

BIS | Department for Business
Innovation & Skills

FINAL IMPACT ASSESSMENT

Dispute resolution review

JANUARY 2010

Summary: Intervention & Options

| | | |
|---|--|----------------------------|
| Department /Agency: BIS | Title: Impact Assessment of Dispute Resolution Review | |
| Stage: Final | Version: Final | Date: December 2009 |
| Related Publications: Resolving Disputes in the Workplace: A Government Response | | |

Available to view or download at: www.berr.gov.uk/files/file54183.pdf

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What is the problem under consideration? Why is government intervention necessary?

The 2007 Gibbons Review identified key problems with the current dispute resolution system in Great Britain, including the tendency of the current statutory dispute resolution procedures to formalise disputes; the evidence suggested that the system was costing too much for all parties both in terms of money and time; and that it could do more to resolve disputes at the earliest opportunity. These regulatory failures were reflected by a wide range of stakeholders in the full public consultation in 2007 and the changes were made as part of the Employment Act 2008 and implemented in April 2009. The Employment Act 2008 repealed the statutory dispute resolution procedures in their entirety. This repeal together with other related primary and secondary legislation, forms part of a package of legislative and non-legislative measures to ensure fair and consistent standards of dispute resolution.

What are the policy objectives and the intended effects?

The policy objective has been to encourage early resolution of disputes and minimise the costs involved by reducing the number of claims going to an employment tribunal. The shortcomings of the 3-step system pointed to a new model that is more efficient and simpler to use, offers users advice on more proportionate ways of resolving their disputes, and which enables disputes to be resolved earlier, with less lost time, expense and stress for all parties.

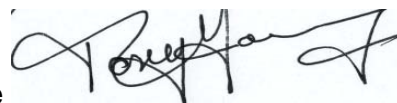
What policy options have been considered? Please justify any preferred option.

The Government consulted on a range of policy options, based on many of the recommendations of the Gibbons Review. Following consultation the Government proceeded with: repeal of the statutory dispute resolution procedures; an enhanced Acas statutory Code and guidance; encouraging compliance with the Code by allowing tribunals to adjust awards if it has not been followed; removing fixed periods for Acas conciliation; and new services including more, earlier, Acas conciliation; a fast track for simple claims and an improved advice service. Following implementation of the changes in April 2009 more recent research findings now enable the earlier cost-benefit estimates to be updated.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Policy outcomes will be assessed a reasonable period after entry into force of the legal changes. Regular monitoring of the various elements of the new system will take place as part of the normal management requirements. For example, monthly data will be collected in respect of Helpline calls, PCC referrals etc.

Ministerial Sign-off For implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.



Signed by the responsible Minister: Lord Young, Minister of State

(Employment Relations and Postal Affairs)Date: 15 December 2009

Summary: Analysis & Evidence

| | |
|-------------------------|--|
| Policy Option: 3 | Description: Repeal statutory dispute resolution procedures and introduce a package of measures to promote effective dispute resolution |
|-------------------------|--|

| | | | | | |
|--|--|------------------------|--|--|--|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' All costs are Government costs and relate mainly to the set up and operation of the new interactive advice service as well as the provision of pre-claim conciliation. One-off costs of £5.4m were incurred in 2008/09. There are ongoing costs of £9.6m in 2009/10 and £11.5m from 2010/11 onwards. | | |
| | One-off (Transition) | Yrs | | | |
| | £ 5.4m | 1 | | | |
| | Average Annual Cost (excluding one-off) | | | | |
| £ 9.6m – 11.5m | 10 | Total Cost (PV) | £ 91m | | |
| Other key non-monetised costs by 'main affected groups' | | | | | |

| | | | | | |
|---|---|---------------------------|--|--|--|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Total estimated benefits are £161m in 2009/10, £199m in 2010/11 and £197.8m from 2011/12 onwards. Of this employers will save around £150.6m in 2009/10, £177.7m in 2010/11 and £176.9m from 2011/12 onwards, with around £149m reduction in admin burdens. Individuals will benefit by £7.7m in 2009/10 and around £15½m thereafter. | | |
| | One-off | Yrs | | | |
| | £ 0 | | | | |
| | Average Annual Benefit (excluding one-off) | | | | |
| £ 197.8m | 10 | Total Benefit (PV) | £ 1,470m | | |
| Other key non-monetised benefits by 'main affected groups' | | | | | |

Key Assumptions/Sensitivities/Risks Cost-benefit estimates are based on around 73,000 potential single and small multiple employment tribunal claims a year. Estimates include allowance for increased claims in early years due to effect of downturn. Costs will be incurred from 2008 onwards and the benefits will be realised from 2009 onwards.

| | | | |
|-------------------------|-------------------------|---|---|
| Price Base Year 2009 | Time Period Years 10 | Net Benefit Range (NPV) £ 1,379m | NET BENEFIT (NPV Best estimate) £ 1,379m |
|-------------------------|-------------------------|---|---|

| | |
|---|---|
| What is the geographic coverage of the policy/option? | GB |
| On what date will the policy be implemented? | 6 April 2009 |
| Which organisation(s) will enforce the policy? | Tribunals Service |
| What is the total annual cost of enforcement for these organisations? | £ 75.9m |
| Does enforcement comply with Hampton principles? | Yes |
| Will implementation go beyond minimum EU requirements? | No |
| What is the value of the proposed offsetting measure per year? | £ N/A |
| What is the value of changes in greenhouse gas emissions? | £ N/A |
| Will the proposal have a significant impact on competition? | No |
| Annual cost (£-£) per organisation (excluding one-off) | Micro Small Medium Large |
| Are any of these organisations exempt? | No No N/A N/A |

| | | |
|---|-------------------------|-------------------------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) |
| Increase of £ 0 | Decrease of £ 133.2m | Net Impact £ 133.2m decrease |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

A: Strategic overview

1. In the light of the independent review by Michael Gibbons¹ (the Review) of workplace dispute resolution practices and the associated public consultation², the Government has repealed the statutory dispute resolution procedures and implemented a package of replacement measures in April 2009 to encourage early/informal resolution of disputes.
2. The partial impact assessment (IA) published in February 2008 made preliminary estimates of the costs and benefits of the proposed changes to the dispute resolution system. Now, as more up to date and robust information has recently become available, the estimated costs and benefits have been revised and are presented in this IA.
3. The changes introduced also support BIS' Simplification Plan which reports on progress to reduce the Department's administrative burdens measured by PwC by 25 per cent by May 2010.

B: The issue

4. The Review identified key problems with the dispute resolution system in Great Britain:
 - The statutory dispute resolution procedures introduced in 2004 carried a high cost burden for employers and employees and have had unintended negative consequences, which outweigh their benefits;
 - While around 75% of claims made to an employment tribunal are resolved without the need for a hearing (a substantial proportion with the involvement of Acas), many settlements happen too long after the dispute first occurred and a significant proportion of those cases that do reach a tribunal hearing should have been capable of being resolved beforehand between the parties.
5. The evidence therefore suggested regulatory failure with some elements of the statutory dispute resolution system to the extent that it was costing too much for all parties - employers, employees and Government - both in terms of money and time; and that more needed to be done to resolve disputes at the earliest opportunity. The Government has sought an alternative model that is more efficient, simpler to use, offers users more

¹ 'Better Dispute Resolution. A Review of employment dispute resolution in Great Britain' Michael Gibbons March 2007 www.berr.gov.uk/files/file38516.pdf

² 'Success at Work: Resolving Disputes in the Workplace' DTI March 2007; www.berr.gov.uk/files/file38553.pdf

proportionate ways of resolving their disputes, and aims to resolve disputes earlier.

Consultation

Within government

6. The Review consulted widely within Government, including the then DTI, Acas and the Tribunals Service, along with other Government departments.

Public consultation

7. The Review received considerable input from key non-government stakeholders, including representatives of business (including the CBI) and of workers (including the TUC). Following publication of the Review's report in March 2007, the Government undertook a three-month public consultation on options based on the recommendations of the Review. The Government received over 400 responses to the consultation. Several responses summarised the views of a number of stakeholders and many others were from representative organisations on behalf of their members. A number of meetings held in England, Scotland and Wales were attended by over 200 people. Formal written responses to the consultation came from a broad spectrum of interests. Employers and their organisations were strongly represented among respondents. The Government response to this consultation was published in May 2008.³

8. The Government published a further consultation "Dispute Resolution – Secondary legislation consultation" on 30 June 2008.⁴ This sought views on a number of measures to complement the investment in Acas services and the legislative reforms in the Employment Act. The consultation closed on 26 September 2008, with 93 responses from a good range of organisations and individuals, and the Government Response was published in December 2008.⁵

C: Objectives

9. Following the Review, the Government considered a package of measures to help solve employment disputes successfully in the workplace so that:

- Productivity is raised through improved workplace relations;
- Access to justice is ensured for employees and employers;
- The cost of resolving disputes is reduced for all parties;

³ *Resolving Disputes in the Workplace Consultation: Government Response*, BERR, May 2008; www.berr.gov.uk/files/file46233.pdf

⁴ *Dispute Resolution – Secondary Legislation Consultation*, BERR, July 2008; www.berr.gov.uk/files/file46775.pdf

⁵ *Dispute Resolution Secondary Legislation – Government Response to Consultation*, BERR, December 2008; www.berr.gov.uk/files/file49216.pdf

- Disputes are resolved swiftly before they escalate; and
- Employment rights are not diluted.

