
STATES OF JERSEY



JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL ANNUAL REPORT 2020

Presented to the States on 25th May 2021
by the Minister for Social Security

STATES GREFFE

Jersey Employment and Discrimination Tribunal



Annual Report 2020

**This is the sixteenth Annual Report of the Employment and
Discrimination Tribunal and covers the period 1 January 2020 to 31 December 2020**

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Membership of the Employment and Discrimination Tribunal

The Employment and Discrimination Tribunal ('EDT') consists of a legally qualified Chair and up to five legally qualified Deputy Chairs. 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 2020 were:

Chair

Mrs Hilary Griffin (Solicitor) – end date August 2020

Dr Elena Moran (Advocate) – start date December 2020

Deputy Chairs

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

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

Chair's Foreword

2020 saw a slight drop in the number of claims submitted to the EDT compared to the previous year. A total of 215 claims were submitted compared to 250 in 2019. Of the claims submitted a total of 59 included an allegation of discrimination, a drop from the 98 discrimination claims submitted the previous year. The reason for the overall drop in claims and the drop in work-related discrimination claims is not known but could be linked to the fact that many employees were not at work for significant parts of the year.

It is notable that the claims submitted included 63 allegations of unpaid wages, 66 allegations of unpaid holiday pay and 89 allegations of unpaid notice pay. While not all of these allegations were upheld, it is disappointing that there are still employees who need to resort to legal proceedings in order to get paid. There were also 41 allegations that no payslips had been provided and 34 allegations that no contract of employment was provided. The right to have a contract of employment and itemised payslips are basic employment rights that all employers should be aware of.

Despite the pandemic the EDT conducted 189 hearings during the year with many taking place by video conference. The majority of the cases (58%) were heard within 6 months of receipt of the Claim Form. Of the remaining cases 36% were heard within a year of the Claim Form being submitted and only 6% took longer than a year. In this small number of cases the delay was mainly attributable to the need for multiple Case Management Hearings due to the complexity of the issues raised and in some cases a delay in producing a Judgment.

The majority of claims submitted to the EDT either settle or are withdrawn prior to a Final Hearing. In 2020 there were 36 cases that went to a Final Hearing. The most common complaint dealt with at a Final Hearing was unfair dismissal or constructive unfair dismissal. Of the 18 unfair dismissal cases that were heard 10 were successful, but in 8 cases the compensation awarded was reduced by 75% to 100%. There were 8 hearings in relation to constructive unfair dismissal with only one claim being successful.

The Final Hearings resulted in awards of damages for breach of contract totalling £50,126 and compensation for breach of statutory rights in the sum of £111,408. While these figures may not appear to be that high, these figures do not take account of the sums paid by way of settlement prior to a final hearing.

I would like to thank Mrs Hilary Griffin for her long service as a Chair of the EDT. Mrs Griffin was appointed in May 2017 after several years of serving as a Deputy Chair. She led the Tribunal for 3 years before stepping down in August 2020. During her tenure as Chair she implemented many important changes to the administration of the EDT and was instrumental in ensuring that the EDT continues to provide a fair and transparent service to all of its users.

I would also like to thank the Deputy Chairs and the Panel Members for their continuing commitment to the EDT. Finally, thank you to the Registrars for all of their hard work especially the support given to the parties that appear before the Tribunal and for keeping the Tribunal running throughout the pandemic.

Dr Elena Moran, Chairman



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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

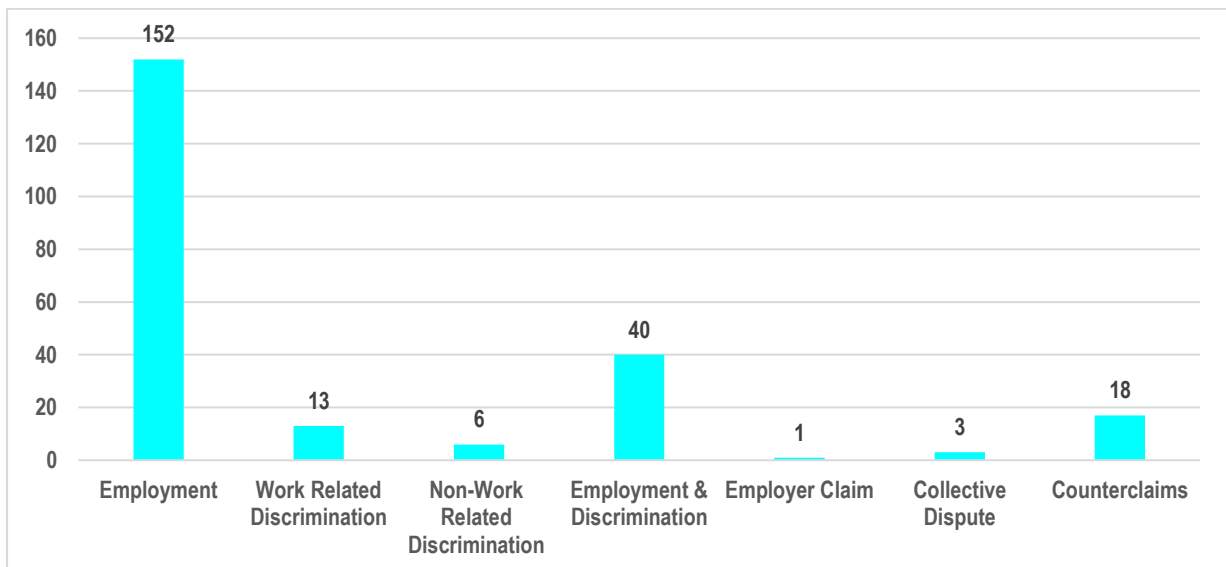
Employment and Discrimination

Statistics – Claim Form Submission Stage

In 2020, the EDT received:

