered to reduce the size or value of any award. The value of the award could be reduced by an amount up to but not exceeding a specified cap. It is anticipated that the cap would be set as a percentage of the overall size of the award; or

- where a claimant made a formal settlement offer to a respondent and the respondent rejected it, if the judgment given against the respondent is at least as advantageous to the claimant as the proposals contained in the claimant's offer, the ET would be empowered to uplift the size or value of the award. The value of the award could be increased by an amount up to but not exceeding a specified cap. We envisage that the cap would be set as a percentage of the overall size of the award. Alternatively, interest could be applied to the judgment award, at or up to a specified rate.

In either of the above scenarios, it is necessary to have an award made by the ET, so allowing the ET to increase or decrease its value as an appropriate sanction. It is also possible that no award is made, however. For example, if a respondent makes an offer of settlement, which is not accepted, but then the claimant goes on to lose the claim, no award will be made and so there will be nothing for the ET to decrease as a sanction.

While the proposal under Option A would not, of itself, deal with this scenario, already existing powers available to the ET could be exercised. In the system as it stands, an ET is able to consider the rejection of the earlier settlement offer in light of its powers to make a costs order or a preparation of time order against a party under Rules 38 to 48[48]. See, for example, Kopel -v- Safeway Stores Plc [2003] IRLR 753. Here, a settlement offer was made, "without prejudice, save as to costs". The Employment Appeal Tribunal held that an unreasonable rejection of a settlement offer, where the offeree went on to lose the case, could be taken into account by an ET when it considered the matter of costs.

A system of formal set-off would raise numerous practical questions if pursued. These questions will be posed and addressed during and after the public consultation. However, for clarity, the questions are likely to include:

[48] Such powers can be exercised e.g. where the offeree has conducting himself in a way that is vexatious, abusive, disruptive or otherwise unreasonable, or in a way that is misconceived. It would be open to argue that, in rejecting a reasonable settlement offer, particularly at an early stage of the proceedings, the rejection of that offer (which caused an arguably unnecessary hearing to be held) was either unreasonable or misconceived. It would be for the ET to determine whether or not that was the case, in the particular circumstances of the case.

- whether offers may include monetary and non-monetary elements, and if so, how any non-monetary elements should best be dealt with at the offer stage and at any subsequent stage where an ET is required to determine whether the offer 'matched' or 'beat' the judgment made[49];

- whether they may relate to the whole or part of the claim (for example to a claim under one jurisdictional heading, but not others in the case; or a claim against one respondent, but not others; or a claim about one particular action alleged to have occurred, but not others);

- at which stages of proceedings offers may be permitted;

- whether offers in settlement prior to litigating should be taken into account in the consideration of future sanctions/penalties;

- whether there should be provisions for offers near to, or at, the final hearing;

- how much time should be allowed for consideration of offers, if indeed there should be any limit;

- whether late acceptance of offers may be permitted and how they should be dealt with;

- whether permission should be required to withdraw an offer within the period for consideration, and, if so, how that should operate;

- what penalties should be available with reference to offers, how should they be calculated and from when;

- how much discretion should be given to the ET in relation to any penalty to be imposed on a party (and should that discretion vary between parties who are represented and parties who are not); and

- whether documentation and information supporting the offer should be required to enable the robust evaluation on the part of the offeree.

[49] Lord Justice Jackson felt evaluation and quantification of non-monetary offers is possible by the judiciary (see final report, ch41, para 3.11). If a court/tribunal ascribes a monetary value to any non-monetary relief sought, the appropriate uplift/decrease can be made. However, this would entail (1) judicial and perhaps other training costs and (2) the prospect of legal argument on the basis of the valuation, which might increase the judicial workload in this one area. In any event, the SETA 2008 results suggest that 89% of cases where the claimant was successful at tribunal, money was awarded. In SETA 2003, that figures was 93%. So the question about non-monetary judgments, whilst important, is unlikely to present insurmountable issues.

For the purposes of this Impact Assessment, it is not possible to evaluate (or in particular cost) a complete model because the above (and other) questions remain to be answered. So we analyse the broad concepts involved, and undertake to add further detail to later drafts of this impact assessment, once possible.

Costs of Option B

Transitional costs

There would be familiarisation and training costs incurred by Employment Judges and panel members. Panels would be required to determine questions (in some instances quite complex questions) over the assessment of values and whether or not an offer 'matches' or beats' an offer. These costs would be incurred by the Tribunals Service.

There would be costs involved in system design, including any necessary forms and IT changes to be introduced. The ET system would need to be able to accept formal settlement offers when lodged, and ensure that the details of those offers (and potentially the fact that they exist) would need to be kept from the panel which would, if necessary, determine the claim, until the point where it is necessary for that panel to become aware of the details. There may be a need to hire additional administrative staff to take on these duties. These costs would be incurred by the Tribunals Service.

There would be costs involved in communicating new procedures to those parties to whom the new procedure is envisaged to apply, including the design of guidance and other supporting literature. These costs would be incurred by the Tribunals Service.

There would be familiarisation and training costs incurred by lawyers and other representatives/advisors; by prospective parties (in particular employers); and individuals and organisations who represent prospective parties, where advice and guidance would be necessary or useful if given by them to those they represent.

It is also anticipated that ETs may face an increase in the number of appeals (at least in the early stages of implementation) to the Employment Appeal Tribunal – and perhaps beyond that to the Court of Appeal/Court of Session, and Supreme Court – because of any uncertainties in the law that need to be resolved. While much case law precedent exists in the civil court jurisdictions, the model envisaged under this option is sufficiently different to those in existence elsewhere to justify test cases being pushed through the appellate system.

These transition costs have not been quantified – we are seeking to quantify the magnitude of these during the public consultation.

Ongoing costs

Parties already make settlement offers in the current system. Respondents make offers when the offer is less than the expected award plus any time and financial costs from continuing to litigate. Claimants accept these offers when the settlement offer is greater than the expected award minus any time and financial costs of continuing to litigate.

There would be costs to claimants who do not accept settlement offers made by respondents and subsequently have their award reduced at the ET hearing stage

Research shows that claimants strongly prefer avoiding losses than acquiring gains (i.e. claimants are loss averse). In this context, a claimant would accept an offer made by a respondent, even if the claimant perceives that it is too low, as there is a risk that it could be reduced if they continue with litigation. This means that claimants may accept offers made by respondents, where they previously would have rejected it for being too low. Claimants may therefore incur costs from reduced settlements.

There would be costs to respondents who fail to accept offers made by claimants and subsequently find, at ET hearing stage, that they would have to pay a higher award.

Respondents would make a formal settlement offer to a claimant where that settlement offer is less than the expected award (including any uplift) plus any costs associated with continuing litigation. It is likely that more respondents would make offers as a result of these proposals. There would be costs to respondents who may not have previously made offers to claimants.

There would also be costs to respondents from paying higher settlements, in situations where they may have previously made a formal settlement offer to claimants. The respondent may increase their formal settlement offers to avoid a situation where that offer was rejected by the claimant and later uplifted at ET hearing stage.

Some claimants and respondents would incur additional process costs (completing new forms, obtaining more robust advice, given the greater consequences of the proposed offer), although as some offers of settlement are already made, many such costs will already be incurred by a proportion of parties under the Option A Base Case.

The offeror (whether claimant or respondent) would face additional costs in seeking legal and/or other advice and/or in assessing the size of any formal settlement offer, given that new incentives systems would be in place. At the very minimum, this would impose time costs on the offeror and may also impose additional financial costs (e.g. whether advice is sought from an accountant, lawyer or other advisor).

The offeree (whether claimant or respondent) would face additional cost in seeking legal and/or other advice and/or in assessing whether or not a settlement offer should be accepted, given that new incentives systems would

be in place. At the very minimum, this would impose time costs on the offeree and may also impose additional financial costs (e.g. whether advice is sought from an accountant, lawyer or other advisor).

The Tribunals Service would incur costs associated with running a set-off regime. While these costs have not yet been quantified, we anticipate them to be minimal (extending simply to the receipt of a form, and to lodging that form in an appropriate place, which can be kept confidential from the panel. Certain costs might also arise from an increase in processing relevant orders and judgments. But no new technical functions would be undertaken by TS staff. That workload would fall to the judiciary).

ETs would face increased judicial/panel costs in respect of determining whether penalties/sanctions should be applied in relevant cases. It is anticipated that additional hearings would be required (whether a panel or, more likely, an Employment Judge sitting alone) to determine the consequences (if any) to an offeree who has failed to 'match' a settlement offer. Ultimately, the exercise of judicial discretion would be called for, on principles established under the new (and also the existing[50]) regime.

It is anticipated that ETs would face additional requests for costs orders and/or preparation of time orders[51], under the existing rules, because offerors are likely to argue more regularly (and/or with more justifiable grounds) that the offeree's conduct should be judged to have been 'unreasonable' or 'misconceived'.

There would be additional time, inconvenience and financial costs for all parties involved in cases where additional hearings and/or appeals are required.

There may also be costs to tribunal users more widely, in that if more hearings are required to be listed, there may be an increase in waiting times.

Benefits of Option B

Transitional benefits

No transition benefits stemming from this proposal have been identified.

Ongoing benefits

Parties already make settlement offers in the current system. They often do so on the basis that the settlement offer is greater than the expected award minus (plus for respondents) any time and financial costs of continuing to litigate.

[50] ETs currently have powers to increase of decrease awards as a result of non-compliance with the Acas Code of Conduct. It is assumed that the principles underlying the rules and case law on this power would transfer to decisions about increasing/decreasing awards as a sanction/reward under this set-off process.
[51] See paragraph above, and footnote[7].

There would be benefits to respondents when claimants do not accept settlement offers made and respondents would subsequently pay a reduced award at the ET hearing stage.

It is likely that claimants strongly prefer avoiding losses than acquiring gains (i.e. claimants are loss averse). In this context, a claimant would accept an offer made by a respondent, even if the claimant perceives that it is too low, as there is a risk that it could be reduced if they continue with litigation. This means that claimants may accept offers made by respondents, where they previously would have rejected them for being too low. Therefore respondents may benefit from having to pay reduced settlements.

There would be benefits to claimants who make settlement offers to respondents, where respondents fail to accept those offers and where claimants subsequently find, at ET hearing stage, that they receive a higher award (including uplift and interest), than otherwise would have been the case.

If these proposals increase the likelihood that respondents make settlement offers, then this may lead to an increase in the number of claimants who accept settlement offers. In particular, claimants who might not have had an offer under the current system may do so under these proposals.

If these proposals lead respondents to make increased settlement offers (to avoid a situation where that offer was rejected by the claimant and later uplifted at ET hearing stage), then claimants may benefit from higher settlements.

There would be benefits to the Tribunals Service if an increased volume of ET cases settle before proceedings begin or at earlier stages of proceedings. This would result in savings to the Tribunals Service, which we cannot currently quantify with any degree of accuracy. These benefits would be realised from reduced time and financial costs associated with cases being heard in employment tribunals.

These proposals are similar to Part 36 of the Civil Procedure Rules in England & Wales. This was “welcomed by all interested groups as a means of resolving claims more quickly. Although offers to settle can be made at any time during proceedings, there is a widespread belief that they are used in the early stages of a claim so that a trial may be avoided”52. The Scottish system of Judicial Tenders is also recognised as being of value, although Lord Gill’s 2009 Civil Courts Review illustrates that many users want, like in England and Wales, for the Tender system to allow offers to be made by both sides, rather than just defenders.

The Department for Constitutional Affairs (DCA) commissioned research into the operation of the Civil Justice (Woolf) Reforms, which included the

[52] Emerging Findings, DCA 2001. See Chapter 4, paragraph 4.6.

introduction of Part 36[53]. The researchers concluded that Part 36 was a key element in "levelling the playing field and producing equality of arms between parties to litigation, one of the key objectives of the reforms." It opened up discussions at an earlier stage. It was useful in a range of categories of cases, from commercial work, to personal injury cases and debt collecting.

We assume some or all of ET cases would also lend themselves to this process, given the core similarities in the party versus party litigation. This is reflected by the SETA 2008 analysis, which suggests that the chief reason behind the making and acceptance of settlement offers was the expected saving in time and money from concluding the case at that stage, rather than prolonging proceedings and waiting for a hearing before the ET.

Indicative data included in Chapter 34 of Lord Justice Jackson's preliminary report on Civil Litigation Costs Review suggested that, in the context of the very specialist Technology and Construction Court, 16% of cases settled or withdrawn, were settled/withdrawn as a result of a Part 36 offer, or a payment into court. Although it is difficult to draw direct (or indeed any) parallel between TCC litigation and ET cases, when combined with the supportive testimony from civil court users more generally[54], it seems that a setting-off mechanism could be welcomed and so therefore used in ETs.

There may be benefits to users of employment tribunals from reduced waiting times. This benefit would only be realised if this proposal significantly reduces the volumes of cases at employment tribunals.

Due to the variety of behavioural responses from the different groups affected it is not possible to quantify the impacts that this proposal might have. During the consultation we will seek to estimate the possible reduction in hearings (and subsequent costs savings) because more offers are accepted and this results in the avoidance of full tribunal hearings.

Option C– Establish, through ET Rules, a process where formal settlement offers can be made, analogous to the Scottish system of Judicial Tenders and the E&W civil court model under CPR Part 36 – with penalties and rewards bearing primarily on the costs/expenses incurred by the parties after the formal offer has been made

Under this option, which is similar to Option B, ET rules would provide for a mechanism to facilitate the making of formal settlement offers.

The model proposed is, again, a hybrid between the Scottish Judicial Tender (where formal settlements are lodged, but there is no facility to make any 'payment into court') and the E&W Part 36 (where formal offers can be made by either party to the other, rather than just by respondents to claimants).

[53] See Emerging Findings and Further Findings.

[54] See e.g. Emerging findings, para 4.8, which cited the "CEDR Civil Justice Audit [where] 74% of external lawyers (those not practising in a firm which dealt with its own litigation) felt that Part 36 made settling cases easier". Much wider supportive testimony was listed there and elsewhere.

Under this Option, the **costs/expenses** incurred by the parties (as assessed by the tribunal) would be the prime focus of the sanctions/rewards. Accordingly:

- Where a respondent made a formal settlement offer and where a claimant rejected that offer, if a claimant later failed to obtain a judgment more advantageous than the respondent's offer, the ET would be empowered, unless it considered it unjust to do so, to order that the respondent is entitled to costs on the indemnity basis from the date on which the relevant offer was made (or the date on which the time to respond to that offer expired), plus interest on those costs; or

- Where a claimant made a formal settlement offer and where a respondent rejected that offer, if a claimant later obtained a judgment against the respondent at least as advantageous to the claimant as the proposals contained in the claimant's offer, the ET would be empowered, unless it considered it unjust to say so, to order that the claimant is entitled to indemnity costs from the point at which the offer was made (or could have been accepted), plus interest from that point.

Costs of Option C

Transitional costs

The transitional costs would be similar to those for option A, but could potentially be greater. While the assessment of costs/expenses is a function undertaken regularly by the judiciary in the civil courts, it is a complicated and time demanding task. Costs are not routinely awarded in employment tribunal cases, with costs awards being made in only 412 cases in 2009/10 (from 25,700 cases disposed at hearing – adjusted for multiple jurisdictions per claim).

Ongoing costs

The ongoing cases would be similar to those in option B, but could potentially be greater. If the costs/expenses, given their complexities, are more burdensome to assess than decisions on changes to the award made for option B, then the ongoing costs will be higher than under option B.

Relative to Option B, it is possible that:

- more hearings may be required, taking up more judicial and party time, in the assessment of costs issues;

- those hearings may be longer and more complex than the hearings anticipated to be necessary under Option 1;

- appeal rates may be higher, in particular in the period following implementation,.

The costs to all parties, and to the Exchequer, could potentially be higher than under Option B. In essence, this is because quantification of 'costs' can involve investigation/research on the part of the parties (who need to establish and then set out for the ET exactly what costs they consider they have incurred – whether in respect of e.g. legal/other advice, travel, time or other disbursements) and on the part of the ET (which would be required to determine, usually at a hearing, the reasonableness of those estimates/quantifications, in accordance with general costs/expenses law). That then has to be taken into consideration when looking to assess the reasonableness or otherwise of the settlement rejection by the offeree, which the panel/judge would determine using the discretion afforded to it. Under Option 1, however, the ET would be asked to exercise discretion on altering the size of the award based on this last limb only, i.e. the ET's view of the unreasonable rejection of the settlement. The preliminary work to identify and argue over the amount of costs incurred, or their reasonableness, would not be relevant[55].

Benefits of Option C

Transitional benefits

No transitional benefits have been identified.

Ongoing benefits

Ongoing benefits are likely to be similar to those in option B. Due to uncertainty around the application of costs rules, parties may be more likely to accept settlement offers which they would not otherwise accept.

Key assumptions/sensitivities/risks

The civil justice system does not have access to an equivalent of Acas. Accordingly, any estimates of savings based on what happens in some of the Part 36 or tender offers may already be dealt with in the ET system.

A further assumption is that judicial interpretation and application of penalty powers would be used consistently and regularly.

[55] Where a claim was wholly or in part about a claim for a non-money remedy, the ET would need to quantify the relative value of the claim, the settlement offer and the award. That would require detailed consideration. However, that would be the case under both Option 1 and 2.

The risk is that, where the scheme is applied inconsistently, parties and advisers/representatives find it difficult or impossible to balance the relative merits of accepting particular settlement offers and the incentive system does not work.

