

Jersey Employment and Discrimination Tribunal



Annual Report 2019

**This is the fifteenth Annual Report of the Employment and
Discrimination Tribunal and covers the period 1 January 2019 to 31 December 2019**

Contents

Membership of the Jersey Employment and Discrimination Tribunal	3-4
Chairman’s forward.....	5-7
Overview.....	8
Statistics relating to Employment and Discrimination Laws	9-11
Breakdown of employment awards.....	12
Discrimination claims	13-14
Administration of claims.....	15
Respondents failing to respond.....	16
Outcome of issues.....	17
Representation of parties.....	18
Use of translators	19
Contact details of the Tribunal Service.....	20

Membership of the Employment and Discrimination Tribunal

The Employment and Discrimination Tribunal ('EDT') consists of a legally qualified Chairman and up to five 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.

The members of the EDT in 2019 were:

Chairman

Mrs Hilary Griffin (Solicitor)

Deputy Chairmen

Advocate Claire Davies

Advocate Ian Jones

Mr Michael Salter (Barrister)

Mrs Hannah Westmacott (Solicitor)

Advocate Fraser Robertson

Panel members appointed to hear work-related claims

Members with experience as representatives of employers

Marilyn Wetherall

Louise Cram

Sue Cuming

Emma Harper

Louise James

Simon Nash

Michael De La Haye

Roisin Pitman

Members with experience as representatives of employees

John Noel

Simon Cross

Clive Holloway

Zannah Le Moignan

Anne Southern

Neal Vautier (to November 2019)

Jennifer Bridge

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

Elizabeth Adams

Janet Brotherton

Melanie Cavey

Daria Sawicka

Thomas Gales

Mandlenkosi Mlambo

Tamburi Muoni

Chairman's Foreword

2019 was a busy year for the EDT in which we saw a significant increase in both employment and discrimination cases. We continued to make changes to our case management orders and summaries, as well as amending our formal letters to make them more accessible to our users. We also introduced further guidance notes which can be found on our website. The Chairs conducted a total of 212 hearings, produced over 150 sets of detailed case management orders and wrote approximately 80 judgments.

Number of Claims

Increase in overall number of claims and counterclaims

During 2019, the EDT received 290 claims, an average increase of 24% compared on 2018. Included in this figure is one group action ("Group Action") comprising 32 identical claims against a single employer which inflates the figures. However, even when treating the Group Action as a single claim, the overall number of cases received by the EDT still increased by 15% with discrimination cases increasing by 37%.

Increase in counterclaims

The number of cases which included a counterclaim (usually by the employer) increased markedly in 2019, with 40 respondents filing counterclaims, an increase on 2018 of 43%. The majority of counterclaims did not reach a final hearing but of the seven that did, the respondent was successful in three.

Article 12 Default judgments

In both 2017 and 2018, we highlighted that many respondents were failing to file their response form within the statutory 21-day time limit. Disappointingly, despite a concerted effort by the EDT to ensure that employers responded to claims, the number of defaults remained static at 8% of all claims. Our standard letters and envelopes are clearly marked to highlight the importance of responding to the claim before the deadline and, wherever possible, we now also send claims to respondents by email, although this is only possible where a named individual and email address (not a general email address) is provided on the claim form.

These Article 12 cases are particularly frustrating because they are a significant drain on the EDT's time and resources as many defaulting respondents then seek to overturn the default judgment.

With regard to the filing of responses, we have seen an increase in applications from legal representatives seeking an extension of time in which to file a response. In the majority of such cases, the grounds for the

application is that the legal representative has only just received instructions. I would like to take this opportunity to remind all advisors that the clock starts ticking to file a response form on the date on which the claim form is sent out to the respondent by the EDT; It does not start on the date on which the respondent decides to take advice and advisors should not presume that any such application will be granted. Guidance notes on how to make an application for an extension of time and the necessary documents to be filed can be found on the EDT's website.

Employment claims

Unfair dismissal / constructive unfair dismissal

We saw a small percentage increase in unfair and constructive unfair dismissal claims in 2019, with 120 claims being filed. There were 54 constructive dismissal claims, an increase from 41 in 2018.

Of the unfair and constructive unfair dismissal cases which proceeded to a final hearing, respondents were significantly more successful than claimants. This was particularly apparent in constructive dismissal cases, where respondents were successful in 10 out of the 12 cases. This high success rate for respondents is consistent with constructive dismissal cases in the UK and reflects the very high burden on claimants to prove that their employer's conduct was so serious as to amount to a constructive dismissal. It is incumbent on those who advise claimants to ensure that their clients understand the high burden of proof placed on them and that claimants do not come to the EDT under the misapprehension that poor or upsetting treatment by an employer will necessarily amount to a constructive dismissal.

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 any compensation in accordance with the legislation. Of the five successful claims, the EDT applied a reduction on every occasion. Most commonly, such reductions were applied on "just and equitable" grounds, typically in circumstances where there was procedural unfairness but where the evidence showed either (a) an element of contributory fault by the claimant or (b) evidence to show that the claimant would have been dismissed in any event. Reductions in these cases varied between 10% and 83%.

Reduction in compensation and damages

The total amount awarded as compensation for unfair dismissal and for breach of contract decreased by 50% in 2019 from a total of £140,551 in 2018 to £86,297 in 2019. This reduction reflects respondents' success rates in claims where successful claims often result in higher levels of compensation (such as

unfair dismissal and notice pay claims). Claimants were more successful in claims which generated less in terms of compensation and damages (such as failure to provide written statement of terms, unpaid wages, holiday pay and failure to provide itemised pay statements).

Discrimination claims

The Group Action artificially inflated the number of age discrimination claims, thereby showing age discrimination as being the most common type of discrimination claim. However, by treating the Group Action as a single claim, disability discrimination was actually the most common type of discrimination claim by a considerable margin, making up 41% of all discrimination claims. Sex discrimination claims were the second most common type of claim, with approximately half of the number of disability claims. There were no claims on the grounds of sexual orientation in 2019.

The significant increase in disability claims was unsurprising given that disability only became a protected characteristic in September 2018. The 2018 figures therefore covered only four months of disability claims. We anticipate that disability claims will continue to increase in 2020. Of the 35 disability claims received, two reached a final hearing and in both cases those claims were unsuccessful. As of 1 January 2020, there were 21 on-going disability claims.

The EDT saw many different grounds for claiming disability discrimination, including work-related stress, depression, dyslexia, fibromyalgia and chronic pain. Employers should note that, unlike other protected characteristics, a significant number of disability claims are filed by claimants who remain an employee of the respondent when they file their claim. This can pose additional management challenges for employers with the potential for more victimisation and constructive dismissal claims if such situations are mismanaged. We therefore recommend that employers ensure that managers are properly trained on how to deal with 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 2020.