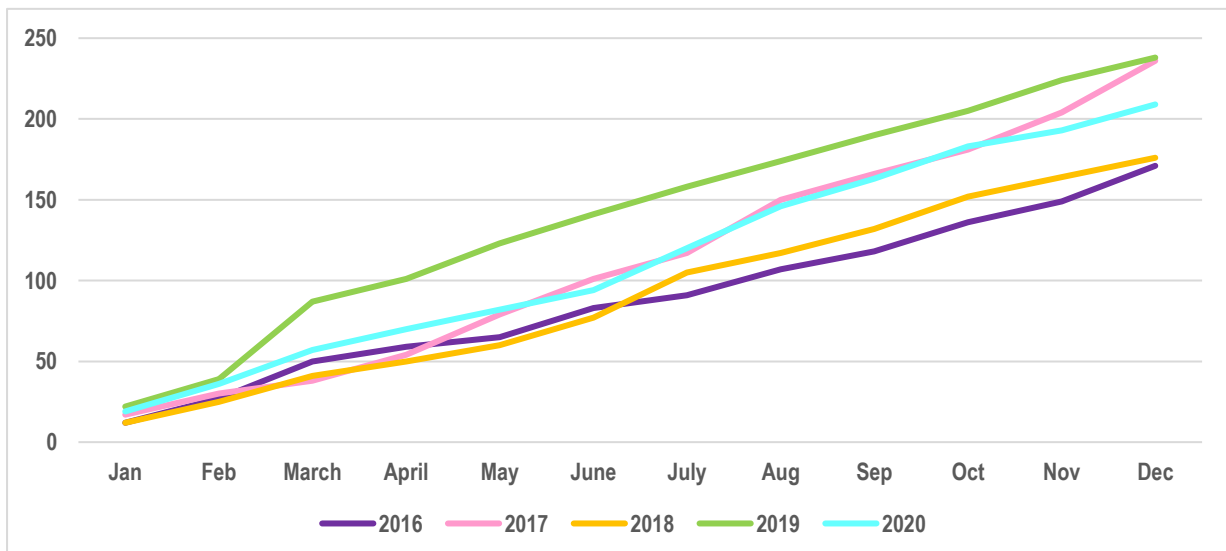
- a) 152 employment only claims;
- b) 13 work-related discrimination claims;
- c) 6 non-work related discrimination claims;
- d) 40 joint employment and discrimination claims;
- e) 1 employer claim;
- f) 3 collective dispute claims; and
- g) 18 counterclaims from employers.

Number of claims received by the Employment and Discrimination EDT:



Employment claims over the years:

The overall number of work-related claims decreased in 2020.



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 2020 18 counterclaims were issued, this is a decrease on last year's figures where 40 counterclaims were issued. Of the 3 counterclaims which went to a Final Hearing during 2020, 2 were successful.

Employer claims:

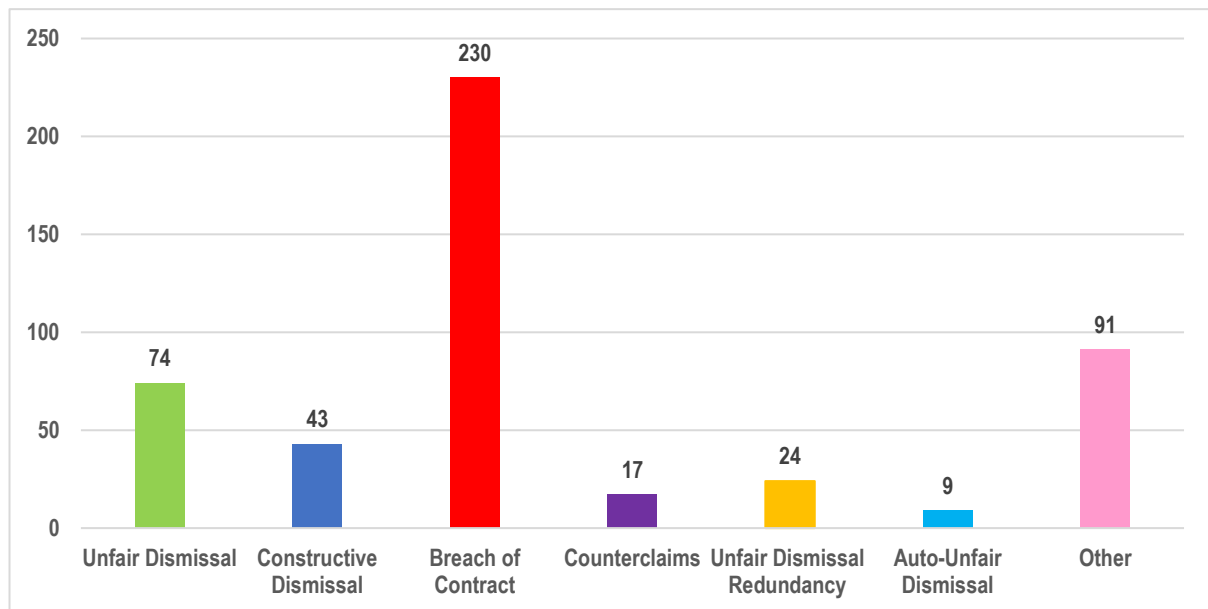
Employers are entitled to initiate proceedings against former employees for breach of contract. In 2020 the EDT received 1 employer claim which was withdrawn before Case Management Hearing stage.

Collective disputes:

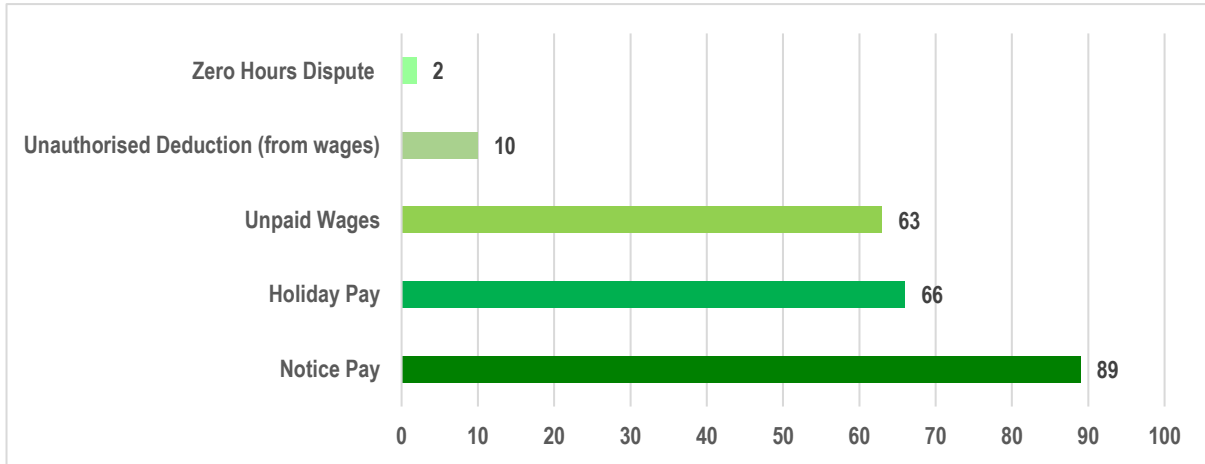
A collective dispute is a claim filed on behalf of one or a group of employees represented by a trade union against their employer and where a collective agreement exists between the employee, employer and the trade union. The EDT received 3 collective disputes in 2020 which is an increase from 2019 where none were received. At year end all 3 disputes were at Interim Hearing stage only.