There is a strong likelihood that all parties strongly prefer avoiding losses than acquiring gains (i.e. parties are loss averse). This means that both parties are likely to agree formal settlement offers as there is the risk that they could be worse off if an ET were to decide the outcome (increasing or decreasing any award made, where applicable). Though the policy is intended to reduce volumes at ETs and the average duration of ETs, it is possible that any trend to out of court settlement could present a risk to access to justice for both parties. It is anticipated that this would pose a risk to benefit realisation, although the extent to which that risk is apparent in other parts of the civil justice system which use systems akin to set-off is not clear.

There is a further risk that parties or representatives could use the new process as part of 'aggressive litigation' tactics, putting undue pressure on weaker parties to accept settlements of (from an objective perspective) unreasonably low values. There is a risk that this proposal may worsen legal outcomes for parties and that access to justice is compromised. In particular, because they tend to be represented less frequently56, this risk might apply disproportionately to claimants.

Summary of options

Given the experience of the wider civil litigation system, it is felt that the net benefits of either Option B or Option C may outweigh the 'do nothing' Option A. Although some indications are that the costs associated with Option C may be higher than with Option B, at this stage and on the basis of the information available, we do not have a preferred option.

We consider that both Options B and C deserve further investigation. Accordingly, we plan to consult and populate a more detailed Impact Assessment to determine whether benefits would be sufficient to justify any costs associated with the proposals.

[56] The SETA survey in 2003 surveyed around 2,300 cases that went to full hearing and found that of cases that went to full hearing 42% of claimants were legally represented and 72% of respondents were legally represented. The later SETA survey in 2008 found that 32% of ET1 forms (i.e. from claimants) indicated they were legally represented, whilst 54% of ET3 forms from respondents indicated they were legally represented.

Proposal 5: Witness statements to be taken as read

Government is committed to streamlining the employment tribunal system so that it is as swift, user-friendly and effective as possible.

Ultimately, cases that require determination by a tribunal will need to be listed for a hearing before a panel of tribunal members, or before an Employment Judge sitting alone. We want to reduce the length of these hearings in instances where current practice adds undue procedural requirements.

A witness statement is a written statement given by a person, which contains the evidence which that person intends to give during the presentation of a party's case. It will contain the substance of what is known as the witness's 'evidence in chief', i.e. evidence given by a witness for the party who called them.

A witness's evidence in chief is distinct from the evidence given under 'direct examination', i.e. answers to the questions put by the party who called them; and also distinct from 'cross examination', i.e. answers to the questions put by a party other than the party who called the witness.

In line with current practice and procedure, at least in most of England and Wales, witnesses tend to be required to read out the content of their witness statements during an ET hearing, so that the evidence is heard orally by the tribunal judge or members. (In Scotland, however, witness statements are not used in ET (or wider civil court) hearings, unless ordered by a judge).

The reading aloud of witness statements is generally followed by any relevant cross examination. Witness statements are required to be read out, as a general rule, irrespective of whether that statement has been read by the parties and the tribunal beforehand – which is usually the case. Accordingly, evidence read out loud from a witness's statement tends to be known by the parties and by the tribunal in advance.

This proposal would introduce a general rule that would end the standard practice of reading witness statements aloud even where the contents of those statements are not known by all relevant parties beforehand. Instead, witness statements would be 'taken as read' – i.e. they would stand as the evidence in chief of the witness concerned, therefore obviating the need for time to be spent reading out the statement.

Rationale

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may

consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this context Government intervention is required to improve efficiency. There is an inefficiency in the way ET hearings currently operate – it is thought that time is often wasted by having witnesses read their statements aloud when all those present in the hearing are already familiar with the substance of that evidence. These proposals would also bring procedure into line with current practice in civil courts, "where a witness is called to give oral evidence… his witness statement shall stand as his evidence in chief unless the court orders otherwise"[57].

Affected Stakeholder groups, Organisations and Sectors

This proposal is designed to reduce the time spent by parties and witnesses giving evidence before ETs in hearings. Accordingly, the proposal should decrease the overall length of hearings. Groups likely to be affected by the proposal are:

- **claimants and respondents** – hearing times will be reduced. This will cause less expense in terms of attendance and/or representation;
- **other witnesses** – will no longer be required to read aloud in front of a public and formal tribunal. Time spent giving evidence will also be reduced;
- **representatives** (including lawyers and trade union reps) – time will be saved in representing parties;
- **Employment Judges** and **tribunal members** – will need to ensure witness statements are read and understood in advance of hearings, but will be able to deal with hearings more efficiently; and
- **ET staff** and the administration more generally – will facilitate the more flexible and efficient use and deployment of tribunal resources, including judicial and member resources, and the use of tribunal hearing rooms.

Cost and Benefits

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

[57] Civil procedure rules 1998, rule 32.5(2)

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 sensibly 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 A – retain current practice of reading out witness statements during hearings

This is the do-nothing scenario.

Witnesses in ET hearings would, as a general rule (at least insofar as England and Wales is concerned) continue to be required to read the contents of their witness statement out loud to the tribunal, irrespective of whether the content of that evidence in chief had been disclosed to the other parties and to the tribunal in advance of the hearing.

There would be continuing inefficiency from duplication of work already undertaken and ET hearing times would continue at current length.

Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value[58].

Option B – taking witness statements as read with no judicial discretion to exercise flexibility in the application of that rule

Description
A strict procedural rule would be introduced, by way of amendment to the Statutory Instrument setting out the ET constitution and procedure that would provide that a witness called to give oral evidence would have any witness statement he makes stand as his evidence in chief.

However, unlike the equivalent provisions in the E&W civil courts, there would be no accompanying discretion for judges or tribunals to deviate from this strict rule. That would ensure that the potential savings in terms of time and cost would be maximised for all parties.

Costs of Option B

Transition costs

There would be transition costs to the Tribunals Service of updating procedural rules.

[58] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

There would be familiarisation and training costs incurred by Employment Judges and panel members. These costs would be minimal.

These transition costs have not been quantified – we are seeking to quantify the magnitude of these during the public consultation process.

Ongoing costs

Tribunals would face ongoing costs from not being able to see some or all of the evidence in chief presented orally. There may be circumstances where panel members want to assess the veracity and/or weight of a particular witness's evidence (e.g. because of the central importance of that evidence, because there is some reason to question its integrity or reliability, or simply that the panel would benefit from a summary of that evidence, particularly where there is a lot of factual evidence to keep in mind).

Witnesses would face ongoing costs if Tribunals were not able to apply the new procedural rule flexibly. Witnesses can be asked to elaborate on their witness statement rather than simply read it aloud as they might have valuable or relevant evidence but the quality of their written statement is such as to fail to make the most of that evidence.

Witnesses may also, if they are a novice witness, benefit from some time reading their own evidence in chief, before cross examination commences, to settle them into the formality of the proceedings;

Claimants and respondents would face ongoing costs from worse legal outcomes in some or all affected cases. This is likely to have an adverse impact on claimants, who are represented proportionately less frequently than respondents, in SETA (2003) 55% of claimants had day-to-day representatives compared to 59% of respondents[59]. It may be the case that claimants may not have access to the support required when drafting (or asking witnesses for) written statements.

If Employment Judges and/or panel members do not currently read witness statements prior to tribunal hearings, they will face time costs from doing so. These costs have not been quantified, and it is anticipated that more information will be obtained during the public consultation process.

Other parties may incur additional costs associated with the preparation of witness statements if they are perceived to be more important to the proceedings as a whole. These costs have not been quantified, and it is anticipated that more information will be obtained during the public consultation process.

[59] Survey of Employment Tribunal Applications (SETA) 2003, Table 4.5, Applicants' and employers' survey – day to day representatives, p104

Some members of the judiciary may be concerned about the impact on procedural fairness of this proposal, particularly as there is no judicial discretion.

Benefits of option B

Taking witness statements as read would result in a reduction in average hearing length. It is anticipated that savings will also accrue in terms of judicial and wider tribunal time, although it is not possible to quantify the magnitude of any reduction since no data is held on the time witnesses spend reading witness statements. It is expected that ET resources would be freed-up more quickly (judge time, hearing rooms etc) and would be re-deployed to deal with further work. It is anticipated that more information about these potential benefits would be obtained during the public consultation process.

ETs often operate 'floating lists', where cases are assigned hearing dates on the assumption that some cases in the list will settle and so not require the hearing. Although this ensures tribunal rooms never stand empty, it means, if not enough cases fall out, there will be too many listed and so some will need to be adjourned. If hearings are dealt with more quickly, some cases that are listed on a floating list may be less likely to stand adjourned at the end of each day. This would speed up the ET process for parties, representatives and witnesses who can be heard on their original date, preventing future delay by having to come back when the ET can hear their case.

Given the envisaged reduced length of hearings, parties, witnesses and representatives' direct/indirect costs of and associated with attending those hearings will be similarly reduced. These savings have not been quantified.

There will also probably be savings in terms of reduced cost to witnesses time/ inconvenience. These savings have not been quantified.

Savings in terms of reduced costs to claimants and respondents (time and inconvenience) are also anticipated. These savings have not been quantified.

Option C– taking witness statements as read, but with judicial discretion to exercise flexibility in furtherance of the duty to deal with cases justly (preferred option)

Description

A procedural rule would be introduced, by way of amendment to the Statutory Instrument setting out the ET constitution and procedure, that would provide that a witness is called to give oral evidence would have any witness statement he makes stand as his evidence in chief unless the court orders otherwise.

This proposals would be consistent with the practice (also provided for by secondary legislation in rules) in the civil courts in England & Wales.

Costs of option C

The costs of Option C would be very similar to those associated with Option B as outlined above. However, it is likely that because of the extra flexibility afforded to Employment Judges, some of the costs to witnesses; and for claimants and respondents (in terms of worse legal outcomes) can be avoided.

Again, for the costs outlined, it is anticipated that more information will be obtained during the public consultation.

Benefits of option C

As in Option B, there would be benefits to claimants, respondents, witnesses, representatives and to the tribunal's judiciary and administration. However, the extra flexibility afforded to Employment Judges would mean that these benefits are likely to be lower.

Given that some members of the judiciary may be concerned about the impact on procedural fairness of this proposal, it is likely that the discretion to vary the default position will be exercised in a significant proportion of cases. This would lead to reductions in average hearing times, but smaller in magnitude than those in option 1.

There would still be a benefit to service users from reduced costs of time and inconvenience

As above, this is unlikely to translate into monetised savings. Instead, the resources freed-up more quickly (judge time, hearing rooms etc) will be re-deployed to deal with further work.

Risks and assumptions

Witness statements are prepared in the bulk of English and Welsh cases proceeding to a hearing and so the preferred option does not introduce any new burden on the parties or witnesses.

Based on experience in the Bristol region (which operates a standard policy of taking witness statements as read), we would expect both options B and C to shorten hearing times. We are unable to quantify the reduction in hearing times, as hearings in the Bristol region may be reduced due to other factors.

There is a risk that taking witness statements as read and particularly when judicial discretion is not allowed may result in lengthier cross-examination of witnesses, as Employment Judges and/or panel members seek to ascertain more information from witnesses.

With a backlog of cases, it is unlikely that any of the savings outlined from reducing average case length will be cashable savings (it will simply accelerate a reduction in waiting times).

Options B and C could disadvantage unrepresented claimants disproportionately, if their written advocacy is not as strong as the employer's. Judicial discretion will therefore be important to ensure procedural fairness is safeguarded.

Summary of options

The likely benefits of Option C may be lower than those of Option B. However, Option B has disadvantages associated with its rigidity, which would hinder procedural fairness to a large extent, and may negate some or all of the benefits likely to be accrued. Therefore, on balance, Option C represents the clear preferred option.

Proposal 6: Withdraw payment of expenses

Government is committed to streamlining the employment tribunals system so that it is as swift, user-friendly and effective as possible, as well as ensuring value for money.

Currently, parties and witnesses in an ET case can apply for reimbursement for a proportion of their travel and accommodation costs to attend a hearing, as well as certain other costs, such as costs for use of interpreters. While some of the smaller tribunals do not pay expenses, they are payable within the larger jurisdictions, i.e. Social Security & Child Support, Asylum & Immigration Tribunals and Mental Health Tribunals, also including employment tribunals where expenses claims are currently paid to parties.

Rationale

In this context, Government intervention is required to address inefficiencies in the way that the Tribunals Service currently operates its expenses system. With a heavily constrained budget, there is a need to ensure that value-for-money is achieved in the way that ETs operate. It is also considered that the ET procedures should be brought into line with those in Civil Courts, stated in the Civil Procedure Rules.

Where an issue is significant for the parties, the lack of payment of expenses would be unlikely to deter them from seeking to bring/defend a claim. It is perceived that this may encourage parties to think carefully about bringing/defending claims, taking the matter to hearing and the number of witnesses summoned.

It is considered that any costs incurred by a party in paying witness expenses would be recoverable from the other side if successful at the final hearing. This would require a rule change and would be relatively easy to implement. It would also act to discourage weaker claims from proceeding through the system.

Affected Stakeholder groups, Organisations and Sectors

This proposal is designed to reduce the cost to the tribunal of administering cases and may even reduce the length of time in hearings as it is considered that fewer witnesses would be called by parties to give evidence. Groups likely to be affected by the proposal are:

- **claimants and respondents** – there would be a requirement for the parties to bear the cost of their witnesses attending to give witness at the hearing;

- **other witnesses** – there would be little impact on the witnesses as their expenses would still be made, the difference in this would be that the money would come from the parties calling them; and

- **ET staff** and the administration more generally – there would be some savings, as there would be a slight reduction in witnesses being called to give evidence at a hearing, which could reduce the length of the hearing.

The total cost to the ET from paying parties expenses from 2009/2010 was in the region of £290,000.

Cost and Benefits

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 sensibly 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

Option A – Do nothing (base case) – Retain the current expenses arrangement within the ET.

Under the 'do nothing' option. The ET would continue to process the applications received from the parties and pay out the expenses being claimed by these parties and their witnesses.

Expenses currently payable to parties and witnesses of employment tribunals include:

- Travelling expenses within the UK where costs exceed £5 (except for witnesses summoned by witness order who would be reimbursed full travel costs). The £5 excess applies to each claim submitted, irrespective of the number of days covered by that claim.
- Travel costs from overseas may, exceptionally, be paid.
- Overnight expenses may be paid, subject to limits.
- Loss of earnings is payable when no form of compensation is payable by an employer or, in the case of a self employed person, where work cannot be advanced or deferred.

Under the do-nothing scenario, travel expenses would continue to be paid. In 2009/10, the overall cost to the taxpayer was in the region of £290,000 (£278,500 from payments of expenses claims and administration costs of approximately £10,000). The number of claims for expenses received was 2,745 [Internal management statistics show that approximately 11,833 claims were disposed of at hearing, and 2,745 claims for expenses were received from parties/ witnesses].

Continuation of the status quo would imply continuing inefficiency in the way the Tribunals Service operates. There may be mounting criticism that taxpayer's money is used in an inefficient manner.

Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV)[60]

Option B – Cease payment of expenses to all parties and their witnesses involved in the ET proceedings (Preferred Option)

Under this option we are proposing that all expenses claimed by parties and their witnesses cease to be paid by the ET. We propose that when witnesses are called upon to give evidence, the party calling the witness would be required to offer payment to cover their expenses, which is similar to the system within the courts (Civil Procedure Rules 34.761). Following the conclusion of the case, the successful party can then claim costs, including those expenses paid to their witnesses from the other, unsuccessful party. The burden is ultimately on the unsuccessful party with this option, as they would be required to bear the cost of their own witnesses and that of the successful party and is not the same as cost shifting used within the courts, as it only involves the witnesses expenses. However, as with the normal claims for costs, this would also be subject to judicial discretion.

Costs of Option B

Transition costs

The Tribunals Service would incur costs related to changes in publications i.e. leaflets and changes to the information on various websites (directgov, ET website, business-link)

The Tribunals Service would also incur familiarisation and training costs for members of the ET staff. Familiarisation and training would be required to ensure that no claims for expenses from parties are to be considered and paid by the tribunal.

These costs have not been quantified but it is anticipated that we would be able to identify the magnitude during the public consultation process.

Ongoing costs

Parties would have to bear the costs of any travel expenses for themselves and any witnesses they call to give evidence. These financial costs could be considerable for some parties. It is considered that the cost to claimants, especially those representing themselves would experience a substantial increase in costs as a result of this proposal being implemented. We assume

[60] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

[61] Civil Procedure Rules 34.7 Right of witnesses to travelling expenses and compensation for loss of time: at the time of service of a witness summons the witness must be offered or paid – a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and b) such a sum by way of compensation for loss of time as may be specified in Practice Direction 34A

that this would be similar to the amount that would be saved by the ET in not paying out for expenses, equivalent to approximately £280,000. This is assuming that the number of witnesses called would be the same and that broadly the same number of claimants would travel to the ET.

Only the unsuccessful party would be required to pay the expenses of their own witnesses as well as those of the successful party would incur costs. But the extent to which the parties try to calculate their probability of winning and therefore not having to pay the expenses (and if they get this right) and this affects their willingness to call witnesses is very hard to estimate.

Some parties would not have the financial resources at their disposal to be able to pay the travel expenses of any witnesses they call to give evidence. In these circumstances, parties would be adversely affected as these proposals may prevent access to justice and result in worse legal outcomes.