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.tribunal.je

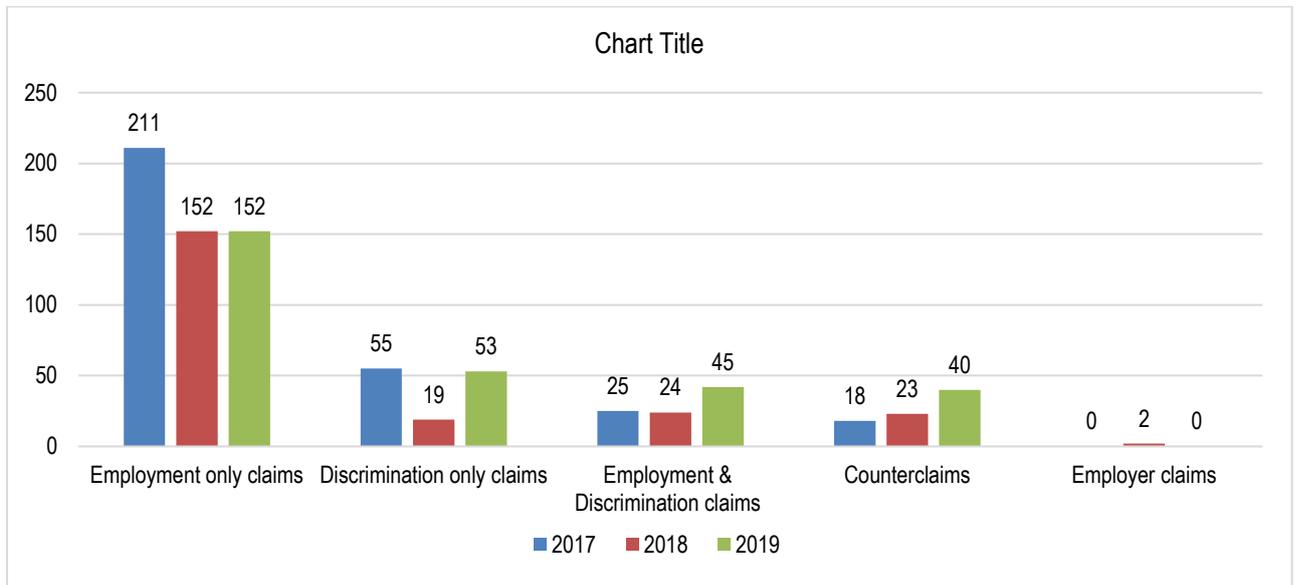
The EDT's decisions are published on the Jersey Law website: www.jerseylaw.je/Judgments/JET

Statistics Relating to Employment and Discrimination Laws

In 2019, the EDT received:

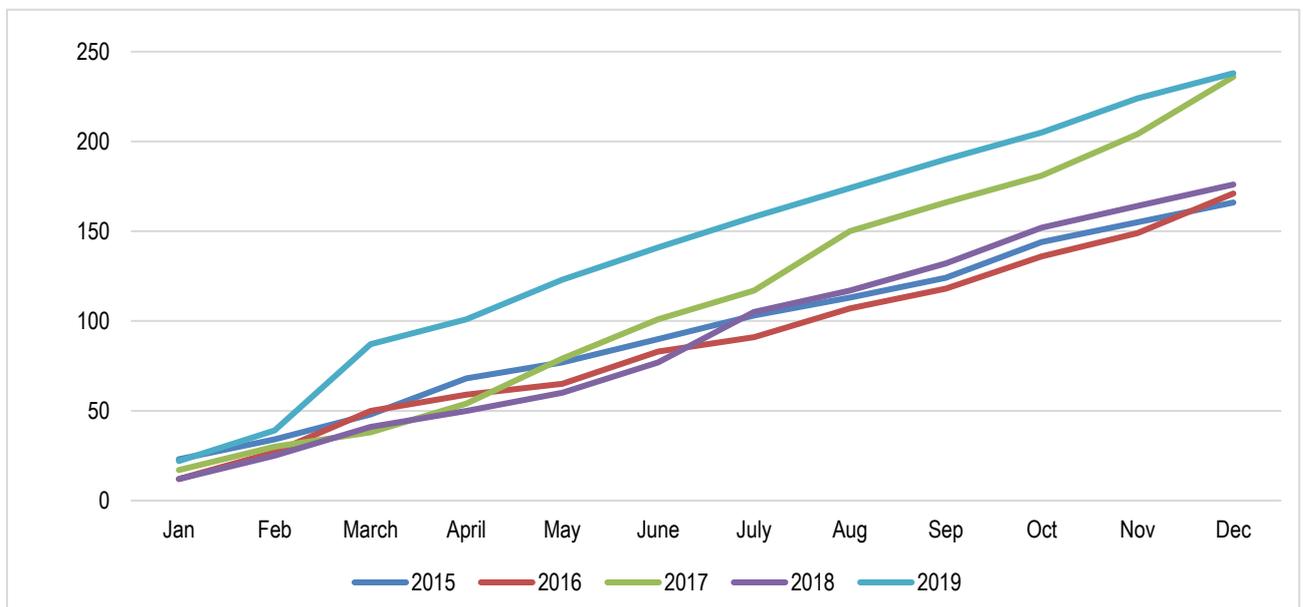
- a) 152 employment only claims;
- b) 41 work-related discrimination claims;
- c) 12 non-work related discrimination claims;
- d) 45 joint employment and discrimination claims;
- e) 0 employer claims; and
- f) 40 counterclaims from employers.

Number of claims received by the Employment and Discrimination EDT:



Employment claims:

The overall number of work-related claims increased in 2019, in line with the 2017 figures. The 2018 decrease in claims was more consistent with the 2014 to 2016 figures as shown below.



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. In 2018, 23 counterclaims were issued, this increased in 2019 to 40 counterclaims. Of the seven counterclaims which went to a final hearing during 2019, three were successful.

Employer claims:

Employers are entitled to initiate proceedings against former employees for breach of contract. In 2018 the EDT received two employer claims.

No employer claims were received in 2019.

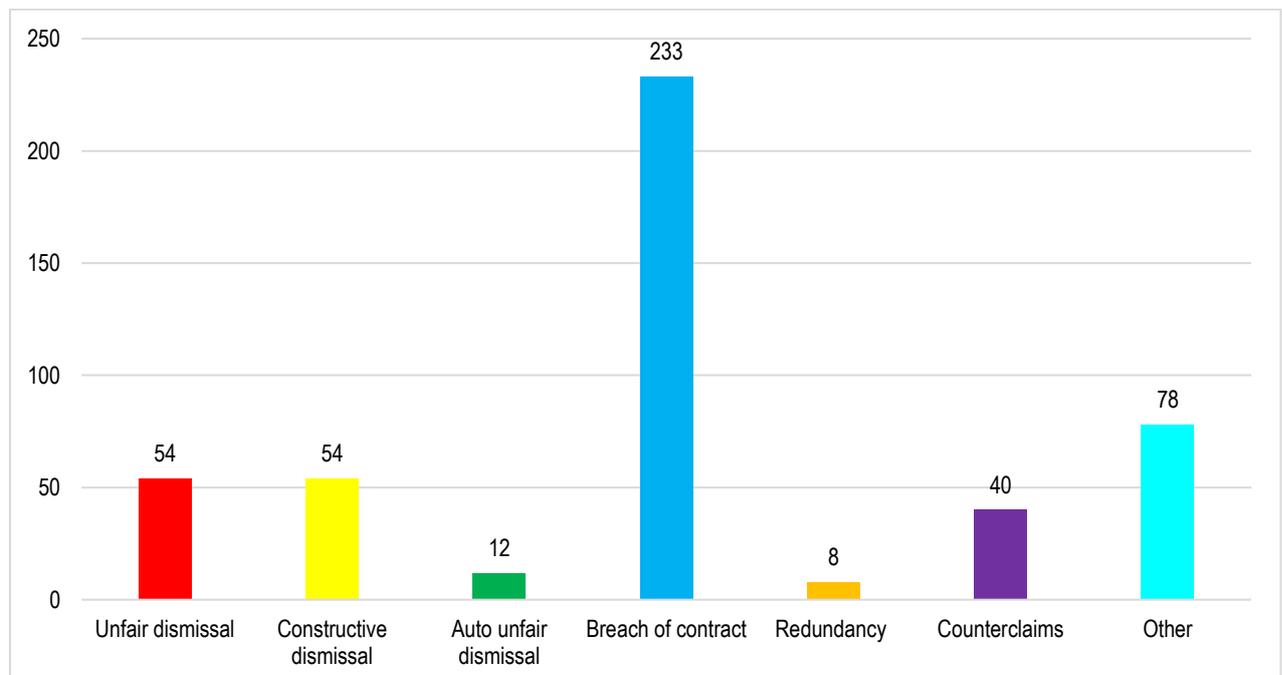
Collective disputes:

A collective dispute is a single claim filed on behalf of a group of employees against their employer.

The EDT did not receive any collective disputes in 2019 although it did receive a group action comprising of 32 identical claims against one employer.

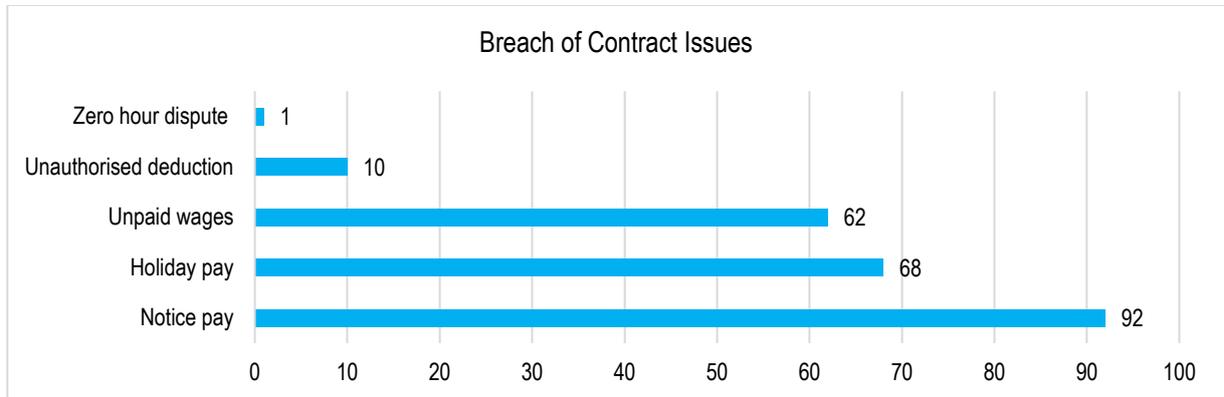
Employment issues dealt with by the EDT

Employment claims often comprise of several different issues.

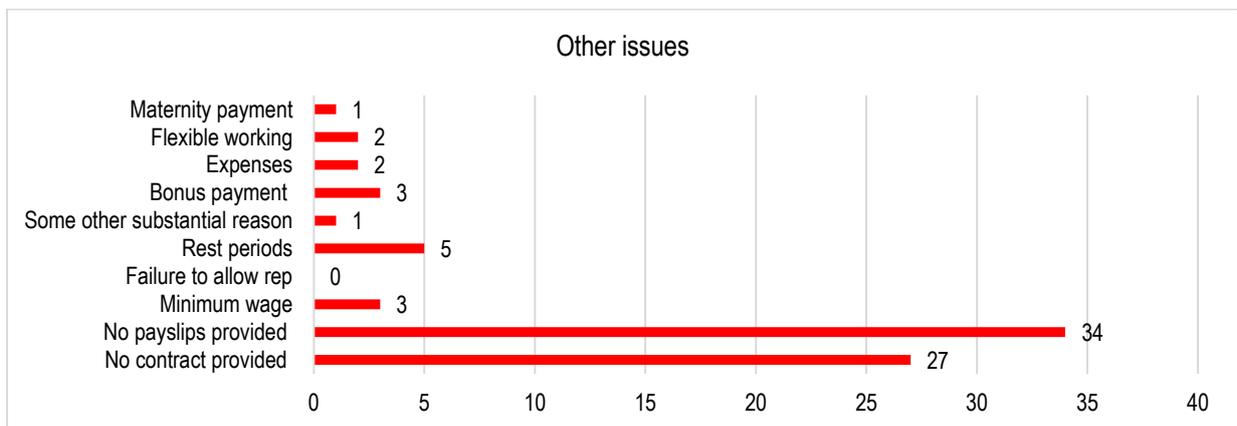


Breach of contract issues:

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

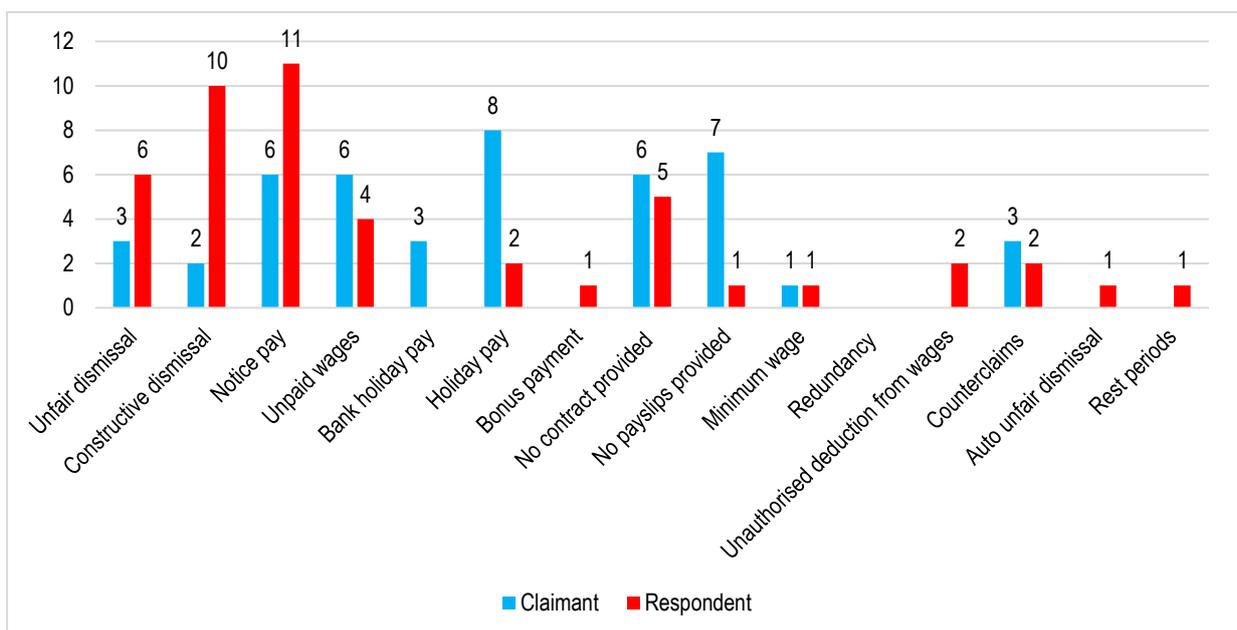


Other issues raised:



Outcome of employment issues at final hearing:

42 cases went to final hearing in 2019. In some cases, both parties were successful with different issues.

