



Department for
Business, Energy
& Industrial Strategy



Ministry
of Justice

**REFORMING THE EMPLOYMENT
TRIBUNAL SYSTEM**

Taking forward the principles of
wider court and tribunal reform
in the employment tribunal

DECEMBER 2016

Introduction

1. This document records the analysis undertaken jointly by the Department of Business, Energy and Industrial Strategy (BEIS) and Ministry of Justice (MoJ) to fulfil the requirements of the Public Sector Equality Duty in relation to the proposed reform of the Employment Tribunal. The Public Sector Equality Duty comprises three strands, set out in section 149(1) of the Equality Act 2010 whereby a public authority must, in the exercise of its functions, have due regard of the need to:
 - (i). Eliminate discrimination (both direct and indirect), harassment, victimisation and any other conduct that is prohibited by the Act;
 - (ii). Advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not
 - (iii). Foster good relations between persons sharing a relevant PC and persons who do not. This includes tackling prejudice and promoting understanding.

2. Any queries about this Equality Analysis should be addressed to:

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Description of the Policies

3. This Equality Statement considers the impact of the Government's proposals to reform the Employment Tribunal system in line with the reforms being implemented across the rest of the justice system under the Transforming our justice system programme¹. The Government's intentions are set out in the attached consultation paper. These are to:
 - a. confer responsibility for procedural rules for Employment Tribunals and the Employment Appeal Tribunal on the Tribunal Procedure Committee;
 - b. confer responsibility for determining panel composition on the Lord Chancellor with a specific power to delegate this responsibility to the Senior President of Tribunals; and,
 - c. amend any provisions that restrict reform in the Employment Tribunals Act 1996 to provide necessary flexibility to implement the wider reform programme.

4. The new powers are expected to be used to:
 - a. **digitise the claims process**, so that claims are able to be made and subsequently processed online, enabling electronic communication between the individuals and the tribunal, simplifying the process, speeding up the resolution of disputes;
 - b. **delegate routine tasks from judges to caseworkers** - allowing procedural decisions that do not determine the outcome of the case to be made at a proportionate level so that judges can focus on those matters where their legal expertise and knowledge is needed;
 - c. **tailor the composition of tribunal panels to the needs of the case** - ensuring that panel members without legal expertise are asked to sit on panels according to their expertise and the needs of the case; and
 - d. **remove any unnecessary restrictions on how a particular type of case must be determined** – ensuring that simple cases can be resolved by simple methods.

¹ <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/>.

Evidence

5. We have considered a number of available sources to determine the likely impact of all the Employment Tribunal measures. The main sources of information are the Survey of Employment Tribunal Applications 2013, data from HMCTS (both published and administrative) and Office for National Statistics publications.
6. The 2013 Survey of Employment Tribunal Applications² collects information on the personal characteristics of Employment Tribunal claimants in relation to race, gender, disability, sexual orientation, religion, age and marriage and civil partnership. We do not currently have information on the protected characteristics of Employment Tribunal claimants in terms of gender reassignment and pregnancy and maternity with the current Survey of Employment Tribunal Applications data. It should be noted that recent fee changes may have had an impact on the profile of Employment Tribunal users. Results from Survey of Employment Tribunal Applications for Employment Tribunals are compared against the data collected by the Office for National Statistics relating to the characteristics of the British workforce to see how the characteristics of claimants differ to the general population of employees. Typically, these are taken from the Quarterly Labour Force Survey dataset for January to March, 2016³.
7. Statistics relating to the use of the internet have been used to assess the digital skills of various protected groups. These data come from the Internet Access - Households and Individuals: 2015 bulletin⁴ and the Q1 2014 Internet Access Quarterly update⁵, both published by the Office for National Statistics. A more recent edition of the report became available after our initial analysis but, as it shows the same trends as the 2015 dataset, we have not replaced the initial analysis.