Benefits of Option B

Transitional benefits

No transition benefits have been identified.

Ongoing benefits

The Tribunals Service would realise savings from no longer having to reimburse travel expenses for witnesses called to give evidence at an employment tribunal. This would result in annual savings of approximately £280,000 based on 2009/2010 figures.

The Tribunals Service would realise admin savings from not having to process expenses claims. After consulting with Tribunals Service operations staff, it was assumed that each expenses claim takes approximately 30 minutes to process. The hourly rate of a band E Liberata staff member is equivalent to £9.77 per hour (based on a 36 hour week). Therefore, the Tribunals Service would realise admin savings of approximately £10,000 annually. This total figure includes Liberata costs for issuing final payment.

Therefore, the Tribunals Service would realise total savings of £290,000 from not administering these claims. This includes the total saved from not paying expenses as well as the admin costs.

There would be some potential benefits to the parties, in the form of better managed claims and a small reduction in judicial time, which could result in claims being resolved earlier, as parties might be more willing to consider early resolution rather than having to pay more money and meet their expenses and those of their witnesses.

Option C – Cease payments of expenses to all parties and their witnesses but with appropriate exemptions in place to pay expenses in certain circumstances.

This option is similar to option 1, as the parties would be required to bear the costs of calling their witnesses rather than the state. However, in circumstances where parties are unable to bear these costs, they would be able to apply to the ET. Parties would be required to provide evidence to show that their witnesses are crucial to their claim/defence and that they are unable to bear the costs of them attending the ET hearing.

A system would be put in place for parties to apply to the ET for their witness's expenses to be paid by the tribunal in exceptional circumstances. The criteria used by the tribunal to determine the exceptional circumstances would be similar to that used in the civil courts.

Costs of Option C

Transitional costs

The Tribunals Service would incur costs relating to changes to publications i.e. forms and leaflets and changes to the information on various websites (directgov, ET website, business-link)

The Tribunals Service would incur set-up costs from establishing an appropriate travel expenses exemptions system.

The Tribunals Service would also incur familiarisation and training costs for members of the ET staff. This would mainly be to highlight that only exceptional claims for expenses from parties are to be considered and paid by the tribunal. Guidance on processing such payments would be required for staff.

These costs have not been quantified but it is anticipated that we would be able to identify the magnitude during the public consultation process.

Ongoing costs

Parties would have to bear the costs of any travel expenses for any witnesses they call to give evidence, as well as their own expenses. These financial costs may be considerable for some parties. It is considered that the cost to claimants, especially those representing themselves would increase substantially as a result of this proposal being implemented. These costs are assumed to be approximately £280,000 based on the figures obtained for 2009/10.

Some parties would not have the financial resources at their disposal to be able to pay the travel expenses of any witnesses they call to give evidence. In these circumstances, an appropriate exemptions system would compensate witnesses travel expenses, meaning that it is unlikely (though still possible) that any parties would be denied access to justice or suffer worse legal outcomes. This effect is thought to be minimal as those parties who are unable to bear the cost of their witness expenses would be able to apply to the tribunal, by providing evidence to prove their inability to pay. It is

considered that this would be similar to the practice used in the courts for considering fee exemptions.

The Tribunals Service would incur additional admin costs as a result of administering an exemptions system and considering any evidence. Whilst it is envisaged that a limited number of applications for exemptions might be received from vulnerable parties, there would still be an increase in administrative costs . The exemptions system would require an administrator to spend more time looking through the expenses application and making sure that the parties have provided the correct documents in order for their application to be considered. As there would be a reduction in overall claims, this administrative role would not require additional resources.

Benefits of Option C

Transition benefits

No transition benefits have been identified for this proposal.

Ongoing benefits

The Tribunals Service would realise savings from no longer having to reimburse travel expenses for witnesses called to give evidence at an employment tribunal. Due to the imprecise nature of the exemptions system at this stage, it is not possible to quantify the savings that the Tribunals Service would realise from this proposal.

There would also be benefits to the Tribunals Service as claims would be better managed by parties, resulting in potentially shorter hearing, as fewer witnesses would need to be called, which would lead to more judicial time available to hear additional cases.

There would also be benefits to Tribunals Service from assisting early dispute resolution, as it is considered that parties might be more willing to discuss resolution if they know that expenses are not so easy to obtain from the tribunal.

Risk and Assumptions

There is the assumption that this proposal does not prevent access to justice, as the expenses incurred by parties in attending the hearing would be met by the parties or the tribunal.

There is the risk that claimants might be deterred from making a claim and or calling witnesses, as they would be required to pay their expenses and potentially the costs of the other parties witnesses if unsuccessful.

Proposal 7 - Extend jurisdictions where judge can sit alone

Government is committed to streamlining the employment tribunals system so that it is as swift, user-friendly and effective as possible.

With constrained public finances, it is ever more important that value for money is achieved in the Courts and Tribunals services that Government provides.

In an ET, cases that require determination by a tribunal will generally be managed to a point where they can be listed for a hearing (the equivalent of a trial in a civil court) before a panel of tribunal members. That panel will be made up of an Employment Judge and two 'wing' members, one of whom will have expertise and experience of representing employees, and the other will have similar expertise and experience in relation to employers. Where a 'tripartite' panel considers an ET case and there is a subsequent appeal, the EAT will generally also list the case before a panel of three, constituted in similar tripartite fashion.

Insofar as the ET is concerned, the requirement for tripartite panels is provided for by section 4 of the Employment Tribunals Act 1996. In relation to the EAT, the equivalent provision is found under section 28 of that Act. However, unless a judge directs otherwise, cases within the scope of section 4(3) can be heard and determined by a judge sitting alone, rather than by a full tripartite panel. (For the effective application of section 4(3) to the EAT, see section 28(4)). The list of jurisdictions within the scope of section 4(3) is set out in the table at **Annex 7A**.

Rationale

In this case, the Government intervention is required to reduce inefficiencies in the way ET/EAT hearings currently operate. Cases could be dealt with faster, without compromising fairness and access to justice, by a judge sitting alone instead of by a full tripartite panel. Further, permitting a broader range of ET cases and appeals to be dealt with by lone judges is more consistent with the practice observed in civil courts in E&W and in Scotland (where civil courts' case load is also made up of party -v- party disputes involving issues of law and fact that need to be determined).

Cases heard by a judge sitting alone use the Tribunals Service's resources more efficiently. Further, listing cases for hearing is easier in front of a judge, rather than a panel of three members. This is particularly so in respect of managing member availability where a case runs across different days, or needs to be considered again by the same panel in a Review hearing at a later stage. These proposals will facilitate a more flexible and efficient use and deployment of Tribunals Service resources.

Separately, we would expect that requiring the parties to take one Employment Judge through the issues of a relatively simple case generally takes less time at a hearing than taking a panel of three through those issues. So it is assumed that hearing times would be shorter where a judge sits alone. Consequently, parties will be tied up for less time, and the tribunal resources can be utilised more effectively (more cases can be dealt with; and wing members can be deployed more effectively to deal with cases more deserving of their expertise.

While wing members remain an integral part of the system, the suggestion is that certain additional categories of case could be appropriate for judges to sit alone. Specifically, it is suggested that the following categories of hearing would benefit:

(a) unfair dismissal proceedings in ETs – many such cases involve relatively straightforward determinations about whether a claimant's right not to be unfairly dismissed has been breached. Analogous (at least in terms of the essential underlying legal questions to be addressed) to litigation in the civil courts which is determined by lone judges[62], an argument can be made that this jurisdiction should be one where Employment Judges should be entitled to sit without wing members; and

(b) appeals in the EAT – appeals to the EAT must be on a point of law, i.e. they must identify flaws in the legal reasoning of the original decision. The EAT will not normally re–examine (or determine) issues of fact. Only in exceptional circumstances has new evidence been presented at EAT stage[63]. Therefore, the rationale for legally qualified judges to sit with wing members is not the same as that at the first instance (ET) stage. In order to determine whether an ET was wrong on a point of law, it is thought that a Judge is demonstrably qualified and able to undertake the task without the assistance of lay members.

Affected Stakeholder groups, Organisations and Sectors

Groups likely to be affected by the proposals include:

[62] In simple and broad terms, the tribunal's consideration of an unfair dismissal case will cover four separate bases: (a) can the applicant claim (e.g. was he an 'employee' insofar as the law defines it; did he belong to any excluded group, like police officers; and did he have the requisite minimum length of service to qualify for statutory protection); (b) if so, was the claimant 'dismissed' in the legal definition; (c) if so, what was the reason for that dismissal; and (d) was that reason fair, i.e. was it within the "band of reasonableness" in which a reasonable employer could have acted? Questions about meeting the basic legal criteria and assessing what in the circumstances of the case the band of reasonableness would look like are questions to which judges sitting alone in civil courts address themselves in a very broad range of cases.

[63] In some EAT cases, new evidence has been allowed because the circumstances were exceptional. For example, Harrower b. Hogg where it was alleged that perjury had been committed before the employment tribunal and Moncrieff v. McDonald which involved new evidence relevant to compensation.

- **claimants and respondents** – the length of hearings should reduce in relevant cases, and so will cause less expense in terms of attendance and/or representation;

- **other witnesses** – likely to spend slightly less time giving evidence before a judge sitting alone, so again helping to save expense;

- **representatives** (including lawyers and trade union reps) – again, shorter hearings mean less time engaged in attending hearings with parties;

- **ET/EAT judges** – judges will not have to meet with members before or after hearings, to talk through the issues, explain any legal points, and agree on judgments and reasons;

- **tribunal members** – members will be utilised more effectively, on less straightforward cases (in particular where there are significant factual disputes to be determined), and so better deploying their skills and expertise; and

- **ET staff** and the administration more generally – will facilitate the more flexible and efficient use and deployment of tribunal resources. This will reduce the overall cost to the Exchequer of running the system, or lead to more productive deployment.

Table 7.1 highlights the volume of jurisdictional hearings disposed by the Tribunals Service for 2009/10 for some (but not all) of the existing jurisdictions where a judge can sit alone[64]. It also includes unfair dismissal cases and EAT appeals for comparison. Pre-hearing reviews are generally heard by an employment judge sitting alone.

The proposal is to include the additional jurisdictions/cases (unfair dismissal and EAT appeals) which may be heard alone by a judge (with or without judicial discretion to include the full panel). In 2009/10 there were, excluding pre-hearing reviews, 9,700 unfair dismissal complaints disposed of at a full hearing, whilst 403 appeals were determined by the EAT at final hearing. That equates to a total of 10,103 hearings, so potentially to the reduced deployment of 20,206 members (assuming hearings last for an average of one session day).

[64] Figures are not readily available for the other types of case in which a judge can currently sit alone. Figures have been presented for jurisdictions in which data is readily available. All the jurisdictions in which an Employment Judge can sit alone are listed in Annex 2.

Table 7.1. Jurisdictions disposed of at a hearing

	Successful at tribunal	Dismissed at a preliminary hearing	Unsuccessful at hearing	Number of hearings*
Unfair dismissal	5,200	1,200	4,500	10,900
Breach of contract	5,800	520	2,300	8,620
Redundancy pay	3,000	140	690	3,830
Equal pay	200	110	77	387
National Minimum Wage	49	10	47	106
EAT appeals**	219	172	184	575

Source: Tribunals Service. Employment Tribunal and EAT Statistics (GB) 1 April 2009 to 31st March 2010. Table 2 http://www.justice.gov.uk/publications/docs/tribs-et-eat-annual-stats-april09-march10.pdf. * Hearing consists of the sum of successful at tribunal, dismissed at a preliminary hearing and unsuccessful at hearing. ** EAT data is drawn from Tables 13 to 16.

Costs and benefits

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 sensibly 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.

Option A: "Do Nothing" (Base Case)

This is the do-nothing option. The statutory provisions governing where judges can sit alone would remain unaltered, so full panels would continue to hear the full range of cases and appeals as at present.

Under the "do-nothing" base case the jurisdictions which may be heard by judges sitting alone would not be extended to include unfair dismissal proceedings, or more EAT appeals. In 2009/10, only 43.8% of EAT hearings were heard by an Employment Judge sitting alone and it is expected that this figure would remain at approximately the current level. Unfair dismissal and EAT proceedings would continue to require a full panel consisting of a judge and two lay members.

ET/ EAT hearings would continue to be held before a panel of three (an Employment Judge and two wing members). Some groups would continue to criticise the perceived lengthy and burdensome process. ET resources would continue to be used in an inefficient way and parties to ETs would continue to suffer costly delays and inconvenience caused by the tripartite process. In the current situation where Employment Judges continue to sit with panel members in unfair dismissal or EAT proceedings, there would be a need to recruit approximately 300 additional lay members in 2010/11.

Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV)[65].

Option B: Require judges to sit without wing members in (a) proceedings in ETs concerning unfair dismissal; and (b) all proceedings in the EAT

This proposal would require an Employment Judge to sit alone in cases concerning unfair dismissal in an ET (so long as that case involved no other jurisdictional complaints or matters which an Employment Judge had no power to sit alone in[66]), and require a judge to sit alone without members in the EAT.

Currently in jurisdictions where an Employment Judge can sit alone, they have the discretion to decide whether it is appropriate that they should sit alone, or with panel members. However, this proposal would require Employment Judges to sit alone in unfair dismissal or EAT hearings. There would be no accompanying discretion for judges to deviate from this strict requirement. This would ensure that any potential savings to parties and to the tribunal in terms of time and cost would be maximised.

Costs of Option B

Transitional costs

The Tribunals Services would incur costs from changes required to forms and leaflets. Old stock would have to be run down and new forms and leaflets made available, with the information also changed on the various websites (directgov, ET website, business-link). Leaflets and forms are increasingly being used electronically.

The Tribunals Service would also incur familiarisation and training costs. These costs would include updating guidance and of Employment Judges and panel members familiarising themselves with it.

These costs have not been quantified but it is anticipated that we would be able to identify the magnitude during the public consultation process.

Ongoing costs

Parties to a claim could incur costs from worse legal outcomes. In certain unfair dismissal claims, and/or certain appeals, there is a likelihood of a dispute arising on the underlying facts. This makes it desirable (in the interests of due process) for the proceedings to be heard by a tripartite panel,

[65] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

[66] Some cases involving claims for unfair dismissal will also involve, for example, allegations for discrimination on the grounds of sex, or race. Discrimination claims cannot currently be determined by a judge sitting alone. Nor would our proposal change that. So a tripartite panel would have to hear this type of case, whether it involved unfair dismissal or not.

which would be able to lend distinctive and experienced perspectives to determining those factual disputes – in essence performing the function of an expert jury. Denying the parties to the claim or appeal the opportunity of that broader perspective would likely to give rise to a perception (at least) of justice not being done, or being seen to be done.

It is anticipated that the Tribunals Service could incur costs as parties would be more likely to appeal the judgements made. This would be a consequence of any diminished trust in the system. This would imply additional costs at EAT stage. It would not be possible to predict what the volumes of additional appeals would be since this would depend on the circumstances of individual cases. Therefore, these costs have not been quantified.

Since members would not be present at the EAT either, HMCS may incur costs as more parties seek to lodge second appeals to the Court of Appeal/Court of Session. Further challenges/appeals might also be pursued under ECHR provisions, including approaches to Europe.

Parties to a claim may face additional costs if the litigation process is lengthened, so vitiating the underlying objectives of the proposals insofar as directed at them.

In essence, the chief cost risked under this proposal is that ETs would be unable (or less able) to further the 'overriding objective', i.e. to deal with cases justly[67]. A natural consequence would be poorer outcomes in some or all affected cases. The rigidity of this proposal therefore impedes (or could impede in significant numbers of cases) procedural fairness, and so deny justice in individual cases. These costs have not been quantified.

It is anticipated that there would be no cost associated with a reduced demand for the services of members, whether in regard to redundancy or other contract termination issues, because members are not 'employees' and do not attract such rights.

Benefits of Option B

Transitional benefits

There would be savings to the Tribunals Service from not having to undertake a new member recruitment campaign which would be required in or around 2011/12. Based on the costs of the 2009/10 campaign, which was of a similar size to that anticipated to be required, there would be savings of £0.5million.

Ongoing benefits

Using historical volumes of unfair dismissal hearings, it is possible to estimate the savings to Tribunals Service from enabling judges to sit alone for unfair dismissal cases.

[67] Regulation 3, Employment Tribunal (Constitution & Rules etc) Regulations 2004.

Table 7.2 below shows the average volume of jurisdictional unfair dismissal cases disposed by the Tribunals Service that were dismissed at a preliminary hearing or reached a full hearing.

Table 7.2. Historic unfair dismissal hearing volumes

Year	Dismissed at a preliminary hearing	Full hearing
2005/06	896	6,523
2006/07	978	7,437
2007/08	1,180	7,132
2008/09	1,012	8,307
2009/10	1,200	9,700
Average over last 5 years	1,053	7,820

Source: Tribunals Service. Employment Tribunal and EAT Statistics (GB) report (Table 2). * Full hearing consists of the sum of successful at tribunal and unsuccessful at hearing.

Table 7.2 refers to jurisdictional complaints and not unique hearings (a claimant is able to lodge a claim under more than one jurisdictional heading). In order to obtain an estimate for the number of actual hearings it is necessary to divide the number of hearings per jurisdictional complaint by the average number of jurisdictions per claim. This averaged 1.7 during the period 2005/06 – 2009/10. The average number of hearings is 4,588.

