

Jersey Employment and Discrimination Tribunal



Annual Report 2018

**This is the fourteenth Annual Report of the Employment and
Discrimination Tribunal and covers the period 1 January 2018 to 31 December 2018**

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Membership of the Employment and Discrimination Tribunal

The Employment and Discrimination Tribunal ('EDT') consists of a legally qualified Chairman and up to four legally qualified Deputy Chairmen. There are also three pools of side members who, depending upon the nature of the claim, will sit with a Chair.

Work related claims (employment and discrimination)

When the claim is work-related, a Chair may sit with two lay members drawn from:

- a) a pool of side members comprising of persons with knowledge of, or an interest in, trade unions or matters relating to employees; and
- b) a pool of side members comprising of persons with knowledge of, or an interest in, employers' associations or matters relating to employers.

Non-work related claims

When the Tribunal sits to hear a non-work related claim under the Discrimination Law a Chair will sit with two lay members drawn from a third pool of members which comprises a group of persons with knowledge or experience of, or an interest in, matters relating to equality and discrimination.

All appointments to the EDT are made following an open recruitment process overseen by the Jersey Appointments Commission in accordance with its published guidelines.

Once appointed, lay members remain entirely independent of their background; they do not represent any organisation with which they are associated and are entirely impartial, even though in work-related disputes they will have a background in either employer or employee matters.

The Chairs usually sit alone to hear unfair dismissal and breach of contract disputes but will sit with lay members for final hearings of discrimination claims and in more complex employment claims.

Membership of the Jersey Employment and Discrimination Tribunal

The members of the EDT in 2018 were:

Chairman

Mrs Hilary Griffin (Solicitor)

Deputy Chairmen

Advocate Claire Davies

Advocate Ian Jones

Advocate Michael Preston

Mr Michael Salter (Barrister)

Panel members appointed to hear work-related claims under the

Employment Law and Discrimination Law

Members with experience as representatives of employers

Marilyn Wetherall

Louise Cram

Sue Cuming

Emma Harper

Louise James

Mark Therin (to January 2018)

Members with experience as representatives of employees

John Noel

Simon Cross

Clive Holloway

Zannah Le Moignan

Anne Southern

Neal Vautier

Michael Baudains (to January 2018)

Alan Kearney (to November 2018)

Panel members appointed to hear non-work related claims of discrimination

Elizabeth Adams

Thomas Gales

Janet Brotherton

Mandlenkosi Mlambo

Melanie Cavey

Tamburi Muoni

Daria Sawicka

Tribunal Service Team Members

Manager

Nathan Wilczynski

Registrars

Tayla Le Mottee

Tracey Buesnel

Steph de la Cour

Chairman's Foreword

2018 was a period of consolidation for the EDT during which we sought to build upon the extensive administrative changes which occurred in 2017. We continued to make minor amendments to our new forms and guidance notes and also introduced guidance notes in Portuguese and Polish which can be found on our website. Between them, the Chairs conducted 174 hearings and case management meetings and wrote approximately 70 judgments, including judgments on applications for leave to appeal to the Royal Court. As set out below, they also started providing much more detailed summaries and orders at the case management stage to make the tribunal process more user-friendly for unrepresented parties.

Case Management

The main objective of a Case Management Meeting ("CMM") is to provide a detailed timetable to the parties so that pre-hearing preparation is smooth and effective. However, with a high proportion of our users being unrepresented, we realised that many users remained less able to present focused and relevant evidence at the final hearing.

With this in mind (and in addition to the usual orders which are provided at CMMs) the chairs now also provide to the parties a detailed summary of facts and issues arising in their case. Since the introduction of these summaries, we have seen a reduction in the number of enquiries made to the Registrars by parties after their CMM. Moving forward, we hope to see:

- an increase in the number of cases which settle during the period between the CMM and the final hearing (because the parties have a clearer understanding of the issues); and
- final hearings focusing more effectively on the relevant issues.

Number of claims

Reduction in overall number of claims

During 2018 the EDT received 197 claims, an average 32% reduction across both employment and discrimination claims compared to 2017.

Whilst the overall reduction in claims appears significant, the figures are more consistent with the years up to (and including) 2016. With the benefit of this year's statistics, it would appear that the volume of

cases in 2017 was unusually high, partly caused by a number of group actions, which can artificially inflate the figures.

Increase in counterclaims

The number of cases which included a counterclaim (usually by the employer) continued to increase in 2018 with 23 counterclaims being filed, an increase of nearly 6% on 2017. The majority of these counterclaims either settled or were withdrawn. Of the two counterclaims which proceeded to a final hearing, both were unsuccessful. The majority of the counterclaims were attempts by employers to seek damages for breach of contract due to employees leaving their employment without working their notice.

Article 12 Default Judgments

In 2017, we highlighted the fact that many respondents were failing to file their response form within the statutory 21-day time limit.

In order to try and reduce these instances of default, we made some administrative changes to our standard letters and envelopes to further highlight to respondents the importance of responding to the claim before the expiry of the deadline.

Although we saw a slight reduction in the number of defaults, the number remained frustratingly high at 8% of all claims. In some cases, respondents tried to file their response forms after the expiry of the 21-day time limit. The EDT has no power to exercise a discretion in such cases and may not allow a response form to be submitted late.

Inevitably, where a respondent has filed a response form late, the EDT usually finds in the claimant's favour.

Employment claims

Unfair dismissal/constructive unfair dismissal

We saw a 35% reduction in unfair and constructive unfair dismissal claims in 2018, with 113 claims being filed. This figure included 14 'auto' unfair dismissal claims (claims where an employee is not required to have 52 weeks of continuous employment).

Of the 18 unfair dismissal claims which proceeded to a final hearing, respondents were successful in nearly 60% of cases. This ratio was even more marked in constructive dismissal where the burden on

claimants to prove that they were constructively dismissed is particularly high; of the seven constructive dismissal claims which took place, only one claimant was successful.

Reduction of awards

When awarding compensation in unfair and constructive unfair dismissal claims, the EDT is required to consider whether it should apply a reduction to that compensation in accordance with the legislation. Of the eight successful claims, the EDT applied a reduction on five occasions. Most commonly, such reductions were applied on “just and equitable” grounds, typically in circumstances where there was procedural unfairness but where the evidence showed there either to be an element of contributory fault by the claimant or evidence to show that the claimant would have been dismissed shortly thereafter in any event. Reductions in unfair dismissal awards varied between 25% and 70%.

Unpaid wages/itemised pay statements

We saw a 25% increase in the number of claims being issued for unpaid wages, with the EDT receiving 61 claims during 2018. Many of these claims arose as a result of employers withholding wages at the end of an employee’s employment (often because the claimant had not worked their notice). The majority of these claims either settled or were withdrawn by the claimant (often upon the receipt of payment after the CMM).

We also saw a 14% increase in the number of claims issued against employers for failing to provide itemised pay statements. The EDT has a discretion to award up to four weeks’ pay for such claims. Employers should be aware that providing only an annual pay statement is not sufficient. Employers are required to provide pay statements every time that they pay their employees.

Discrimination claims

The EDT received 43 discrimination claims during 2018, with work-related disputes accounting for the majority of those claims.

The protected characteristic of age accounted for the highest number of claims, making up 21% of all discrimination claims issued. It is worth noting that claimants varied in age, with some claiming less favourable treatment because they were ‘too young’ and others claiming less favourable treatment because they were ‘too old’.

Sex discrimination and pregnancy and maternity-related discrimination made up 19% and 17% of discrimination claims respectively. Sexual orientation-related discrimination claims made up only 4% of all claims.