² Department of Business, Energy and Industrial Strategy, 11 June 2014. Survey of employment tribunal applications 2013. <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-2013>

³ UK Data Service. Quarterly Labour Force Survey, January to March, 2016. <http://nesstar.ukdataservice.ac.uk/webview/index.jsp?v=2&mode=documentation&submode=abstract&study=http://nesstar.ukdataservice.ac.uk:80/obj/fStudy/7725&top=yes> [Accessed August 2016]

⁴ Office for National Statistics, 6 August 2015. Internet Access - Households and Individuals: 2015. <http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2015-08-06> [Accessed 4 August 2016].

⁵ Office for National Statistics, 14 May 2014. Internet Access Quarterly Update: Q1 2014. <http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccessquarterlyupdate/2014-05-14> [Accessed 4 August 2016].

8. Diversity statistics of the judiciary are published annually by the Judicial Office⁶ and this has been used to assess the equality impacts on judges and non-legal members of within the Employment Tribunals. The data are only available in relation to age, gender, and ethnicity. These statistics have been compared with diversity data for the general population of British employees.
9. Administrative staff data were provided by the Ministry of Justice Human Resources Management Information Team. It gave a snapshot of data as at 31 March 2016. Age, gender and ethnicity data are available for tribunals as a whole and, separately, for the Employment Tribunals and Employment Appeal Tribunal.

Equality Analysis

Eliminating unlawful discrimination

10. This section considers the equality impacts that the reform proposals could have on each of the protected characteristics.

Direct discrimination

11. None of the reform proposals will be directly discriminatory as they will not result in treatment of any individuals less favourably because of any protected characteristic they have or are thought to have but rather will apply equally to all people, irrespective of any protected characteristic.

Indirect discrimination

12. We have identified that the key groups likely to be affected by these reforms will be users of the Employment Tribunals and Employment Appeal Tribunal, the judiciary (including judges and non-legal members), and Her Majesty's Courts and Tribunals Service administration staff. We welcome responses to the consultation to inform our thinking with regards to indirect discrimination, particularly relating to areas for which limited data are available.

Users of the ETs and EAT

13. We consider that the proposals that are relevant to Employment Tribunal users are claim digitisation and flexibility around types of hearing as these proposals will change the way that many users interact with the tribunals. We do not believe that the panel composition or judicial delegation proposals will have any impact on users. In the following, unless otherwise stated, statistics relating to Employment Tribunal users derive from Survey of Employment Tribunal Applications 2013;

⁶ Judicial Office, 30 July 2015. Judicial Statistics 2015. <https://www.judiciary.gov.uk/publications/judicial-statistics-2015/>

statistics relating to the GB workforce are taken from the Quarterly Labour Force Survey dataset; See Evidence section for references. Survey of Employment Tribunal Applications 2013 data relate to Employment Tribunals only. However, Employment Appeal Tribunal claims are linked to ET claims, as they will largely be appeals against Employment Tribunal judgments.

Gender

14. Fifty seven per cent of Employment Tribunal claimants were men, slightly higher than the proportion of the employed GB workforce (53 per cent). We do not foresee disadvantage as a result of gender as there is little difference in internet use between men and women under 65 years of age⁷.

Ethnicity

15. Overall 82 per cent of claimants were white, compared with 89 per cent of workers in general. However, in race discrimination cases 47 per cent of claimants were black and 22 per cent Asian. The Survey of Employment Tribunal Applications does not report any further detail on the race of claimants.
16. The ability of non-English speakers to continue to access the reformed Employment Tribunal system could have an impact on racial equality. As now, HMCTS will continue to engage with accessibility groups during the development phase to ensure that all users continue to be able to access the Employment Tribunal system. Otherwise, we do not consider that there is any potential for indirect discrimination on the basis of race or ethnicity.