10. These measures include: repealing the statutory dispute resolution procedures; providing better help and guidelines to resolve disputes at an earlier stage; and improving the way employment tribunals work.

Background

11. The Government's policy on resolving disputes in the workplace was last set out in the 2001 consultation paper '*Routes to Resolution: Improving Dispute Resolution in Britain*'. This proposed three principles for a modern dispute resolution system: access to justice; fair and efficient tribunals; and a modern, user-friendly public service. A framework to achieve this was laid out in primary legislation in the Employment Act 2002. This established statutory minimum dismissal and disciplinary and grievance procedures. A three-step process of a written statement, a meeting and an appeal was introduced by The Employment Act 2002 (Dispute Resolution) Regulations 2004 (the Regulations), and accompanied by revised employment tribunal rules of procedure and a revised Acas Code of Practice on disciplinary and grievance procedures.

12. The Government gave a commitment to review the Regulations after two years, to see if these objectives had been met. This commitment was confirmed in '*Success at Work*⁶ as part of our programme to deliver better regulation. This is a key part of BIS's work to simplify regulation, by removing compliance costs and complexity, and addressing irritants for business and others affected by employment law, while ensuring that employee rights are protected.

13. In December 2006, the Government broadened the review to look end-to-end at the whole dispute resolution framework with the appointment of Michael Gibbons as an independent reviewer. The Gibbons Review (the Review) looked at the options for simplifying and improving all aspects of employment dispute resolution, to make the system work better for employers and employees.

14. The Review put forward recommendations for change, covering the current legal requirements, the way employment tribunals work and the scope for new initiatives to help resolve disputes at an earlier stage.

15. In its consultation *Success at Work: Resolving Disputes in the Workplace*⁷ in March 2007 the Government considered these recommendations and invited views on various measures to help resolve disputes successfully in the workplace. The partial impact assessment published alongside the consultation provided the first estimates of the costs and benefits of these measures. A full impact assessment was published in

⁶ '*Success At Work: Protecting vulnerable workers, supporting good employers*' March 2006 URN 06/1024.

⁷ <http://www.berr.gov.uk/files/file27469.pdf>

February 2008, which included revised estimates of the costs and benefits of the changes in the light of responses to the consultations. Now, this final impact assessment presents updated cost-benefit estimates based on more recent and robust research.

D: Options identification

16. A summary of the measures on which the Government consulted is set out below. The partial impact assessment considered a package of measures (Option 3) against two alternatives: do nothing (Option 1) and repeal the statutory procedures and streamline employment tribunals (Option 2). Details of these options can be found in the partial impact assessment.

- **Option 1:** Do nothing;
- **Option 2** Repeal the statutory dispute resolution procedures and streamline employment tribunals;
- **Option 3:** As Option 2 above, but also introducing a package of measures to promote effective dispute resolution including:
 - i. offering a new advice service;
 - ii. providing a new entry point for employment tribunal applications;
 - iii. providing a new approach to straightforward claims;
 - iv. making dispute resolution services available earlier in appropriate cases;
 - v. removing fixed periods for Acas conciliation.

17. Despite the fact that the available data to assess the effects of the 2004 reforms was limited, the Review identified some key trends within the current system. Since the introduction of the reforms in October 2004, the total number of employment tribunal claims had risen, but this was largely due to an increase in multiple claims⁸. Although the number of multiple claims varies from quarter to quarter, claims have on average risen from around 15,800 a quarter in the financial year (FY) 2005-06 to around 18,900 in FY 2006-07⁹. Multiple claims increased significantly in 2007-08¹⁰ averaging around 32,700 per quarter and although the number of claims has since declined in FY 2008-09 they were still averaging over 20,200 per quarter (Chart 1 below).

18. Single claims fell initially after the reforms introduced in October 2004 from around 16,000 claims a quarter to just under 12,000 in the fourth quarter of 2004. However, since then the number of single claims has been rising steadily averaging around 12,900 in 2005-06, 14,300 in 2006-07 and 14,600 in 2007-08. Data for 2008-09 indicate a faster rate of increase to around

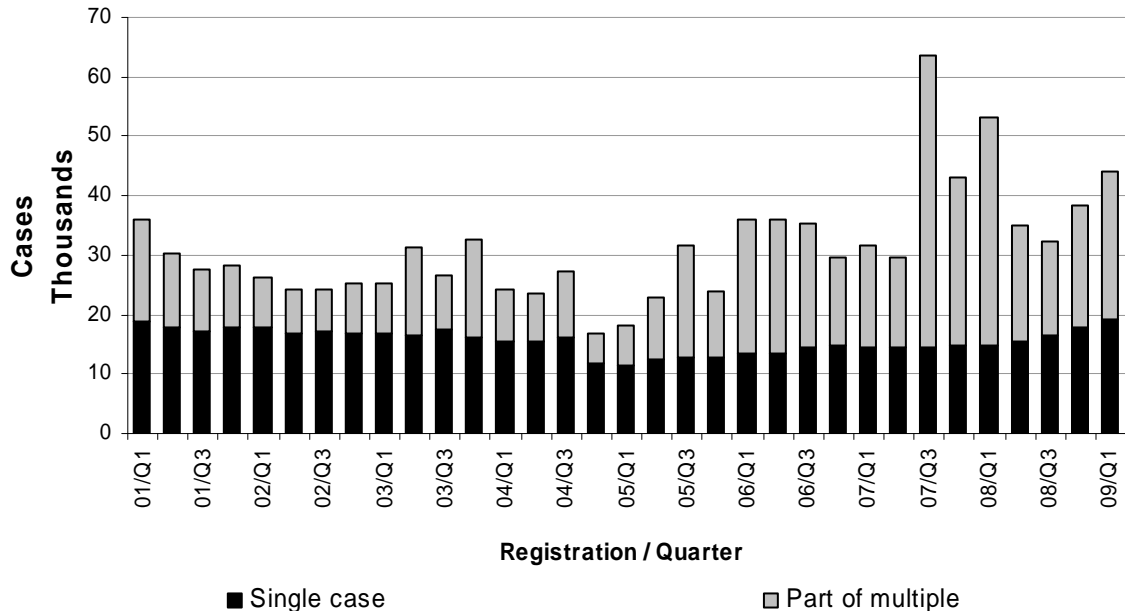
⁸ Single and multiple claims – Claims to the Employment Tribunal may be analysed into two broad categories, singles and multiples. Multiple cases are where a number of people bring cases against one employer on the same or very similar grounds and they are processed together.

⁹ Multiple claims accounted for 58 per cent of all claims in 2006-07 compared with 36 per cent in 2004-05.

¹⁰ This was due to a significant increase in equal pay claims between Q3 2007 and Q1 2008

17,200 per quarter, exceeding pre-October 2004 levels, though this is due to some extent to the increase in unfair dismissal claims during the current downturn.

Chart 1 – Quarterly volumes of employment tribunal claims, Q1 2001- Q1 2009



Source: Employment Tribunal Service. #Great Britain, not seasonally adjusted

19. The 2004 reforms seemed to have had an initial impact on reducing the risk of unfair dismissal, but at a higher cost to business. The PricewaterhouseCoopers / BRE administrative burdens exercise 2005 identified that the costs to business of complying with and carrying out the various elements of the statutory dispute resolution procedures amounted to £114.8 million¹¹ (after taking account of business as usual costs). The underlying information obligations on business are detailed in Table B1 in Annex B.

20. Following the consultation, the Government has made the following changes:

- Repealed the statutory dispute resolution procedures
- Reverted to the case law¹² which applied before 2004 regarding the role of procedural unfairness in unfair dismissal
- Invited Acas to revise its statutory Code of Practice on disciplinary and dismissal procedures, and give employment tribunals discretion to make

¹¹ This is based on the number of employment tribunal claims registered in 2004/05, i.e. around 86,000

adjustments to awards if parties have unreasonably failed to comply with the Code

- Introduced an expanded Acas advice service which will be able to give employers and employees information about the options open to them to resolve employment disputes
- Made additional Acas pre-claim conciliation services available where appropriate
- Removed the current time restrictions on Acas' duty to conciliate after a claim is made to a tribunal.

