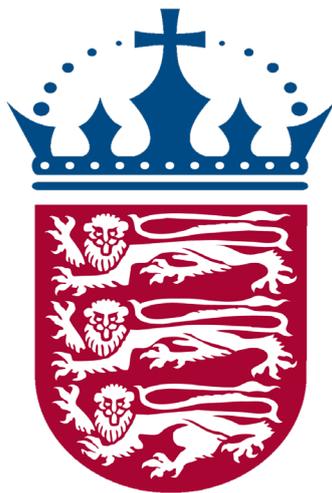


Jersey Employment and Discrimination Tribunal



Annual Report 2022

**This is the eighteenth Annual Report of the Employment and
Discrimination Tribunal and covers the period 1 January 2022 to 31 December
2022**

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Overview

The Employment and Discrimination EDT ('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 Capacity Tribunal; and
- the Charity Tribunal;

The Tribunal also maintains the Register of Trade Unions and Employers' Associations registered in Jersey

The Tribunal 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 Tribunal 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

There is no fee required to submit a claim to the EDT and there are no costs awarded to either party at the end of the matter.

Membership of the Employment and Discrimination

Tribunal

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

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.

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 EDT 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.

Appointments

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.

Remuneration of Members

All members are paid a day rate for sitting on hearings.

Chairman – £736.00

Deputy Chairman – £552.00

Lay Members – £97.00

The members of the EDT in 2022 were:

Chair

Dr Elena Moran (Advocate)

Deputy Chairs

Advocate Ian Jones

Mr Michael Salter (Barrister)

Mrs Hannah Westmacott (Solicitor)

Advocate Fraser Robertson

Advocate Cyril Whelan

Panel members appointed to hear work-related claims

Members with experience as representatives of employers

Marilyn Wetherall

Sue Cuming

Emma Harper

Simon Nash

Michael De La Haye

Roisin Pitman

Scott Hollywood

Claire Bowes

Members with experience as representatives of employees

Lorraine Bennett

Simon Cross

Clive Holloway

Zannah Le Moignan

Anne Southern

Jennifer Bridge

Patrycja Zakrzewska

Sue Pallot

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

Elizabeth Adams

Thomas Gales

Janet Brotherton

Mandlenkosi Mlambo

Melanie Cavey

Tamburi Muoni

Daria Sawicka

Chair's Foreword

There were 209 Claim Forms submitted to the EDT in 2022. The Claim Forms contained:

- 82 claims of discrimination;
- 80 claims of unfair dismissal;
- 80 claims for notice pay;
- 77 claims for holiday pay;
- 53 claims for unpaid wages;
- 52 claims relating to non-provision of payslips; and
- 31 claims relating to non-provision of an employment contract.

Of the 82 discrimination claims submitted, 72 were claims of workplace discrimination and 10 were non-work-related claims.

The most common protected characteristic giving rise to a discrimination claim was disability discrimination which accounted for around 55% of all discrimination claims. The second most common characteristic was race 27%. Several claimant's identified work-related stress and anxiety as giving rise to their disability. The low threshold for the statutory definition of disability means that some employers fail to identify a stress or anxiety issue as a disability and put in place appropriate adjustments.

The high level of unfair dismissal claims is linked to the number of discrimination claims as dismissals that are discriminatory are automatically unfair.

The number of notice pay and unpaid wages claims has been affected by a small number of employers ceasing to trade. In two cases, the employer failed to enter any form of recognised insolvency process meaning several employees with unpaid wages and holiday pay have been unable to claim Insolvency Benefit from the Social Security Department.

The high level of claims for notice pay is related to the high level of claims for unfair dismissal. An employee dismissed for gross misconduct or resigning and alleging constructive unfair dismissal will have an associated claim for notice pay.

Holiday pay and in particular bank holiday pay continue to be an issue with employers still failing to appreciate that employees who work on a bank holiday are entitled to double pay or a day off in lieu. Employees on zero-hour contracts are entitled to be paid for a bank holiday if they would ordinarily have worked on that day.