Disability

17. Twenty six per cent of claimants had a long-term disability which is about the same as the proportion among employees in general (27 per cent). Nineteen per cent had a long-term disability that limited their activities in some way, a higher proportion compared with the workforce as a whole (11 per cent). The proportion rises to 86 per cent in disability-specific discrimination cases, with 52 per cent in discrimination cases, 16 per cent in Wages Act and 18% in redundancy payment cases.
18. The proposed flexibility around the type of hearing may be particularly beneficial to users with restricted mobility, although physical hearings will still be able to take place where necessary. Likewise, the digital service will increase accessibility for users with restricted mobility by removing the need to travel.
19. The Government recognises that there is evidence that people with a long term disability are less likely to use the internet and other digital channels than people who are not disabled⁸. This will, however, be mitigated by the assisted digital

⁷ Office for National Statistics, 14 May 2014. Internet Access Quarterly Update: Q1 2014.

⁸ Office for National Statistics, 14 May 2014. Internet Access Quarterly Update: Q1 2014 and Office for National Statistics, 6 August 2015. Internet Access - Households and Individuals: 2015.

service which will provide support to users to access and use the digital service or alternative methods where appropriate.

20. We have recently consulted on the provisions that need to be in place to assist tribunal users who may struggle with using or accessing digital systems and this may be particularly relevant to tribunal users with a disability. HMCTS will continue to engage with external stakeholder groups, including disability groups, while designing the digital system and will ensure that there are processes and systems in place to meet the needs of tribunal users with disabilities.

Age

21. There is evidence for a correlation between age and use of digital technology and that older people are less likely to use the internet for a range of different tasks⁹. Based on this, we believe that claimants over 65s are likely to need more assistance than younger claimants, but this group accounts for just 3 per cent of Employment Tribunal users¹⁰. The correlation between age and digital skills will also be mitigated by the 'assisted digital' service which will provide support to users to access and use the digital service or alternative methods where appropriate. With these provisions in place, the digital service will make the Employment Tribunals more accessible to all users.

Religion / belief

22. Overall, 67 per cent of claimants regarded themselves as belonging to a religion. This proportion rose to 71 per cent among those involved in discrimination cases generally and rose higher still, to 94 per cent, among those involved in religion/belief discrimination case. There is no evidence to suggest that users of the Employment Tribunals and Employment Appeal Tribunal will be put at a disadvantage as a result of their religion of beliefs.

Marriage / civil partnership

23. Forty eight per cent of claimants were married or in a civil partnership and 63 per cent were living as part of a couple, broadly reflecting the working population. There is no evidence to suggest that users of the Employment Tribunals and Employment Appeal Tribunal will be put at a disadvantage as a result of their marriage or civil partnership status.

Sexual orientation

24. Ninety four per cent of claimants identified themselves as heterosexual, 2 per cent identified as homosexual and 1 per cent as bisexual. A further one per cent answered they did not know, and two per cent preferred not to say. There is no

⁹ Office for National Statistics, 6 August 2015. Internet Access - Households and Individuals: 2015.

¹⁰ BIS, Findings from the Survey of Employment Tribunal Applications 2013, June 2014, Figure 8.1 p85.

evidence to suggest that users will be put at a disadvantage as a result of their sexual orientation.

Pregnancy / maternity

25. Data on pregnancy/maternity are not covered by the Survey of Employment Tribunal Applications reports. However, a recently published Government report on pregnancy and maternity related discrimination and disadvantage found that 1 per cent of mothers surveyed had lodged a complaint at an Employment Tribunal.¹¹ During 2014/15, there were 955 claims disposed under the jurisdiction of suffering a detriment or unfair dismissal relating to pregnancy.
26. There is no evidence to suggest that Employment Tribunal users will be put at a disadvantage as a result of pregnancy or maternity. We recognise that being pregnant or having children may be a limiting factor in accessing a physical tribunal building. Digital claims management and the provision of alternative types of hearing may be particularly beneficial to people who are pregnant or are parents.

Gender reassignment

27. There is no information available in relation to the number of tribunal users who have had or who are considering gender reassignment. However there is no evidence to suggest that any claimants will be put at a disadvantage as a result of gender reassignment.