Employment Issues:

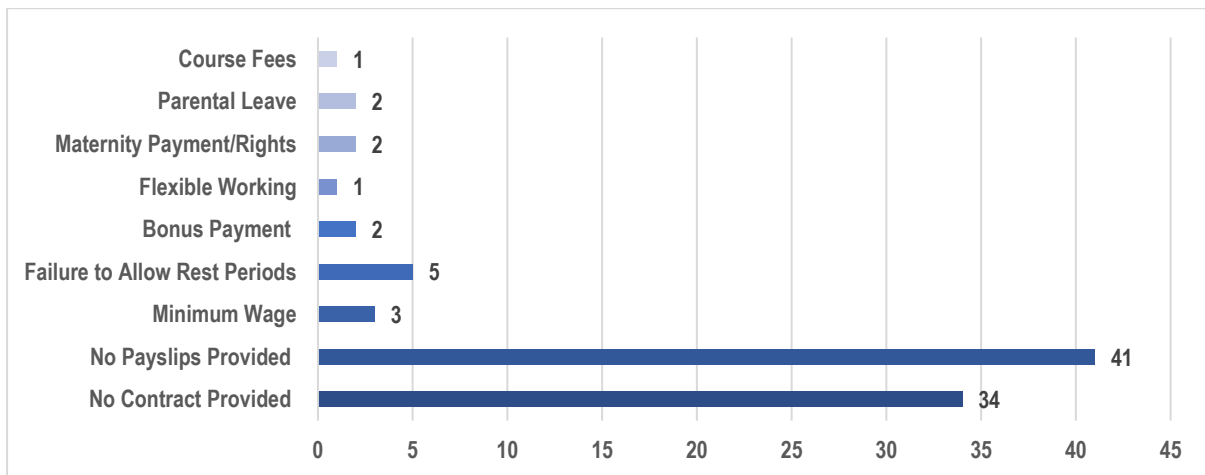
Employment claims often comprise of several different issues at Claim Form submission stage.



Breach of contract issues:



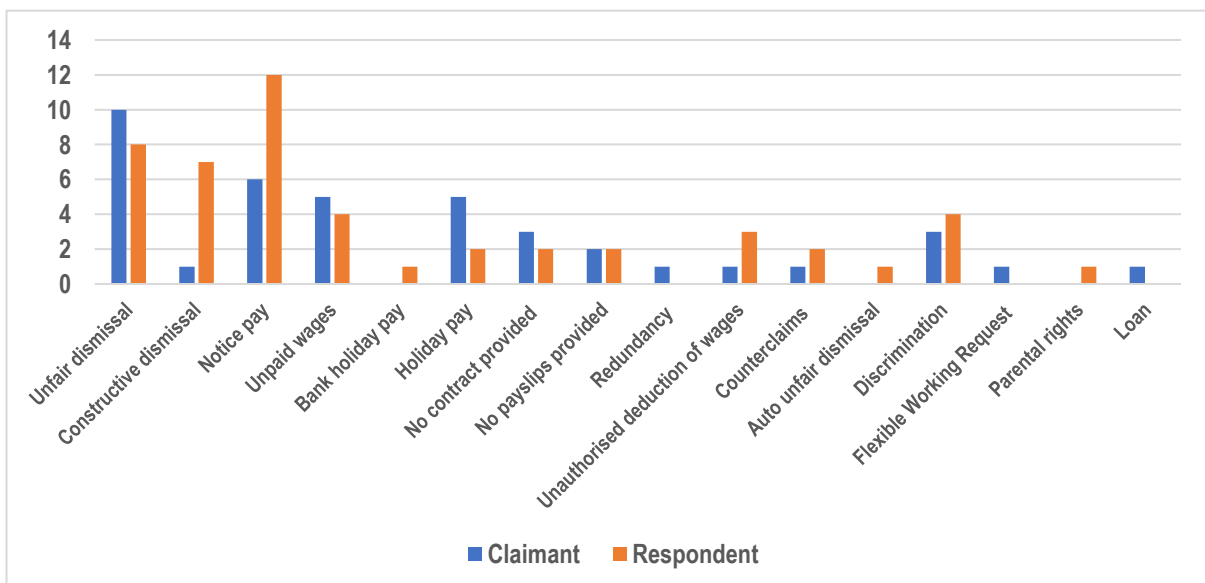
Other issues:



Statistics – Outcomes & Awards

Outcome of employment issues at Final Hearing:

36 cases went to Final Hearing in 2020. In some cases, both parties were successful in different issues.

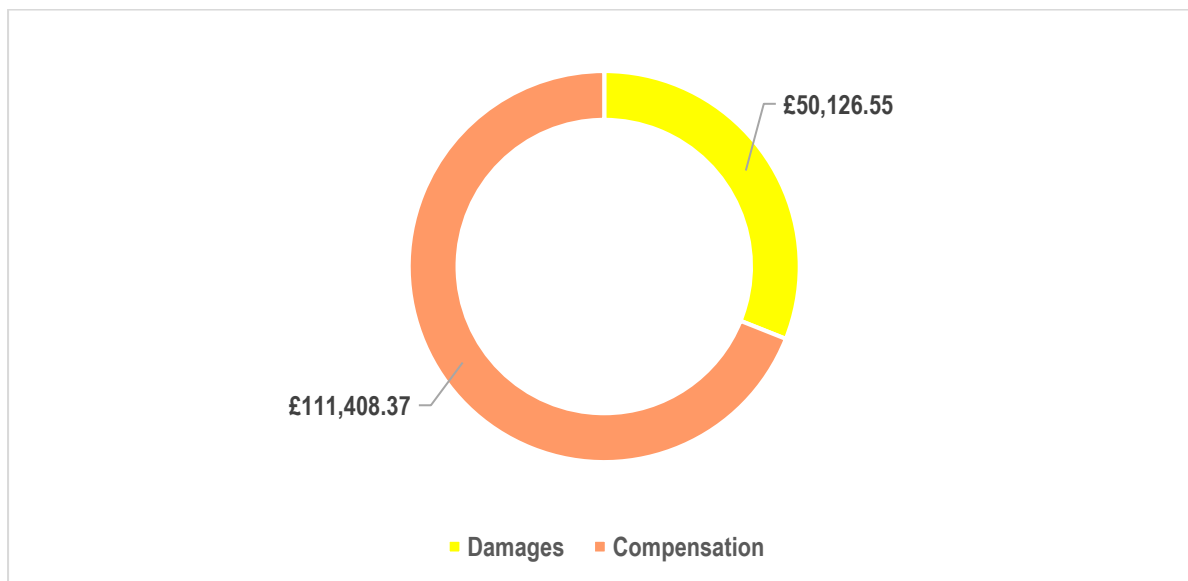


Breakdown of employment awards:

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 2020 the total amounts awarded in compensation and damages increased.