The high level of complaints relating to non-provision of payslips and employment contracts remains a concern. A significant number of employers are either unaware of their obligations or do not consider them to be a high priority. In a surprising number of cases employees are unaware of the legal entity what employs them. This is due in part to a confusion on the part of employers around the use of registered business names. A registered business name is not a legal entity and cannot be an employer.

Most claims submitted to the EDT settle prior to a final hearing. Work related claims are referred to Jersey Advisory & Conciliation Service (JACS) for conciliation. Non-work discrimination claims are referred to Citizen's Advice Jersey (CAJ) for mediation. Claims that get as far as an initial case management hearing often settle after that hearing.

In 2022 the EDT held a total of 33 final hearings. Other than claims relating to no contract or no payslips most claims fail at the final hearing. This is probably because where a claim is clear cut or has obvious merit, the employer will settle the case before the final hearing.

The EDT continues to deal with cases as quickly as possible. Some cases are delayed because of ill-health of the parties, insolvency of the employer or parallel criminal proceedings. A small number of cases are very complex and take time to resolve. Most of the claims submitted in 2022, some 77%, were resolved within 6 months of receipt of the Claim Form with 9% being resolved within a year of the Claim Form being submitted.

The EDT relies heavily on the work of the Registrars who administer claims and assist the parties with procedural questions. I would like to thank the Registrars for their continued hard work and professionalism in their roles.

Dr Elena Moran, Chairman

Employment and Discrimination

EDT Process

The EDT process starts with a Claim Form being received which can include more than one issue. For example, a Claim Form may raise issues relating to unfair dismissal, unpaid wages and a failure to provide payslips.

The vast majority of Claim Forms are submitted by employees but occasionally by an employer.

The Claim Form is sent to the respondent who files a Response Form. In the Response Form the respondent may raise a counterclaim that the claimant must then respond to.

Where no response or response to counterclaim is filed to a claim the EDT may issue a judgment in default, known as an Article 12 Judgment. This is only issued where the EDT has enough information to give judgment. In some cases, the EDT may give judgment on liability but order that there is a remedies hearing at a later date.

Once all the necessary forms have been submitted cases are stayed and referred to conciliation/mediation. All claims involving employers are referred to the Jersey Advisory and Conciliation Service, and non-work-related discrimination claims are referred to Citizens Advice Jersey.

Where a case does not settle at mediation it is listed for a short case management hearing before a Chair to give orders for the progress of the case.

A case is listed for an interim hearing where it is necessary to resolve whether the EDT has jurisdiction. For example, to determine if a Claimant is an employee or is self-employed, or if the claim has been submitted in time.

A final hearing is presided over by a single chair, or a panel of three in cases of constructive dismissal or discrimination.