The current daily fee payable to a lay member is £174. If a 21% mark-up is added to reflect non-wage labour costs, the cost of a single lay member is therefore £230 per day. The average hearing length at tribunal for unfair dismissal cases is, broadly, one day based on data for the period 2007-2010 from the employment tribunal[68]. There are usually two lay members per hearing hence an indicative unit cost saving of removing lay members from an unfair dismissal case is around £460.

The Tribunals Service would realise benefits from reduced expenditure on fees to panel members in unfair dismissal claims. It is not possible to estimate the number of unfair dismissal cases in which an Employment Judge could sit alone as many ET claims are submitted as multi-jurisdictional claims[69] with claims in jurisdictions in which an Employment Judge cannot sit alone. Therefore, the Tribunals Service would only realise benefits of reduced expenditure on panel member fees in claims that are submitted under the 'unfair dismissal' jurisdiction only. It is not possible to quantify these savings as there is no way to estimate volumes of single-jurisdictional claims.

[68] This is consistent with average hearing lengths of hearing based on median values from SETA. The most recent TS statistics (07/08 to 09/10) indicate that an average hearing takes 4 hours and 12 minutes to complete, with a tribunal day lasting roughly 5.5 hours. We assume, however, that one day is a realistic estimate, given the historical data and given the early stage of this impact assessment process.

[69] Multi-jurisdictional claims are claims brought to the Employment Tribunal in more than one jurisdiction

Where a claimant brings cases in an unfair dismissal jurisdiction and another jurisdiction, the case would have to be heard by an Employment Judge and panel members and Tribunals Service would not realise any savings.

We also expect a range of non-monetised benefits to accrue for parties and representatives, in terms of better service provided by a more efficient and responsive Tribunals Service. And as a result of the assumed reduction in hearing times (although it may be relatively low), parties will benefit from reduced costs of time and inconvenience.

Option C: – Extend the category of cases where judges can sit without those wing members to (a) proceedings in ETs concerning unfair dismissal; and (b) all proceedings in the EAT; but permit discretion for judges to direct otherwise in appropriate cases

This Option would involve increasing the jurisdictions in which an employment judge can sit alone to include unfair dismissal. Unfair dismissal proceedings would be heard by a judge sitting alone instead of by a full panel of a judge and two lay members. In certain cases where the judge considers that a full panel is necessary this will still be possible. Similarly, while as a default position members would not sit on EAT appeals, the judge could direct that members should sit in any case(s) appropriate.

Costs of Option C

Transitional costs

The Tribunals Service will need to make changes to forms and leaflets. Old stock would have to be run down and new forms and leaflets made available, with the information also changed on the various websites (directgov, ET website, business-link). Leaflets and forms are increasingly being used electronically.

The Tribunals Service would also incur familiarisation/training costs. These costs would consist of costs of updating guidance and of judges and panel members familiarising themselves with it.

As in Option B, these costs have not been quantified but we would seek to identify the magnitude of these during the public consultation process.

Ongoing costs

Parties to a claim could incur costs from worse legal outcomes. In certain unfair dismissal claims, and/or certain appeals, there is a likelihood of a dispute arising on the underlying facts. This makes it desirable (in the interests of due process) for the proceedings to be heard by a tripartite panel, which would be able to lend distinctive and experienced perspectives to determining those factual disputes – in essence performing the function of an expert jury. Denying the parties to the claim or appeal the opportunity of that broader perspective would be likely to give rise to a perception (at least) of

justice not being done, or being seen to be done. These costs would be mitigated, at least in part, by the fact that Employment Judges would be afforded discretion as to whether individual cases would be heard with panel members.

It is anticipated that the Tribunals Service would incur costs as parties would be more likely to appeal the judgements made. This would be a consequence of any diminished trust in the system. This would imply additional costs at EAT stage. These costs would be mitigated, at least in part, by the fact that Employment Judges would be afforded discretion as to whether individual cases would be heard with panel members.

Since members would not be present at the EAT either, HMCS may incur costs as more parties seek to lodge second appeals to the Court of Appeal/Court of Session. Further challenges/appeals might also be pursued under ECHR provisions, including approaches to Europe. These costs would be mitigated, at least in part, by the fact that Employment Judges would be afforded discretion as to whether individual cases would be heard with panel members.

Parties to a claim may face additional costs if the litigation process is lengthened, so vitiating the underlying objectives of the proposals insofar as directed at them.

In essence, the chief cost risked under this proposal is that ETs would be unable (or less able) to further the 'overriding objective', i.e. to deal with cases justly[70]. A natural consequence would be poorer outcomes in some or all affected cases. This option has less rigidity than option B due to the judicial discretion to have a full panel. These costs have not been quantified.

It is anticipated that there would be no cost associated with a reduced demand for the services of members, whether in regard to redundancy or other contract termination issues, because members are not 'employees' and do not attract such rights.

Benefits of Option C

Transitional benefits

There would be savings to the Tribunals Service from not having to undertake a new member recruitment campaign which would be required in or around 2011/12. Based on the costs of the 2009/10 campaign, which was of a similar size to that anticipated to be required, there would be savings of **£0.5 million**.

Ongoing benefits

There would be similar benefits as identified under Option B, but to a lesser extent. In order to calculate the cost savings to the Exchequer of Option C, it

[70] Regulation 3, Employment Tribunal (Constitution & Rules etc) Regulations 2004.

is necessary to estimate the percentage of cases in which, although an Employment Judge is entitled to sit alone, he decides that issues arising in a case are such that he will require (or benefit from) wing member participation.

The Tribunals Service would realise benefits from reduced expenditure on fees to panel members in unfair dismissal claims. It is not possible to estimate the number of unfair dismissal cases in which a Employment Judge could sit alone as many ET claims are submitted as multi-jurisdictional claims[71] with claims in jurisdictions in which an Employment Judge cannot sit alone. Therefore, the Tribunals Service would only realise benefits of reduced expenditure on panel member fees in claims that are submitted under the 'unfair dismissal' jurisdiction only. It is not possible to quantify these savings as there is no way to estimate volumes of single-jurisdictional claims. However, it is expected that any benefits realised by Tribunals Service would be smaller in magnitude than the benefits of Option B, as it is likely that affording discretion to Employment Judges would mean they would not sit alone in all unfair dismissal cases.

Where a claimant brings cases in an unfair dismissal jurisdiction and another jurisdiction, the case would have to be heard by an Employment Judge and panel members and Tribunals Service would not realise any savings.

An Employment Judge sitting alone would be the default option and a claimant or respondent would have to specifically make a request if they wanted a Judge to consider that a case be heard with panel members. It is anticipated that this procedure would be continued and would be applied to the new jurisdictions. It is also anticipated that the practice of Employment Judges sitting alone would become more widely accepted by parties to employment tribunal proceedings and appeals over time, reducing the volume of requests from claimants or respondents that a Employment Judge sit with panel members.

Summary of options

The likely monetised benefits of Option C may be lower than those of Option B. However, the disadvantages of Option B's rigidity (which might hinder procedural fairness to an extent that is not justifiable) would cancel out some or all of the benefits likely to be accrued. Therefore, on balance, Option C represents the clear preferred option.

Key assumptions/sensitivities/risks

We are assuming that an unfair dismissal case (and an appeal at the EAT) will on average last one session day (i.e. circa 5 hours).

[71] Multi-jurisdictional claims are claims brought to the Employment Tribunal in more than one jurisdiction

There is a risk that the quality of judicial decision-making may suffer in the absence of panel members.

There is a risk that parties may see the introduction of this proposal as a diminution of their right to a trial by their peers and that this might result in an increase in appeals to higher courts, increasing costs to HMCS.

Annex 7.A

Employment jurisdictions where a judge can sit alone

Table 7.A1. Employment jurisdictions where a judge can sit alone

Descriptor
(a) Claim of an employee for breach of contract of employment (b) Employer's counter-claim
Application by an employee that an employers has failed to pay a protected award as ordered by a tribunal
Failure to provide a written statement of terms and conditions and any subsequent changes to those terms
Failure to provide a guarantee payment
Failure to pay remuneration whilst suspended for medical reasons
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
Failure to provide a written pay statement or an adequate pay statement
Application for interim relief
Failure by the SOS to make an insolvency payment in lieu of wages and/or redundancy
Appeal against an enforcement or penalty notice issued by the Inland Revenue
Suffer a detriment and/or dismissal related to failure to pay the minimum wage or allow access to records
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
Failure of the employer to prevent unauthorised or excessive deductions in the form of union subscriptions Failure of the Secretary of State to pay unpaid contributions to a pensions scheme following an application for payment to be made
Failure to pay a redundancy payment
Failure of the SOS to pay a redundancy payment following an application to the NI fund
Failure of employer to pay or unauthorised deductions have been made
Complaint by a worker that employer has failed to allow them to take or to pay them for statutory annual leave entitlement Appeals before the Employment Appeal Tribunal where the tribunal case at first instance was determined by an Employment Judge sitting alone.

Proposal 8 – Introduce the use of legal officers

Government is committed to streamlining the ET system so that it is as swift, user-friendly and effective as possible.

The ET has general powers to manage proceedings which are contained in Rule 10 (2) of the Employment Tribunals Regulations, as stated below:

> *(2) Examples of orders which may be made under paragraph (1) are orders —*
>
> *(a)as to the manner in which the proceedings are to be conducted, including any time limit to be observed;*
>
> *(b)that a party provide additional information;*
>
> *(c)requiring the attendance of any person in Great Britain either to give evidence or to produce documents or information;*
>
> *(d)requiring any person in Great Britain to disclose documents or information to a party to allow a party to inspect such material as might be ordered by a County Court (or in Scotland, by a sheriff);*
>
> *(e)extending any time limit, whether or not expired (subject to rules 4(4), 11(2), 25(5), 30(5), 33(1), 35(1), 38(7) and 42(5) of this Schedule, and to rule 3(4) of Schedule 2);*
>
> *(f)requiring the provision of written answers to questions put by the tribunal or chairman;*
>
> *(g)that, subject to rule 22(8), a short conciliation period be extended into a standard conciliation period;*
>
> *(h)staying (in Scotland, sisting) the whole or part of any proceedings;*
>
> *(i)that part of the proceedings be dealt with separately;*
>
> *(j)that different claims be considered together;*
>
> *(k)that any person who the chairman or tribunal considers may be liable for the remedy claimed should be made a respondent in the proceedings;*
>
> *(l)dismissing the claim against a respondent who is no longer directly interested in the claim;*
>
> *(m)postponing or adjourning any hearing;*
>
> *(n)varying or revoking other orders;*
>
> *(o)giving notice to the parties of a pre-hearing review or the Hearing;*
>
> *(p)giving notice under rule 19;*
>
> *(q)giving leave to amend a claim or response;*

(r)that any person who the chairman or tribunal considers has an interest in the outcome of the proceedings may be joined as a party to the proceedings;

(s)that a witness statement be prepared or exchanged; or

(t)as to the use of experts or interpreters in the proceedings.

With a limited number of exceptions, such as the rejection of the ET1 claim form or the ET3 response form because the claimant or respondent have not submitted their claim or response on the prescribed form, correspondence from parties is referred to the judiciary for consideration and decision.

There are a number of routine administrative decisions currently performed by members of the judiciary which could be delegated to administrative staff or a legally qualified member of staff acting under standing directions from the judiciary without damage to the administration of justice. Within this Impact Assessment we are exploring 3 options where work could be delegated to 3 types of legal officer. This would release judicial time to concentrate on more complex matters requiring judicial input.

This proposal would allow a qualified legal officer to undertake routine case management work including provisions for further information, adjourning or postponing hearings, exchanging documents (e.g. witness statements) and the provision of expert evidence and/or listing. The impact of freeing up judicial resources could potentially promote faster, more efficient resolution of less complex matters.

Rationale

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistribution reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this context, Government intervention is required to reduce inefficiencies in the way government currently operates. It is argued that there are inefficiencies in the way that some of the case management powers are currently dealt with. It is also argued that Tribunals Service resources are not used to their full potential and matters are not dealt with according to their complexity. More efficient outcomes could be better achieved by delegating some of the more routine work from the judiciary to a suitably qualified legal officer or ‘junior’ judge.

Affected Stakeholder groups, Organisations and Sectors

The proposal would reduce the cost to tribunals of administering cases, and would reduce the overall length of hearings, at first the instance and appeal stage. Accordingly, groups likely to be affected by the proposals include:

- **claimants and respondents** – the length of time taken to resolve a claim would reduce in relevant cases, and reduce expenditure in terms of attendance and/or representation;
- **other witnesses** – would also benefit from cases being dealt with faster;
- **representatives** (including lawyers and trade union reps) – again, less time taken to resolve the claim means less time engaged in attending hearings with parties;
- **ET judges** – judges would have more time to deal with the more complex matters and hear more cases and potentially make more decisions; and
- **ET staff** and the administration more generally – would facilitate the more flexible and efficient use and deployment of tribunal resources. This would reduce the overall cost to the Exchequer of running the system, or lead to more productive deployment.

Cost and Benefits

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 a 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 sensibly 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.

Option A: "Do Nothing" (Base Case) - The ET procedural rules would remain unchanged and the current practice of judiciary dealing with routine work would stand.

This is the do-nothing option. Under this option there would be no change to the way the judiciary would consider claims and the correspondence that is referred to them. They would be required to provide direction as necessary without work being delegated.

There would be no consequential reduction in the length of cases being dealt with.

Because the do-nothing option is compared against itself the costs, benefits and Net Present Value (NPV)[72] are zero.

Option B: Delegate a limited number of powers to experienced members of the administration

Description:

This option would involve experienced members of the administration being limited to dealing with correspondence such as requests for the postponement of hearings; whether correspondence from one party should be copied on to the other(s); and the issue of witness orders where confirmation had been received that the witness was not prepared to attend voluntarily.

Costs of Option B

Transitional costs

There would be costs to the Tribunals Service consisting of changes required to forms and leaflets. Old stock would have to be run down and new forms and leaflets made available, with the information also changed on the various websites (directgov, ET website, business-link). Leaflets and forms are increasingly being used electronically.

The Tribunals Service would incur costs related to recruitment of legal officers. These costs would include the costs of a recruitment campaign and general HR costs.

The Tribunals Service would also incur familiarisation/training costs. These costs would include updating guidance and of some training for the identified 'legal officers' to take on the additional work.

These costs have not been quantified but we would seek to identify the magnitude of these during the public consultation process.

Ongoing costs

The Tribunals Service would incur ongoing costs of employing 'experienced members of the administration'. These costs have not been quantified.

The Tribunals Service could incur potential costs involved in any legal action that might be taken by parties in the form of Judicial Review applications if claimants or respondents are unhappy about the way they feel that their claim has been dealt with.

[72] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

HMCS could potentially incur costs involved with any legal action that that might be taken by parties in the form of appeals if claimants or respondents are unhappy about the way they feel that their claim has been dealt with.

Claimants and respondents could face ongoing costs from worse legal outcomes in some or all affected cases.

Benefits of Option B

Ongoing benefits

The Tribunals Service would benefit from savings due to reduced judicial time spent on routine interlocutory work.

There would be benefits to claimants and respondents if routine correspondence is progressed sooner and cases are potentially heard by judiciary earlier. Since this would result in quicker dispute resolution, these benefits would be realised in terms of reduced time and inconvenience costs and reduced expenditure on legal representation.

Cases being dealt with more quickly could also help minimise case backlogs.

Risks and assumptions

It is assumed that this proposal would free the judiciary to consider other work or even provide them with sufficient time to hear more cases.

There is a risk that decisions made by a qualified legal officer under Rule 10 (as outlined in paragraph 4, above) may be appealed by the parties.

There is a risk of an increase in applications for Judicial Review if the requests are not dealt with correctly by the ET.

Option C: Delegate an extended range of powers to a suitably qualified legal officer (preferred option)

Description:

Under this option, a legal officer would be able to, with a limited number of exceptions including directions set out by the judiciary and strike out orders, undertake the case management powers listed in Rule 10. The exceptions would include, for example, ‘decisions’ under Rule 10(2)(i to l) where the proceedings were already being dealt with by an EJ, as outlined above.

Costs of Option C

Transitional Costs

The Tribunals Service would incur costs related to recruitment of legal officers. These costs would include the costs of a recruitment campaign and general recruitment costs.

The Tribunals Service would also incur familiarisation/training costs. These costs would include updating guidance and of some training for the administrative staff identified to take on the additional work.

These costs have not been quantified but we would seek to identify the magnitude of these during the public consultation process.

Ongoing costs

The Tribunals Service would incur ongoing costs of employing legal officers. It is considered that qualified legal officers would be recruited at a Band A level within the Ministry of Justice. Salaries would be approximately £57,000 including national insurance and pension contributions (if based in central London). It is anticipated that the Tribunals Service would employ 30 legal officers, equivalent to one legal officer per ET office plus allowing for operational cover of larger offices and leave etc. This would cost the Tribunals Service £1.7m annually, though since this figure is based on an inner London salary it is likely to overestimate the costs of employing legal officers.

The Tribunals Service could incur potential costs involved in any legal action that that might be taken by parties in the form of Judicial Review applications if claimants or respondents are unhappy about the way they feel that their claim has been dealt with.

HMCS could potentillay incur costs involved with any legal action that that might be taken by parties in the form of appeals if claimants or respondents are unhappy about the way they feel that their claim has been dealt with.