21. These are described briefly below.

22. In addition to these measures, the Government will work with the providers of Alternative Dispute Resolution (ADR) services, such as training and mediation, and with bodies representing employers and employees, to promote the benefits of early dispute resolution in the workplace.

Resolving more disputes in the workplace

23. Under this option the statutory procedures¹³ would be repealed. The principles which underpinned the statutory regulations procedures are supported by employer and employee organisations. However, the procedures have had a number of unintended negative consequences, including an increase in the number of disputes needlessly reaching a formal stage, an increased use of legal advice and a focus on following procedure rather than reaching an early outcome. Provisions for repeal are contained in the Employment Act 2008. The Government also proposed to revert to the situation following the Polkey case¹⁴, whereby a dismissal may be found to be unfair on procedural grounds but the tribunal may reduce the compensation award in proportion to the likelihood that dismissal would have gone ahead even if the correct procedure had been followed.

24. The Government recognises that repeal of the statutory procedures could result in some employers and employees failing to act appropriately in attempting to resolve disputes in the workplace prior to an employment tribunal claim. A short, non-prescriptive statutory Code has therefore been introduced, drawn up by Acas in collaboration with stakeholders. This will allow tribunals to consider the appropriateness of parties' behaviour in the particular circumstances of a case rather than assessing compliance with set procedures. Tribunals may also adjust awards by up to 25% if either party has acted unreasonably in failing to comply with elements of the relevant statutory Code.

Beyond the workplace

¹² In particular the House of Lords judgement in Polkey v A E Dayton Services Ltd [1988] AC 344

¹³ Sections 29-33 and Schedules 2, 3 and 4 of Employment Act 2002, along with s98A Employment Rights Act 1996 and consequential amendments in other primary and secondary legislation

¹⁴ see footnote 12 above

25. Michael Gibbons concluded that better advice and guidance for employers and employees and greater availability of conciliation in the early stages of disputes could enable more parties to resolve their differences without needing to go to tribunal. The Government has therefore made additional investment in improving the advice on resolving disputes available to employers and employees, and on funding a greater level of conciliation for disputes which are not yet the subject of an employment tribunal claim.

26. Two legislative changes intended to maximise the effectiveness of Acas conciliation are contained in the Employment Act 2008. Time restrictions on Acas's duty to offer conciliation to parties involved in employment tribunal claims have been removed, ensuring that Acas conciliation is open to parties until a tribunal hearing has been held. This will ensure that Acas help is available where parties realise close to the date of a hearing that they wish to reach an agreed settlement. Acas's existing duty to conciliate on request from the parties in cases which are not yet the subject of a tribunal claim has become a power. This will enable Acas to prioritise its caseload if that was necessary.

27. A further provision in the Employment Act is designed to allow tribunal claimants who have suffered direct financial losses as a result of not receiving money they were owed, over and above the non-payment itself, to ask the tribunal to order compensation for such losses to be paid by the employer. At present such compensation has to be sought in a separate action in the small claims court.

More effective employment tribunals

28. The Government consultations sought views on a number of different measures to improve and streamline processes and procedures. Details of these measures are set out in the impact assessment published alongside the Government response to the Dispute Resolution Secondary Legislation consultation.¹⁵

29. One element of Option 3 which was considered in detail was to provide a new approach to straightforward claims. As part of this, the Government originally proposed introducing a new written determination procedure for straightforward claims in a limited number of jurisdictions. Following extensive consultation, it has proved impossible to devise a written determination process which would be quick and simple, while also protecting the human rights of all the parties.

30. The Government has however added certain Working Time (Holiday Pay) cases to the list of jurisdictions which can currently be heard by an Employment Judge sitting alone. This is designed to save parties time and money in straightforward cases.

¹⁵ Dispute Resolution Secondary Legislation: Government Response to Consultation
<http://www.berr.gov.uk/files/file49216.pdf>

E: Analysis of options

Costs and Benefits

31. The estimated costs and benefits resulting from the changes to the dispute resolution system are presented and discussed below.

32. These estimates update those presented in the partial impact assessment in February 2008. The updates are based on a more comprehensive model of the system and uses more up to date and robust flows and unit cost data primarily from two recent publications, namely:

- The evaluation of the Pre-claim Conciliation pilot commissioned by Acas¹⁶; and
- Results from the 2008 Survey of Employment Tribunal Applications¹⁷

Assumptions and Approach taken

33. The cost-benefit analysis conducted for the partial impact assessment in February 2008 was based on a simple flows model which sought to capture the dynamic effects of the proposed policy changes.

34. For this impact assessment that model has been extended with the aim of producing more robust and reliable cost-benefit estimates, as more up to date data has become available. A more detailed description of the model is given in annex A, but its main characteristics can be described as follows:

- The effect of any change to the system must be analysed against a consistent baseline number of tribunal claims. This is determined by calculating the number of potential ET claims feeding into the system which may be affected by the policy changes. In practice this amounts to all single claims plus 'small' multiples, that is, cases where three or fewer claimants at the same workplace bring the same claim at the same time. Using provisional ET claims data for FY 2008-09 this amounts to 63,250 single claims and 9,600 qualifying small multiple claims¹⁸.
- The model estimates separately costs and benefits for employers, employees and the Exchequer. The unit costs used for each group vary, reflecting as far as possible the costs of the current system to each group;
- The extended model now provides a more detailed breakdown of claims by 3 broad types of jurisdiction, namely short track, standard track and open track¹⁹. This allows better identification of unit costs and enables the measurement of differential effectiveness of the policy changes by track;

¹⁶ Pre-Claim Conciliation Pilot – Evaluation Summary Report; downloadable from www.acas.gov.uk

¹⁷ Department for Business Innovation and Skills Employment Relations Research Series (*forthcoming*)

¹⁸ The earlier impact assessment had used an estimate for 'single-equivalent claims', where an adjustment was made to total multiple claims to allow for differences in unit costs. The baseline figure used in that case was 67,000 potential claims per year.

¹⁹ Short – or fast track – period cases essentially cover jurisdictions such as *Wages Act*, *Redundancy*, *Breach of Contract*, and, following the current legislative changes, *Holiday Pay*.

- Evidence from the Survey of Employment Tribunal Applications (SETA) shows that costs vary according to a number of factors, but are mainly affected by the stage reached in the dispute resolution process²⁰ and the jurisdiction(s) under which the claim is registered;
- Some data are available from the PricewaterhouseCoopers/BRE Administrative Burdens Measurement Exercise database. Both the aggregate information obligation (IO) burdens and their underlying unit costs have been used where appropriate²¹;
- Although the measures have taken effect – and the benefits are realised - from April 2009, some involve initial set-up costs during the 2008-09 financial year;
- Finally, it should be noted that only a relatively small proportion of employment disputes end up in the employment tribunal system. Many are settled or may be withdrawn along the way. The 2004 IA on the statutory dispute resolution procedures estimated, on the basis of the Legal Services Research Centre (LSRC) Periodic Survey, that there may be between 700,000 and 900,000 employment-related justiciable²² events each year.

35. The model-derived cost-benefit estimates presented here are based on the following assumptions (again these are discussed in greater detail in the annex):

- The potential number of disputes entering the dispute resolution system is initially set at 72,851²³
- Following removal of the 3-step procedure those claims that would otherwise have been rejected by the Employment Tribunal are now assumed to flow into the system²⁴. This results in a slight increase in the number of claims overall.
- We assume that half of these potential claims flow through the new Acas advice service where between 1 per cent and 7 per cent of claims, depending on track, are successfully resolved.²⁵;

Standard period cases relate predominantly to *Unfair Dismissal*, while open track cases mainly involve *Discrimination* jurisdictions.

²⁰ Before reaching an employment tribunal hearing, claims may be withdrawn, settled privately or a settlement reached using Acas conciliation.

²¹ It should be noted that the PwC admin burdens exercise was based on data for 2004/05. Furthermore the PwC data make no distinction between single and multiple claims and hence does not account for variations in unit costs. We have therefore attempted to produce a measure of single-equivalent claims, which inevitably leads to problems of comparability.

²² A 'justiciable event' is defined by Genn, *Paths to Justice*, 1998 as a matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being 'legal' and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system.

²³ This is based on provisional data from the Tribunals Service and is comprised of 63,250 single claims and 9,601 small multiple claims.

²⁴ In 2007-08 there were around 4,400 initially rejected claims that were not re-submitted or accepted. Most – 80 per cent, or around 3,500 - of these rejected claims are singles, but the full effect of this is not seen in year 1 as some claims will have been lodged before 6 April 2009 and therefore will continue to be treated under the old system.

²⁵ In the partial impact assessment this was estimated at 5%. Subsequent analysis of the effectiveness of the current Acas helpline service and consultancy on the design of the expanded service indicate that the effectiveness of the service is likely to be greater than this.