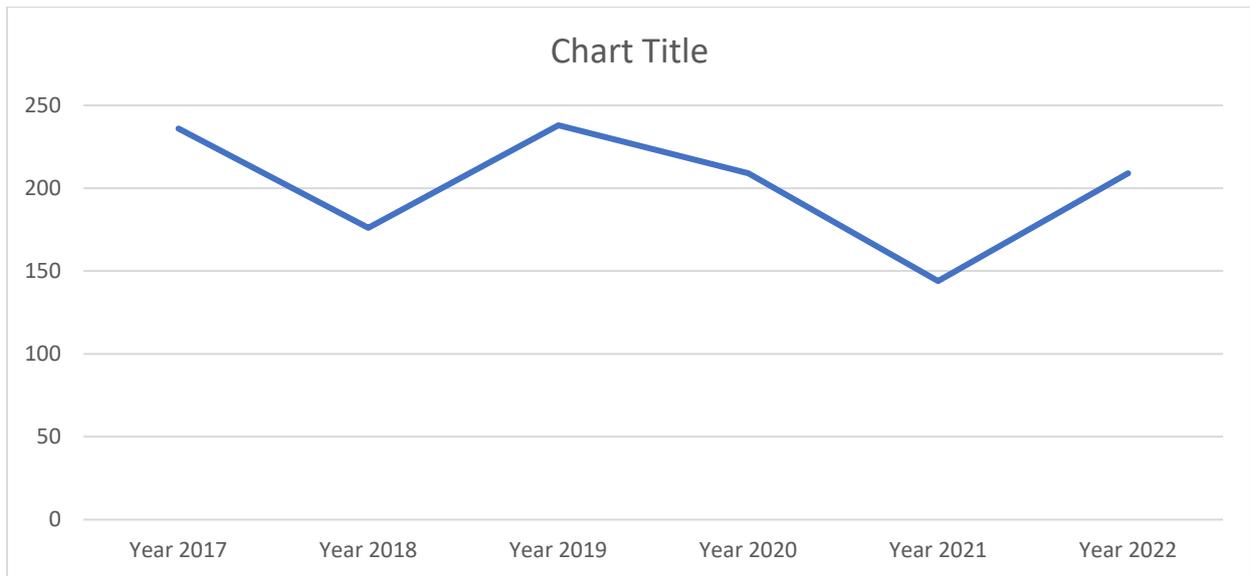
Normally remedies are determined at the final hearing but where this is not possible a separate remedies hearing may be arranged.

The Chairs aim to issue the written judgment to the parties within six weeks of the final hearing.

Claims Submitted in 2022

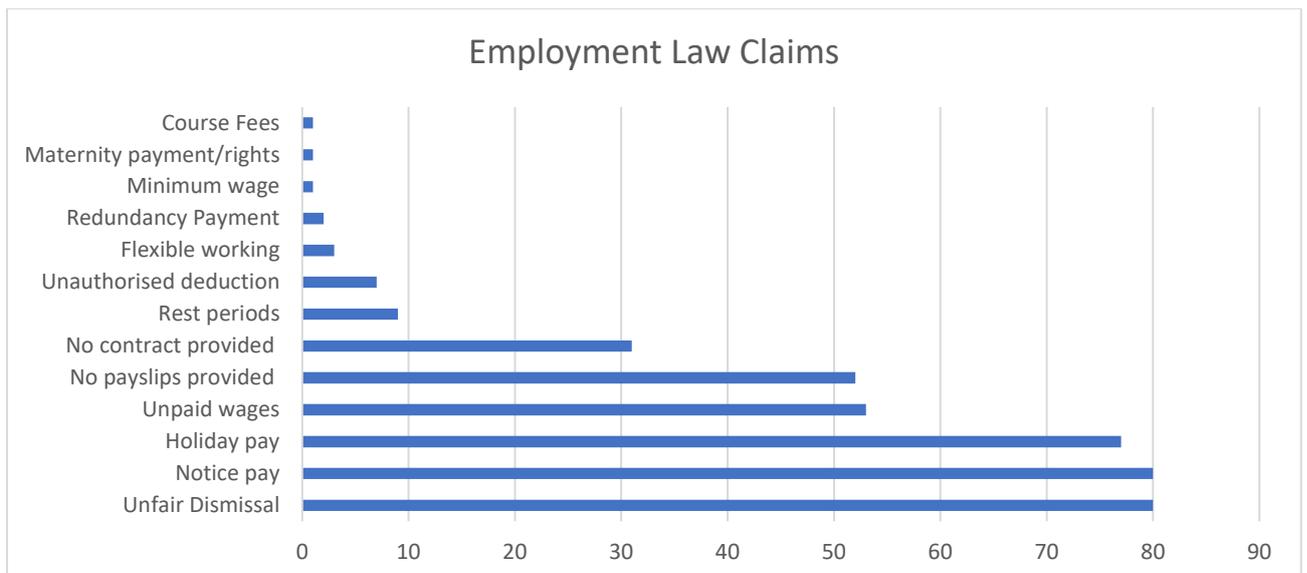
Number of claims received by the EDT:

In 2022 a total of 209 Claimants submitted Claim Forms to the EDT raising claims under the Employment Law and Discrimination Law. There were no claims under the Employment Relations Law



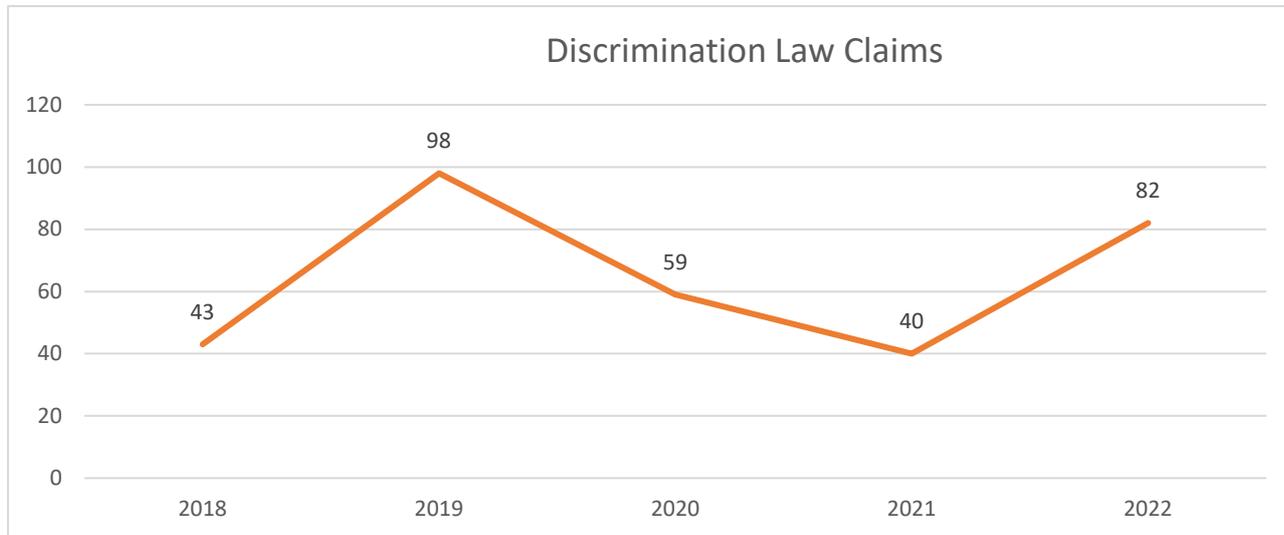
Employment Law Claims

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



Discrimination Law Claims

There were 82 Discrimination Law claims submitted in 2022.



Work related versus non-work-related discrimination claims:

The EDT received 72 work-related and 10 non-work-related discrimination claims.

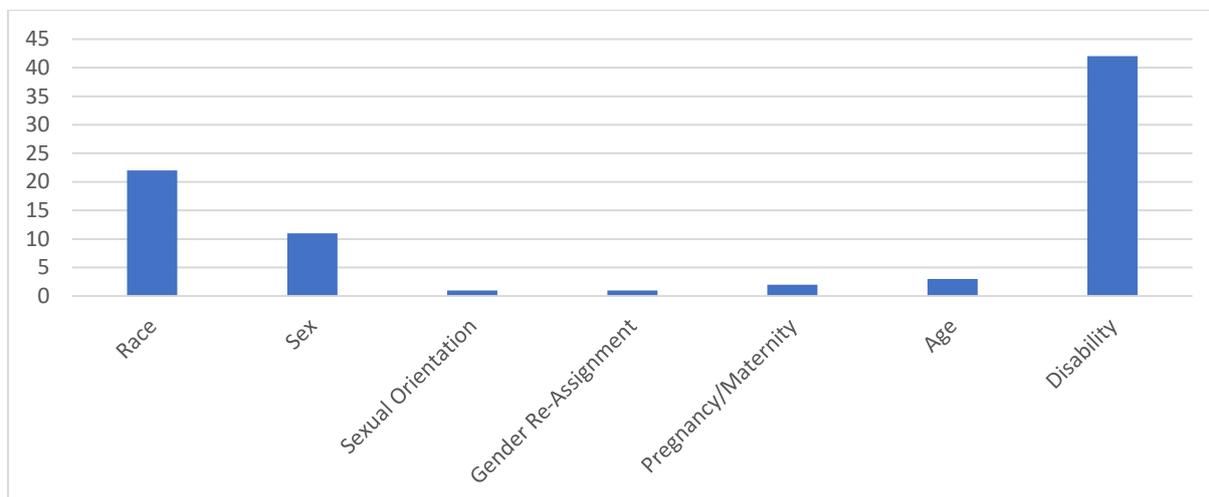
The non-work-related claims related to education, the provision of goods, facilities and services and use and management of premises.