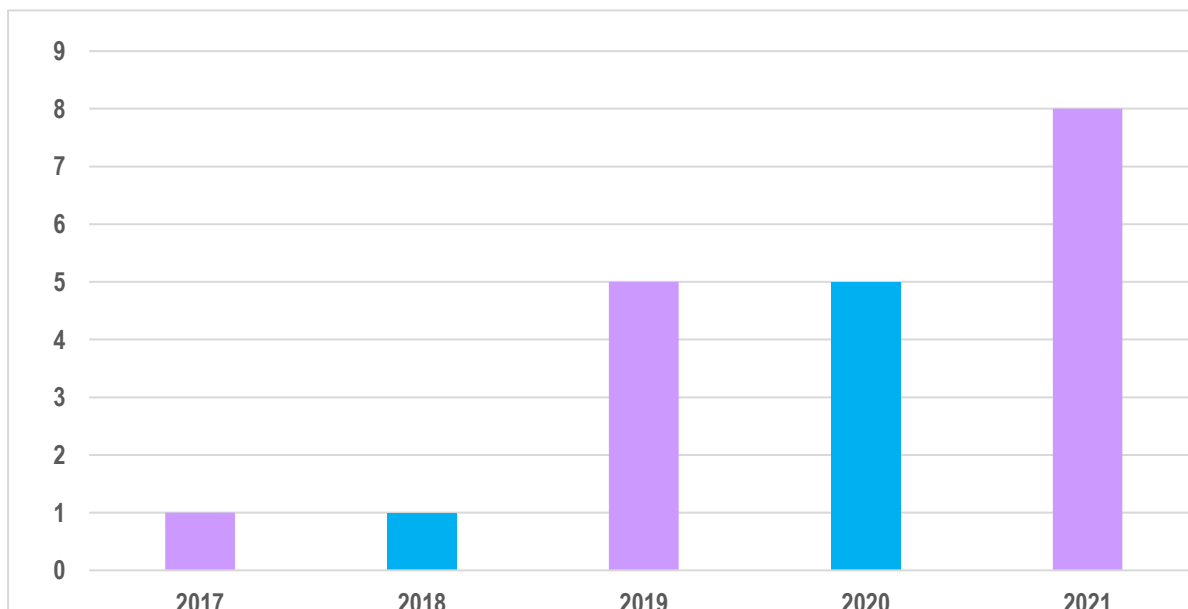


Number of cases where EDT applied a reduction to compensatory awards:

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

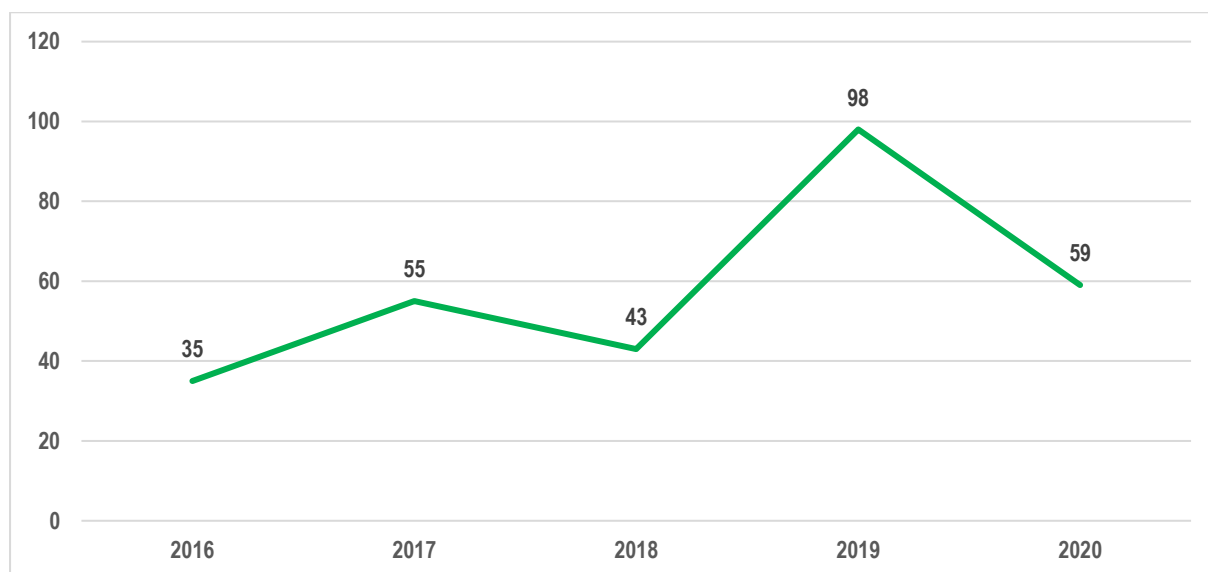
In 2020, the EDT applied a reduction to 8 successful unfair dismissal awards between 75% to 100%.

This is the highest number of reductions in the last five years.