Of particular note was the number of disability discrimination claims brought to the EDT. Despite only becoming a protected characteristic in September 2018, disability discrimination accounted for 11% of all claims over the entire year. We expect disability discrimination claims to continue to increase during 2019 (particularly in connection with work-related stress) and we recommend that employers take advice on how to address disability-related issues in the workplace.

Finally, I would like to thank the Deputy Chairs and the panel members for their continuing hard work, and the Registrars for their support and for ensuring the smooth running of the EDT. We look forward to continuing to provide a fair and transparent service to our users in 2019.

A handwritten signature in black ink, appearing to read 'Hilary Griffin', written in a cursive style.

Hilary Griffin
Chairman

Overview

The Employment and Discrimination Tribunal ('EDT') is an independent judicial body set up to hear and resolve claims and matters of dispute arising under the Employment (Jersey) Law 2003 ('Employment Law'), the Employment Relations (Jersey) Law 2007 ('Employment Relations Law') and the Discrimination (Jersey) Law 2013 ('Discrimination Law').

The EDT is one of several tribunals managed by the Judicial Greffe, the administrative arm of the Jersey Courts, through the Tribunal Service. The Judicial Greffe maintains budgetary control of the tribunal's day to day resources and the Minister for Social Security oversees the appointment of new panel members and also the introduction of employment and discrimination legislation and policy. The other tribunals in the Tribunal Service are:-

- the Planning Tribunal;
- the Health and Safety Tribunal;
- the Social Security Tribunal, which is made up of three tribunals, dealing with medical appeals, social security appeals and income support medical appeals;
- the Mental Health Review Tribunal; and
- the Charity Tribunal.

The EDT itself is similar to a court but is less formal. Hearings are open to the public, although there are certain circumstances when hearings may be held in private. The EDT strives to provide a user-friendly service ensuring that the documentation and terminology used in its proceedings is easily accessible to all parties. The services of a translator are provided when required at no charge to a party.

The EDT's claim and response forms, together with its User Guides and other explanatory information, are available on the EDT Service's website: www.EDT.je.

The EDT's decisions are published on the Jersey Law website: www.jerseylaw.je/Judgments/JET

Statistics Relating to Employment and Discrimination Laws

In 2018, the EDT received:

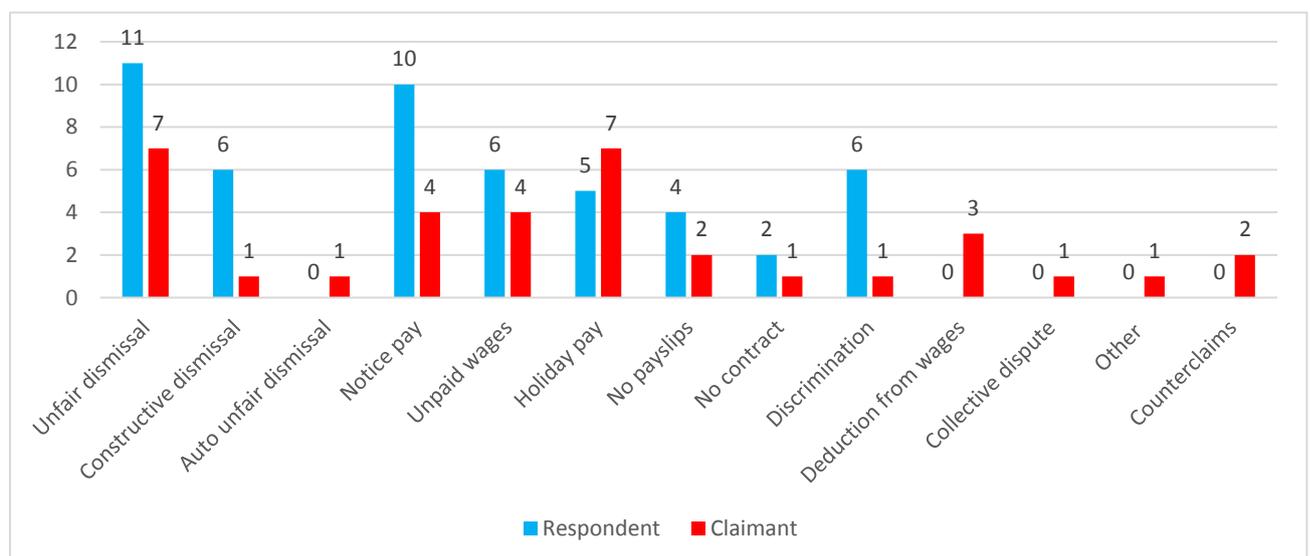
- a) 152 employment only claims;
- b) 11 work-related discrimination claims;
- c) 8 non-work related discrimination claims;
- d) 24 joint employment and discrimination claims;
- e) 2 employer claims; and
- f) 23 counterclaims from employers.

Number of claims received by the Employment and Discrimination EDT



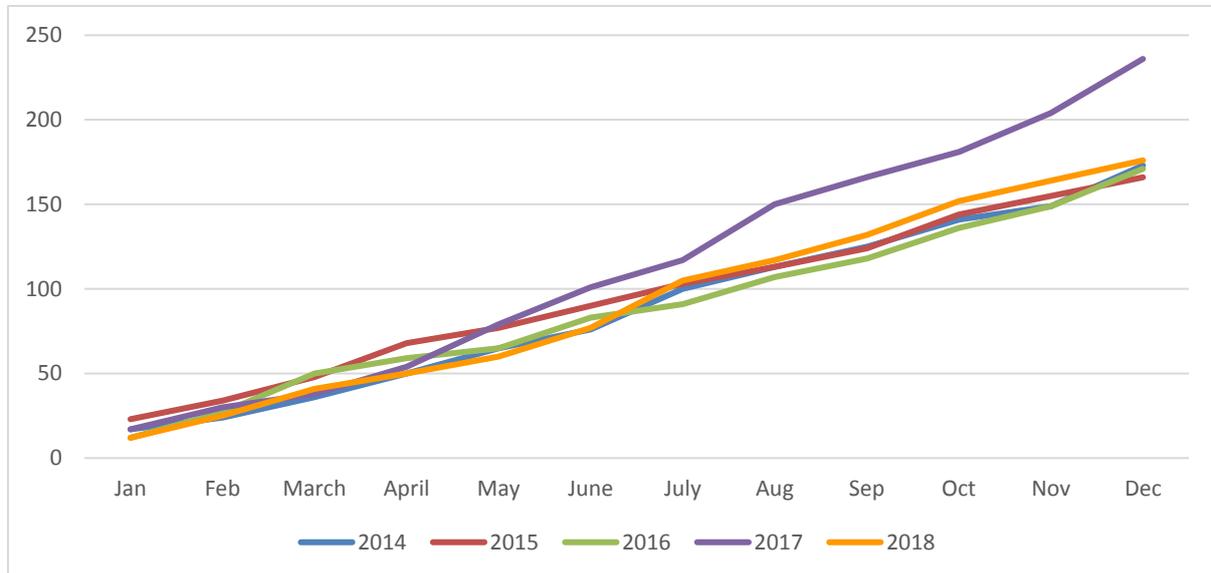
Outcome of employment issues at final hearing

44 cases went to final hearing. In some cases, both parties were successful with different issues.



Employment claims

The overall number of work-related claims fell in 2018 when compared to 2017, but the 2018 figures are more consistent with the 2014 to 2016 figures.



