

## Employment Tribunal Review - 2010/11

This year's Employment Tribunal statistics reveal some interesting facts, which may come as a surprise to some. The statistics come from HM Courts and Tribunals Service's annual report, which was published in September 2011. The report covers the period from 1 April 2010 to 31 March 2011 and the data challenges some perceptions about the volume of claims and size of awards handed out by employment tribunals.

### Total number of claims

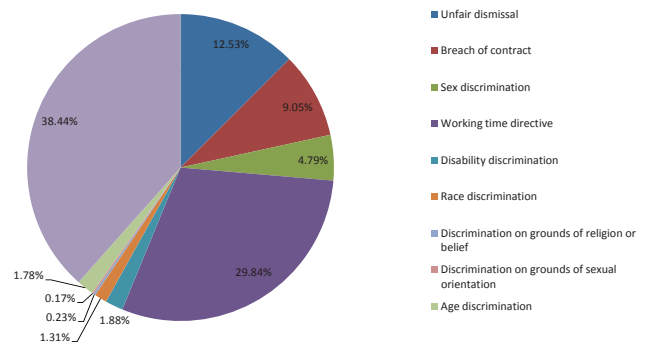
The total number of claims submitted at the employment tribunals during 2010/11 decreased by 8% compared to 2009/10 but mark a 44% increase on 2008/09. Compared to 2009/10, this year has seen a 15% decrease in the number of single claims and a 4% decrease in multiple claims (i.e. where more than one claimant brings the same claim). If you compare this year's figures with 1998/99, the number of claims lodged have more than doubled, showing a continued upwards trend in the number of claims lodged. However, the overall rise in claims over the past 10 years can be attributed more to a rise in multiple claims.

The upwards trend in the total number of claims lodged over the past 10 years suggests that employees are becoming increasingly litigious. This could be due to a number of factors such as the availability of information about their rights via the internet, the increase in employment legislation and enhanced protection for employees and changes in the nature of the working relationship. The rise in claims suggests that the previous Government's reforms to the employment tribunal system have not had a significant effect on the number of claims lodged at tribunals.

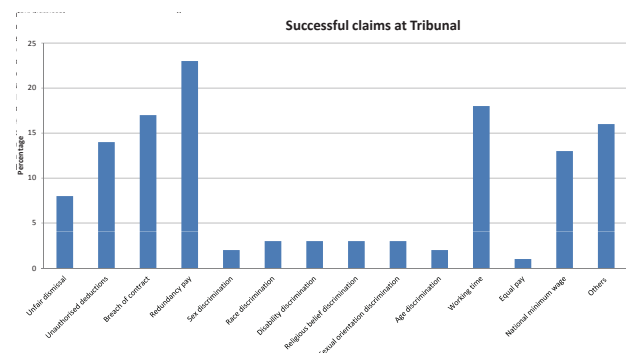
### Types of claims

A claim can comprise a number of individual grounds of complaint. The most common ground of complaint was working time – almost 30% of the total. The most commonly cited discrimination claim was sex discrimination. Aside from age and sex discrimination claims, the number of discrimination claims decreased from 2009/2010. Age complaints rose by 31% and sex discrimination complaints stayed more or less the same. Given that the default retirement age of 65 was abolished this year, we expect age discrimination complaints will continue to increase in the coming years.

Claims accepted by Employment Tribunals



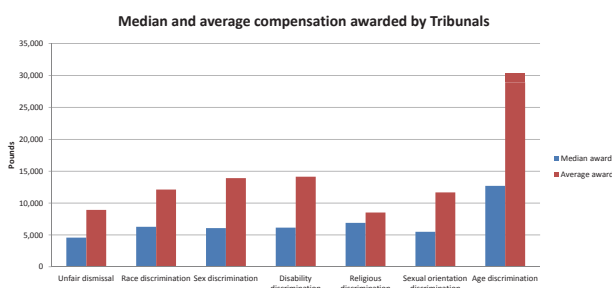
Despite the increase in the number of protected characteristics covered by anti-discrimination legislation over the past 10 years, it is interesting that there has been only a slight increase in the overall number of discrimination claims since 2000/01.



## Success rates

Of the total number of unfair dismissal claims disposed of by the tribunals, only 8% were ultimately successful. Therefore, far more unfair dismissal claims fail at tribunal than succeed and this is something that employers should take into account when considering whether to settle or defend such claims. The success rates for discrimination complaints are even lower – 2% for sex and age discrimination, and 3% for race, disability, religious belief and sexual orientation discrimination.

The median award for unfair dismissal claims was £4,591. The median award for discrimination claims ranged from £5,500 (sexual orientation) to £12,697 (age discrimination).



These figures can be useful in trying to lower the expectations of claimants and help reach a favourable settlement.

The maximum that was awarded for a discrimination claim was £289,167 for sex discrimination:

Claim	Maximum Award
Religion or belief	£20,221
Sexual orientation	£47,633
Race	£62,530
Age	£144,100
Disability	£181,083
Sex	£289,167

The maximum award figures challenge the perception that discrimination claims, if successful at tribunal, can be highly lucrative. Only 15% cent of successful age discrimination claims have resulted in awards of more than £50,000. For the other strands, this figure is no more than 6%.

The above success rates might suggest that employers tend to fight weaker claims. As there are no statistics on the level of settlements that employers reach with employees during proceedings, it is difficult to obtain a true picture of the compensation or payments received by claimants.

## Looking ahead

The Government's recent proposals to introduce a fee structure in employment tribunals could have an impact on the number and type of claims that are brought. The Government is presently consulting on two fee-charging options. Under both options, tribunals will have the power to order that the unsuccessful party reimburse the fees paid by the successful party.

Under the first option, the amount of fees charged would depend on the type of claim brought and the stage that is reached in the proceedings. There would be an initial issue fee at the time the claim is lodged. For single claims, the issue fee would be between £150 and £250. There would be six further fees for certain specified applications once a claim has been accepted. There would also be a hearing fee of between £250 and £1,250. These fees would be payable by the claimant.

The second option involves one main fee paid by the claimant at the time the claim is lodged. This fee would range between £200 and £1,750 for a single claim. As with the first option, six further fees would apply. The level of fees would depend on the value of the claim as well as its nature and the number of people involved. The fees for claims in excess of £30,000 would be substantially higher than for claims below that.

The Government's proposals are aimed at encouraging early and informal resolution of workplace disputes, rather than having to resort to the tribunal system. That is a laudable goal but, in our experience, changes to legislation and the tribunal system tend to result in an increased scope for disputes, at least in the short term. Even if these proposals are introduced, a worsening economic climate could result in a further increase in the overall number of claims in 2012. Nevertheless, employers will welcome these proposals in the hope that fees will act as a sufficient disincentive for some potential claimants.

If you have any questions about any of the issues raised in this legal update, please contact:

### ***Bernadette Daley***

Partner  
bdaley@mayerbrown.com  
Tel: +44 20 3130 3667

### ***Purvis Ghani***

Associate  
pghani@mayerbrown.com  
Tel: +44 20 3130 3689

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