Employment Tribunal judiciary

28. We consider that the relevant aspects of the policy that could impact on the Employment Tribunal and Employment Appeal Tribunal judiciary are the proposals on panel composition, delegation of judicial function, and increased digitisation. The Employment Tribunal judiciary comprises Employment Tribunal judges (27 per cent) as well as non-legal members (73 per cent). All of the non-legal members are fee-paid, whereas the Employment Tribunal judges are either salaried (42 per cent) or fee paid (58 per cent).
29. In the following, unless otherwise stated, statistics related to judicial diversity are taken from Judicial Diversity Statistics Tool 2015, part of Judicial Statistics 2015; statistics related to the workforce are taken from the Quarterly Labour Force Survey, January to March, 2016. See Evidence section for references. The judicial data relate to judges in Employment Tribunals only. However, the Judicial Diversity Stats Tool registers only two judges and 21 non-legal members specifically for Employment Appeal Tribunal¹² so the following summary is generally representative.

¹¹ See P.145 and Figure 11.1:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf

¹² Excludes non-legal members

Gender

30. Overall 52 per cent of the Employment Tribunal judiciary are male and 48 per cent female, broadly similar to the GB employed workforce (which is 53 percent male and 47 percent female).
31. Forty nine per cent of non-legal members are male and 51 per cent females. Any reduction in the number of non-legal members would not, therefore, disproportionately affect males or females.
32. There is a risk that judicial delegation and digitisation could potentially result in fewer available working hours for fee-paid judges who are deployed according to need. Whilst the majority of ET judges are male (59 per cent), which is a higher proportion than that of the GB workforce, 61 per cent of female judges are fee paid, compared with 56 per cent of male judges, meaning there could be a disproportionate impact on female judges.

Ethnicity

33. The exact breakdown of ethnicity in the judiciary is not known, as some people choose not to declare it. In the Employment Tribunals, 9 per cent of non-legal members and 2 per cent of judges have not stated their ethnicity.
34. Eighty two per cent of non-legal members identify as white compared with 89 per cent of the GB workforce. Ten per cent of non-legal members identify as being from a BAME background compared with 11 per cent of the GB workforce.
35. Six per cent of Employment Tribunal judges are from BAME backgrounds compared with 11 per cent of the GB labour force. This difference is largely accounted for by those who reported an Asian or Asian British background who account for 6 per cent of the GB labour force but only 2 per cent of Employment Tribunal judges.
36. There is a risk that judicial delegation and digitisation could mean that there will be a lower work volume which could potentially result in fewer available working hours for fee-paid judges. Fifty eight per cent of judges who are white are fee paid, compared with 43 per cent of judges who are from BAME backgrounds. However, of those judges from a BAME background, 78 per cent of Asian or Asian British judges are fee paid. This indicates that there is likely to be a disproportionate impact on various ethnic groups, particularly Asian or Asian British judges.

Disability

37. Her Majesty's Court and Tribunal Service do not publish data on disability characteristics of the judiciary. Information on disability has not consistently been collected in the past; it has only routinely been collected for new recruits since 2013. As such the impact that this policy will have on disabled members is difficult to determine. However there is no evidence to suggest that there will be a disproportionate impact on members of the Employment Tribunal judiciary who

share a protected characteristic relating to disability. Reasonable adjustments for those in the judiciary with disabilities will continue to be made.

Age

38. It may be expected that the judiciary will be generally older than the work force as a whole, as younger individuals are less likely to have the prerequisite knowledge and experience needed for these roles, and we have not therefore compared the age characteristics of the judiciary to those of the wider workforce.
39. Eighty six per cent of the Employment Tribunal judiciary are above the age of 50 and just 2 per cent are below the age of 40. This is broadly in line with the wider judiciary, where 82 per cent are above the age of 50 and 3 per cent below the age of 40.
40. Judicial roles are likely to rely increasingly on digitisation, and as digital capability corresponds to age,¹³ this may particularly impact older judges and non-legal members. However, this risk will be mitigated by the appropriate IT training and support.
41. Of the non-legal members in the Employment Tribunals, 92 per cent of non-legal members are above the age of 50, and just 1 per cent below the age of 40. Employment Tribunal judges, on the other hand, are generally younger than their non-legal member counterparts with 69 per cent above the age of 50 and 31 per cent below the age of 40. Whilst we have identified that age may be linked to digital capability, we do not consider that, with the appropriate support and training in place, that older members will be particularly disadvantaged.
42. There is a risk that judicial delegation and digitisation could mean that there will be less work, potentially resulting in fewer sittings for fee-paid judges than salaried judges. Younger Employment Tribunal judges are more likely to be fee paid rather than salaried with 94 per cent of judges under 40 being fee paid, compared to 47 per cent of judges over 60. This policy could therefore potentially disproportionately impact younger judges.