Counterclaims

There are circumstances in work-related disputes where an employer may, whilst defending the claimant's claim, also issue a counterclaim against the claimant for breach of contract. 2018 saw a further 5.7% increase in counterclaims, although of the 23 counterclaims issued, only two went to a final hearing. In both instances, the counterclaim was unsuccessful.

Employer Claims

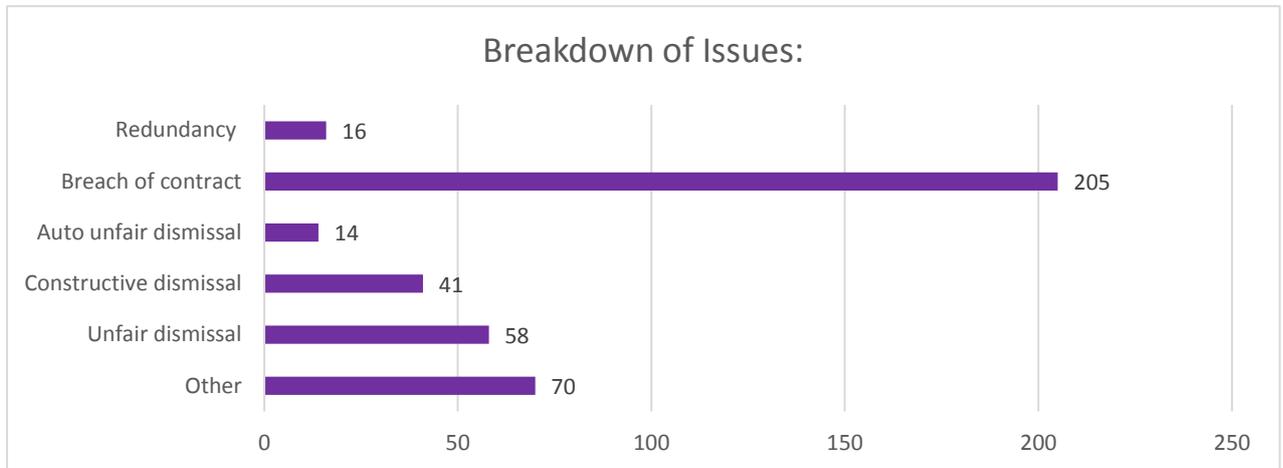
Employers are entitled to initiate proceedings against former employees for breach of contract. In 2018 the EDT received two employer claims. One employer claim received an Article 12 Judgment as the employee failed to respond, the other went to final hearing where the employer failed to appear, so the employee was successful.

Collective Disputes

In 2018 the EDT received one collective dispute. This is a single claim filed on behalf of a group of employees against their employer. The claimant was successful in this claim.

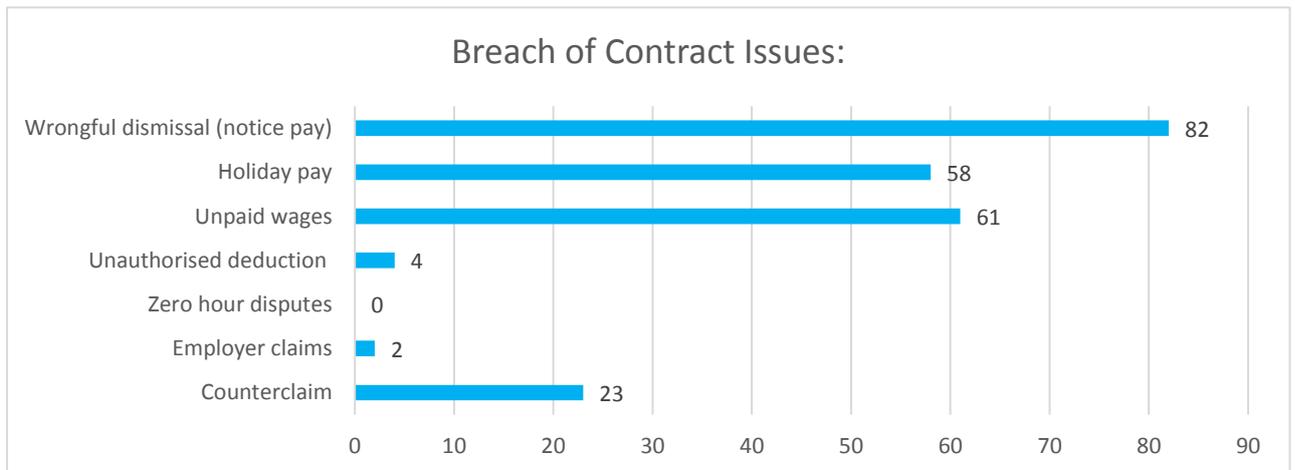
Employment issues dealt with by the EDT

Employment claims often comprise of several different issues.

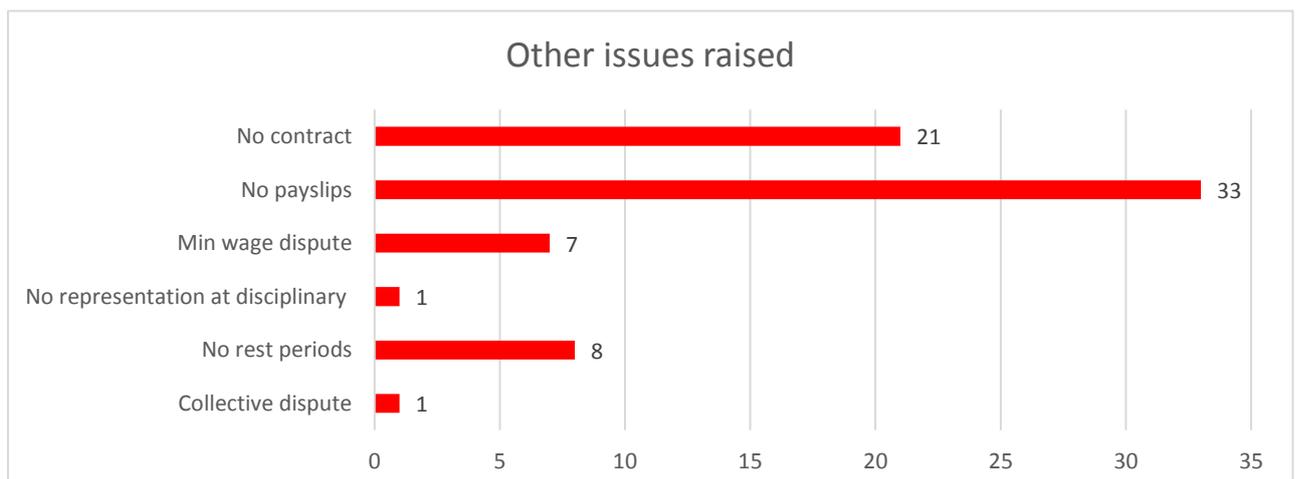


Breach of contract issues

Breach of contract claims comprise of a number of different issues.