Claimants and respondents could face ongoing costs from worse legal outcomes in some or all affected cases.

Benefits of Option 2

Ongoing benefits

There would be benefits to the Tribunals Service of more efficient use of judicial resources. Freeing up judicial time by delegating routine work to qualified legal officers would allow Employment Judges to concentrate on more complex matters and would potentially allow more cases to be listed.

Based on anecdotal evidence, this option would have the potential of saving over 20% of judicial time currently spent on routine interlocutory work as the

legal officers would be able to deal with additional work and determine straightforward claims. Due to the imprecise nature of any potential savings that might arise, these savings have not been quantified.

There would be benefits to claimants and respondents if routine correspondence is progressed through sooner and cases are potentially heard by judiciary earlier. Since this would result in quicker dispute resolution, these benefits would be realised in terms of reduced time and inconvenience costs and reduced expenditure on legal representation.

Cases being dealt with more quickly could also help minimise case backlogs.

Risks and assumptions:

It is assumed that this proposal would free judiciary to consider other work or even provide them with sufficient time to hear more cases.

It is assumed that there are potentially more savings compared with option 1 due to an increased range of activities undertaken by legal officers. However, more information will be gathered though the consultation.

There is a risk that decisions made by a qualified legal officer under Rule 10 may be appealed by the parties.

There is a risk of an increase in applications for Judicial Review if the requests are not dealt with correctly by the ET.

Option D: To introduce the role of a 'junior' judge

Description:

Under this option a 'Junior' Judge would be able to determine straightforward monetary award claims both through default judgements and at hearing. The judeg would and conduct Pre Hearing Reviews (PHR) in cases and prepare default judgements where no response is received. In addition to this, 'Junior' Judges would be able to undertake the full range of case management powers listed in Rule 10, outlined in paragraph 4 above.

Costs of Option D

Transition costs

The Judicial Appointments Commission (JAC) would incur costs related to recruitment of 'Junior Judges'. These costs would include the costs of a recruitment campaign and general HR transition costs. This is estimated at approximately £540,000, and the length of any such judicial recruitment campaign is not able to be specified at this time.

The Tribunals Service would also incur familiarisation/training costs. These costs would include updating guidance and costs of training for the 'Junior' Judges to be able to hear cases.

These costs have not been quantified but we would seek to identify the magnitude of these during the public consultation process.

Ongoing costs

The Tribunals Service would incur ongoing costs of employing 'Junior' Judges. It is considered that qualified Junior Judges would need to be created at a band below the current lower band of a Judge, which is band 7 (£102,000, including national insurance and pension contributions). It is considered that approximately 30 Junior Judges would be needed (this number being calculated on the same basis as for legal offices in paragraph 34 above). On the basis of salary of £80,000 plus 10% national insurance and pension contributions, the total cost would be approximately £2.6 million.

Claimants and respondents could face ongoing costs from worse legal outcomes in some or all affected cases.

Benefits of Option D

Ongoing benefits

There would be benefits to the Tribunals Service from introduction of a 'Junior' Judge which would result in more efficient use of resources available to the ET. Junior Judges would be able to deal with more work, which could potentially free even more judicial time to hear cases and deal with complex claims.

Based on anecdotal evidence, this option would have the potential of saving over 20% of judicial time currently spent on routine interlocutory work, as the 'Junior' Judge would be able to deal with additional work and determine straightforward claims. Due to the imprecise nature of any potential savings that might arise, these savings have not been quantified.

There would be benefits to claimants and respondents if routine correspondence is progressed through sooner and cases are potentially heard by judiciary earlier. Since this would result in quicker dispute resolution, these benefits would be realised in terms of reduced time and inconvenience costs and reduced expenditure on legal representation.

Cases being dealt with more quickly could also help minimise case backlogs.

Risks and assumptions

It is assumed that employing 'Junior Judges' would free judiciary to consider other work or even provide them with sufficient time to hear more cases.

There is a risk of an increase in applications for Judicial Review if the requests are not dealt with correctly by the ET.

There is a risk that the recruitment campaign could be lengthy which may affect the realisation of any benefits.

Proposal 9 – Overriding objective

BIS and Tribunals Service have not produced an impact assessment for this proposal. However, there is discussion of this proposal in the consultation document.

Proposal 10 – Introduce fee charging for employment tribunals

Government believes that more needs to be done to support and encourage workers and employers to resolve workplace disputes as early, as amicably and as effectively as possible but accepts that in some cases, it will be necessary for parties to turn to employment tribunals (ETs). Accordingly, Government is committed to considering the practice and procedure in ETs, the appellate tribunal and the employment appeal tribunal (EAT) so that the system is as swift, user-friendly and effective as possible.

It is perceived, specifically among the business/employer community, that many of the claims presented to tribunals lack merit. Although this is not directly borne out by statistics provided by the Tribunals Service.

It is also an important consideration that, with the Tribunals Service budget under pressure from a range of factors, the Tribunals Service needs to ensure value for money in the services it provides – including the running of courts and tribunals.

The majority of tribunals within TS, for example the Social Security and Child Support Appeals Tribunal and the Special Education and Needs Tribunal, are designed to resolve disputes between the citizen and a decision-making agency of the state. They are thus the primary route for asserting the rights of the citizen against the state where the aggrieved party considers that the State has made an erroneous or unlawful decision.

employment tribunals (which are closer in nature to the county courts) deal with party v party disputes but the full costs of running the system, unlike in other civil proceedings fall to the taxpayer. The Government does not consider that it is appropriate for the state to fund what are essentially private disputes between an individual and another private party.

Rationale

The conventional economic approach to Government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules.) In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society.) In this case the Government is intervening to improve efficiency and equity in the employment tribunals.

There are both efficiency and equity arguments for introducing fees. Setting fees at zero price equates to taxpayers providing a subsidy for those services. As the Government considers it fairer for service users to pay for the service they use rather than these services being subsidised by taxpayers (subject to the provision of fee remissions for the less well off to safeguard access to justice), introducing a fee charging regime generates equity gains.

As no fees are currently charged, for some users, the benefits of using the service (their willingness to pay) is less that the cost of providing the service. In effect the service is over consumed, which generates a welfare loss for society. In this case people would turn to the employment tribunals too much to resolve issues rather than using other mechanisms available to them e.g. mediation. Reducing subsidisation by introducing a fee improves economic efficiency and reduces these welfare costs.

It is accepted that individuals' economic welfare may be reduced for some tribunal users as a result of the policy. However, the fees remissions system should minimise the number of users for whom this occurs.

As can be seen from the table below, which is drawn from 2009-10 statistical reports published by the Employment Tribunals Service, the majority of jurisdictional complaints were disposed of without the need for a substantive hearing.

Table 10.1 - Employment tribunal Cases disposed and outcomes of jurisdictions in 2009-2010

	2007/08	**2008/09**	**2009/10**
Total claims disposed	81,600	92,000	112,400

JURISDICTION MIX OF TOTAL CLAIMS DISPOSED Apr 09 to Mar 10

Nature of claim	Jurisdictions disposed	Withdrawn		ACAS conciliated settlements		Struck out (not at a hearing)	
	No.	No.	%	No.	%	No.	%
Unfair dismissal	50,900	12,200	24	22,400	44	3,900	8
Wages Act	35,200	11,100	31	9,300	26	3,200	9
Breach of contract	32,100	7,100	22	10,400	32	2,200	7
Redundancy pay	12,400	2,700	22	2,300	19	930	8
Sex discrimination	17,500	10,100	57	3,600	20	2,700	15
Race discrimination	4,500	1,400	30	1,700	38	330	7
Disability discrimination	6,100	2,000	32	2,800	45	430	7
Religious belief discrimination	760	250	32	250	33	83	11
Sexual orientation discrimination	540	160	30	210	40	49	9
Age discrimination	3,900	1,500	39	1,500	39	270	7
Working time	20,500	4,500	22	6,700	33	1,300	6
Equal pay	20,100	14,300	71	2,300	11	3,100	16
National minimum wage	410	100	25	160	37	25	6
Others	21,900	5,600	25	6,900	31	1,500	7
	227,000	**73,000**	**32**	**70,600**	**31**	**20,100**	**9**

Table 10.2 - Employment tribunal Cases outcomes of jurisdictions in 2009-2010

Nature of claim	Successful at tribunal		Dismissed at a preliminary hearing		Unsuccessful at hearing		Default judgment	
	No.	%	No.	%	No.	%	No.	%
Unfair dismissal	5,200	10	1,200	2	4,500	9	1,500	3
Wages Act	5,000	14	860	2	1,900	5	3,800	11
Breach of contract	5,800	18	520	2	2,300	7	3,700	12
Redundancy pay	3,000	24	140	1	690	6	2,600	21
Sex discrimination	340	2	180	1	560	3	110	1
Race discrimination	130	3	240	5	700	15	60	1
Disability discrimination	170	3	170	3	530	9	60	1
Religious belief discrimination	19	2	64	8	89	12	9	1
Sexual orientation discrimination	27	5	26	5	47	9	10	2
Age discrimination	95	2	110	3	330	9	31	1
Working time	3,600	18	300	1	1,200	6	2,900	14
Equal pay	200	1	110	1	77	0	10	0
National minimum wage	49	12	10	2	47	11	26	6
Others	4,900	22	670	3	1,300	6	1,100	5
	28,500	**13**	**4,600**	**2**	**14,300**	**6**	**16,000**	**7**

It is expected that the introduction of fees will lead to:

- a higher proportion of individual employment disputes being resolved without the need for the individual embarking upon employment tribunal proceedings and therefore a reduction in the number of claims made to employment tribunals
- a reduction in the number of cases that proceed to a full hearing in employment tribunals
- a reduction in the time and costs of ET proceedings for claimants, respondents and their representatives; and
- a reduction in the overall costs of administering the system for the Exchequer

Affected Stakeholder groups, organisations and Sectors

Full details of the groups affected by the proposal will be included in the full impact assessment but will include:

- **claimants and respondents** – who would potentially have to pay fees when bringing or defending an employment tribunal claim. They may potentially also be able to avoid costly and complicated hearings altogether. Those who elect to become involved in the process will potentially benefit from a system which administers fewer cases

- **representatives** (including lawyers and trade union representatives) who will likely experience a change in the volume of cases.
- **the Tribunals Service**, as the recipient of the fee.
- **Alternative dispute resolution services, such as the Advisory, Conciliation and Arbitration Service (Acas)**, as it is likely that potential claimants might seek alternatives to the employment tribunal

Costs and Benefits

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 sensibly 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 A

This is the do-nothing option. The employment tribunal system will continue to levy no fee for those seeking resolution of an employment dispute through the employment tribunal process.

In 2009-10, employment tribunals cost taxpayers £84.4m. It is anticipated that the Tribunals Service's budget would come under continuing pressure from a range of factors. If the number of employment tribunal claims remains at its present level then it is expected that there would be an adverse impact upon the quality of the service provided. It is also expected that this could adversely affect the speed at which cases are brought to first hearing, for example, many offices are currently experiencing difficulty in fitting the large number of multi-day cases into hearing lists. These claims will continue to suffer further delays and backlogs would increase across all offices leading to further criticism of the service provided by stakeholders.

Because the do-nothing option is compared against itself its costs, benefits and Net Present Value (NPV)[73] are zero.

[73] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future

Option B – Introduce a fee charging regime into employment tribunals and to the employment appeal tribunal

Description:
A fee charging regime would be introduced into the employment tribunals and to the employment appeal tribunal

This Impact Assessment considers only the costs and benefits of the principle of introducing a fee for these services. In the subsequent consultation paper, which the Tribunals Service aims to publish in the Spring of 2011, they will consider in detail the level of fee to be paid and the stage at which a fee may be charged. Full details of the anticipated costs and benefits of any specific options would be included in the full Impact Assessment that would form part of the subsequent consultation. The public consultation is likely to include the following questions:

- Should the only fee payable be incurred by the claimant only at the claims stage?
- Should the level of the fee depend upon the complexity of the proceedings brought? For example, should the level of fee charged if the proceedings relate to a Wages Act complaint be lower than that where the proceedings have been brought under unfair dismissal. Should discrimination claims attract a higher level of fee than unfair dismissal?
- Should that fee be set at a level which enables full cost pricing to be achieved?
- Should the fee payable in multiple claims be lower than that payable in single claims? If yes, how should that fee be calculated?
- Should a fee be payable by both parties when the claim is listed for full hearing?
- Should the level of that hearing fee depend on the nature of the claim brought?
- Should a fee be charged for preliminary hearings ie. Case Management Discussions and Pre-hearing reviews?
- Should a fee be charged for an employment tribunal judgment if the decision has been announced orally at the conclusion of the hearing?
- Should a fee be charged when a party seeks a review of a tribunal judgment?
- Should a fee be charged when a party appeals to the Employment Appeal Tribunal?
- What are the terms of the remissions policy?
- What will be the arrangements for the payment of fees?

Costs of Option B

Transitional Costs

There would be costs to the Tribunals Service from developing and establishing a fee charging system including the development of new IT or the refinement of existing IT systems.

There would be costs to the Tribunals Service associated with communicating the new procedures and processes to the parties whom the new processes would apply.

There would be costs to the Tribunals Service associated with the development, introduction and/or provision of access to a remission and exemptions policy.

There would be familiarisation and training costs to the Tribunals Service for those staff involved in the fee payment and remissions process.

These costs have not been quantified but we would seek to quantify the magnitude of them during the public consultation process.

Ongoing Costs

There would be annual costs to the Tribunals Service associated with the operation of the fee charging process

The Tribunals Service would incur operating and administration costs associated with the remission and exemptions policy. There would be costs to the parties as they would now pay a fee for a service that was previously free at the point of use. These costs would be incurred if, failing any efforts or in the absence of any effort, to resolve the claim by alternative means parties elected to go through the employment tribunal process.

There would be additional costs to parties if they decided to appeal to the EAT against the decision of an employment tribunal as they would now pay a fee for a service that was previously free at the point of use. There may be some users who no longer access the ET and these will lose the benefit of the service.

Introducing a fee for parties at an employment tribunals may result in parties attempting to resolve claims through alternative means. This could result in larger costs to alternative dispute resolution services such as Acas (Advisory, Conciliation & Arbitration Service).

Where alternative means of dispute resolution are not available parties may suffer worse outcomes.

These costs have not been quantified but we would seek to quantify the magnitude of them during the public consultation process.

Benefits of Option B

Transition benefits

No transition benefits have been identified

Ongoing benefits

Charging fees for use of employment ribunals may encourage some ET users to consider alternatives to the Tribunal, such as mediation or ACAS conciliated settlements. Some tribunal users may conclude that at the higher price, use of the Tribunal is not a cost effective option compared to other alternatives.

The Tribunals Service would benefit from a stream of revenue from fee-charging.

The Tribunals Service would also benefit from a reduction in running expenses. This is based on the assumption that demand for ETs is reduced by the introduction of fee-charging and that ET's can reduce the variable element of their costs.

Given that employment tribunals services are currently being offered free at the point of use intoducing a fee would result in an efficiency gain to society.

Users of employment tribunals (claimants and respondents) would benefit from reduced waiting times. This is based on the assumption that the number of ET hearings is reduced by introducing fee-charging.

Respondents of employment tribunal cases would benefit if the volume of cases heard by an employment tribunal decreases. Respondents would face lower time and financial costs of responding to claims and reduced costs of reputation damage (where applicable).

Risks and Assumptions

It is assumed that an appropriate remissions and exemptions system will be implemented that would maintain access to justice. However, it is likely there would be some users who would not have a remission or exemption and who might not be able to afford the fee. These users would be prevented from using the ET service.

The introduction of a fee charging regime would result in a decreased number of claims made to employment tribunals, although we have not estimated what this reduction would be. Comments on what the expected decrease could be are welcome.

Proposal 11 - Increase qualifying periods for unfair dismissal

Problem Under Consideration

Currently, employees can make a claim for unfair dismissal if they were dismissed after 12 months in their post. Business have told us of their concerns that the existing legislation is too weighted against employers when it comes to the decision to employ people – making it feel a riskier step than some are prepared to take. There may also be a risk that the current one year period is too short for employers and employees to resolve differences they may have – and that the one year qualifying period acts as an incentive to some employers to bring the relationship to an end earlier than is in everyone's interests.

Rationale for Intervention

Existing regulation around unfair dismissal is in place to protect workers. Some of the problems raised about the current situation suggest that the existing form of Government regulation, whilst still necessary, could be changed to yield a more efficient outcome.

Policy Objective

The objective of any change made to qualifying periods is to redress the balance between employers and employees in this area of legislation.