Claims by protected characteristics:

Disability discrimination claims accounted for 55% of the overall discrimination issues with claimants most commonly identifying stress, anxiety and depression in their Claim Forms.

Sex (and related characteristics) made up 15%, age 3% and race the remaining 27%.

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 and ethnic origins.

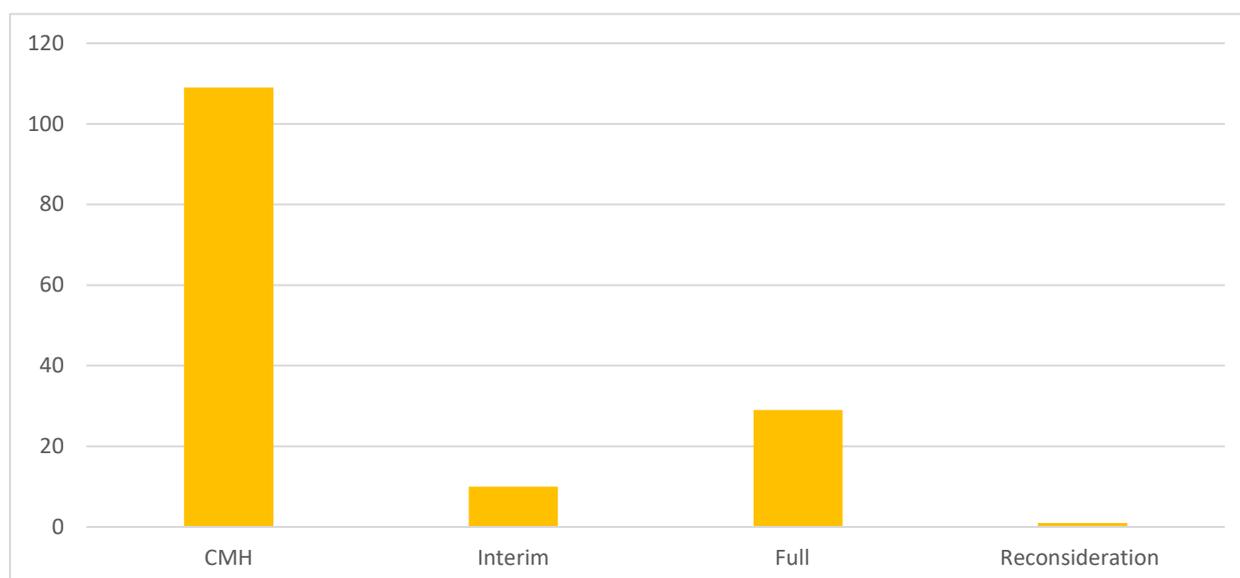
Age – includes a person who is of a particular age group or to a range of ages. Applies to all age groups.

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.

Administration of Claims

The EDT conducted 149 hearings during 2022. Hearings are conducted in person, by phone or by video link. Phone and video hearings take place for several reasons including parties or representatives are off island and health issues.