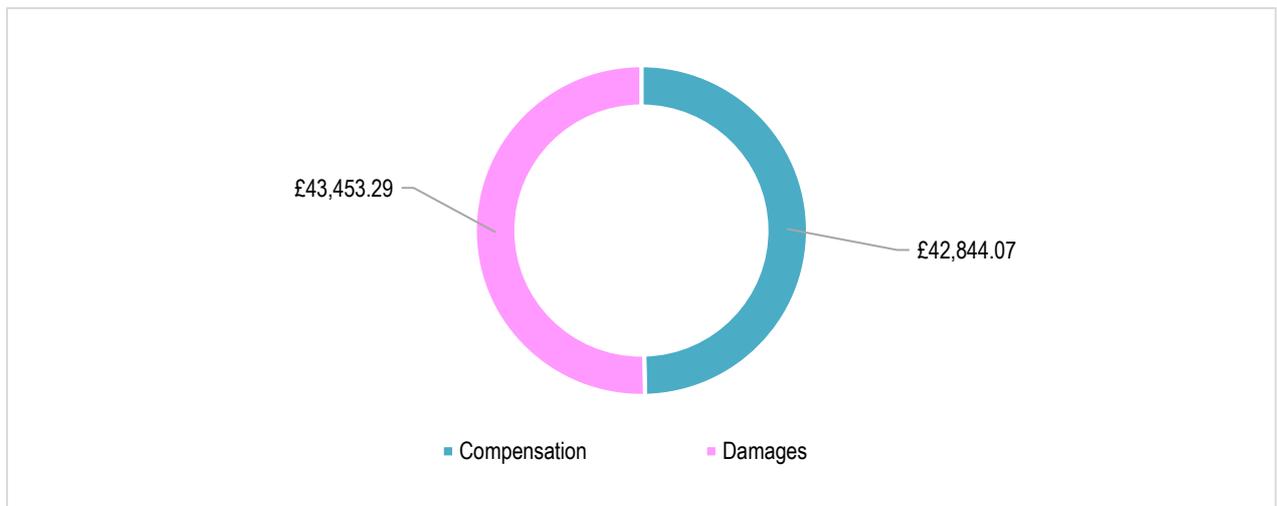


Breakdown of Employment Awards

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).

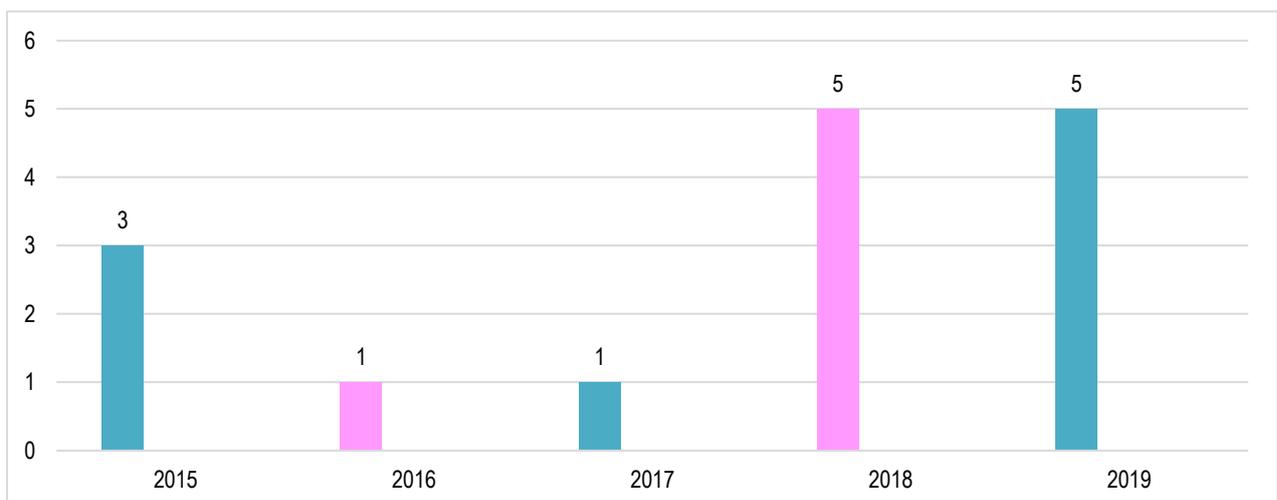
During 2019 the total amounts awarded in compensation and damages decreased significantly from £140,551.59 in 2018 to £86,297.36.



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

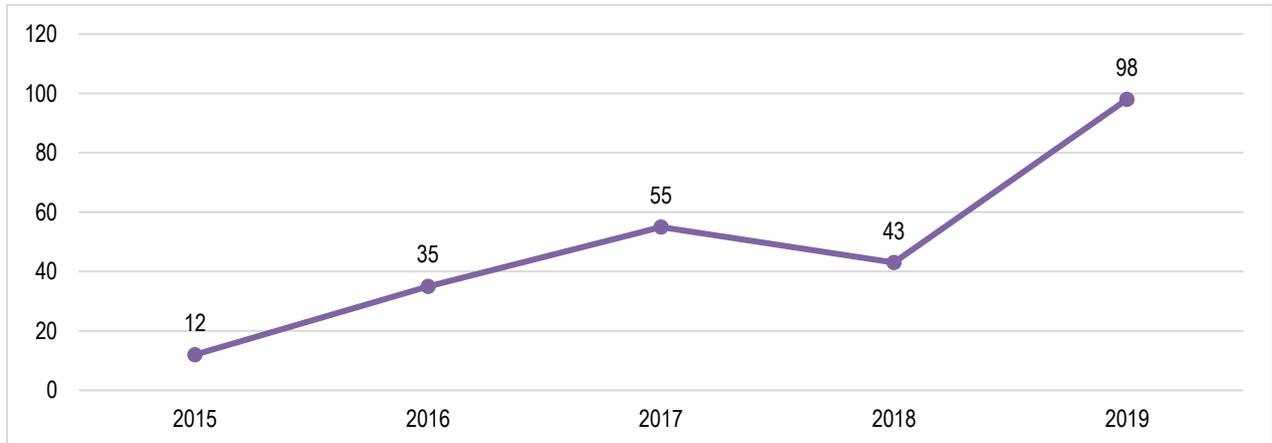
The EDT may, in certain circumstances, apply a reduction to an award of compensation for unfair dismissal.

In 2019, the EDT applied a reduction to all five successful unfair dismissal awards of between 10% and 83%.