- Of the remainder, as with the current system, around 10 per cent are dealt with by means of the fast-track process.
- A further 35-50 per cent depending on track are referred to the expanded Acas pre-claim conciliation service, with half of these being successfully conciliated. The majority of those that are not resolved re-enter the main employment tribunal system²⁶;
- Of all the cases that enter the employment tribunal system proper, conciliation is attempted in all cases and between 56 per cent and 84 per cent of the time, depending on track, the case is resolved.

36. Unit costs for employer staff time involved in all stages of the dispute resolution process have been estimated at 2009 prices²⁷. We have further assumed external legal costs at £250/hour, though only in cases where employers use representation in the form of solicitors at different stages in the process²⁸.

37. These unit cost data and other assumptions have been based on the available data as well on discussions with key stakeholders such as the Tribunals Service and Acas. Inevitably changes to the system involve a degree of uncertainty and more evidence and data have become available since the last impact assessment²⁹ to allow the model to be updated accordingly³⁰.

38. What is also taken into account is the effect of the economic downturn on the number of potential claims. This has two main effects.

39. First, there is evidence that as the labour market is adversely affected by the downturn there is a consequent rise in the number of ET claims. So far this is mainly manifested in jurisdictions relating to unfair dismissal and redundancy. It is difficult to predict the scale and nature of further effects on claims and for this reason we carry out scenario analysis to allow for this. We therefore allow for an increase in standard track claims on 2008-09 levels of 20 per cent. We further assume that this increase in claims lasts for two years, that is for the financial years 2009-10 and 2010-11.

40. Second, in terms of operational resource the rise in claims means that the planned resource shift towards PCC within Acas is delayed as resource effort is focused on existing ET1 conciliation. It is anticipated that the full PCC resource potential will be realised by the end of the current financial year 2009-10 but until then the model assumes only half of the original PCC

²⁶ The Acas research into the pre-claim conciliation pilots found that only around two-thirds of cases referred to PCC but not resolved actually go on to submit a full ET claim

²⁷ These are wage data taken from the Annual Survey of Hours and Earnings (ASHE) 2008, uprated to 2009 prices and scaled up by a factor of 1.21 to allow for non-wage labour costs. Specifically these relate to wages for office managers (SOC code 1152), lawyers (SOC 2411) and personnel/HR staff (SOC 1135).

²⁸ See chapters 5 and 8 and report annexes of SETA 2008 (forthcoming) for further details

²⁹ Notably from the Pre-claim Conciliation pilot run by Acas and the follow-up evaluation work – <http://www.acas.gov.uk/CHttpHandler.ashx?id=1079&p=0>.

³⁰ Specifically Acas commissioned an evaluation of the Pre-Claim Conciliation pilot and a further Survey of Employment Tribunal Applications (SETA) was carried out in 2008.

resource allocation during the first year. Inevitably this reduces the effectiveness of the policy changes initially and therefore has a consequent effect on savings made by employers, employees and the Exchequer.

Costs

41. The only identified increase in net costs following the changes to the dispute resolution system is for the Exchequer.

Exchequer Costs

One-off costs

42. One-off implementation costs were incurred by the Government in 2008/09 and amounted to £5.4 million. This is mostly accounted for (£4.6 million) by the set-up costs of the advice service, which includes technical and training costs, additional staff costs, consultancy support and regional piloting costs³¹. In addition to this there are costs of £0.8m for piloting the additional pre-claim Acas conciliation services, in order to confirm how best to target disputes that are likely to benefit from these services.

Recurring costs

43. Ongoing Exchequer costs come on stream from 2009/10 onwards and are estimated in the first year at £9.4 million and £11.5 million from 2010-11.

44. These costs are mainly due to an extra £6m in 2009/10 and £7.9m in 2010/11 of funding for pre-claim Acas conciliation in cases that are considered most likely to benefit from it.

45. The new advice service is estimated to have running costs of £3.4m in 2009/10 rising to £3.6m from 2010/11. This investment is over and above the £7.5m that is currently spent on the existing Acas helpline.

Benefits

46. As a result of these policy and service changes, benefits are estimated to accrue to employers, employees and the Exchequer and are detailed below. In each case benefits are realised from 2009/10 onwards following implementation of the system changes.

47. Because the estimated benefits will be affected by the anticipated increase in claims resulting from the downturn in the first two years, the inclusion of previously rejected claims and the resource available for PCC, the overall benefits are presented separately by year below and are then summarised at the end of this section. Benefits tables set out both the anticipated effect on volumes of claims, PCC referrals and reductions in the number of Employment Tribunal hearings as well as the financial savings estimated to accrue to the Exchequer, employers and individuals.

³¹ BERR New Services Programme Advice Service Description, Detica, October 2007

48. Reductions in ET hearings and savings to the Exchequer, employers and individuals are calculated as marginal effects; that is, the difference between before and after the dispute resolution system changes were made.

49. Furthermore, as Acas is funded to provide up to 20,000 PCC cases a year and as this resource is limited to 10,000 cases in the first year, further adjustments are made to the model to reflect this.

Main sources of Benefit

50. The changes made to the dispute resolution system that are expected to have the largest impact are the helpline and the introduction of pre-claim conciliation. The savings estimates produced in this IA are based on these two key changes.

Employer savings from reduction in administrative burdens

51. Employers will benefit from a reduction in administrative burdens. This consists of two broad components.

52. First of all, by repealing the three-step procedure employers will no longer be subject to the 11 information obligations relating to the procedures³². Together the saving from this (after business as usual costs) will amount to £114.8 million. We would expect employers to continue to follow the principles which the procedures sought to encapsulate – in particular to communicate effectively with employees about disciplinary issues, and to comply with the requirements of the law on unfair dismissal – and the revised Acas statutory Code of Practice will continue to promote those principles and the ability of tribunals to adjust awards for unreasonable failure to comply with the Code will incentivise compliance. The administrative burden saving to employers derives from the fact that they will no longer need to comply with the complex and sometimes over-burdensome requirements which arose from putting the principles into regulatory form.

53. Secondly, changes to the dispute resolution process will mean that those disputes that are resolved at either the helpline stage or through pre-claim conciliation will not require either party to complete tribunal claim and response forms (known respectively as the ET1 and ET3). The PwC administrative burdens exercise estimated that each claim would cost employers £2,000 on average to complete their ET3 form, with much of this accounted for by the use of external services such as legal advice. In the tables below this is denoted as savings from employers having to complete fewer ET3s.

³² These are detailed in Annex B

Benefits in Year 1

54. In year 1 PCC referrals are capped at 10,000. With an extra 2,648 previously rejected claims now flowing into the system plus an estimated additional 6,700 standard track single claims arising during the downturn, total potential volumes are estimated at 82,202. This compares with an estimated 79,553 ET claims that would have occurred before the changes to the system (Table 1a below).

55. On this basis we estimate that the number of ET hearings would fall by 1,311.

Table 1a. Year 1 – Effect on Volumes

| | ET volumes (After) | ET volumes (Before) | PCC Referrals | Reduction in ET hearings |
|---|-----------------------|------------------------|---------------|-----------------------------|
| Baseline case | 72,851 | 72,851 | 10,000 | 2,482 |
| plus inclusion of rejected claims | 75,499 | 72,851 | 10,000 | 1,265 |
| ..plus more claims due to downturn | 82,202 | 79,553 | 10,000 | 1,311 |

Source: BIS estimates

56. Total savings in year 1 are estimated at £161m. Most of this - £150.6m – is estimated to accrue to business, with £133.2m in admin burden reductions and £17.4m in policy cost savings. (Table 1b below. The total admin burden reduction is the sum of the last two columns).

57. Estimated savings for the Exchequer are £2.8m.

58. Estimated savings for individuals are £7.7m.

Table 1b. Year 1 – Estimated Savings

| | Total Savings | Exchequer | Individuals | Employers | | |
|---|------------------|--------------|--------------|---------------|----------------|---------------|
| | | | | Direct | 3-steps | Fewer ET3s |
| Baseline case | £178.9m | £4.0m | £14.7m | £27.5m | £114.8m | £17.9m |
| plus inclusion of rejected claims | £159.9m | £2.7m | £7.4m | £17.0m | £114.8m | £18.0m |
| ..plus more claims due to downturn | £161.0m | £2.8m | £7.7m | £17.4m | £114.8m | £18.4m |

Source: BIS estimates

Benefits in Year 2

59. In year 2 PCC referrals are fixed at a maximum of 20,000. With an extra 3,531 previously rejected claims now flowing into the system plus an extra 6,700 standard track single claims arising during the downturn, total

potential volumes are estimated at 83,084. This compares with an estimated 79,553 ET claims that would have occurred before the changes (Table 2a below).