Number of hearings in 2022:



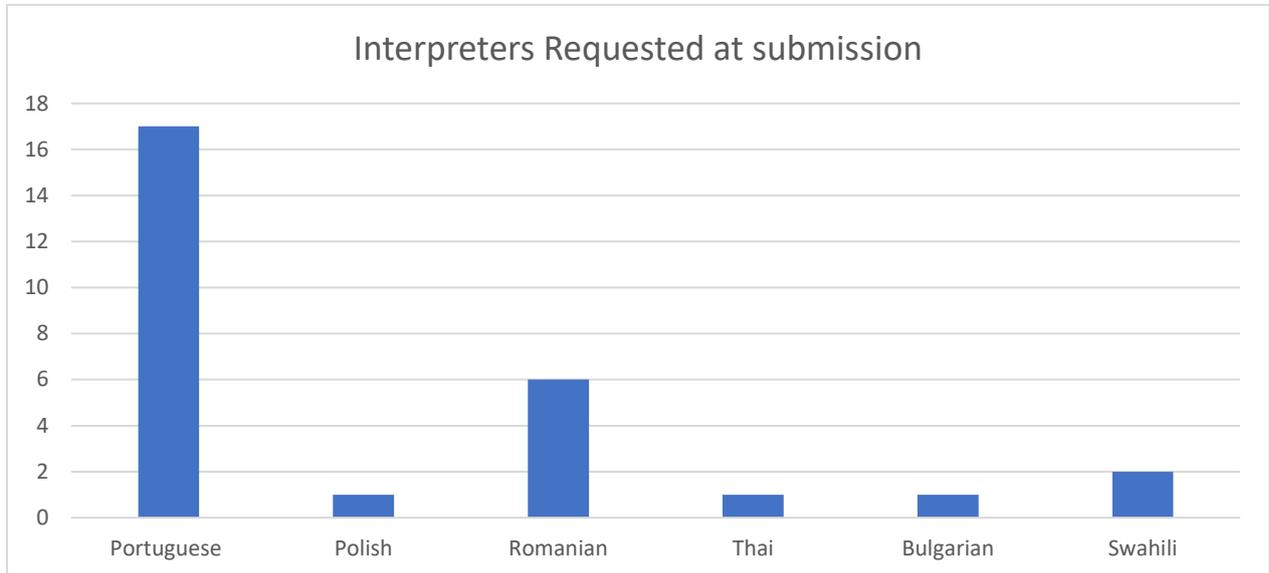
Use of Interpreters

The services of an interpreter are provided by the EDT when required for hearings. This facilitates the smooth running of hearings and ensures fairness.

Interpreters are paid £82.00 - £224 depending on the length and type of the hearing.

In 2022 28 parties indicated on their forms that they would require the assistance of an interpreter.

Language of interpreter indicated on the Claim Form:



Length of Claims

The EDT aims to resolve all claims within 6 months of receipt of the Claim Form. Sometimes this is not possible due to the complexity of the issues in the case, the health of the parties, insolvency of a party or related criminal proceedings.

Of the claims received in 2022:

- 77% were closed within 6 months of receipt of Claim Form
- 9% were closed within a year of receipt of Claim Form

Representation of Parties

Out of 209 cases filed in 2022, 38 claimants and 74 respondents engaged representatives to assist them at form submission stage.

Out of 24 final hearings in 2022, 4 claimants and 6 respondents were represented at this stage.

Claimants were assisted by a range of representatives including friends and family, HR professionals and in a few cases lawyers, either locally qualified or qualified abroad.

Most representatives for respondents were lawyers, either locally qualified or qualified abroad.