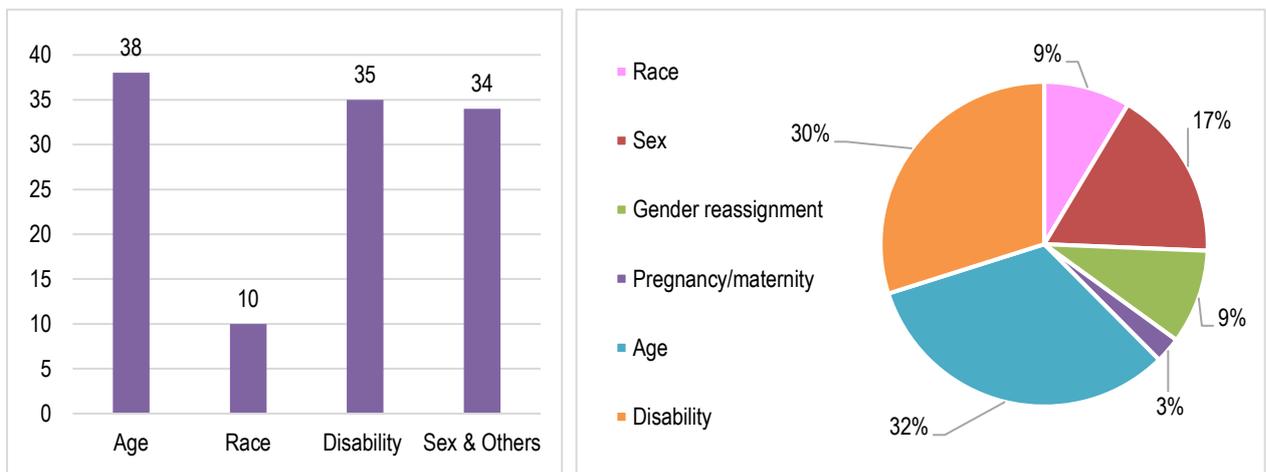
Discrimination claims

The overall number of discrimination claims rose in 2019 to a total of 98 claims, a 56% increase on last year.



Claims by protected characteristic:

Age, race and disability combined accounted for 71% of discrimination issues. Sex (and related characteristics) made up the remaining 29%. In some cases, claimants claimed discrimination on the grounds of two different protected characteristics. However, the age discrimination figures are misleading because of a group action of 32 identical claims being issued against a single employer.



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

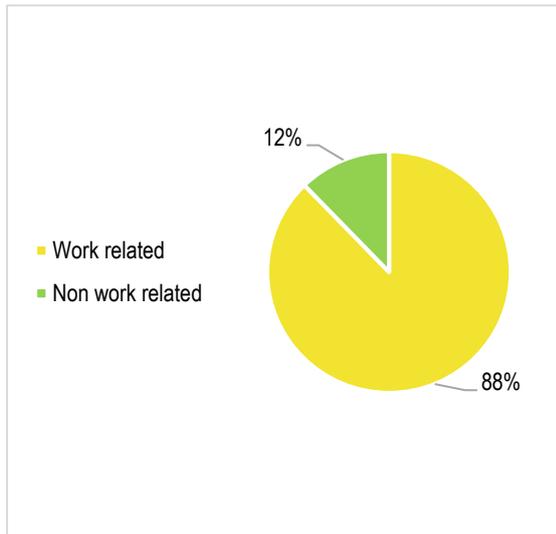
Race – includes colour, nationality, national origins and ethnic origins.

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 2019.

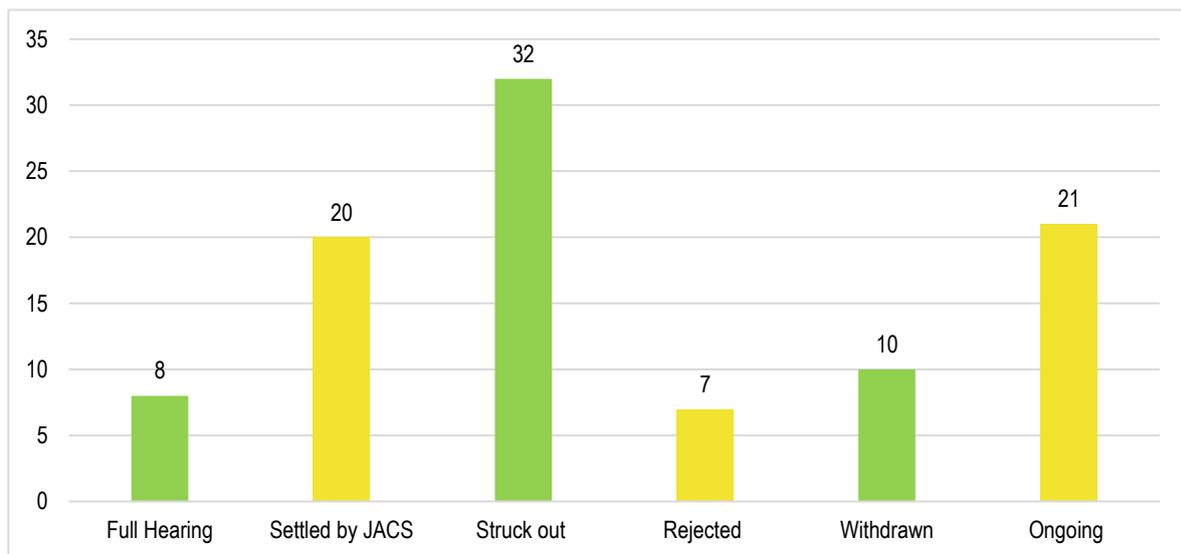


A claim can be made in respect of the following areas:

- **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 98 discrimination claims which were filed in 2019, only 8 went to a final hearing of which one was successful. Of the remaining claims, 69 were settled, struck out, rejected or withdrawn and (as at 31 December 2019) 21 remain on-going.



Administration of claims

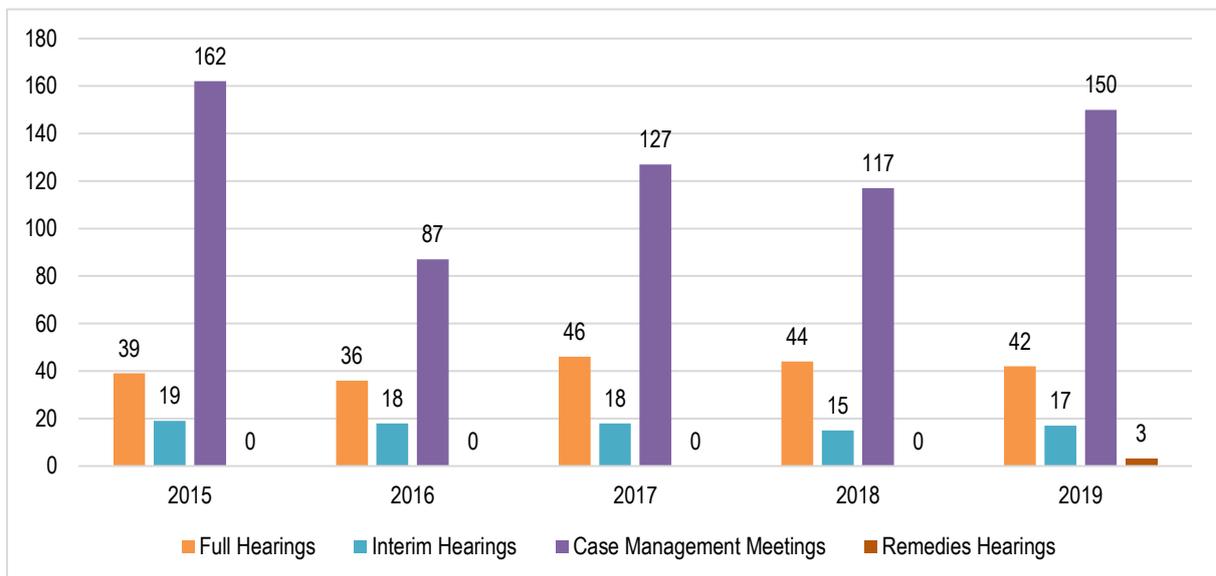
The EDT conducted 208 hearings during 2019. Of the 150 Case Management Hearings, 10 were conducted by telephone. A Case Management Hearing takes place between a Chair and the parties to assist the EDT in managing the case, by identifying any issues, setting orders, deciding on the date for the interim/final hearing.