60. On this basis we estimate that the number of ET hearings would fall by 3,177.

Table 2a. Year 2 – Effect on Volumes

| | ET volumes (After) | ET volumes (Before) | PCC Referrals | Reduction in ET hearings |
|------------------------------------|-----------------------|------------------------|---------------|-----------------------------|
| Baseline case | 72,851 | 72,851 | 20,000 | 4,096 |
| plus inclusion of rejected claims | 76,382 | 72,851 | 20,000 | 3,132 |
| ..plus more claims due to downturn | 83,084 | 79,553 | 20,000 | 3,177 |

Source: BIS estimates

61. Total savings in year 2 are estimated at £199m. Most of this - £177.7m – is estimated to accrue to business, with £146.7m in admin burden reductions and £31m in policy cost savings. (Table 2b below)

62. Estimated savings for the Exchequer are £5.7m.

63. Estimated savings for individuals are £15.6m.

Table 2b. Year 2 – Estimated Savings

| | Total Savings | <i>Exchequer</i> | <i>Individuals</i> | <i>Employers</i> | | |
|------------------------------------|------------------|------------------|--------------------|------------------|----------------|-------------------|
| | | | | <i>Direct</i> | <i>3-steps</i> | <i>Fewer ET3s</i> |
| Baseline case | £223.2m | £7.3m | £25.1m | £44.6m | £114.8m | £31.3m |
| plus inclusion of rejected claims | £197.8m | £5.6m | £15.4m | £30.6m | £114.8m | £31.5m |
| ..plus more claims due to downturn | £199.0m | £5.7m | £15.6m | £31.0m | £114.8m | £31.9m |

Source: BIS estimates

Benefits for Year 3 onwards

64. From year 3 onwards PCC referrals remain at 20,000 per year as do the extra 3,531 previously rejected claims now flowing into the system. Assuming economic recovery and a consequent reduction in unfair dismissal claims total potential volumes are now estimated at 76,382. This compares with an estimated 72,851 ET claims that would have occurred before the changes (Table 3a below).

65. On this basis we estimate that the number of ET hearings would fall by 3,132.

Table 3a. Year 3 – Effect on Volumes

| | ET volumes (After) | ET volumes (Before) | PCC Referrals | Reduction in ET hearings |
|-----------------------------------|-----------------------|------------------------|---------------|-----------------------------|
| Baseline case | 72,851 | 72,851 | 20,000 | 4,096 |
| plus inclusion of rejected claims | 76,382 | 72,851 | 20,000 | 3,132 |

Source: BIS estimates

66. Total savings in year 3 are estimated at £197.8m. Most of this - £176.9m – is estimated to accrue to business, with £146.3m in admin burden reductions and £30.6m in policy cost savings. (Table 3b below)

67. Estimated savings for the Exchequer are £5.6m.

68. Estimated savings for individuals are £15.4m.

Table 3b. Year 3 – Estimated Savings

| | Total Savings | Exchequer | Individuals | Employers | | |
|-----------------------------------|------------------|-----------|-------------|-----------|---------|------------|
| | | | | Direct | 3-steps | Fewer ET3s |
| Baseline case | £223.2m | £7.3m | £25.1m | £44.6m | £114.8m | £31.3m |
| plus inclusion of rejected claims | £197.8m | £5.6m | £15.4m | £30.6m | £114.8m | £31.5m |

Source: BIS estimates

69. The detailed costs and benefits are summarised in Table 4 below.

Table 4. Detailed costs and benefits (£m).

| | 2008/09 | 2009/10 | 2010/11 | 2011/12+ |
|--------------------------------------|---------|---------|---------|----------|
| COSTS | | | | |
| Exchequer – total one-off costs | 5.4 | 0.0 | 0.0 | 0.0 |
| - helpline set-up | 4.6 | 0.0 | 0.0 | 0.0 |
| - pre-claim conciliation | 0.8 | 0.0 | 0.0 | 0.0 |
| Exchequer – total recurring costs | 0.0 | 9.4 | 11.5 | 11.5 |
| - helpline | 0.0 | 3.4 | 3.6 | 3.6 |
| - pre-claim conciliation | 0.0 | 6 | 7.9 | 7.9 |
| BENEFITS | | | | |
| Exchequer – total recurring | 0.0 | 2.8 | 5.7 | 5.6 |
| Employers – total recurring benefits | 0.0 | 150.6 | 177.7 | 176.9 |
| Employees – total recurring benefits | 0.0 | 7.7 | 15.6 | 15.4 |

Source: BIS estimates

F: Risks

70. It is inevitable that the costs and benefit estimates presented above are liable to a degree of uncertainty, especially with changes to the dispute resolution system and the introduction of new measures. There is added uncertainty over the estimates in the short-term given the economic downturn and the consequent rise in employment tribunal claims. Sensitivity analysis has been used in our modelling in an attempt to account for this³³.

71. It should be noted that there is a ceiling on the additional resources available for pre-claim conciliation services, and Acas will be given the statutory ability to prioritise its use of these resources as it sees fit. This approach was broadly supported in consultation. Furthermore, the advice service is being designed to be capable of dealing with a significant expansion of demand over and above the current level. We used expert consultancy to assess likely demand and to identify the most effective structure for the future service. As a result, we piloted both the new pre-claim conciliation services and various aspects of the expanded advice service during 2008 to ensure they were fit for purpose and test our demand assumptions.

³³ See paragraphs 38-40 above

G: Enforcement

72. If a dispute is not resolved in the workplace, an employee may make a claim to an employment tribunal as with the existing dispute resolution system. Employment tribunals are specialist judicial bodies that are part of the Tribunals Service.

H: Recommendation and summary table of costs and benefits

73. Overall costs and benefits by main group affected are given in Table 5 below.

74. Ongoing benefits to employers include an estimated £133.2 million in 2009-10, £146.7 million in 2010-11 and £146.3 million in 2011/12 as a result of reductions in administrative burdens.

Table 5. Summary of costs and benefits (£m).

| | Costs | | | | Benefits | | | |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|--------------|--------------|--------------|
| | 2008/09 | 2009/10 | 2010/11 | 2011/12+ | 2008/09 | 2009/10 | 2010/11 | 2011/12+ |
| Exchequer | 5.4 | 9.6 | 11.5 | 11.5 | None | 2.8 | 5.7 | 5.6 |
| Employers | None | None | None | None | None | 150.6 | 177.7 | 176.9 |
| <i>of which Admin burdens</i> | <i>None</i> | <i>None</i> | <i>None</i> | <i>None</i> | <i>None</i> | <i>133.2</i> | <i>146.7</i> | <i>146.3</i> |
| Employees | None | None | None | None | None | 7.7 | 15.6 | 15.4 |
| Total | 5.4 | 9.6 | 11.5 | 11.5 | None | 161.0 | 199.0 | 197.8 |

Source: BIS estimates

I: Implementation

75. The changes to the dispute resolution system came into effect in April 2009 following the introduction of the Employment Act 2008.

J: Monitoring and evaluation

76. The planned changes to the Acas advice service and the additional pre-claim conciliation services were tested through regional piloting before implementation. BIS has been developing detailed benefits realisation plans for the new services, both during the set-up phase and since the implementation. However, as the actual number of ET cases heard under the new regime would be very few in the first six months, the review will be rather limited to analysis of data around New Services (PCC and Helpline) as well as gathering the views of stakeholders. The overall volume of tribunal claims will also be an indicator of the effectiveness of the changes, although this is of course influenced by external factors, including the economic climate and the introduction of new employment rights. Therefore, success may not look like

just the simple reduction in the ET numbers. Subsequently, the most recent Survey of Employment Tribunal Applications (SETA) was conducted in late 2008 and included ET cases that were closed between February 2007 and January 2008. The SETA 2008 provides a benchmark against which to measure the impact of any changes in legislation and regulations arising from the Government's response to the Gibbons Review.

77. In all, to monitor progress made since the implementation of the changes in the Dispute Resolution Programme, BIS has been working on developing an evaluation framework that would gather all the relevant evidence in one place. The evaluation will include:

- Baseline data – where available – that reports on information at the outset of the policy change and is important in understanding how much progress has been made following the change in policy.
- This impact assessment - to reflect upon measures of change and costs and benefits.
- Data from process and formative evaluations conducted by service providers (Acas, TS, and others where available). Management information system, generating evidence, for example on volumes and outputs.
- Utilisation of data based upon multiple research methods: quantitative evidence and surveys; qualitative evidence and case studies on customer experiences and behaviours (we take customers to include those groups, such as employers, managers, employees and former employees, representatives, service providers).