Other issues raised

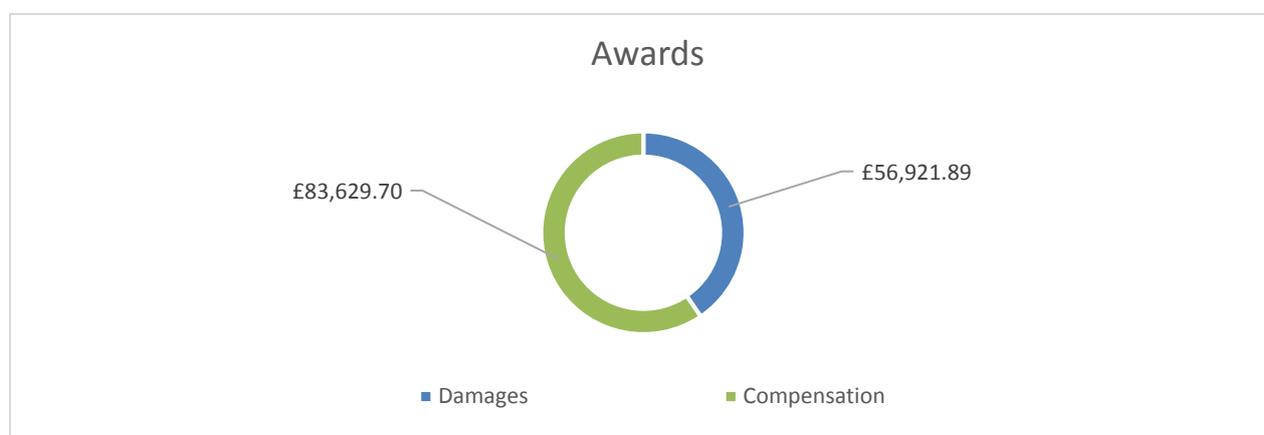


Breakdown of Employment Awards

The EDT awards damages for successful breach of contract claims (*ie* failure to pay holiday/bank holiday pay, wrongful dismissal (notice pay), unpaid wages, commission, bonuses).

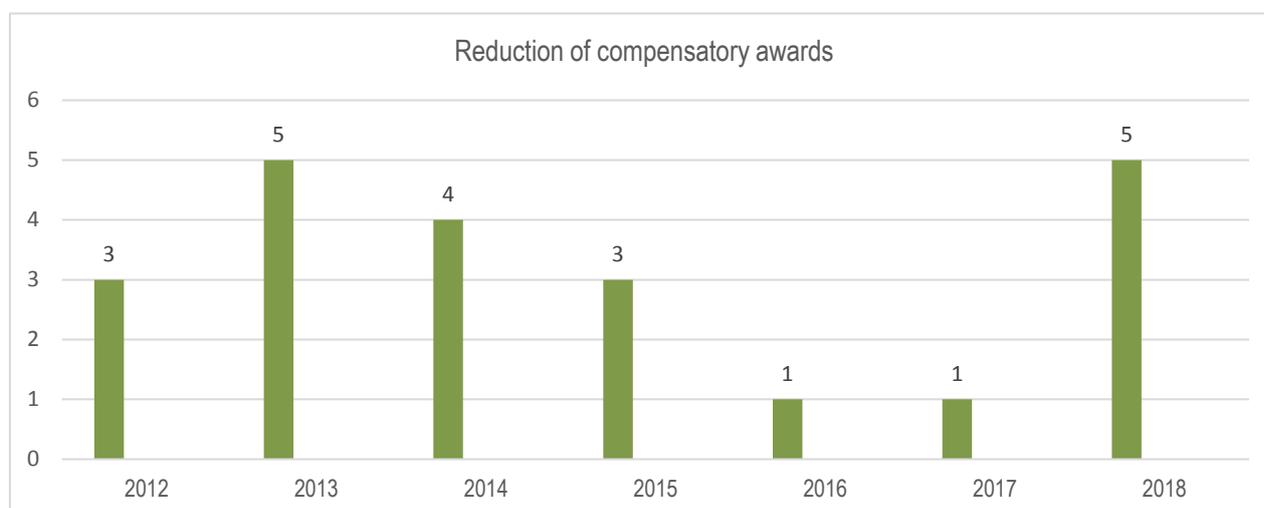
The EDT awards compensation for successful statutory claims (*ie* unfair or constructive unfair dismissal, discrimination, failure to provide pay statements, failure to provide contract, failure to allow representation at disciplinary hearing etc).

During 2018, the amounts awarded in compensation to claimants increased by 14% but damages for breach of contract reduced by a similar amount. Overall, therefore, awards issued by the EDT remained stable.



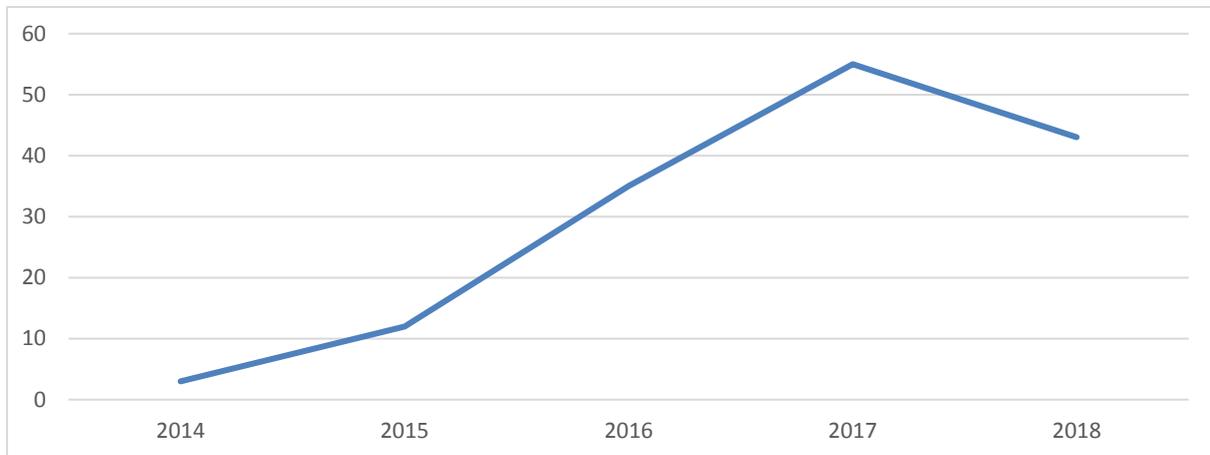
Number of cases where EDT applied a reduction to compensatory awards by year

The EDT may, in certain circumstances, apply a reduction to an award of compensation for unfair dismissal. In 2018, the EDT applied a reduction to five awards of between 25% and 70%.



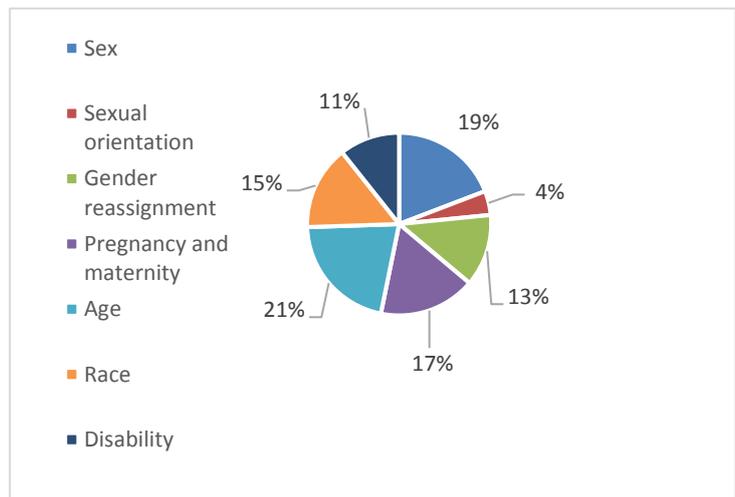
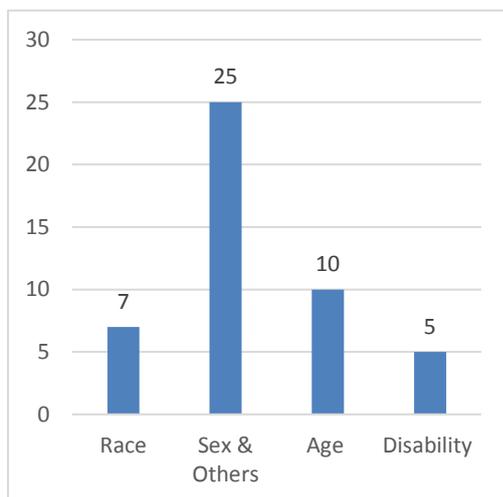
Discrimination claims

The overall number of discrimination claims has fallen this year to 43. In 2017 there were 55 discrimination claims. Of the seven which went to a final hearing, the claim only succeeded in one case.