Options under consideration

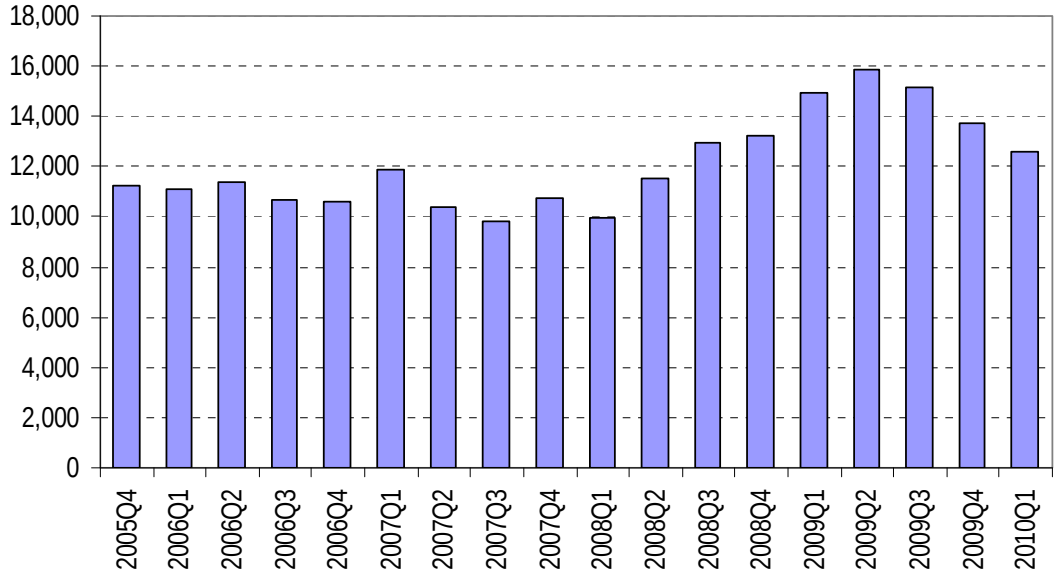
This impact assessment considers raising the unfair dismissal qualifying period from one to two years by looking at the impacts relative to doing nothing (maintaining the qualifying period at one year). The two year qualifying period existed previously and in considering this policy there were no reasons for suggesting any longer period would meet the needs of business whilst also providing adequate protection. A complete end to enabling employees to bring a case for unfair dismissal on any grounds (other than day one rights), as some business commentators have suggested, was not considered as it could have had a significant impact on employee protection.

Assessing the impact of raising the qualifying period

Trends in unfair dismissal claims

The average level of unfair dismissal claims per quarter prior to the recession was around 11,000. There is a clear rise in cases coinciding with the downturn in the economy (chart 11.1) and particularly the level of redundancies which peaked in the second quarter of 2009.

Chart 11.1. Trends in unfair dismissal claims per quarter

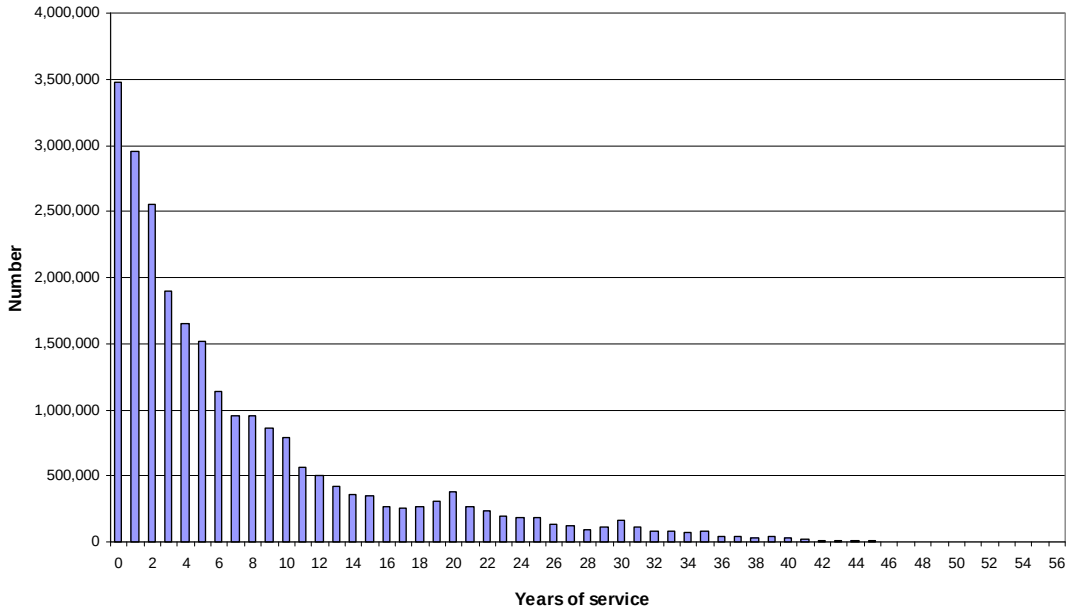


Source: Tribunals Service monthly data supplied to BIS

Length of service distribution

Chart 11.2 below shows the most recent distribution of length of service in years for the UK population. Length of service is measured as the amount of time in continuous employment with the same employer. As might be expected, the distribution is heavily skewed towards the lower end reflecting turnover in the labour market. The median length of service in the UK in the fourth quarter of 2009 was just under five years.

Chart 11.2. Years of continuous service distribution, UK Q4 2009



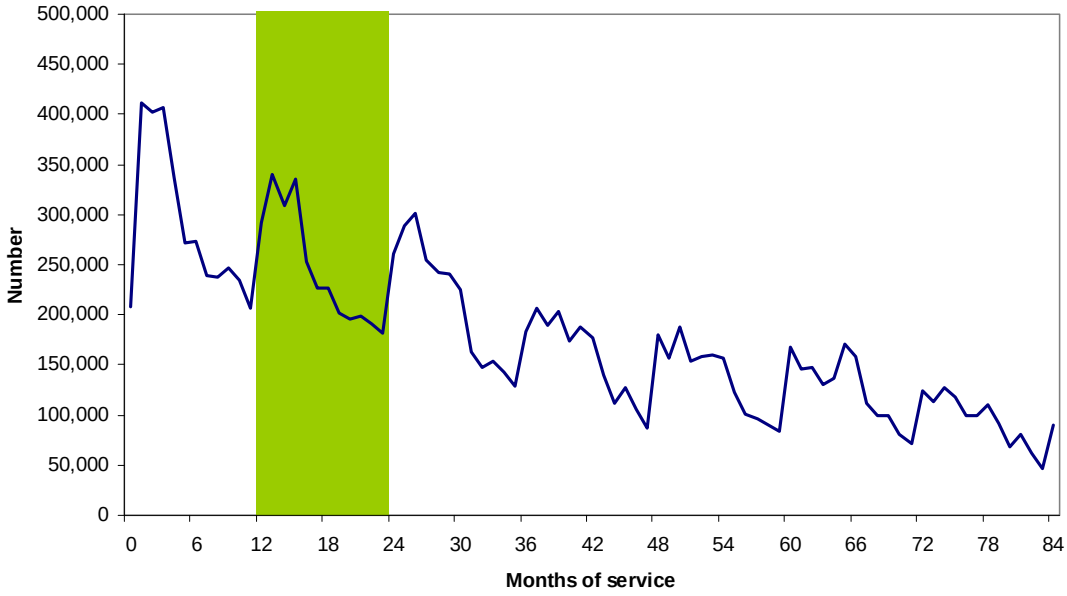
Source: BIS analysis of Labour Force Survey

This distribution can be used to estimate the number of existing workers who would be affected (i.e. lose access to a particular means of recourse) by a change in the minimum qualifying period for the right to bring certain claims to Tribunal. Lengthening the qualifying period will reduce the pool of those who are eligible to bring certain claims and therefore potentially reduce the total number of disputes progressing to Tribunal.

Looking at monthly length of service in chart 11.3, the total number of people who would be affected by an increase in any qualifying period from 12 to 24 months is represented by the area under the graph in the green shaded area. The effect of a large increase in qualifying period is generally subject to diminishing returns, i.e. increasing the period by a year at a time yields a gradually smaller effect. However there are peaks in the data which suggest that sometimes increasing the qualifying period by a single month will yield disproportionate effects[74].

[74] The peaks in the data tend to be centred on whole years which may suggest sampling error from self-reporting, although seasonality may also be present.

Chart 11.3. Monthly distribution of continuous employment, UK Q4 2009



Source: BIS analysis of Labour Force Survey (non-seasonally adjusted)

Table 11.1 below quantifies the size of this area by showing how increasing the minimum qualifying period by various amounts would reduce the eligible population. The effect on the 2007 length of service distribution is also included to provide a pre-recession comparator[75].

Table 11.1. Effect of lengthening qualifying period on eligible population based on 2009 and 2007 fourth quarter data.

Lengthen qualifying period from 12 months to:	2009 Q4 % reduction in eligible population	2007 Q4 % reduction in eligible population
18 months	6.8 %	6.8 %
24 months	11.8 %	11.6 %
30 months	18.1 %	16.8 %
36 months	21.8 %	20.5 %
42 months	26.4 %	24.7 %
48 months	29.4 %	27.6 %

Source: BIS analysis of Labour Force Survey

[75] The 2007 distribution is more highly skewed towards lower length of service than 2009. This might not be the intuitive result given the economic recession.

Quantifying the effect on unfair dismissal claims

The link between reducing the pool of eligible workers and reducing the number of claims brought is not straightforward.

The exact distribution of the length of service *for those who bring claims* is not known. However the LFS data, as above, or the Survey of Employment Tribunal Applications (SETA) can shed some light on how reducing the numbers of those eligible could translate to fewer claims brought.

Data sources

Although SETA aims to be a representative survey of ET applications, looking solely at unfair dismissal applicants reduces the sample size significantly. Once the data is banded into 12 month periods, there are never more than 90 individuals within one year which increases the margin of error associated with any estimates. Because of the nature of responses to the survey, SETA cannot be used for investigating the effects of changes that do not involve a full year (such as extending to 18 months).

The LFS is the best source for investigating the characteristics of the eligible population who would be able to bring forward an unfair dismissal claim but, by its nature, is not focused on those people who are most likely to bring claims. In addition, the survey only asks questions on length of service to those currently employed and not to those to have lost their job. Therefore, unless dismissals are completely unrelated to length of service, the LFS distribution may not be representative of the population of interest.

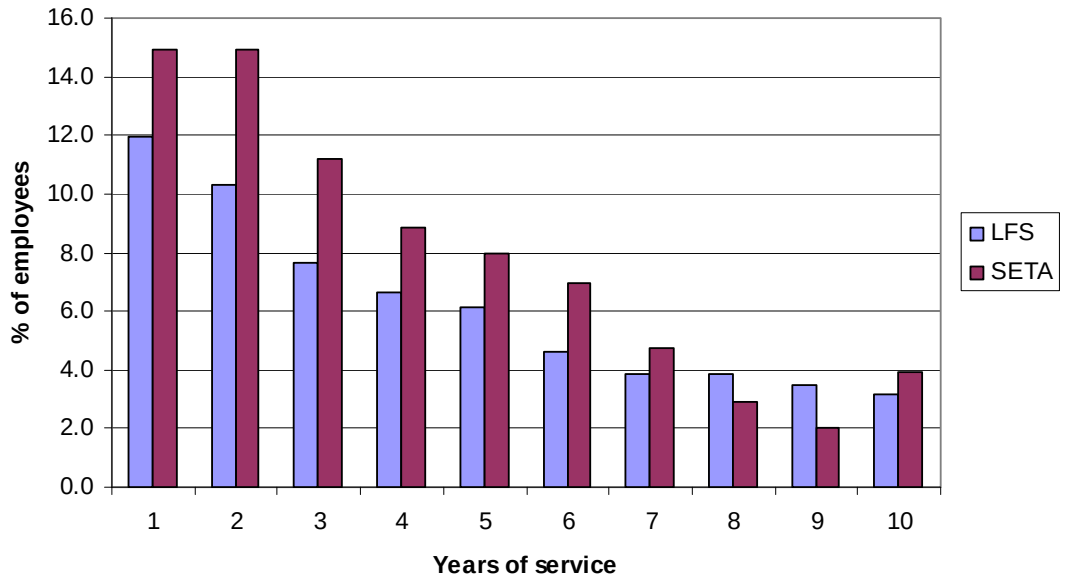
With uncertainties surrounding both sources (sample sizes for SETA and how representative the LFS is on this issue) a range encompassing the two may be appropriate, although the fact SETA uses actual claimant data may mean it should be the preferred estimate if available.

Comparison of data

The chart below compares the distribution of length of service (up to 10 years) from the LFS Q4 2009[76] and SETA 2008. Most importantly, it is clear that the SETA unfair dismissal respondent distribution is similarly shaped to the underlying population. But the data from SETA is more skewed towards lower lengths of service – i.e. a higher percentage of unfair dismissal cases involve individuals with just a few years service than the LFS would imply. This may reflect a natural bias of dismissals – crucially the LFS surveys those still in work whilst the SETA measure is essentially covers a subset of those who have lost their job.

[76] Earlier quarters do not affect the implications

Chart 11.4. Length of service distributions, of current employees in Q4 2009 (LFS) and unfair dismissal claimants in 2008 (SETA 2008)



Source: BIS analysis of Labour Force Survey and SETA 2008

Calculating the effect on ET claims

The figures in the chart above may mean that if one was to use SETA as the basis for the estimates, for a given increase in the qualifying period, the estimated reduction in unfair dismissal claims would be proportionally larger than the reduction in the eligible population. For instance an increase in the qualifying period from 1 to 2 years would reduce the eligible population by 11.8% but make 14.9% of current Tribunal claims ineligible.

These calculations, however, assume away any dynamic change. In reality applicants are able to lodge ET claims under several jurisdictions simultaneously without listing a main jurisdiction. This may result in contradicting effects of the policy. Those who currently lodge unfair dismissal claims may simply pursue other jurisdictions instead (breach of contract is the most obvious substitute). In this scenario the unit fall in the number of unfair dismissal claims is largely a mirage as an ET process, with all of its associated costs is still lodged, just not in the unfair dismissal jurisdiction. Alternatively, those who can no longer bring unfair dismissal claims may withdraw their case from other jurisdictions as well.

Historical data from the ETS & Tribunals Service (Employment) case management database can help estimate the 'true' reduction in ET cases as a result of a lengthening of qualifying periods for unfair dismissal. From 2001 to 2006, 44% of UD cases were submitted as single claims - i.e. no other

jurisdictions were listed. The remaining 56% were also lodged under breach of contract, various pay or various discrimination jurisdictions.

In the absence of further evidence, BIS estimates will assume all of the single-jurisdiction claims under the proposed new qualifying period would not occur and half of the remaining multi-jurisdiction claims would not be lodged. This means that 72% of those currently under the limit would be withdrawn and 28% would continue regardless.

Table 11.2. Estimated reduction in unfair dismissal claims from increasing qualifying period from one to two years

Average number of unfair dismissal claims per year: 43, 940*

	Low estimate (using LFS data)	High estimate (SETA)
% of claims within 12 and 24 months	11.8%	14.9%
Number of claims	5,185	6,547
72% of number of claims	3,733	4,714
72% of number of claims (rounded)	3,700	4,700

Source: BIS estimates based on data from Tribunals Service, LFS and SETA 2008 data. *ETS annual data 2004/05 to 2008/09

The annual reduction in claims for lengthening the qualifying period by one year is estimated to lie between **3,700 and 4,700**. The upper estimate using SETA may be considered the most representative (with the proviso that there is some uncertainty) as it uses actual claimant data.

The LFS can be used to estimate the size of the eligible population according to different protected groups to identify any possible disproportionate effects of a policy. Generally, disproportionate effects of partially removing the right to claim unfair dismissal can be seen amongst young workers and, to a lesser extent, non-whites and females. SETA data can only look at the gender discrepancy and confirms a slightly larger proportionate effect would be seen amongst females than males. Behavioural effects between the two groups may of course differ. More informatio is available in the equalities impact assessment.

Monetary estimates

The estimated reduction in claims can be multiplied by an indicative unit cost of unfair dismissal claims to result in a monetary value of the policy. These calculations have been undertaken separately for employers, employees (claimants) and the Tribunals Service. The savings to employers from paying fewer awards has also been calculated. As this is a transfer payment this alsorepresents a cost for claimants.

Using SETA 2008 data and uprating to 2010 prices the indicative unit cost of an **unfair dismissal dispute** (SETA samples across cases that reach Tribunal as well as cases that are Acas settled, privately settled, withdrawn and dismissed) is £1,300 for a claimant, £3,000 for an employer and £1,900 for the Tribunals Service (further details on these unit cost estimates can be

found in the Impact Assessment for proposal 1, extending pre-claim conciliation). The unit cost for employers from filling out an ET3 form (admin burden) is £2,000. The median value of an award under unfair dismissal from 2008-09 was £4,269 (source Tribunals Service).

Below is a table that multiplies the estimated reduction in disputes by the above indicative unit costs (factoring in award payment reduction from employers). Cost savings are presented in table 11.3 and costs (for claimants only) are presented in table 11.4.

Table 11.3. Summary of cost savings (benefits) to employers, claimants and the Tribunals Service per annum

Group affected	Low cost estimate	High cost estimate
Cost savings to employers (time spent on case and advice and representation)	£11.1m	£14.1m
Cost savings to employers (fewer awards paid)	£15.8m	£20.1m
Cost savings to employers (admin burdens)	£7.4m	£9.4m
Cost savings to claimants	£4.8m	£6.1m
Cost savings to the Tribunals Service	£1.5m	£2.0m

Source: BIS estimates in 2010 prices. Figures have been rounded.

Table 11.4. Summary of costs to claimants per annum

Group affected	Low cost estimate	High cost estimate
Claimants (fewer awards received)	£15.8m	£20.1m

Source: BIS estimates in 2010 prices. Figures have been rounded.