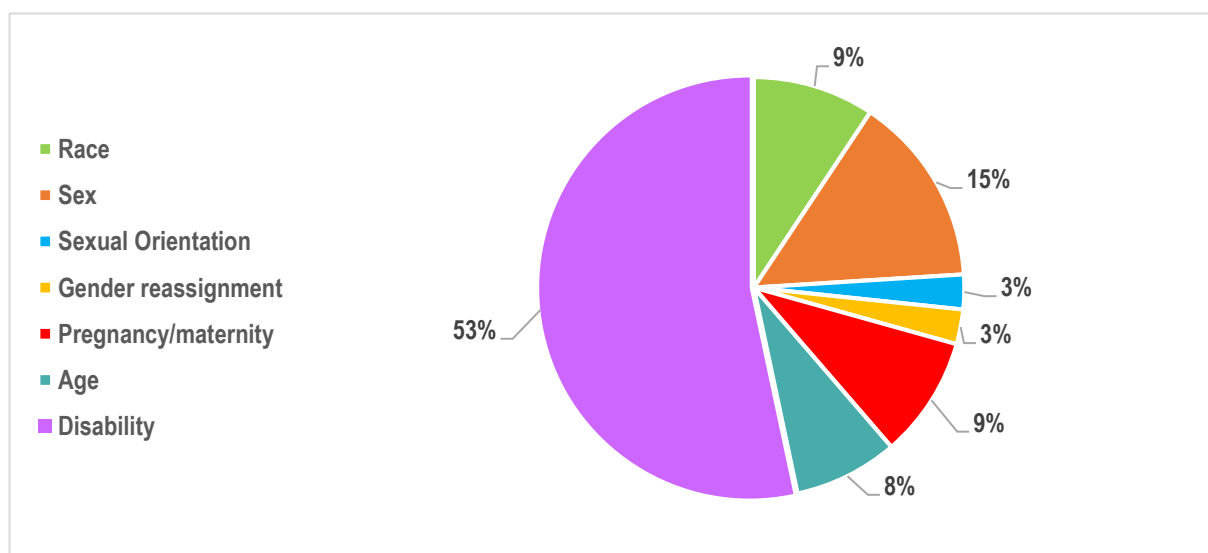
Discrimination Claims

The overall number of discrimination claims fell in 2020 to a total of 59 claims, a 40% decrease on last year.



Claims by protected characteristics:

Disability accounted for 53% of discrimination issues. Sex (and related characteristics) made up 30%, age 8% and race the remaining 9%. 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.

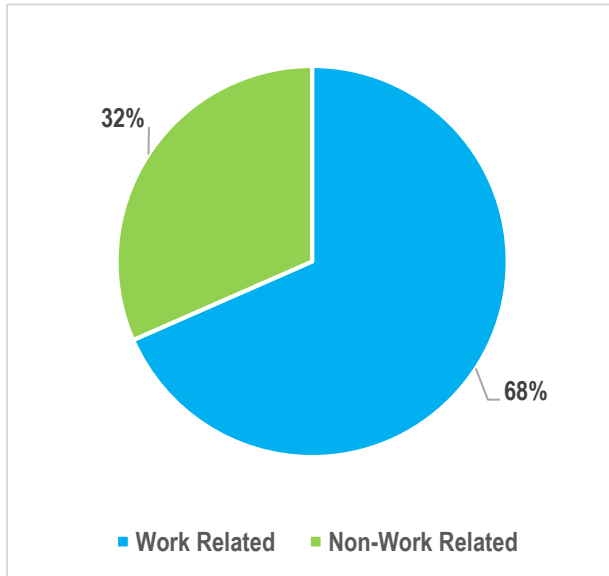
Race – includes colour, nationality, national origins and ethnic origins.

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:

The EDT received 13 work related and 6 non-work related discrimination claims.

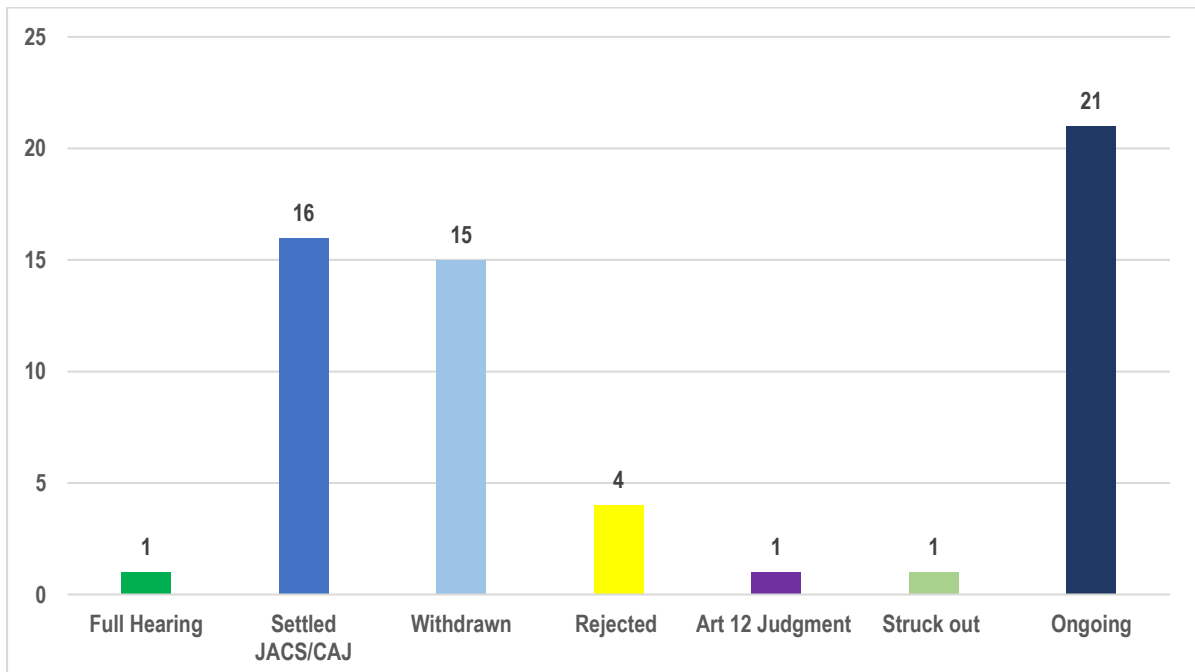


A claim can be made in respect of the following areas:

- **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 59 discrimination claims which were filed in 2020, only 1 went to a Final Hearing in that year which was successful on the ground of disability. Of the remaining claims, 16 were settled by JACS/CAJ, 1 was struck out, 4 were rejected, 1 had an Article 12 Judgment issued (see definition on page 15) and 15 were withdrawn. As at 31 December 2020 21 remain on-going.



Administration of Claims

The EDT conducted 189 hearings during 2020. Many of the hearings were conducted by Starleaf video conferencing to accommodate parties during the Covid-19 Pandemic.