Other characteristics

43. Her Majesty's Court and Tribunal Service do not publish judicial data in relation to the religion or belief, marriage and civil partnership, sexual orientation, pregnancy or maternity or gender reassignment. However there is no evidence to suggest that there will be a disproportionate impact on any judges or non-legal members who share these protected characteristics.

¹³ Office for National Statistics, 6 August 2015. Internet Access - Households and Individuals: 2015

Employment Tribunal administration staff

44. We consider that increased digitisation may be relevant to administration staff working in the Employment Tribunal and Employment Appeal Tribunal. It is not anticipated that other elements of the reform will significantly affect administration staff.
45. In the following, unless otherwise stated, statistics related to administrative staff diversity are taken from internal management information and relate to staff in Employment Tribunals and Employment Appeal Tribunal combined; statistics related to the workforce are taken from the Quarterly Labour Force Survey, January to March, 2016. See Evidence section for references.

Gender

46. Sixty-eight per cent of Employment Tribunal administration staff are female compared with 47% of the employed GB workforce. Although there is a risk that any decrease in work volumes as a result of digitisation could affect a high proportion of females, relative to the wider population, we do not consider that this amounts to indirect discrimination as the impacts on staff will be the same regardless of gender and will be proportional to their composition in the workforce.

Ethnicity

47. The exact breakdown of ethnicity amongst the administration staff in the Employment Tribunal is not known, as 17 per cent choose not to declare it. However, 24 per cent who did report it are from BAME backgrounds, compared with 11 per cent of the GB workforce as a whole. There is therefore a risk that a high proportion of people from BAME backgrounds, relative to the wider population, could be put at a disadvantage should work volumes decrease as a result of digitisation. However, we do not consider that this amounts to indirect discrimination as the impacts will be the same on all staff regardless of ethnicity and will be proportional to their composition in the workforce.

Age

48. Sixty-one per cent of Employment Tribunal administration staff are aged between 40 and 59 compared with 45 per cent of the GB labour force. Many administrative roles are likely to rely increasingly on digitisation, and as digital capability corresponds to age, this may impact older staff in particular. However training and support will be made available to mitigate this risk and provide the opportunity to learn new skills. There is also a risk that a high proportion, relative to the GB workforce, of people aged 40-59, will be put at a disadvantage should work volumes decrease as a result of digitisation. However, we do not consider that this amounts to indirect discrimination as the impacts will be the same on all administration staff regardless of age and will be proportional to their composition in the workforce.

Disability

49. Only 50 per cent of Her Majesty's Courts and Tribunals staff have completed a declaration on disability. Of these 10 per cent have reported a disability compared

to 11 per cent for the GB workforce as a whole. The available data does not suggest that there will be a disproportionate impact on those with disabilities. Her Majesty's Court and Tribunal Service will continue to make reasonable adjustments for Employment Tribunal staff with disabilities.

Other characteristics

50. Her Majesty's Court and Tribunal Service do not publish staff data in relation to the religion or belief, marriage or civil partnership, sexual orientation, pregnancy or maternity, or gender reassignment. There is no evidence to suggest that there will be a disproportionate impact on those who share any of these protected characteristic.

Harassment and victimisation

51. We do not consider there to be a risk of harassment or victimisation from these proposals.

Advancing equality of opportunities.

Employment Tribunal users

52. The increased use of digitisation and the use of non-physical means of hearing has the potential to better meet the needs of people with particular protected characteristics, enabling them to participate in public life. We consider that people with mobility-related disability and those with caring responsibility, including parents, will particularly benefit from these reforms as they will have greater flexibility and ease of access to the Employment Tribunals and Employment Appeal Tribunal.