Outcomes & Awards

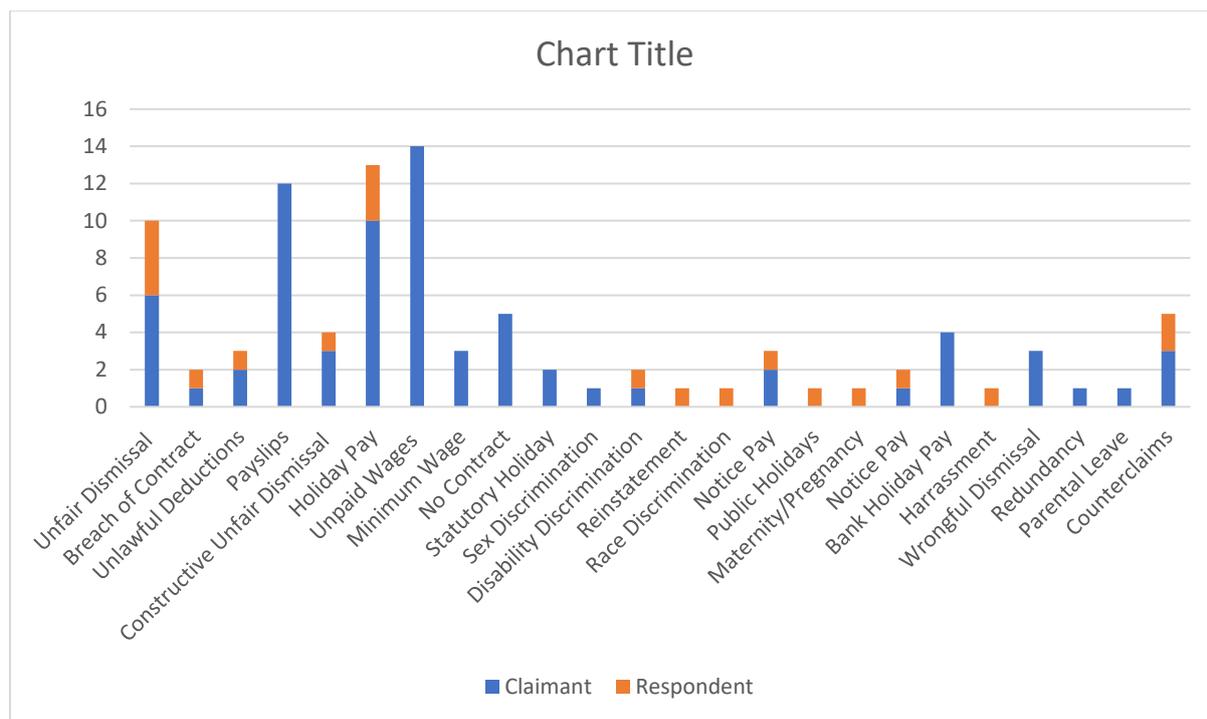
Judgments

The EDT aims to issue a judgment to the parties within 6 weeks of the final hearing.

Outcomes of Final hearings

There were 33 final hearings in 2022 including 4 from Claim Forms submitted in 2021.

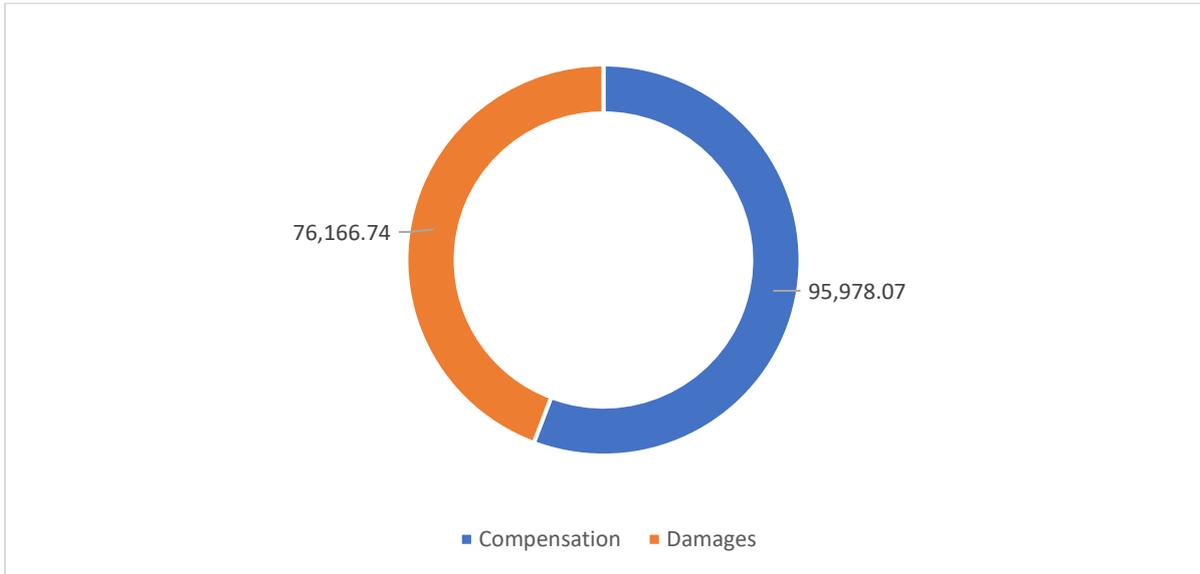
In some cases, both parties were successful on different issues.