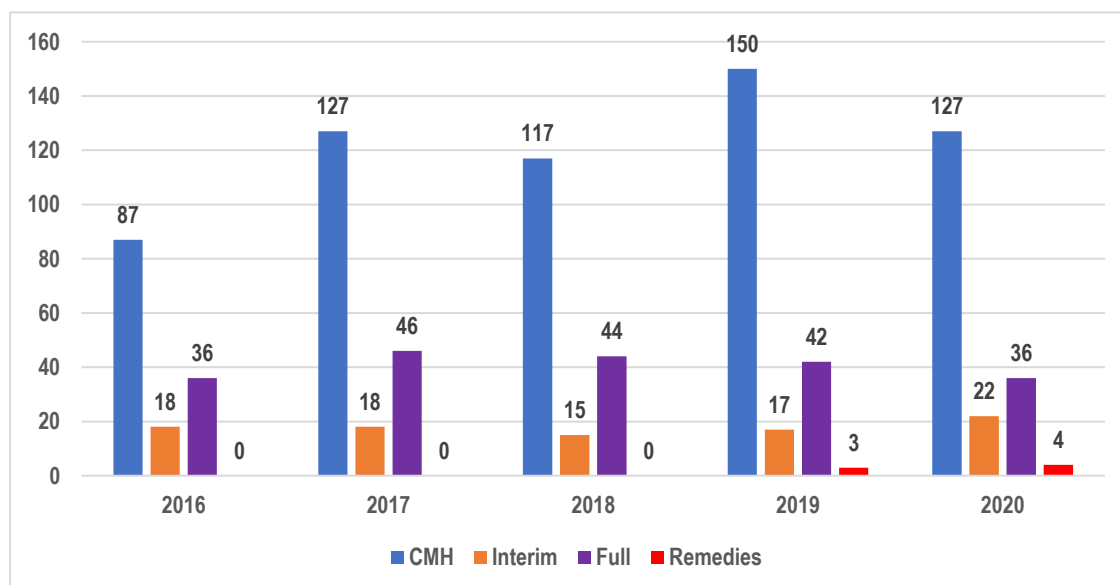
A Case Management Hearing takes place between a Chair and the parties to assist the EDT in managing the case, by identifying any issues, setting orders, deciding on the date for the Interim/Final Hearing.

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

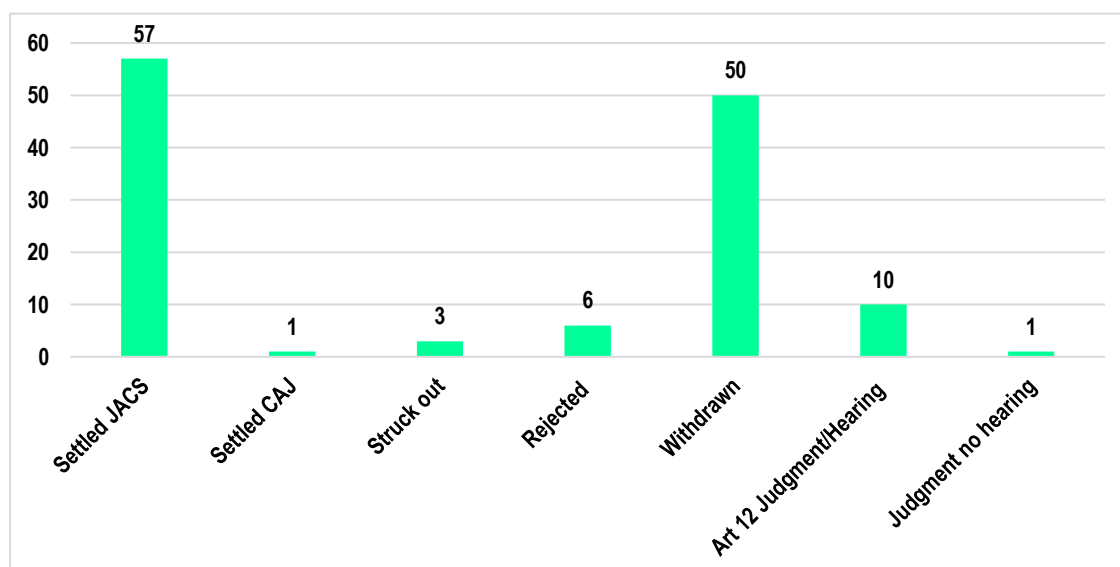
The Final Hearing is where all the evidence is heard and a decision is made on the facts of the case.

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

Number of hearings per year since 2016:



Total number of claims received in 2020 which did not go to Final Hearing:



Respondents failing to file Response Forms

When a Respondent fails to file a Response Form, a Chair can determine the claim on the papers unless the Chair considers that a hearing is necessary on the basis there is insufficient information to make a Judgment. 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 2020. Out of 215 claims, 13 claims were uncontested or received a late response.

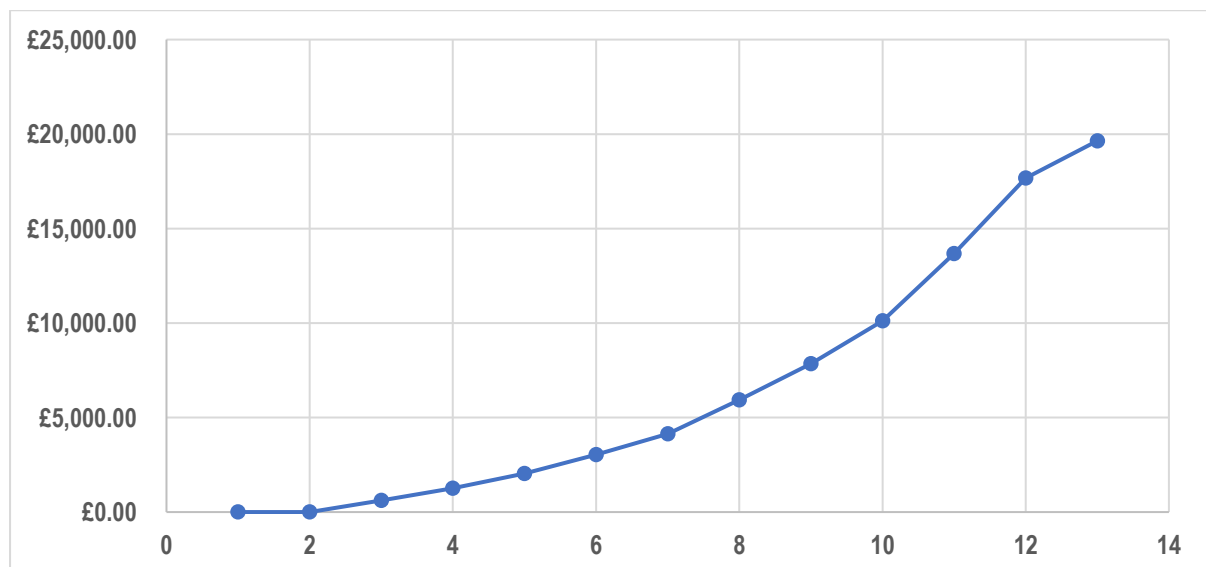
In 2019 out of 250 claims, 19 claims were uncontested or received a late response.