Familiarisation Costs

Employers will incur limited familiarisation costs as a result of this change. It is likely that the time spent will be similar across business sizes, though this does mean that this small cost is felt disproportionately by smaller firms. Given how simple this change is, it is expected this will take employers about 10 minutes to assess. In larger organisations this will be carried out by a HR manager. The Annual Survey of Hours and Earnings 2009 tells us that the median wage will be £28.13 per hour (this figure includes non-wage labour costs added to the ASHE median). There are just over 1.1 million firms employing staff according to BIS SME statistics from 2007. Multiplying the time by the wage and in turn by the number of employers gives us estimated familiarisation costs of **£5.2 million**.

Unintended consequences

There may also be unintended consequences from a policy to reduce qualifying periods such as a higher demand for Acas services.

Summary of Impact

BIS estimate an indicative cost saving to employers of **£34.3 - £43.6** million per annum. This includes employers paying out fewer penalties, as well as direct cost and admin burden savings from going through employment tribunals fewer times. However, they will face familiarisation costs of **£5.2 million** in the first year. Claimants are estimated to save between **£4.8 - £6.1 million** as a result of fewer tribunals. However, awards received by claimants will fall by **£15.8 - £20.1 million** per annum. The Tribunals Service is estimated to save around **£1.5 - £2.0** million in costs.

Proposal 12. Introduce financial penalties for employers

This proposal gives power for employment tribunals where the ET is acting at first instance to impose financial penalties on employers who are found to have breached employment law. These proposed penalties will increase the expected cost for employers from breaching employment law if at employment tribunal judges' rule against the employer.

The penalties are payable to the Exchequer, not the claimant and would therefore generate revenue for the Exchequer. This represents a transfer payment from employers to the Exchequer.

In the long run we would expect some behavioural change from employers with an increase in compliance with employment law and potentially fewer disputes entering the employment tribunal system. This would result in cost savings for employers, the Exchequer and claimants. This dynamic change has not been quantified and has not been considered in the calculation of the estimates.

The estimated revenue to the Exchequer is around **£11.1million** per annum assuming that 50% of employers take advantage of the early payment incentive in which the penalty reduces by 50% if the reduced amount of penalty is paid within 21 days. This estimate has not accounted for behavioural change from employers resulting in increased compliance and possible avoidance of employment tribunal proceedings, nor administrative costs.

Objectives

To introduce power for employment tribunals to impose financial penalties on those employers found to have breached an individual's rights. The overriding objective is to avoid workplace disputes and hence potential employment tribunal claims.

Economic rationale

The policy aim is to deter non-compliance. This will be achieved via the proposed penalty as it increases the expected cost for employers from breaching employment law if at employment tribunal, judges rule against the employer.

It has been assumed that the introduction of the proposed penalty will influence compliance behaviour. However, finding evidence to support this assumption is difficult as there is not a vast amount of evidence linking penalties with employment law since penalties are not currently widely used. Therefore, we have conducted a review of the impact of penalties on health and safety regulation and will apply the key findings into the labour market.

In a research report regarding compliance with health and safety law a survey on employer's attitudes towards health and safety was conducted. The survey reported that "47% of respondents are worried by the cost of financial penalties and think enforcement would force health and safety up their list of priorities or do something they otherwise would not do."[77] Applying this to the labour market would seem to show that as the penalty proposal is implemented employers will change their behaviour to ensure they are not breaching employment law thereby avoiding the financial penalty. Thus, the level of non-compliance should fall as sought after.

A literature review[78] regarding the determinants of compliance with laws and regulations with special reference to health and safety quoted a paper by Scholz and Gray (1990). This paper identified that the imposition of a penalty can affect behaviour regardless of the extent of the penalty itself. This is assumed to be the same in the context of the labour market. Therefore, assuming this would also apply in the labour market firms should become more compliant simply due to the fact that penalties have been introduced and not at the level they have been introduced at.

If the labour market reacts in a similar way to penalties as the market for health and safety does then the policy aim of deterring non-compliance is feasible. This would result in cost savings for employers, the Exchequer and claimants. This dynamic change has not been quantified.

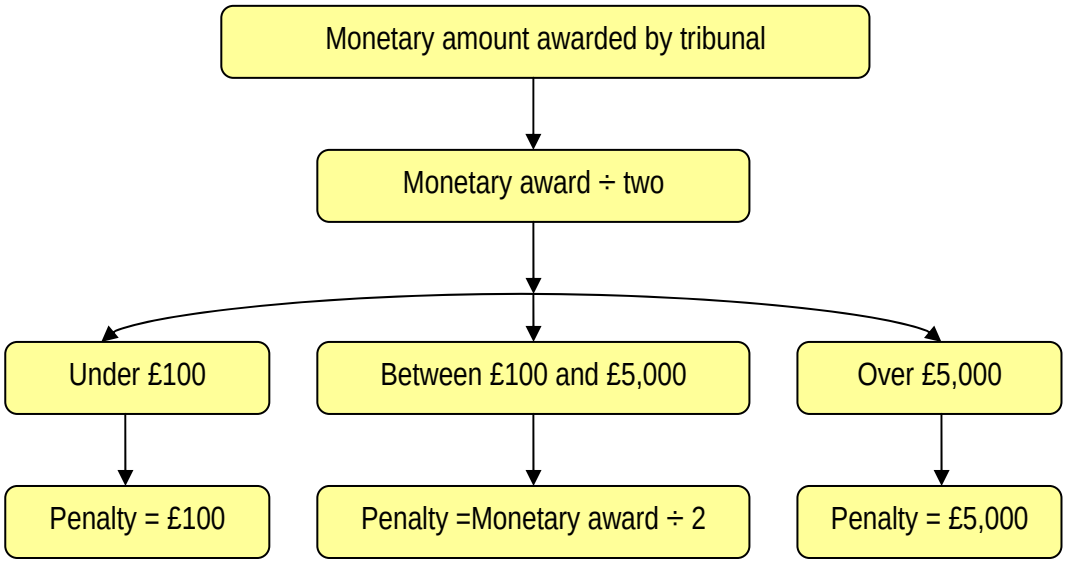
Proposed Penalty Scheme

The proposed system of penalties believes the penalty should be half the amount of the award made by the employment tribunal so that the level of the penalty is proportionate to the award. The penalty will have a minimum threshold of £100 and an upper ceiling of £5,000. We envisage that where a non-financial award is made a tribunal can ascribe a monetary value and so the appropriate financial penalty can be made.

[77] An evidence based evaluation of how best to secure compliance with health and safety law prepared by Greenstreet Berman Ltd 2005.
[78] The determinants of compliance with laws and regulations with special reference to health and safety prepared by the London School of Economics and Political Science 2008.

Figure 12.1 illustrates how the proposed penalty will be calculated.

Figure 12.1. The calculation of the proposed penalty.



Box 12.1 gives examples of how the penalty will be calculated and how the level of the penalty changes in different circumstances.

Box 12.1: Illustrative examples of how the penalty will be calculated

Example 1
Sarah has been awarded £100 for a successful claim regarding sex discrimination against her employer. Half of the award is £50, which is below the minimum penalty. Therefore, her employer will have the minimum financial penalty of £100 imposed.

Example 2
Craig has been awarded £8,000 for a successful claim regarding unfair dismissal against his employer. Half of the award is £4,000 which is within the penalty range. Therefore his employer will have a penalty of £4,000.

Example 3
Jane has been awarded £14,000 for a successful claim regarding disability discrimination. Half of the award is £7,000 which is above the maximum penalty. Therefore, her employer will pay the maximum penalty of £5,000.

It is important that there should be an incentive for non-compliant employers to pay the penalty quickly. Therefore it is also proposed that the penalty

should be reduced if there is prompt payment. The reduction should be set at 50% if the reduced amount of the penalty is paid within 21 days.

Total estimated costs to employers and monetary benefit to the Exchequer

Excluding possible dynamic effects from employers increasing compliance in the long-term it is possible to estimate potential levels of revenue for the Exchequer from the introduction of penalties. Where financial penalties are paid this is a pure transfer from employers to the Exchequer. In the situation where there is full compliance with employment legislation, employers would not face financial penalties and the exchequer would not receive the revenue.

Using data showing compensation awarded by tribunals per jurisdiction and applying this to historic levels of employment tribunal hearings where the claimant was successful and awarded money; it is possible to estimate total financial penalties per jurisdiction.

For a more accurate result a five year average, where possible, from the Tribunals Service Employment Tribunal Statistics publication 2008/09 has been used to estimate the number of claims for each jurisdiction. As some jurisdictions have not existed for 5 years we have used the all the available data to calculate an average. As a claim may cover more than one employment jurisdiction this figure has been deflated by a factor of 1.8[79] (based on the five year average number of jurisdictions per claim).

The number of successful claims then needs to be adjusted to account for the amount of successful claims that are awarded money. This is estimated at 89% by the Survey of Employment Tribunal Applications (SETA)[80] 2008.

Using data on the compensation awarded by tribunals per jurisdiction from Employment Tribunal and EAT Statistics (GB) the proportion of claims awarded money can be allocated between the bands allowing the calculation of penalties. Where this information was not available the median amount awarded for each jurisdiction was used instead of SETA 2008. In the case of working time and equal pay this was not available and so the median of all cases was used to estimate the level of penalties.

The proportion of employers who will take advantage of the early payment incentive also needs to be estimated. It is advantageous to use the National Minimum Wage (NMW) penalties for underpayment as a case study. In the NMW if the penalty is paid within 14 days it is subject to a 50% discount. In 2009/10 penalties were imposed on 480 cases of which 236 paid within 14 days. This is just under 50%.

Although the proposed penalty differs from the NMW penalty in that it allows employers 21 days to pay the employee it can still provide us with a very

[79] 1.8 = 162,876(5 year average of all jurisdictions disposed) / 92,050 (5 year average total claims disposed)
[80] Findings from the survey of employment tribunal applications 2008

rough approximation of how many employers are likely to take advantage of the incentive. For this proposal we assume 50% of employers will pay the remaining amount of the penalty (after the 50% reduction) within 21 days. We do not assume that the probability of repaying within 21 days is affected by the amount of the award or the penalty when calculating our estimates.

Table 12.1 shows the estimated total penalties for employment tribunal cases that were successful at tribunal (in favour of claimant) and were awarded money. An arbitrary reduction was applied to the working time jurisdiction fine payments (a reduction of 25% to account for large multiples paying proportionally less). No assumptions are made about non-financial awards.

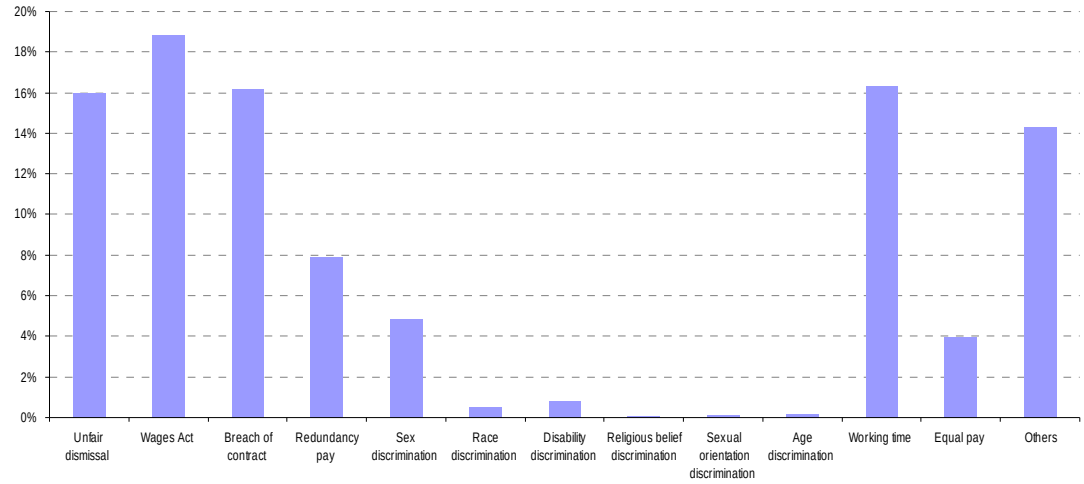
Table 12.1. Employment tribunal cases disposed that were successful at tribunal (in favour of claimant) and were awarded money by jurisdiction 5 year average

Nature of claim	Successful at tribunal and money awarded	Total penalties assuming all payments made after 21 days	Average penalty per successful tribunal assuming all payments made after 21 days	Total penalties assuming 50% payments made before 21 days	Average penalty per successful tribunal assuming 50% payments made before 21 days
Unfair dismissal	1,831	£4,650,000	£2,500	£3,490,000	£1,900
Wages Act	2,156	£920,000	£400	£690,000	£300
Breach of contract	1,853	£2,460,000	£1,300	£1,850,000	£1,000
Redundancy pay	901	£720,000	£800	£540,000	£600
Sex discrimination	558	£1,910,000	£3,400	£1,430,000	£2,600
Race discrimination	57	£170,000	£3,000	£130,000	£2,300
Disability discrimination	90	£300,000	£3,300	£230,000	£2,500
Religious belief discrimination	7	£20,000	£3,000	£20,000	£3,000
Sexual orientation discrimination	10	£30,000	£3,200	£20,000	£2,100
Age discrimination	18	£40,000	£2,200	£30,000	£1,700
Working time	1,873	£1,522,500	£800	£1,140,000	£600
Equal pay	453	£490,000	£1,100	£370,000	£800
Others	1,640	£1,480,000	£900	£1,110,000	£700
All	11,447	£14,712,500	£1,300	£11,050,000	£1,000

Source: Tribunals Service. http://www.employmenttribunals.gov.uk/Documents/Publications/ET_EAT_Stats_0809_FINAL.pdf Table 2. BIS Estimates. Some figures have been rounded. Total may not sum to individual parts due to rounding. To calculate total financial penalties we have used where available the distribution of compensation awarded for that particular jurisdiction. In cases where this was not available the median of the amount awarded by tribunal was used. For working time and equal pay the median amount awarded by tribunal in all cases was used.

The chart below shows the share of each jurisdiction as a proportion of the total using the figures presented in table 12.1.

Chart 12.1. Share of cases that were disposed by Tribunals Service, successful at tribunal (in favour of claimant) and awarded money by jurisdiction 5 year average



Source: BIS estimates based on Tribunals service data (see Table 1 above)

Table 12.1 shows that when assuming 50% of the remaining penalties are paid within 21 days the estimated upper bound extra revenue to the Exchequer and cost to employers is approximately **£11.1 million**. This gives an average penalty of £1,000 across all jurisdictions.

If no employers take advantage of the early payment incentive (so all pay after 21 days) the estimated total penalties is approximately **£14.7 million** per annum. This gives an average penalty across all jurisdictions of £1,300.

However, these estimates regardless of whether employers have paid within 21 days have not factored in behavioural change from employers resulting in increased compliance and possible avoidance of employment tribunal proceedings. This will cause an overestimate of the extra revenue that the Exchequer will receive.

In summary, the estimated range of costs faced by employers/ revenue expected by the Exchequer as a result of the introduction of financial penalties is **£0 - £11.1m, giving a mid-point estimate of £5.5m.**

Administrative burden

We will want to avoid significant or duplicated administrative costs in the administrative process for collection of financial penalties, and will consider how this can be achieved in the light of consultation responses to this proposal.

Risks

There are a number of risks associated with estimating the potential impact of the proposed penalties.

The effect of the proposed penalty on non-compliance could have been over or under estimated. This is because the penalty may not have been set at the correct level ensuring it acts as a strong deterrent. A literature review regarding the determinants of compliance with laws and regulations commented “one counterproductive effect (of enforcement on compliance) may be that of imposing penalties insufficiently large to deter the offending behaviour. Alternatively, imposing too great penalties can result in an inability of firms to pay and have damaging wider consequences.”[81]

If the £5,000 upper ceiling does not act as a strong deterrent firms will not change their behaviour and hence the penalty is not serving its purpose of decreasing non-compliance. If the £5,000 is upper ceiling is too high some firms may struggle to pay the penalty which could have damaging consequences to the business.

The estimated monetary benefits to the Exchequer have not take into account the long term change in employer’s behaviour. If the proposed penalty has a significant impact on non-compliance and the majority of non-compliant employers change their behaviour to comply with employment law the monetary benefits will have been overestimated.

When calculating the monetary benefit to the Exchequer we have assumed that 50% of firms will pay the penalty within 21 days thereby reducing the penalty amount by 50%. We have not taken into account that there may be a bias on the penalties which are most likely to be paid back within 21 days. Firms may be more likely to pay back larger penalties than smaller penalties. Therefore, if this was the case where more of the larger penalties were being paid back within 21 days than smaller penalties this would lead to an overestimate in the approximated monetary benefit to the Exchequer.

[81] The determinants of compliance with laws and regulations with special reference to health and safety prepared by the London School of Economics and Political Science 2008

Proposal 13 –Review calculation of award and redundancy payment limits

BIS have not produced an impact assessment for this proposal. However, there is discussion of this proposal in the consultation document.

Equality impact assessment

The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties set out in the Equality Act 2010. Equality Impact Assessments are an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups. This Equality Impact Assessment takes a summary view of the equality impact of all proposals on resolving workplace disputes.

The 2008 Survey of Employment Tribunal Applications (SETA) collects information on the personal characteristics of claimants. Results from SETA can be compared against the Labour Force Survey for employees to see how the characteristics of claimants differ to the general population of employees.