Employment Tribunal judiciary

53. The Government recognises that the judiciary is less diverse of certain protected characteristics than the wider population. The Diversity Forum, attended by representatives of the Ministry of Justice, Judicial Appointments Commission, the judiciary and the legal profession, are exploring ways of increasing diversity in the judiciary.

54. There is a possibility that the digitisation and panel composition proposals could lead to fewer sitting days for judges and non-legal members, which could in turn lead to a reduction in future recruitment, preventing people from more diverse backgrounds, and particularly younger people from entering judicial roles. Workload decline has already had an impact on judicial recruitment with no non-legal member recruitment since 2009 and, with the exception of new leadership posts, the Employment Tribunal has not recruited any new judges since 2013.

55. However, there are policies in place involving cross deployment of Employment Tribunal judges to other areas of the courts and tribunals system, providing greater opportunities to the existing cohort of Employment Tribunal judges and minimising the impacts of potential decline in sitting hour availability. A pilot is being run wherein salaried Employment Tribunal judges can sit in the civil county courts

according to business needs. Likewise Employment Tribunal judges can already be deployed to other tribunals on an expression of interest basis. Whilst these policies will apply to all Employment Tribunal judges, regardless of any protected characteristic, they may be particularly beneficial to fee-paid judges who are most likely to be affected by these proposals, including females, younger people, and Asian or Asian British judges.

56. Additionally, schemes are in place across the wider judiciary to encourage greater diversity and equality of opportunities. There are more than a hundred Diversity and Community Relations judges across England and Wales who volunteer to community engagement to encourage judicial careers from groups that are typically under-represented in the judiciary. There are support and mentoring schemes in place to provide help for under-represented groups, including candidates who are female, or from a BAME background, or who come from a low socio-economic background, to apply for the High Court.

Employment Tribunal administration staff

57. We do not consider that there is scope within the policy of reforming the Employment Tribunals and Employment Appeal Tribunal to promote advance equalities of opportunity between groups of people who share a certain characteristics and those who do not.

Fostering good relations

58. We do not consider that there is scope within the policy of reforming the Employment Tribunals and Employment Appeal Tribunal to promote measures that foster good relations between persons who share a relevant protected characteristic and persons who do not. For this reason, we do not consider Employment Tribunal reform is relevant to this obligation.

Welsh language considerations

59. Both Ministry of Justice and Her Majesty's Court and Tribunal Service have adopted the principle that in the conduct of public business and the administration of justice in Wales, it will treat the English and Welsh languages on a basis of equality. We are aware of our Welsh language obligations and we will be considering this as the reform proposals develop and are implemented. We will also be working closely with Government Digital Services, who likewise have Welsh language obligations, to build the digital systems and ensure that users are able to communicate with the Employment Tribunals in Welsh.

Summary of impacts of key reform features

60. Having considered the impact of Employment Tribunal reform in relation to the obligations under the Equality Act, we have concluded that:

- a. Employment Tribunal reform will not result in any direct discrimination of Employment Tribunal users or judiciary or Her Majesty's Court and Tribunal System staff;
- b. There may be some disparate impacts on Employment Tribunal judges who share certain protected characteristics relating to age, ethnicity and gender, but these are justified and lawful;
- c. Employment Tribunal reform does not have an adverse impact in relation to harassment and victimisation, nor in relation to the need to foster good relations; and
- d. Equality of opportunities of Employment Tribunal users may be promoted as the Employment Tribunals will be more accessible to people that may have issues with the system presently. The policy does not promote equality of opportunities for judges or Employment Tribunal staff, but there is work being undertaken across the wider judiciary to address this.

61. The Government welcomes responses to the consultation questions and any comments around equality and diversity impacts will inform our equality analysis. The Ministry of Justice and Department for Business, Energy and Industrial Strategy recognise their ongoing equality duty and will continue to assess and monitor the implications of this policy on equality and diversity during and following implementation, and subsequent adjustments will be made as necessary.

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