An Interim Hearing will take place to decide on specific points of a claim (e.g. if a Claimant has sufficient continuous employment).

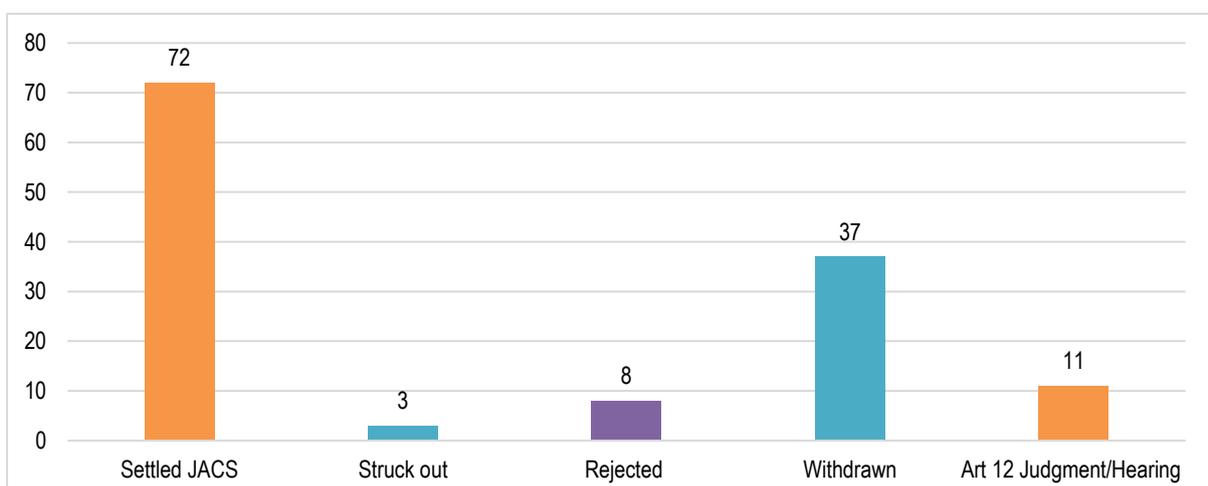
The Final Hearing is where all the evidence is heard and a decision is made on the facts of the case.

A Remedies Hearing is sometimes required to decide on the level of compensation that should be awarded.

Number of hearings per year since 2015:



Total number of claims issued in 2019 which did not go to Final Hearing:

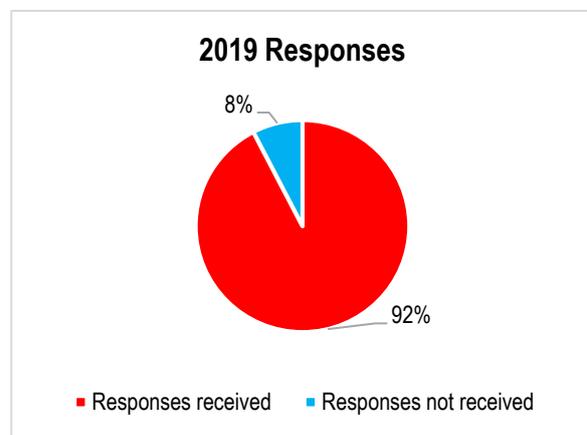
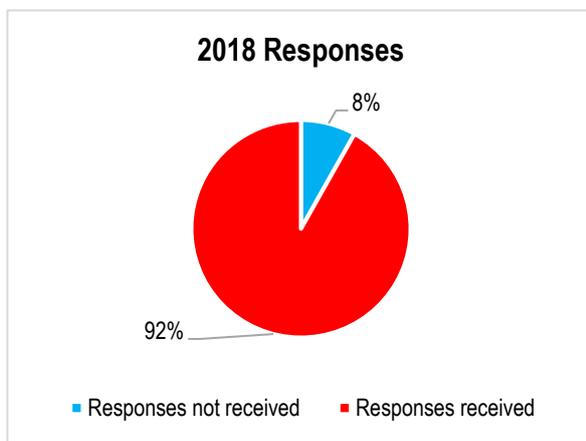


Respondents failing to file Response Forms

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.

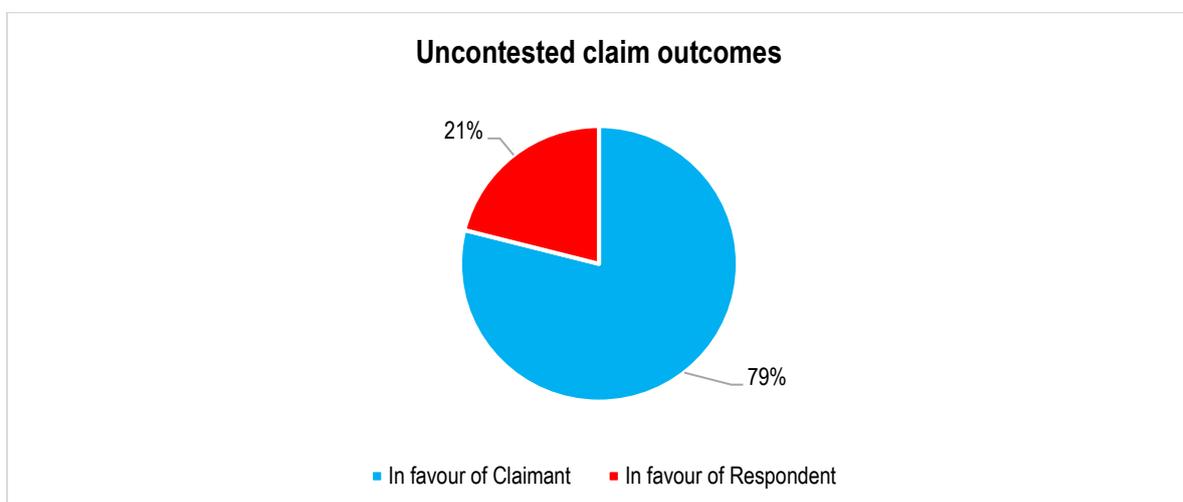
Percentage of responses received:

The number of uncontested or late responses remained stable in 2019. Out of 250 claims, 19 claims were uncontested or received a late response.