Specific Impact Tests: Checklist

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | No | Yes |
| Small Firms Impact Test | No | Yes |
| Legal Aid | No | No |
| Sustainable Development | No | No |
| Carbon Assessment | No | No |
| Other Environment | No | No |
| Health Impact Assessment | No | No |
| Race Equality | No | Yes |
| Disability Equality | No | Yes |
| Gender Equality | No | Yes |
| Human Rights | No | No |
| Rural Proofing | No | No |

Annexes

Annex A: Description of Dispute Resolution Model

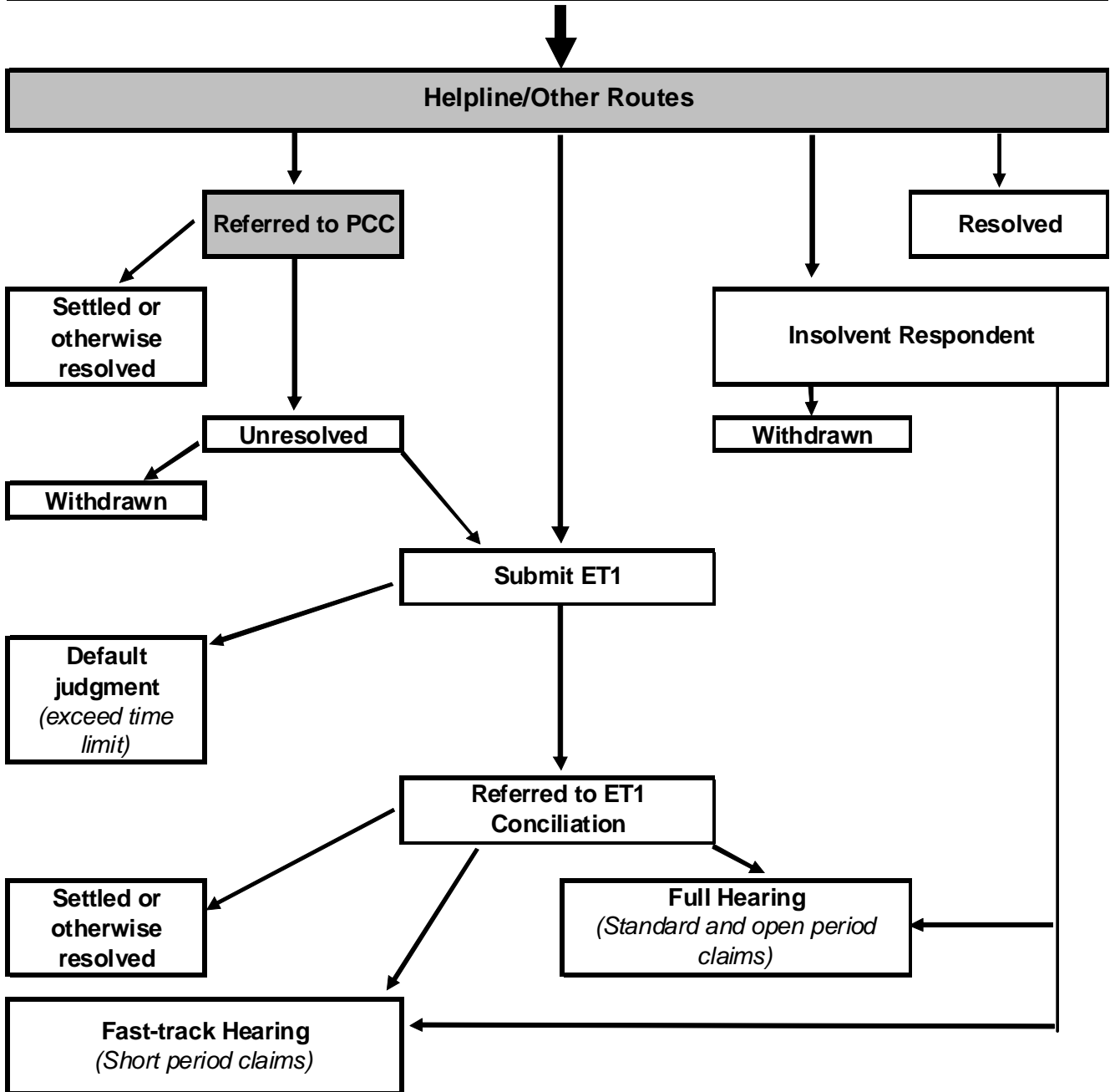
Flows model following changes to Dispute Resolution System

The dispute resolution system in Great Britain is complex and the model we have designed in an attempt to capture the effect of the changes introduced is inevitably a broad and simplified representation of this. The approach we have adopted is depicted in the flow diagram below.

The aim has been to focus on the major factors impacting on the costs and benefits arising from the changes to the system. The model focuses on two states; firstly before and then after the changes to the system and concentrates on the major changes taking place, namely the introduction of the enhanced Acas helpline and the use of pre-claim conciliation.

It is based on an input-output approach where the starting point is an estimate of potential demand in the system (baseline flows in Table A1) and then estimate how these potential claims might flow through the system (Flows parameters – Tables A2a and A2b).

Disputes/Potential Employment Tribunal Claims



Model Assumptions

1. Baseline flows into the system by track

Using employment tribunal data for 2008-09 we estimate the total number of ET claims that could potentially be affected by the changes made to the dispute resolution system. This amounts to all single claims as well as small multiples (involving three or fewer claimants).

Claims are then categorised by track into short, standard and open period cases.

An estimate of how total claims are distributed across these broad tracks is given in table A1 below. This is based on Acas data.

Table A1. Baseline flows into the system by track

| | Total claims | % Distribution by track | | |
|---|---------------|-------------------------|----------|------|
| | | Short | Standard | Open |
| Total ET claims 2008-09 | 151,028 | | | |
| Total single claims | 63,250 | 26% | 46% | 28% |
| Total qualifying multiple claims | 9,601 | | | |
| Total claims affected by DRR changes | 72,851 | | | |

Source: Tribunal Service and Acas

2. Flows Parameters

Tables A2a and A2b below set out the assumptions regarding flows of potential claims through the dispute resolution system according to both the baseline case and following the changes. Essentially the difference is accounted for by a) no resolution at the helpline stage and b) no referrals to pre-claim conciliation in the baseline model.

It should be noted that the percentages shown relate to flows for each stage and therefore do not sum to 100 per cent across all stages. Further explanation of the flows is given after the tables.

Table A2a. Flows parameters – Baseline Case

| | % flows by track | | |
|---|------------------|----------|------|
| | Short | Standard | Open |
| Proportion of claims going to helpline | 100% | 100% | 100% |
| Proportion of claims progressing through helpline | 100% | 100% | 100% |
| Proportion of insolvent respondents | 10% | 4% | 0.2% |
| ..of which subsequently withdrawn | 2% | 1% | 0.1% |
| Proportion of remaining claims referred to PCC | 0% | 0% | 0% |
| ..of which settled or otherwise resolved | 0% | 0% | 0% |
| Proportion of ET1 conciliations settled/withdrawn | 56% | 78% | 84% |
| Proportion of claims to fast-track hearing | 100% | 0% | 0% |
| Proportion of Default Judgements | 9% | 2% | 1% |

Source: BIS/Acas/ETS estimates;

| | % flows by track | | |
|---|------------------|----------|------|
| | Short | Standard | Open |
| Proportion of claims going to helpline | 100% | 100% | 100% |
| Proportion of claims progressing beyond helpline | 93% | 96% | 99% |
| Proportion of insolvent respondents | 10% | 4% | 0.2% |
| ..of which subsequently withdrawn | 2% | 1% | 0.1% |
| Proportion of remaining claims referred to PCC | 50% | 45% | 35% |
| ..of which settled or otherwise resolved | 26% | 24% | 16% |
| Proportion of ET1 conciliations settled/withdrawn | 56% | 78% | 84% |
| Proportion of claims to fast-track hearing | 100% | 0% | 0% |
| Proportion of Default Judgements | 9% | 2% | 1% |

Source: BIS/Acas/ETS estimates;

Proportion of claims going to helpline

We assume half of all potential ET claims are routed through the Acas helpline³⁴. At this point helpline advisers may be able to resolve the issue there and then. Administrative information from Acas during the set-up phase suggests that between 1 per cent and 7 per cent of claims can be resolved depending on the track.

Proportion of insolvent respondents

Next, the model allows for those claims where the employer has become insolvent. These claims are unlikely to go to conciliation and would therefore progress directly to tribunal. However, around 20 per cent of such cases are withdrawn before reaching tribunal.

Proportion of remaining claims referred to PCC

Following the changes to the system a proportion of claims can be referred for pre-claim conciliation provided by Acas. Acas has a resourced capacity for the number of PCC referrals in a year and this is set at 20,000. In the first year, for reasons outlined below, this ceiling is set at 10,000 referrals. The percentages in the table above are the referral rates experienced during the pilot phase of PCC and so are liable to change in time. The PCC pilot also gave an indication of the proportion of PCC referrals that resulted in any form of settlement.