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

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

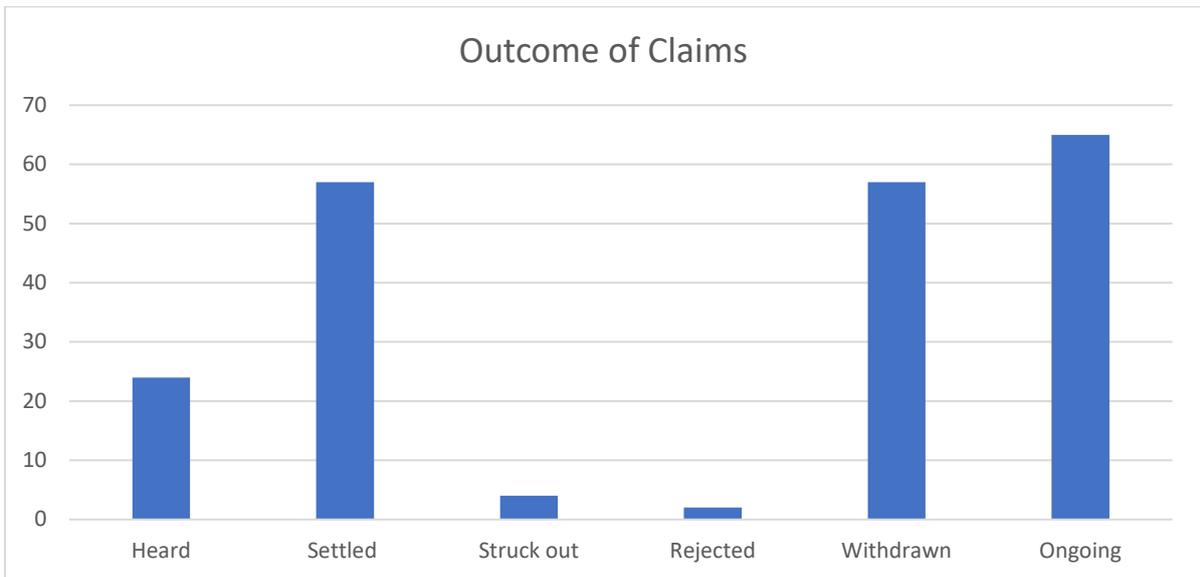
During 2022 the total amount awarded in compensation and damages was £172,144.81



Outcomes of claims as at 31 December 2022:

209 Claim Forms were submitted in 2022. By the end of the year 29 had been to a final hearing and 65 remained ongoing.

The majority of the remainder were either settled or withdrawn.



At the end of 2022 there was one Claim Form received in 2021 that remained unresolved. The delay is due to the respondent company having been dissolved.

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@courts.je

Website

<http://www.tribunal.je>

Team Members

Manager – Tracey Buesnel (Main Responsibility – Employment & Discrimination Tribunal)

Registrar – Janet Smith (Main Responsibility – Mental Health Review Tribunal, Capacity Tribunal & Social Security Tribunal)

Registrar – Helena Nensen-Whelan (Main Responsibility – Planning Tribunal)