Claims by protected characteristic

The protected characteristic of sex (and related characteristics) accounted for 53% of discrimination issues. Age, race and disability combined made up the remaining 47%. In some cases, claimants claimed discrimination on the grounds of two different protected characteristics.



Sex and related characteristics – includes sex, sexual orientation, gender reassignment, pregnancy and maternity.

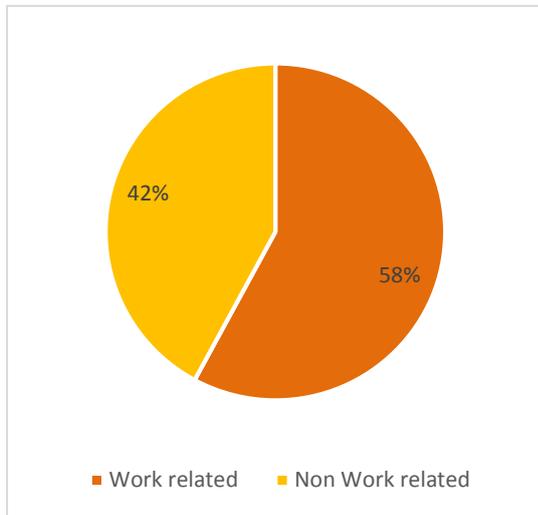
Race – includes colour, nationality, national origins and ethnic origins.

Age – includes a person who is of a particular age group or to a range of ages. Applies to all age groups.

Disability – includes long term physical, mental, intellectual or sensory impairments which can adversely affect ability to engage or participate in activities protected under the Discrimination Law.

Work related versus non-work related discrimination claims

Work-related discrimination formed the majority of the discrimination claims in 2018.

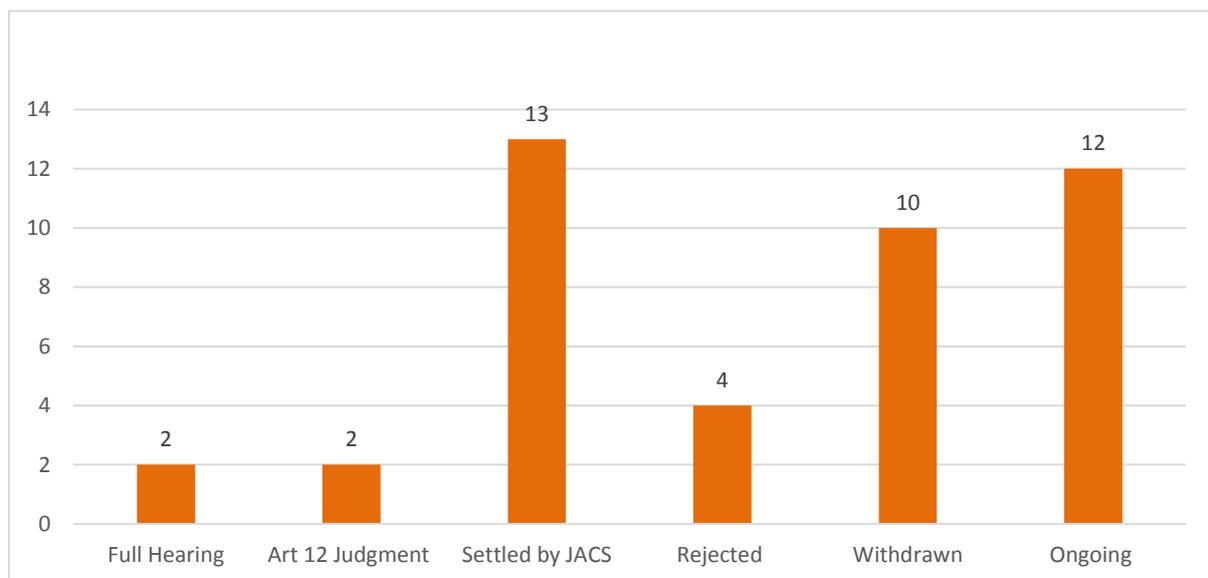


A claim can be made in respect of the following areas:

- **Work Related**
 - Paid work
 - Voluntary work
- **Non-work Related**
 - Education
 - Provisions of goods, facilities and services
 - Access to and use of public premises
 - Disposal or management of premises
 - Access and membership of clubs
 - Requests for information

Outcome of Discrimination claims

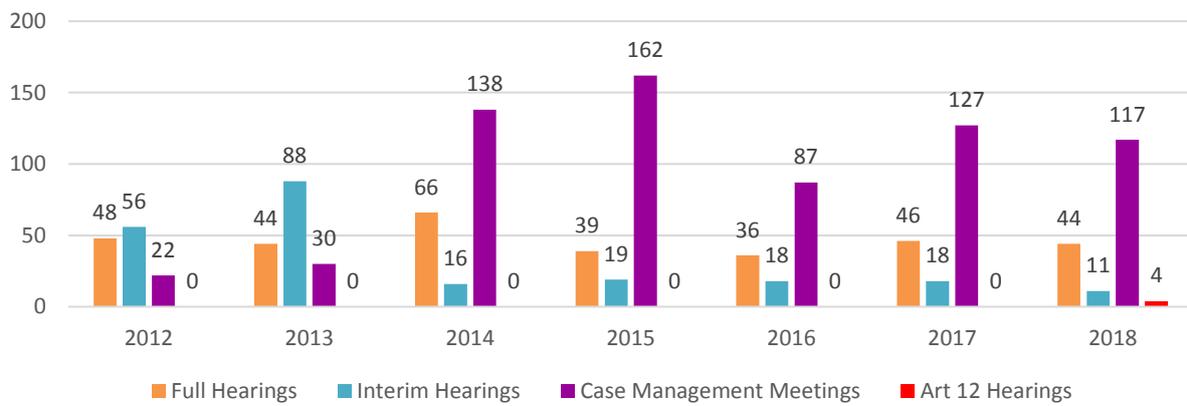
Of the 43 discrimination claims which were filed in 2018, only two went to a final hearing, two received an Article 12 Judgment in default (because of the respondent's failure to file a response form), 27 were settled, struck out, rejected or withdrawn and (as at 31 December 2018) 12 remain on-going.