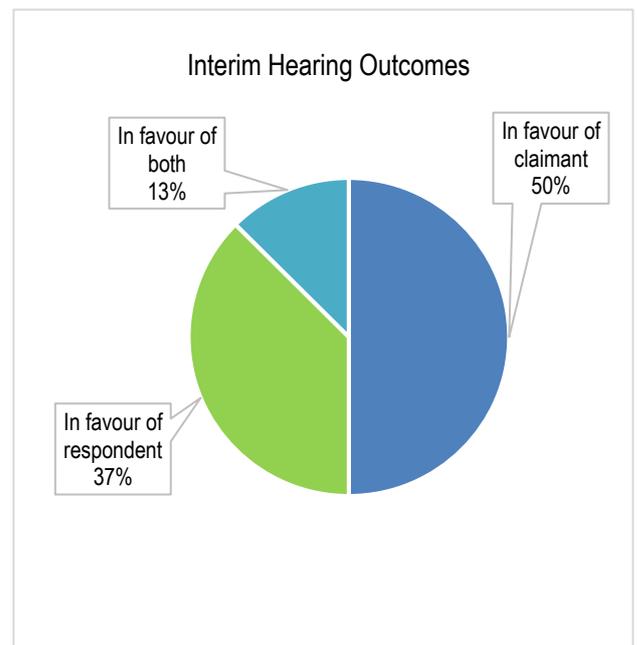
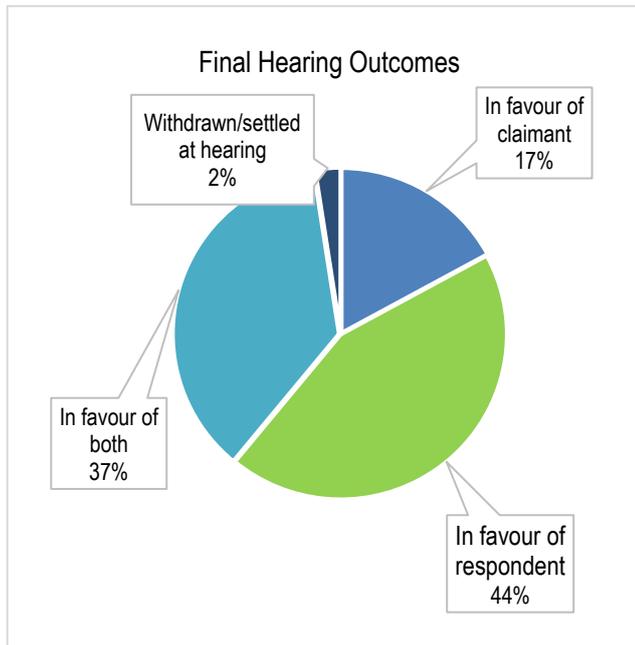


Outcomes of uncontested cases:

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



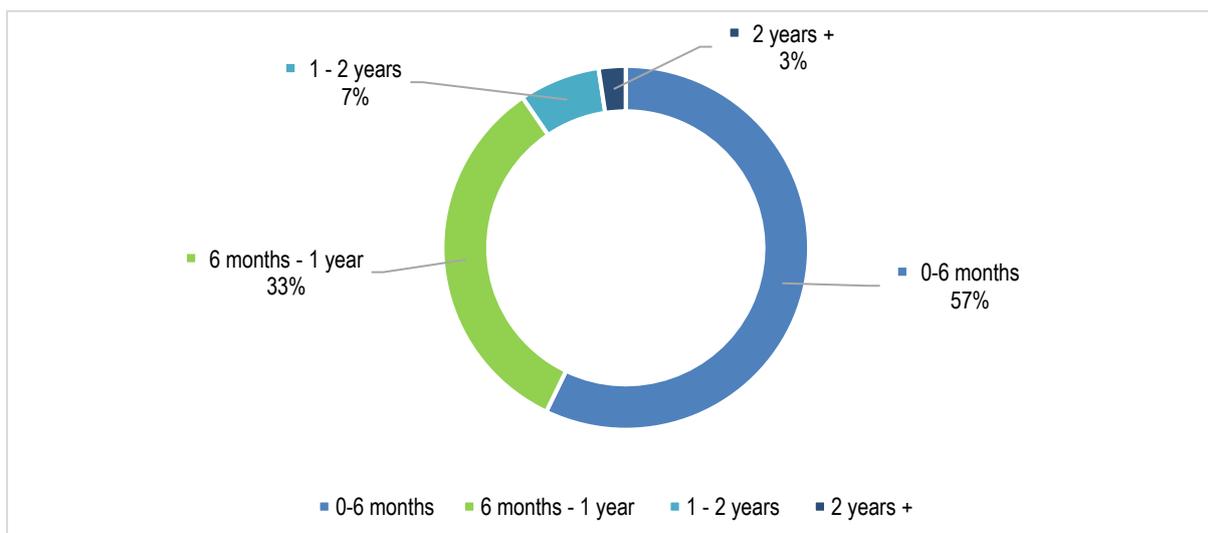
Final hearing/Interim hearing outcomes



At final hearings Respondents were more successful overall than Claimants, whereas at interim hearings Claimants were more successful. 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).

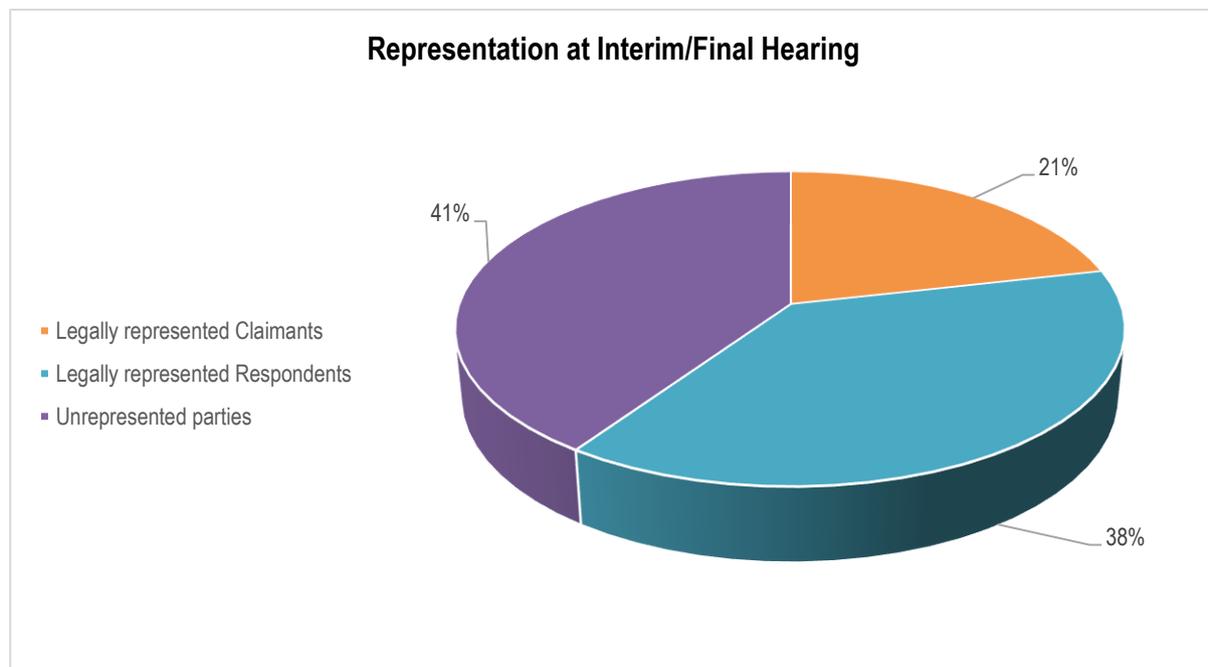
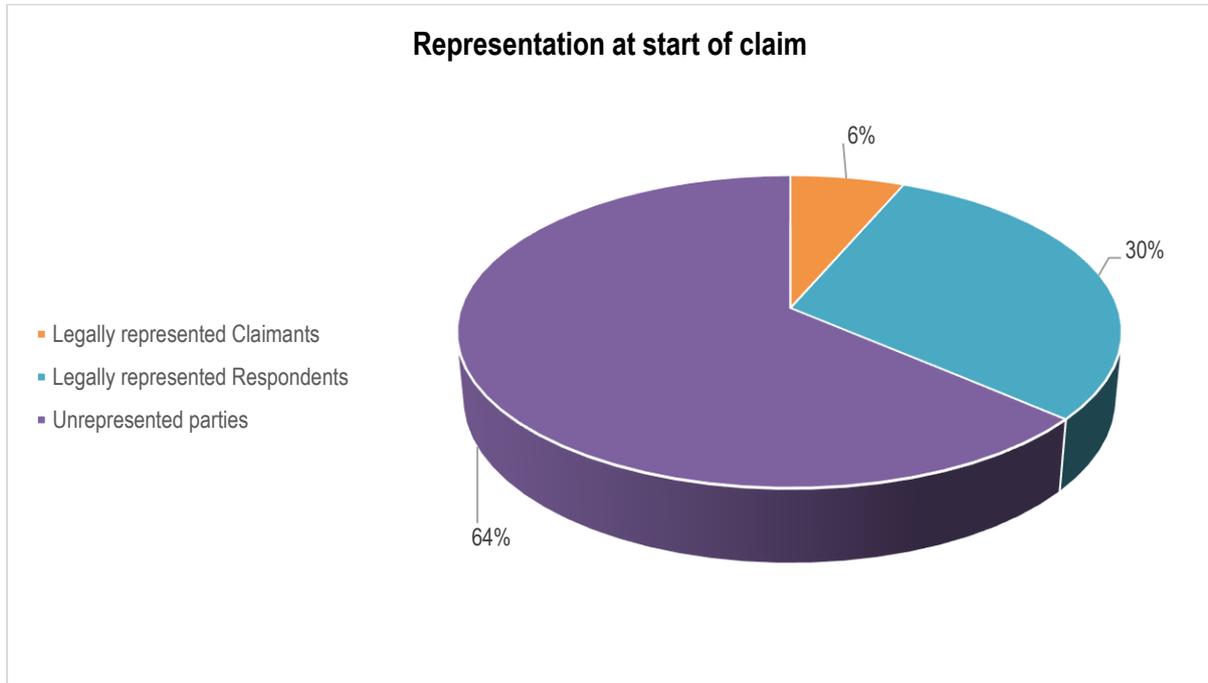
Time taken from receipt of claim form to final hearing of claim:

This chart shows that 57% of claims were heard within 6 months.



Representation of Parties

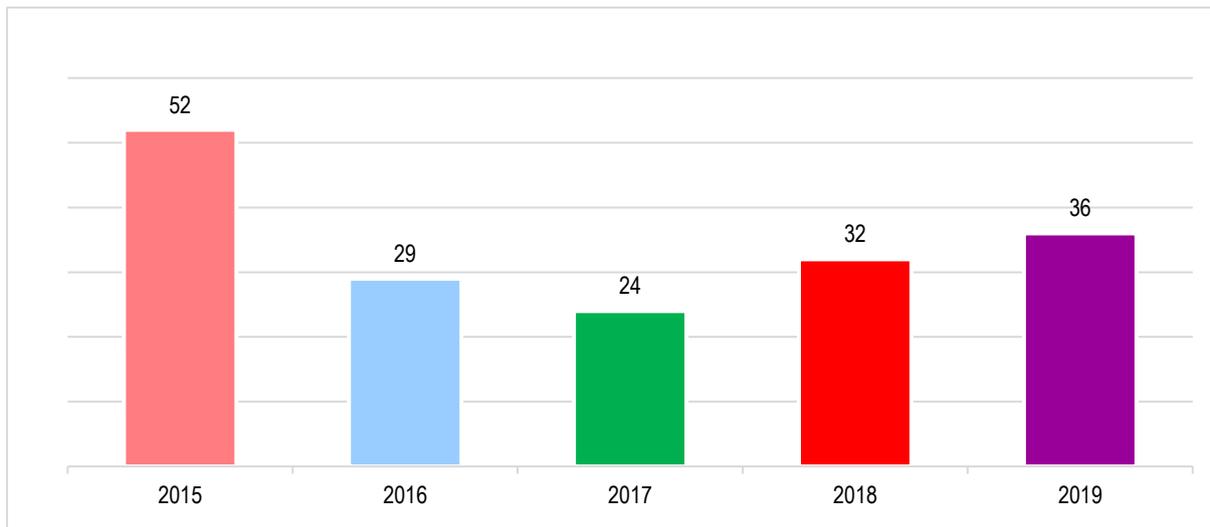
In 2019, approximately 27% of claimants and 68% of respondents engaged representatives to assist them with their cases at some point in the process.



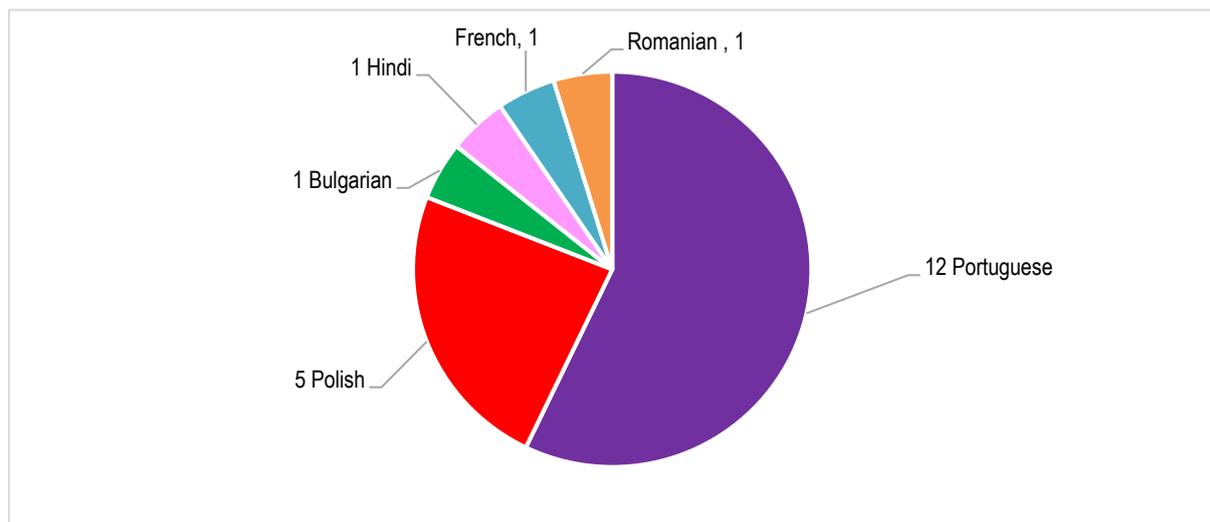
Use of Translators

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 2019 parties indicated on their Claim Forms that they would require the assistance of a translator in Portuguese, Polish, Bulgarian, Hindi, French and Romanian.



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.tribunal.je>

Team Members

Nathan Wilczynski (**Manager**)

Tayla Le Mottee

Tracey Buesnel

Steph de la Cour