The increased pressure on Acas resources in respect of the provision of statutory post-claim conciliation in a time of sharply rising case volumes, coupled with the time required to train the additional conciliators recruited to

³⁴ Other routes into the system include the Citizen's Advice Bureaux and solicitors

enable Acas to deliver PCC, made it necessary to constrain PCC volumes to 10,000 referrals in year 1. In order nevertheless to maximise the impact of the service in this limited number of cases, Acas initially prioritised the circumstances in which the service was offered according to the type of claim involved. Until late October 2009, therefore, with a few exceptions PCC was only made available for potential claims that appeared to fall within the open and standard track jurisdictions, where the savings to parties and the Exchequer are likely to be greatest if a claim can be avoided. One consequence of this is that the distribution of referrals by track up to the end of October (3% short; 81% standard; 16% open) differs from the overall claims distribution in table A1. It is presently too soon after the extension of the service to all jurisdictions to be confident of what the longer term distribution of referrals by track will be, although the latest data for November 2009 display a pattern that is consistent with the projections elsewhere in this IA.

Furthermore, the evaluation of PCC highlighted the fact that of those cases that weren't settled at PCC stage - and would therefore be expected to re-enter the ET claim process – only around two-thirds would submit an ET1 claim.

It is this stage which accounts for most of the marginal change in costs and benefits as a proportion of disputes are settled much earlier in the process, thus avoiding costs that would otherwise have been incurred for all parties had the claim progressed further through the system.

Proportion of ET1 conciliations settled/withdrawn

All other claims flowing through the system would result in ET1 claims and would be offered so-called ET1 conciliation by Acas. The percentages given in the table above indicate the 'success rate' with which these conciliations result in either settlement or withdrawal³⁵.

Proportion of claims to fast-track hearing

This applies to all short track cases only. All other remaining cases go to a full ET hearing.

Proportion of claims resulting in default judgments

If the respondent (employer) does not provide a response to the claim within a set time limit or fails to supply the necessary information, it will not be accepted. In these circumstances, a default judgment may be issued. A default judgment allows an Employment Judge to give a decision about the claim without the claimant having to go to a hearing.

3. Unit costs

1. Median time spent on case

SETA 2008 provides estimates of the total amount spent on claims by both individuals and employers, in the latter case distinguishing between senior staff (directors) and other staff. This data is given by main jurisdiction and

³⁵ This is based on net conciliated cases cleared – Acas annual report 2008/09, p.42

allows us to estimate time resource by broad track. Furthermore, as is set out in the SETA report³⁶, median measures of time allow us to look at a typical case within each track.

The aim of the model used in this IA has been to use the median time as the maximum amount of time input per case per track. Assumptions have then been made regarding the distribution of this time across different stages of the flows model.

Table A3. Median time spent on case

| | Median days spent on case by track | | |
|------------------------|------------------------------------|----------|------|
| | Short | Standard | Open |
| Individuals | 3 | 8 | 14 |
| Employers: Total | 3 | 5 | 8 |
| ..of which Directors | 2 | 4 | 5 |
| ..of which other staff | 1 | 1 | 3 |

Source: BIS estimates based on SETA 2008

2. Average paid costs for advice and representation post ET1

In addition to time input, it is recognised that individuals and employers will incur other costs, firstly for paid advice and representation (Table A4 below) and then for travel, communication and loss of earnings (table A5). Again these have been taken from SETA 2008 and have been weighted to represent an average across all respondents (whether they had incurred any of these costs or not). These amounts have then been uprated to 2009 prices.

Table A4. Average paid costs for advice and representation post ET1

| | Average paid costs (£) | | |
|-------------|------------------------|----------|--------|
| | Short | Standard | Open |
| Individuals | £658 | £643 | £1,041 |
| Employers | £953 | £3,125 | £4,210 |

Source: BIS estimates based on SETA 2008 uprated to 2009 prices

³⁶ See chapter 10 of SETA 2008 forthcoming

3. Average costs incurred for travel, communication and loss of earnings

Table A5. Average costs incurred for travel, communication and loss of earnings

| | Average paid costs (£) | | |
|-------------|------------------------|----------|--------|
| | Short | Standard | Open |
| Individuals | £649 | £1,166 | £1,120 |

Source: BIS estimates based on SETA 2008 updated to 2009 prices

4. Median time spent on PCC cases

The Acas evaluation of the PCC pilot produced estimates of the median time spent on PCC cases (Table A6).

Table A6. Median time spent on PCC

| | Median days spent on PCC by track | | |
|-------------|-----------------------------------|----------|------|
| | Short | Standard | Open |
| Individuals | 0.6 | 1 | 1.5 |
| Employers | 0.6 | 1.5 | 3.0 |

Source: Acas – Evaluation of Acas Pre-Claim Conciliation Pilot

5. Wage and other time costs

Using ASHE 2008³⁷ and uprating to 2009 prices hourly wage data has been taken as the unit time cost for employees (£17.47); managers (£21.95); company lawyers (£36.17) and personnel managers (£32.42). In all cases these costs include an additional 21 per cent mark-up for non-wage labour costs.

6. Acas and ETS costs

The model also uses estimates of unit costs from both Acas and ETS and these are reported in tables A7 and A8 below. However it should be noted that these are not formulated on the same basis and so are not directly comparable between Acas and ETS.

³⁷ The Annual Survey on Hours and Earnings, Office for National Statistics

(i) Acas unit costs

Estimates of the costs to Acas for the provision of PCC and ET1 conciliation are given in Table A7 below. It should be noted that there is greater uncertainty over the estimates for PCC as these are based on initial feedback from the PCC pilot.

Table A7. Acas unit costs for PCC and ET1 Conciliation

| £ per conciliation | Short | Standard | Open |
|--------------------|-------|----------|------|
| PCC | £187 | £250 | £250 |
| ET1 Conciliation | £117 | £186 | £230 |

Source: Acas estimates

(ii) ETS unit costs

Table A8. ETS unit staff costs for hearings

| | Cost |
|--------------------------|---------|
| Judicial time (per hour) | £77.30 |
| Admin time (per hour) | £16.40 |
| Lay members (per day) | £171.00 |

Source: Tribunal Service estimates (judicial and admin time uprated by 21 per cent for non-wage labour costs)

ANNEX B: PwC Admin Burdens

The table below sets out the administrative burdens information obligations relating to the 3-step procedure under the Employment Act (Dispute Resolution) Regulations 2004.

Table B1. PwC Information Obligations relating to the 3-step procedure

| ID | IO Description | Cost Reduction – Post Business as Usual |
|-------|---|---|
| 39748 | Complying with certain disciplinary, dismissal and grievance procedures set out in the Employment Act 2002. Such as: - set out in writing the employee's alleged conduct or characteristics, which lead you to contemplate dismissing or taking disciplinary action against the employee. - send the statement or a copy of it to the employee and invite him/her to a meeting - informing the employee after the meeting of your decision and notify him/her of the right to appeal - against the decision - or, in the case of grievance, you, the employer must invite the employee to attend a meeting to discuss the grievance | £33.7m |
| 17070 | inviting an employee to a meeting organised in accordance with the applicable statutory procedure regarding dismissal and disciplinary and grievance procedures at an alternative time proposed by the employee. | £25.7m |
| 2537 | Ensuring that the correct conditions apply in order for a grievance procedure to be carried out i.e. essentially the employee must have ceased to be employed, have submitted his grievance, and it must not be reasonably practicable for the employer to follow the remainder of the process. -Providing a written decision on the grievance. | £21.0m |
| 29559 | Notifying the employee of the decision reached in response to the grievance and state that he has a right to appeal against the decision if unsatisfied. | £8.0m |
| 29590 | Putting a response in writing to an employee's grievance and sending the response or a copy of it to the employee. | £8.0m |
| 29544 | Inviting an employee to attend a meeting after they have raised a grievance under the standard grievance procedure. | £7.0m |
| 2525 | ensuring that when an employee raises a grievance, the employer follows the grievance procedures set out in the Employment Act 2002 in the appropriate circumstances. -obtaining employee's agreement in writing to the grievance. | £5.1m |
| 29628 | Informing the employee of the final decision following an appeal meeting under the standard grievance procedure. | £2.2m |
| 29435 | Informing the employee of final decision after an appeal meeting. | £2.1m |
| 29617 | Inviting an employee to attend a further meeting after they have appealed the decision under the standard grievance procedure. | £1.1m |
| 29477 | Writing to an employee when "the modified disciplinary and dismissal" procedure is operated and include information (on): - the employee's alleged misconduct which has led to the dismissal, - what the basis was for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and - the employee's right to appeal against dismissal | £0.8m |
| | Total – Removal of 3 Steps | £114.8m |

Source: Price Waterhouse Coopers Administrative Burdens exercise 2005

ANNEX C: SPECIFIC IMPACT TESTS

Competition Assessment

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table C1 below). The proposed legislation will apply to all firms and is unlikely to affect the competitiveness of any particular sector.