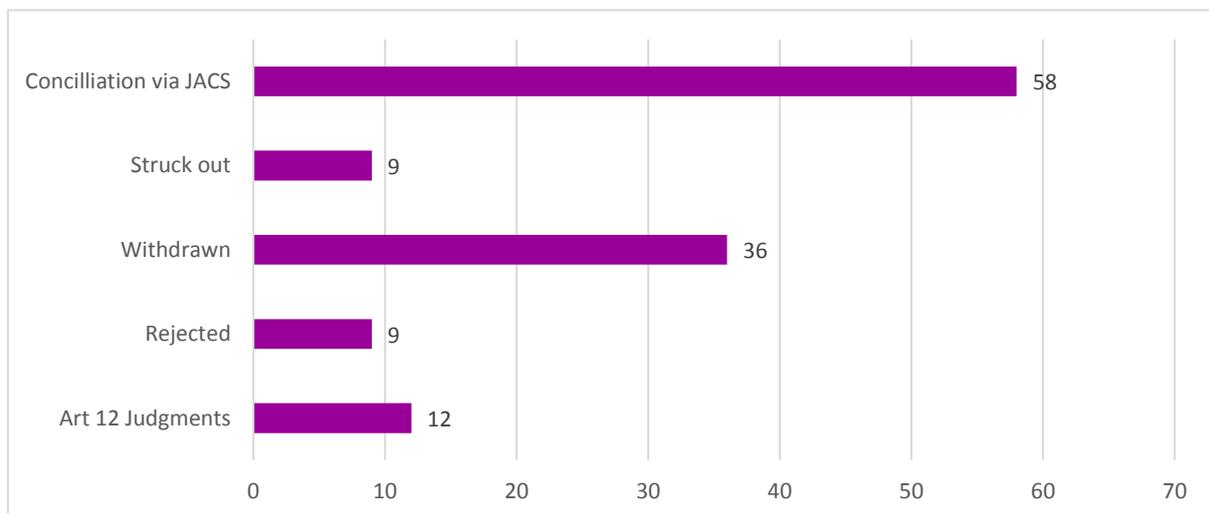
Administration of claims

The EDT conducted 176 hearings during 2018. Of the 44 Case Management Meetings, 10 were conducted by telephone. A Case Management Meeting takes place between a Chair and the parties to assist the EDT in managing the case, by identifying any issues, setting orders, deciding on the date for the interim/final hearing. An Interim Hearing will take place to decide on specific points of a claim (e.g. if a Claimant has sufficient continuous employment). The Final Hearing is where all the evidence is heard and a decision is made.

Number of hearings per year since 2012



Total number of claims issued in 2018 which did not go to Final Hearing

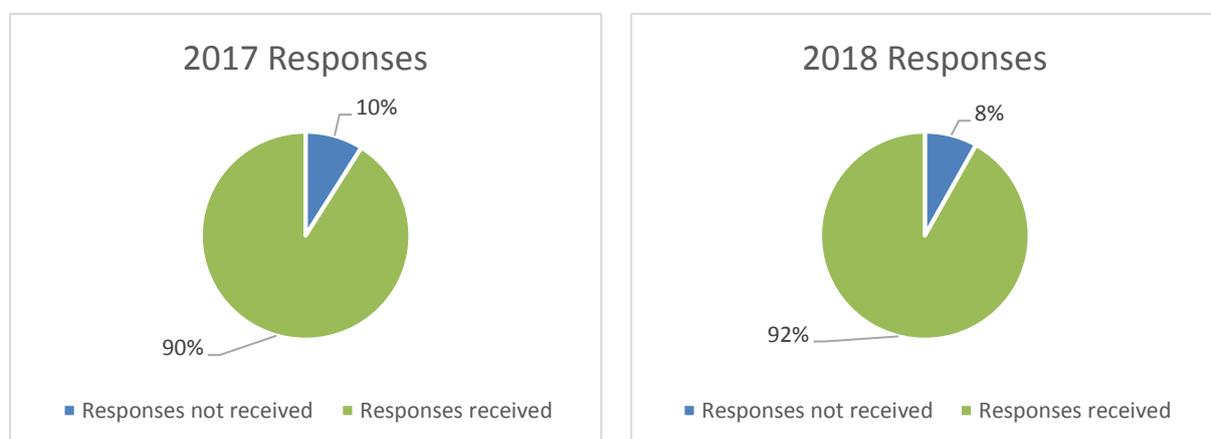


Respondents failing to file Response Forms

When a respondent fails to file a response form, a Chair must determine the claim on the papers unless the Chair considers that a hearing is necessary. In the absence of pleadings or evidence from the respondent, this usually results in a decision in favour of the claimant. This is referred to as an Article 12 Judgment.

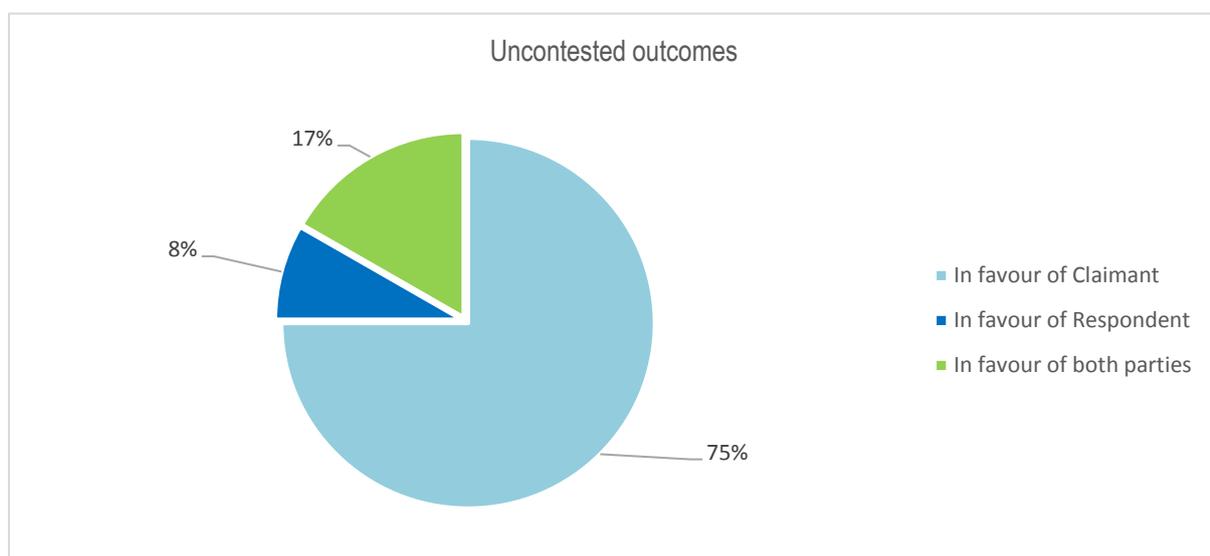
Percentage of responses received

2018 saw a small reduction in the number of respondents failing to respond to the claim within the relevant time-limits. Out of 197 claims, 16 claims were uncontested/contested late.