Outcomes of uncontested cases:

Where the Respondent failed to file a Response Form, the outcome was in favour of the Claimant with the precise remedy being determined at a hearing where necessary.

2 of the 13 Article 12 Judgments were set aside after a successful reconsideration and a successful appeal.

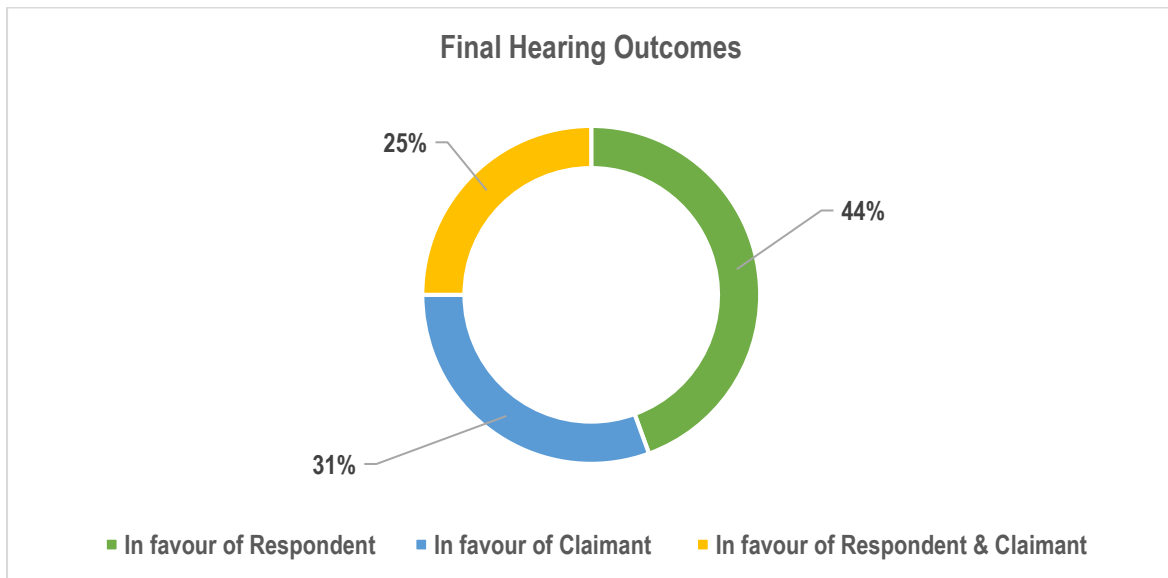
The amounts awarded ranged from £0 to £4964 with a total of £20,000 awarded for Article 12 Judgments alone.



Final Hearing & Interim Hearing Outcomes

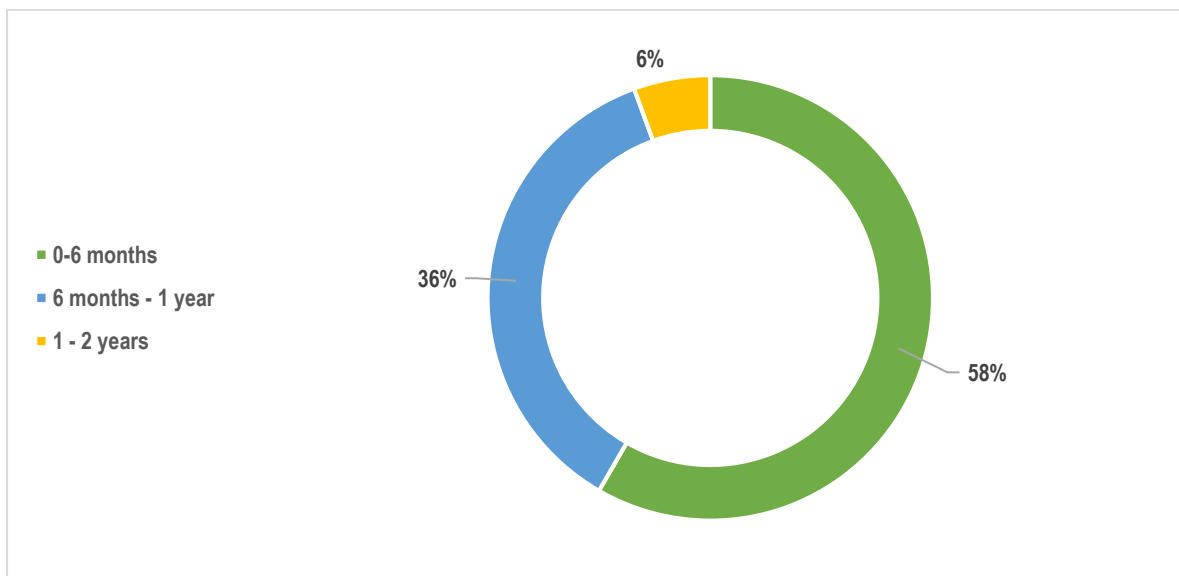
At Final Hearings Respondents were more successful overall than Claimants, whereas at Interim Hearings Claimants were more successful.

In some hearings different parties were successful in different issues.



Time taken from receipt of Claim Form to Final Hearing:

Of the cases heard in 2020 58% were heard within 6 months of receipt of Claim Form.