Gender

BIS has published SETA in 2003 and more recently in 2008. In 2008 three-fifths (60 per cent) of claimants were men. This is similar to the proportion found in 2003 (61 per cent) and somewhat higher than the proportion of the employed workforce as a whole (51 per cent), as given in the LFS. Men brought the majority of employment claims across most jurisdictions; however, 82 per cent of sex discrimination cases were brought by women. This pattern closely resembles that found in 2003, where men also brought the majority of employment claims across most jurisdictions. However in 2003, an even higher proportion of sex discrimination cases were brought by women (91 per cent).

Ethnicity

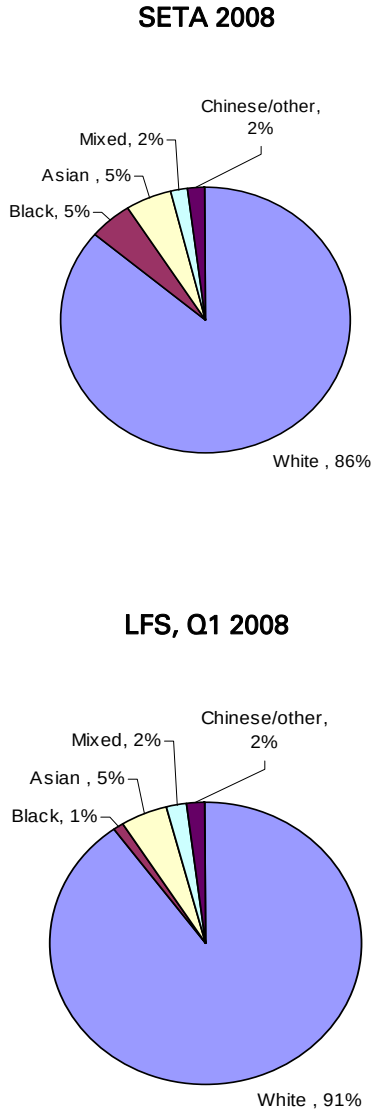
According to SETA 2008 eighty-six per cent of claimants were white, a slightly lower proportion than in 2003 (90 per cent) and lower than the workforce in general (91 per cent). However, the proportion was much lower in race discrimination cases, where only eight out of the 57 claimants (15 per cent) were white, with 20 black (34 per cent) and 20 Asian (34 per cent). This is a similar pattern to that found in 2003.

Disability

In SETA 2008 twenty-two per cent of claimants had a long-standing illness, disability or infirmity at the time of their employment claim, which is the same as the proportion among employees in general (22 per cent) and is a slightly higher proportion than in 2003 (18 per cent). Fifteen per cent had a long-standing illness, disability or infirmity that limited their activities in some way, a higher proportion compared with the workforce as a whole (10 per cent) and in 2003 (10 per cent).

As in 2003, the proportion of claimants who had a long-term disability or limiting long-term disability was, as would be expected, considerably higher in Disability Discrimination Act (DDA) cases (84 per cent and 74 per cent respectively). Looking at primary jurisdiction the proportion of claimants who had a long-term disability was highest in discrimination cases (45 per cent) and lowest in Wages Act cases (10 per cent) and redundancy payment cases (eight per cent).

Chart 1. Ethnicity of claimants, compared with employees in GB



Source: SETA 2008 and LFS, Q1 2008

Detailed assessment of individual proposals

During consultation the wider impacts of all proposals will be considered further and findings reflected in the final impact assessment.

Proposal 1 - Require all claims to be submitted to Acas in the first instance

Acas has recently conducted a survey of Pre-Claim Conciliation (PCC) users to cover its first year of operation from April 2009. The research included a main quantitative fieldwork stage consisting of 1,187 interviews lasting 20 minus on average with a random sample of PCC service users.

The service users describe employee demographics as:

- mostly white (91 per cent), three per cent were Black, two per cent Asian, and one per cent Mixed ethnic group. The profile is similar to the UK workforce as a whole (LFS), but a higher proportion were white than in employment tribunal applications (86 per cent as reported in SETA 2008);
- Thirteen per cent had a long-standing illness, disability or infirmity at the time of Acas assistance, which is lower than the proportion recorded in SETA or LFS (both 22 per cent);
- Mostly male (59 per cent), therefore, 41 per cent were female. This is similar to the profile of employment tribunal applications (60 per cent male; 40 per cent female reported in SETA) and somewhat higher than the proportion of the whole UK workforce given in the LFS (51 per cent male; 49 per cent female).

Proposal 11 - Increase qualifying periods for unfair dismissal

Summary of data for unfair dismissals

To assess the equality impact by gender, race and disability we have examined the Labour Force Survey (LFS). The effect of the 2008/09 recession seems to be apparent in the data in the form of a smaller fraction of employees in the 0-1 year length of service group.

It is worth noting that claims on the grounds of discrimination are unaffected by this measure and where employees may be making claims on multiple grounds, discrimination usually takes precedence.

Gender

The number and proportion of males and females with less than 1 year's service, between 1 and 2 years, and over 2 years is broadly similar. A slightly higher proportion of females are concentrated in the first two groups but the

difference has been reducing over time. In the 1990s the proportion of females in the 0-11 months group was consistently around 2 percentage points higher than males but in recent years a gap between the sexes has not been apparent. The proportion of females in the 12-23 months group has roughly been around 1 percentage point higher than males in recent years, again a reduction from 1990s data. Consequently the gap in the proportion of males and females in the 2 years and over group has closed to below 2 percentage points in the past 5 years.

Looking at the same data the other way (the proportion of people in the three length of service categories who are male or female) the same picture is evident – slightly more of the 2 years and over category is male but the gap is small and the trend is generally towards equality.

Worker status

Part-time employees are considerably more likely than full-time employees to have a length of service lower than 1 year – the proportion has been around 5-10 percentage points higher over the past decade. The difference with the 1-2 year group is less marked – the proportion of part-timers in this category has been around 2-3 percentage points higher over the same period. Hence a disproportionate number of part-time employees fall into the 0-1 and 1-2 year categories and vice versa.

Part-time and gender

Given that the majority of part-time employees are female (nearly 80% in the most recent data), the lack of apparent difference between the distribution of lengths of service of males and females may be surprising. However part-time males and part-time females have quite distinct distributions – male part-timers are much more likely to have a low length of service. So even though there are fewer of them, the high turnover of male part-time employees skews the figures somewhat.

As a result there is a slightly greater difference between men and women, in terms of the proportions of people with short service, when looking at just full-time employees compared with all short service employees. There is some difference between full-time males and females in the proportional size of the two low tenure groups but this has been small in recent years (typically less than 1 percentage point).

Part-time women are disproportionately represented in the 0-1 year group by roughly 4 percentage points over full-time women and around 5 over full-time men. The gap is much smaller for the 1-2 year group where the proportion is nearer to the full-timers. However male part-time employees are noticeably different from other groups – the fraction in the 0-1 year group is consistently double that of full-time men and the fraction in 1-2 years is also greater over the years.

Age

Unsurprisingly younger workers are much more likely than others to have worked for their current employer for a shorter period. There are obvious reasons for why this is the case.

Ethnicity

Data is only available from 2006. A higher proportion of non-whites have been continuously employed for 0-1 or 1-2 years compared to whites. The magnitude of the difference varies amongst ethnic minority groups but is largest amongst the mixed race ethnic group and is consistent in the years of data available. The proportion of non-whites in the 0-1 year group is about 4 percentage points higher and for 1-2 years is about 3 percentage points.

Much of this may be driven by the fact that non-white ethnic groups are on average younger than white groups. This is particularly true of the mixed race ethnic group and since the largest effect is seen for this group then the lower average age helps confim this hypothesis.

Work limiting Disability

According to the LFS 2009 quarter 4 the proportion of employees with no disability who have a length of service between 1 and 2 years (12.1%) is greater than employees with a disability (9.8%). These figures are set out in the table below.

Summary of current length of service data

Table 1. Summary of employees affected by minority group (LFS 2009 Q4)

('000's)		Employees eligible (current = 1 year)	Employees eligible (proposed = 2 years)	Net change	Net change (%)
All employees		20,997	18,076	-2,921	-11.8
Gender	Male	10,630	9,222	-1,409	-11.3
	Female	10,367	8,854	-1,512	-12.3
Ethnicity	White	19,140	16,572	-2,568	-11.4
	Non-White	1,851	1,498	-352	-15.4
	White	19,140	16,572	-2,568	-11.4
	Mixed	151	115	-36	-18.6
	Asian or Asian British	912	738	-174	-15.7
	Black or Black British	462	380	-82	-14.6
	Chinese	86	71	-16	-14.7
	Other	239	195	-44	-14.5
Disability*	No disability	18,175	15,570	-2,605	-12.1
	Current disability	2,822	2,506	-316	-9.8
Size of employing firm	SME (1-49)	9,613	8,034	-1,579	-13.5
	Medium (50-249)	4,952	4,311	-640	-11.2
	Large (250+)	5,640	5,056	-584	-9.3
	Micro (1-10)	3,758	3,145	-612	-13.2
Age	18-24	2,091	1,367	-724	-22.6
	60+(f) / 65+ (m)	963	918	-45	-4.4

Source: BIS analysis of LFS 2009 Q4. *Disability uses the LFS variable 'current disability' (DISCURR) and includes DDA and work-limiting disabled. Summing all subgroups may not equal total employees due to missing values.

Equality impact assessment conclusion - removal of barriers which hinder equality

The proposed changes reflect a broad policy and are designed to have an impact on all employees regardless of their gender, race or disability. Therefore, the proposed changes are unlikely to create any barriers to equality in terms of gender, race and disability.

Competition assessment

We have fully considered the questions posed in The Office of Fair Trading competition assessment test[82] 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.

Table 1. Competition assessment.

Question: *In any affected market, would the proposal..*	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BIS

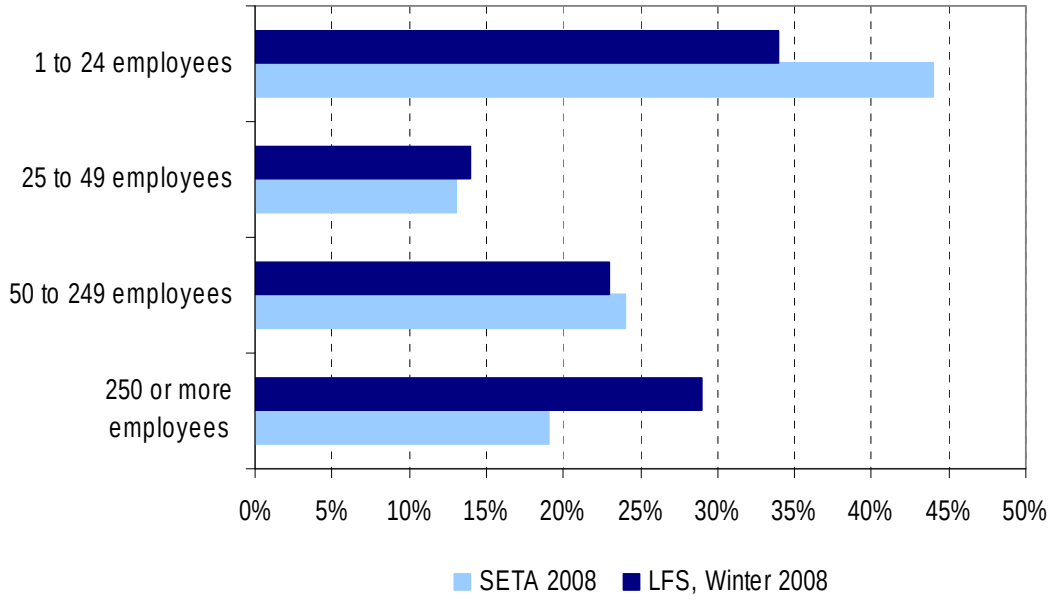
Small firms impact test

Any enterprise with employees could potentially have a dispute with one of its employees and end up at an employment tribunal. The proposals set out in the consultation document should benefit employers by streamlining and simplifying the employment tribunal system and so will apply to all enterprises.

ET cases are disproportionately found in workplaces with under 25 employees. Forty-four per cent of cases in the SETA employer survey were from workplaces with less than 25 employees, which according to the LFS accounts for 34 per cent of workplaces. ET cases are particularly under-represented in workplaces with 250 or more employees. Nineteen per cent of cases in the employer survey had 250 or more employees, which according to the LFS accounts for 29 per cent of workplaces.

[82] http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf

Chart 1. Number of employees at workplace



Source: SETA 2008, ONS Labour Force Survey Q4 2008

Organisational profile of current PCC users

The recent Acas PCC user profile survey examines the user profile of employers who take part in PCC and the main findings are set out below.

The large majority of potential claimants were employed by the private sector (77 per cent); the minority were employed in the public sector (12 per cent) or non-profit / voluntary sectors (five per cent) and seven per cent did not know. In comparison, Labour Force Survey data indicates that 72 per cent of employees worked in the private sector, 25 per cent in the public sector, and three per cent in the non-profit sector. SETA 2008 data shows that 72 per cent of employer respondents were in the private sector and 19 per cent in the public sector with eight per cent in the non-profit/voluntary sector and so the public sector is disproportionately underrepresented amongst PCC users.

Service users were split between those with a single workplace in the UK (44 per cent) and those with multiple workplaces (55 per cent). The employer sample was more likely than the employee sample to be from an organisation with a single workplace (49 per cent vs 41 per cent) and correspondingly employees were more likely than employers to be from an organisation with multiple workplaces (57 per cent vs 51 per cent).

Of those service users who were aware of the number of employees within the workplace, 60 per cent said it was between 1 and 49 (i.e. a small workplace), 23 per cent between 50-249 (i.e. a medium sized workplace) and 13 per cent over 250 employees (i.e. a large workplace). This compares with 57 per cent from small workplaces, 24 per cent from medium workplaces and

19 per cent from large workplaces among employer respondents in SETA 2008.

The employer sample was asked whether the organisation had an internal Human Resources (HR) or Personnel Department that dealt with personnel issues. Over half (55 per cent) indicated that they had a HR or Personnel Department. In comparison, SETA data indicates that 62 per cent of employers with an employment tribunal application against them had an internal HR or personnel department.

Thirty-eight per cent of those who did not have an internal department used an external contractor for HR and personnel issues and 62 per cent did not. Therefore, to summarise, 55 per cent had an internal HR department, 17 per cent had an external contractor, and 28 per cent had neither. All large workplaces had an internal HR department compared with just 39 per cent of small organisations (see table 2).

Table 2 HR Presence

	Small	Medium	Large	Total
Internal	39%	75%	100%	55%
External	21%	15%	0%	17%
Neither	40%	10%	0%	28%

Source: F4c - Does your organisation have an internal HR or personnel department that deals with personnel issues? / F4e – Does the organisation use an external person or company for HR or personnel issues; unweighted base: all sampled employers, 478 – small, 303; medium, 113; large, 49).

Nineteen per cent of employers stated that the organisation had an internal legal department that deals with any personnel or employment issues. This was similar to the tribunal applicant profile: SETA data suggested that 20 per cent had an internal legal department. Large workplaces were most likely to have stated that they had an internal legal department; more than both small and medium sized workplaces (large, 37 per cent; medium, 23 per cent; small, 13 per cent).

In summary, the public sector, large workplaces and organisations with internal HR departments were underrepresented amongst PCC referrals / cases compared with the population of ET cases as shown in SETA. In contrast, the private sector, small workplaces, and those without an internal HR department were overrepresented amongst PCC referrals / cases.

Changes in the qualifying period for unfair dismissal

Micro and SME sized firms employ proportionally more staff who have a length of service between 1 and 2 years and so are more likely to benefit from the monetary cost savings associated with a change in the qualifying period for unfair dismissal. This is shown in Table 3 below.

Table 3. Summary of employees affected by change in unfair dismissal qualifying period by firm size (LFS 2009 Q4)

('000's)		Employees eligible (current = 1 year)	Employees eligible (proposed = 2 years)	Net change	Net change (%)
All employees		20,997	18,076	-2,921	-11.8
Size of employing firm	SME (1-49)	9,613	8,034	-1,579	-13.5
	Medium (50-249)	4,952	4,311	-640	-11.2
	Large (250+)	5,640	5,056	-584	-9.3
	Micro (1-10)	3,758	3,145	-612	-13.2

Source: BIS analysis of LFS 2009 Q4.. Summing all subgroups may not equal total employees due to missing values.

Post Implementation Review

Basis of the review: Further details on how the policy changes will be reviewed will be worked up following consultation, and will need to be considered across BIS, MoJ, Acas and Tribunals Service.
Review objective: • To establish whether changes met the twin objectives of encouraging earlier dispute resolution and a more efficient employment tribunal system
Review approach and rationale: The review approach will cover: • Monitoring of Tribuinal Service administrative data and ACAS Annual Reports • Analysis of regular employment surveys
Baseline: • We have baseline information on how pre-claim conciliation currently works, and against which to assess its effectiveness (proposal 1) • Other information from Tribunals Service administrative data helps to provide a strong baseline.
Success criteria: • All things equal, the number of claims proceeding to full employment tribunal hearing is lower, with evidence this is due to the changes. • Data suggests the costs for all parties are lower than the 2010 position (again with evidence that this is due to the policy changes)
Monitoring information arrangements: Existing surveys and systematic data sources relating to employment tribunals: • Tribunals Service administrative data • ACAS Annual Reports • Further employment surveys

Annex A: Justice Impact test

This impact assessment has been drafted with the Ministry of Justice, and throughout, an assessment has been made of the impact on the Tribunals Service.

This publication is also available on our website at http://www.bis.gov.uk

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