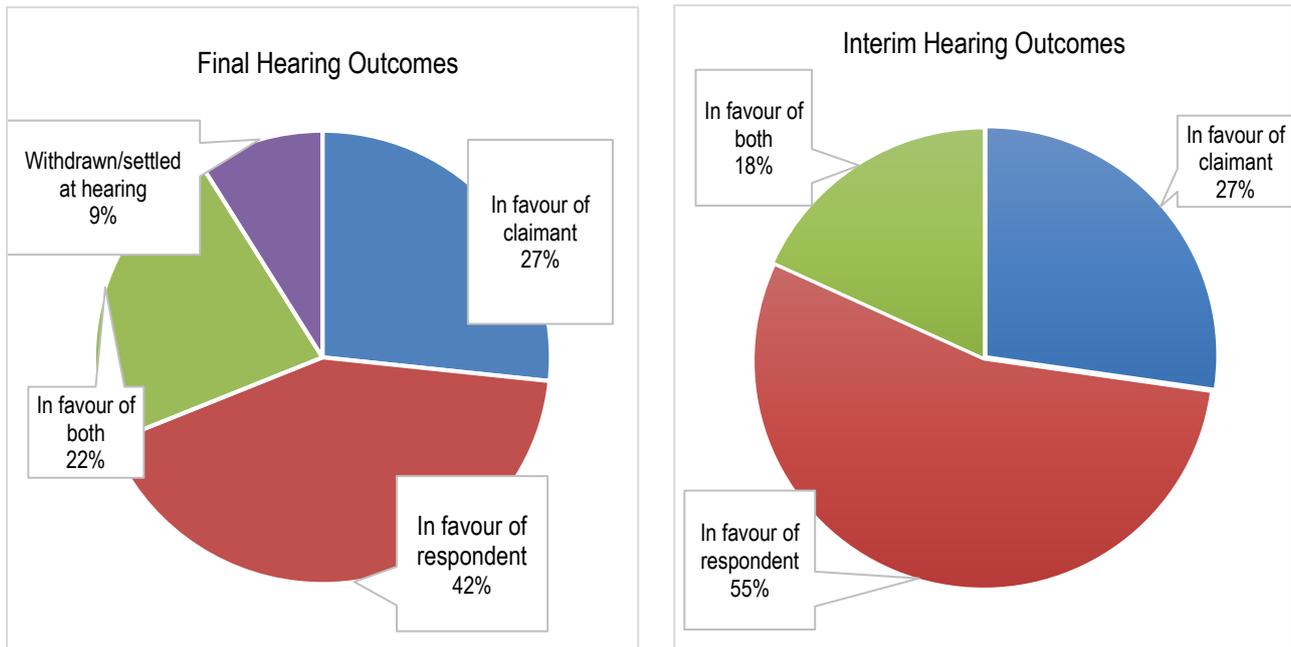


Outcome of uncontested cases

Where the respondent (usually the employer) failed to file a response form, the outcome was usually in favour of the claimant.



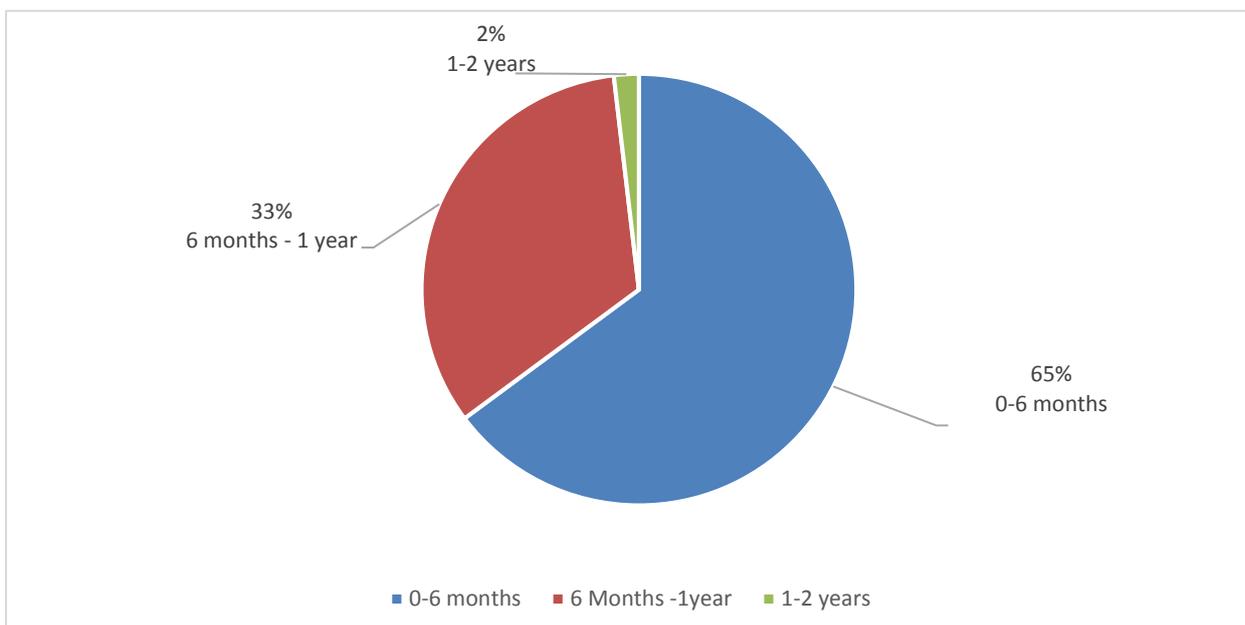
Final hearing and Interim hearing outcomes



At final and interim hearings Respondents were more successful overall than Claimants. However in some hearings, different parties were successful in different issues (eg a Claimant may be unsuccessful in a constructive unfair dismissal claim but successful in a holiday pay claim).

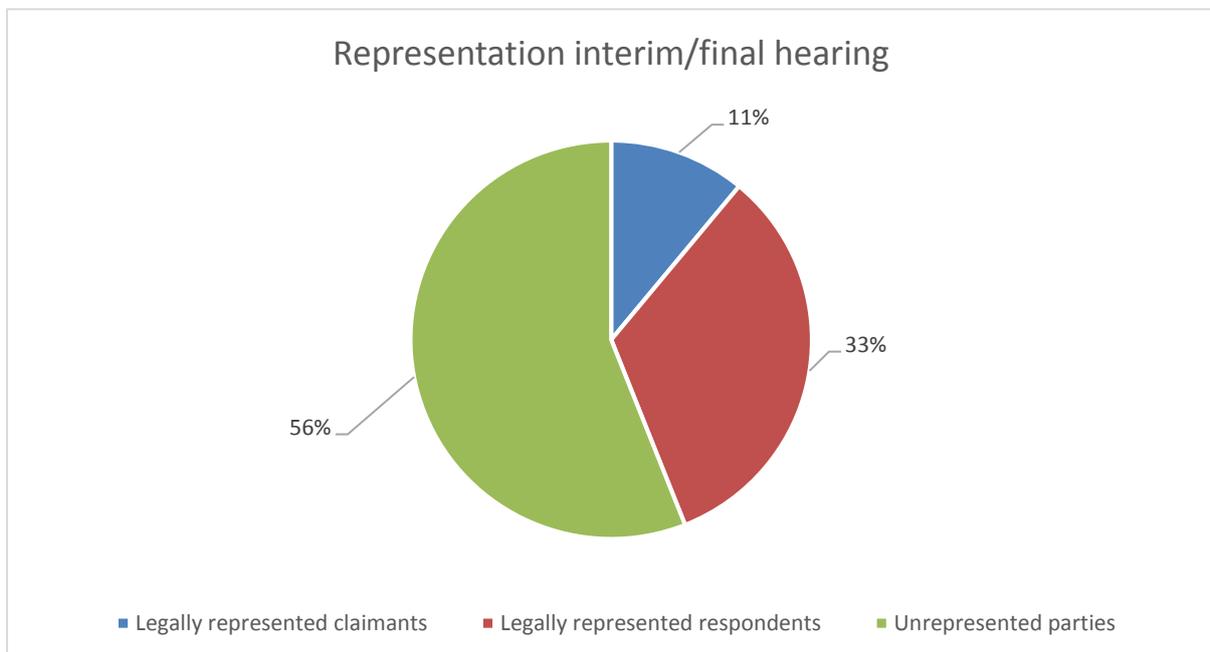
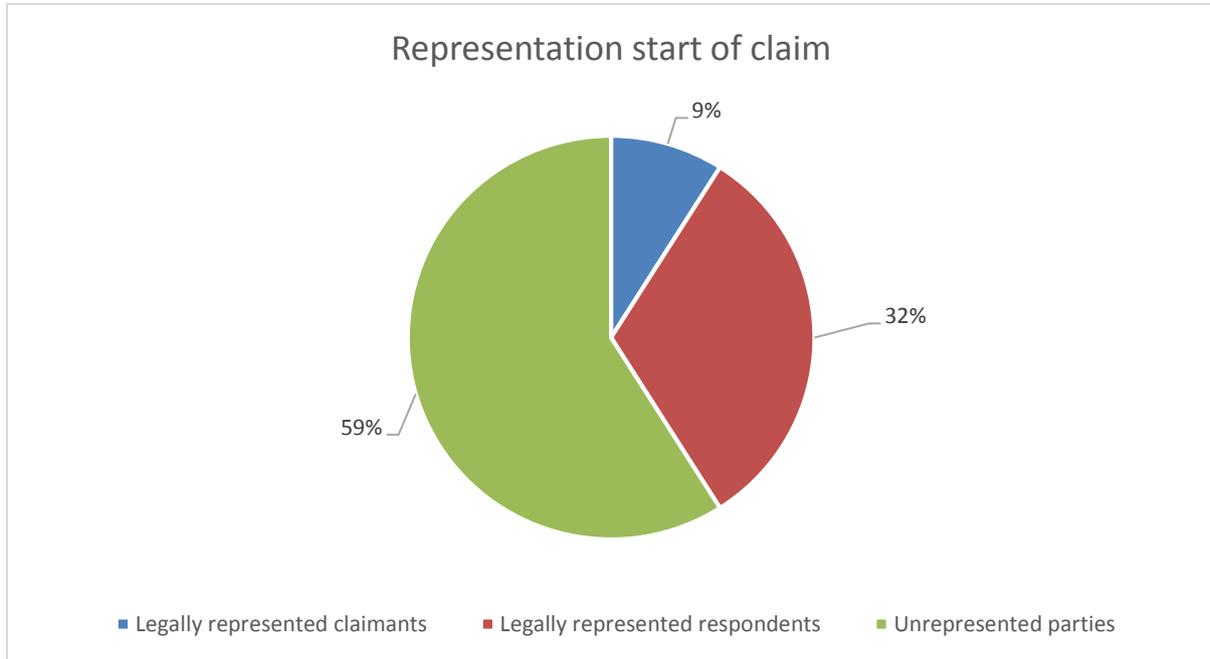
Time taken from receipt of claim form to last hearing of claim