The proposed changes to the dispute resolution system are designed to reduce the cost of dealing with disputes in the workplace for both employers and employees. We believe it will also improve the working of the labour market.

Employment disputes may lead to job separations for reasons other than professional or career development. By improving dispute resolution within the workplace, these measures may enhance the match between skills required at work and the skills workers have.

Table C1. Competition assessment.

| Question: <i>In any affected market, would the proposal..</i> | Answer |
|---|--------|
| ..directly limit the number or range of suppliers? | No |
| ..indirectly limit the number or range of suppliers? | No |
| ..limit the ability of suppliers to compete? | No |
| ..reduce suppliers' incentives to compete vigorously? | No |

Source: BIS

Small Firms Impact Test

The changes proposed under the dispute resolution system would apply to firms of all sizes. However, as shown in table C2 below, smaller firms tend to be disproportionately represented in employment tribunal claims. For instance, according to the Survey of Employment Tribunal Applications (SETA) 2008, 35% of all employees in Great Britain worked in smaller workplaces (fewer than 25 employees), but the survey found that 45% of all employment tribunal applications occurred in workplaces of this size (it should be noted that the survey examined single claims only). Therefore it is likely that the benefits to business identified would have a disproportionately positive effect on smaller firms.

Table C2. Dispute resolution – employment tribunal applications by size of workplace

| Workplace size | Claimants | Share of total GB employees |
|------------------|-----------|-----------------------------|
| 1-24 employees | 44% | 34% |
| 25-49 employees | 13% | 14% |
| 50-249 employees | 24% | 23% |
| 250+ employees | 19% | 29% |

Source: Tables 2.4 and 2.5, Findings from the Survey of Employment Tribunal Applications 2008 (forthcoming), BIS

Annex D: Equality Impact Assessment

As part of scoping work ahead of the commencement of Michael Gibbons' Review, officials recognised the need to understand fully the views of stakeholders regarding the existing Dispute Resolution arrangements. They were particularly concerned to hear the views of the various equality bodies in relation to their perception of how the 3-step procedure affected the groups they represented, i.e. whether the arrangements deterred claimants generally, or more particularly certain groups, and how they considered the system might be improved.

During his Review, Michael Gibbons met with representatives from the EOC, DRC and CRE to hear at first hand their concerns, which centred around the confusion and stress caused by the existing system, meaning that those with claims either did not start or did not complete the process, access to advice and time limits for bringing discrimination claims.

We have looked at the proposed changes to the dispute resolution system in light of the comments made by the bodies referred to and in light of our intention that the changes should apply equally to all groups. We believe that the changes, which are designed to offer users advice on more proportionate ways of resolving their disputes and enable disputes to be resolved earlier, thereby resulting in less time and expense, respond to the points raised and may be expected to have a positive impact on the equality strands over time. We do not consider they will have an adverse impact.

The proposed changes to the dispute resolution system are intended to apply equally to all groups. The changes are designed to offer users advice on more proportionate ways of resolving their disputes and enable disputes to be resolved earlier, thereby resulting in less time and expense.

In terms of equalities duties, the latest Survey of Employment Tribunal Applications (SETA) 2008, shows that overall those with disabilities are not disproportionately represented in employment tribunal cases, but that some ethnic groups may be (see Table D1) over-represented. The SETA data suggest that women are generally under-represented when compared with the share of total employees in Great Britain.

| % | ET applications (%) | GB employees (%) |
|---------------------------------------|---------------------|------------------|
| Women | 40% | 49% |
| <i>Ethnicity</i> | | |
| White | 86% | 91% |
| Black | 5% | 1% |
| Asian | 5% | 5% |
| Mixed | 2% | 2% |
| Other | 2% | 1% |
| <i>Disability</i> | | |
| Long-term illness/disability | 22% | 22% |
| Long-term limiting illness/disability | 15% | 10% |
| No long-term illness/disability | 78% | 77% |

Source: Tables 2.1 and 2.2, Findings from the Survey of Employment Tribunal Applications 2008 (forthcoming), BIS; NB: percentages may not add due to rounding

However differences do emerge when analysed by broad jurisdiction as set out in Table D2 below.

| % | Unfair dismissal | Breach of contract | Wages Act | Redundancy payments | Discrimination | Other |
|---------------------------------------|------------------|--------------------|-----------|---------------------|----------------|-------|
| Women | 35% | 39% | 28% | 28% | 54% | 48% |
| <i>Ethnicity</i> | | | | | | |
| White | 91% | 86% | 82% | 95% | 75% | 89% |
| Black | 4% | 4% | 5% | 2% | 8% | 3% |
| Asian | 3% | 4% | 5% | 2% | 11% | 3% |
| Mixed | 1% | 2% | 3% | 2% | 3% | 2% |
| Other | - | 2% | 2% | - | 3% | - |
| <i>Disability</i> | | | | | | |
| Long-term illness/disability | 20% | 17% | 10% | 8% | 45% | 15% |
| Long-term limiting illness/disability | 12% | 10% | 5% | 8% | 8% | 6% |
| No long-term illness/disability | 80% | 83% | 87% | 92% | 54% | 85% |

Source: Table 2.1, Findings from the Survey of Employment Tribunal Applications 2008 (forthcoming), BIS; NB: percentages may not add due to rounding

Furthermore, the most recent data from the Tribunals Service indicate that of the 172,944 employment tribunal jurisdictions disposed in 2008-09, almost a quarter (24 per cent) were discrimination and equal pay jurisdictions and around 12 per cent were accounted for by sex discrimination, race discrimination and disability discrimination (Table D3). Furthermore, in race and disability discrimination cases a relatively high proportion are resolved through Acas conciliation, which suggests that this form of resolution is

effective and that wider availability of pre-claim conciliation should benefit all the parties involved.

Table D3. Dispute resolution – employment tribunal cases by jurisdiction, 2008-09

| Nature of claim | Jurisdictions disposed | Withdrawn | Acas conciliated settlements | Struck out* | Successful at tribunal | Dismissed at Prelim Hearing | Unsuccessful at Hearing |
|-----------------------------------|------------------------|------------|------------------------------|-------------|------------------------|-----------------------------|-------------------------|
| All Jurisdictions | 172,944 | 33% | 32% | 7% | 13% | 2% | 8% |
| <i>Of which....</i> | | | | | | | |
| Sex discrimination | 10,804 | 42% | 34% | 13% | 3% | 2% | 6% |
| Race discrimination | 3,970 | 28% | 38% | 7% | 3% | 6% | 17% |
| Disability discrimination | 5,460 | 33% | 44% | 6% | 3% | 3% | 10% |
| Religious belief discrimination | 620 | 30% | 34% | 8% | 3% | 7% | 18% |
| Sexual orientation discrimination | 533 | 31% | 40% | 6% | 2% | 8% | 12% |
| Age discrimination | 2,472 | 32% | 40% | 10% | 2% | 5% | 10% |
| Equal pay | 20,148 | 81% | 10% | 8% | 0% | 0% | 0% |

* NB: Not at a hearing. Source: Tribunals Service, Annual Statistics, 2008-09;
http://www.employmenttribunals.gov.uk/Documents/Publications/ET_EAT_Stats_0809_FINAL.pdf

Monitoring and Evaluation

As stated in the main IA, BIS has been developing detailed benefits realisation plans for the new services provided by Acas, as well as an evaluation framework for the overall assessment of the policy changes on dispute resolution. The approach proposed, an ex post evaluation, involves assessing outputs, outcomes and impacts in order to understand the progress made since implementation of the new regime (the new dispute resolution programme). The evaluation will seek evidence on the key interventions in order to determine the outcome of the policy changes; and wider impacts. As the policy changes centre upon the following three key areas, the evaluation will look at the evidence in these areas to see if and how the new regime has improved the dispute resolution arrangements:

- Inside the workplace
- Beyond the workplace
- The Tribunal system

As the section above points out, the proposed changes to the dispute resolution system are intended to apply equally to all groups. The changes are designed to offer users advice on more proportionate ways of resolving their disputes and enable disputes to be resolved earlier, thereby resulting in less time and expense.

Monitoring the effects of the changes by the equalities strands will play an important aspect of the evaluation approach. The evaluation will ensure that sources identified to be used as the relevant measures, such as SETA and other periodic surveys, as well as the qualitative feedback/surveys, will include the information on all key strands. The Acas surveys that are conducted for

evaluation of their services will be providing important sources of information for this overall evaluation of the new dispute resolution regime. These surveys include the equalities strands as part of monitoring effectiveness/impact of their services on different groups. Overall, monitoring by the equalities strands will reveal how different groups compare under the new DR programme. It will therefore highlight any gaps/issues requiring additional attention for the groups considered to be 'disadvantaged' due to the policy changes.