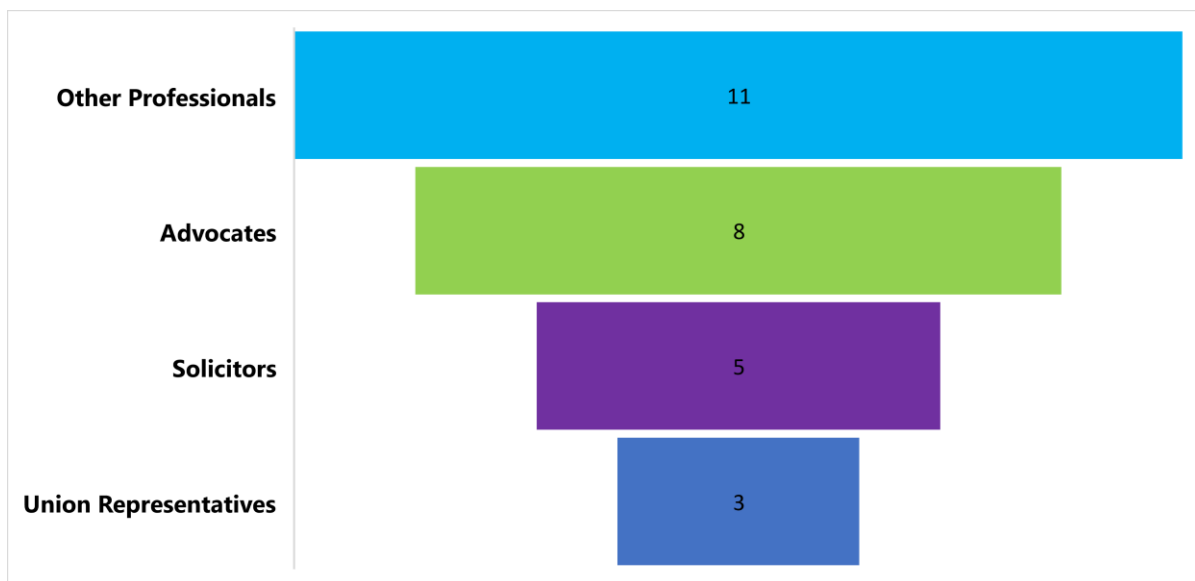


Representation of Parties

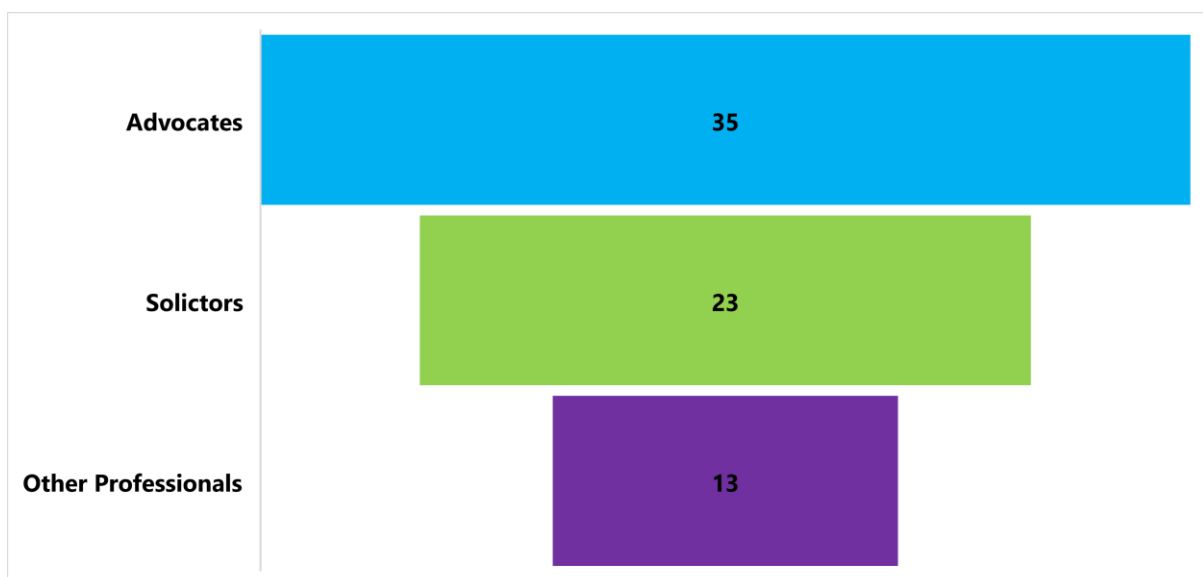
Out of 215 cases filed in 2020, 27 Claimants and 71 Respondents engaged representatives to assist them at form submission stage.

Out of 36 final hearings in 2020, 6 Claimants and 14 Respondents were represented at this stage.

The majority of representatives for Claimants were other professionals, such as HR companies or individuals who, for example, are legally qualified but non-practising. Others include Advocates, Solicitors (both in Jersey and the United Kingdom) and Union representatives.



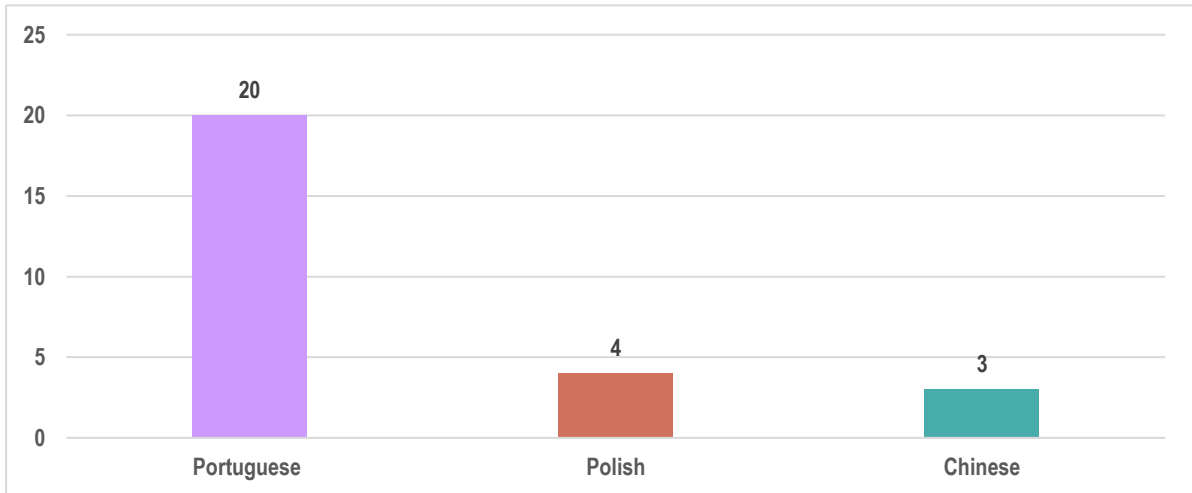
The majority of representatives for Respondents were locally qualified Advocates. Others include Solicitors and other professionals.



Use of Translators

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

In 2020 27 parties indicated on their forms that they would require the assistance of a translator.



Contact Details

Address:

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

Opening hours

Monday – Friday
09:00-17:00

Telephone

(01534) 441380

Email

registrartribunalservice@gov.je

Website

<http://www.tribunal.je>

Team Members

Tracey Buesnel (Manager)

Tayla Le Mottee (Registrar)

Janet Smith (Registrar)