This chart shows that 65% of claims were heard within 6 months.



Representation of Parties

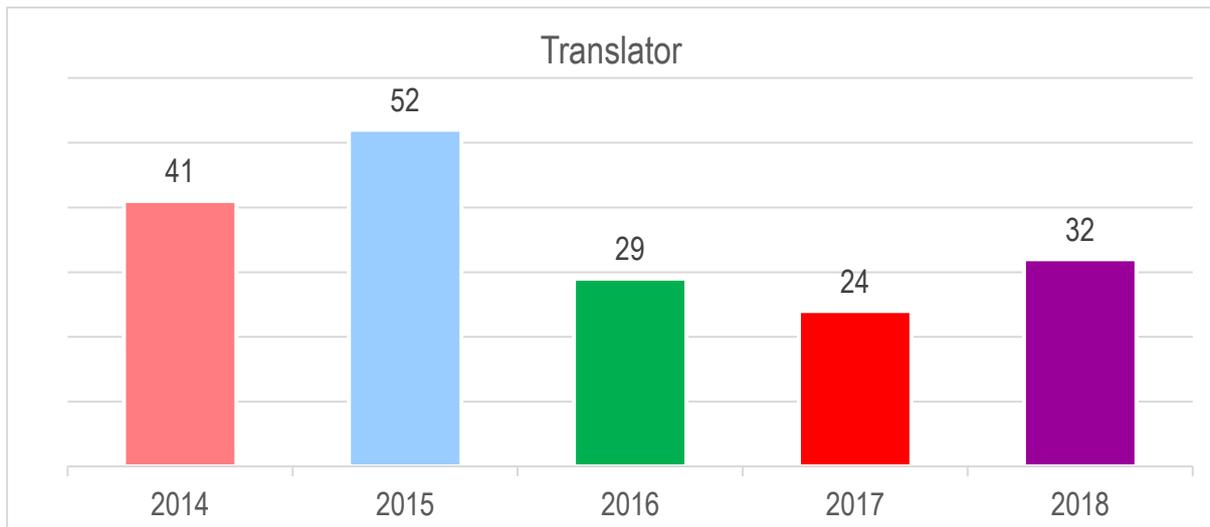
In 2018, the majority of our users were unrepresented. Approximately 10% of claimants and 30% of respondents engaged representatives to assist them with their cases.



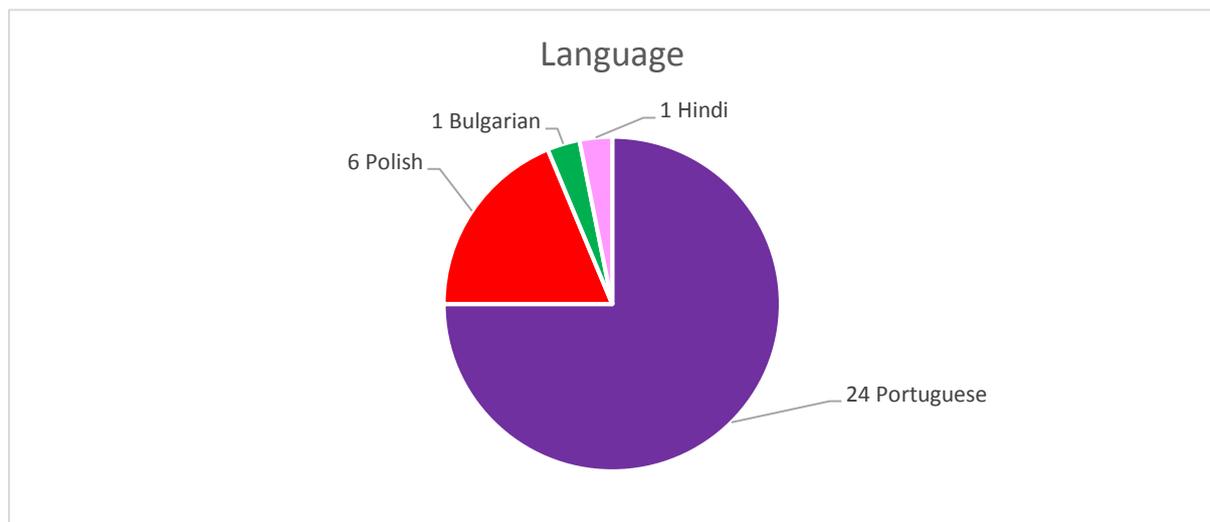
Use of Translators

The services of a Translator are provided by the EDT Service when required. This service facilitates the smooth running of hearings and ensures fairness.

Number of occasions when a translator was required for a hearing:



In 2018 parties indicated on their Claim Forms that they would require the assistance of a translator in Portuguese, Polish, Bulgarian and Hindi.



Contact details of the Tribunal Service

Address:

1st Floor, International House, 41 The Parade, St Helier, Jersey, JE2 3QQ

Opening hours

Monday – Friday
9:30am – 4pm

Telephone

(01534) 441380

Email

registrartribunalservice@gov.je

Website

<http://www.tribunals.je>