

Jersey Employment and Discrimination Tribunal



Annual Report 2017

**This is the thirteenth Annual Report of the Employment and
Discrimination Tribunal and covers the period 1 January 2017 to 31 December 2017**

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Membership of the Employment and Discrimination Tribunal

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

Work related claims

When the claim is work-related, a Chair may sit with two lay members drawn from:

- a) a pool of side members comprising of persons with knowledge of, or an interest in, trade unions or matters relating to employees; and
- b) a pool of side members comprising of persons with knowledge of, or an interest in, employers' associations or matters relating to employers.

Non-work related claims

When the Tribunal sits to hear a non-work related claim under the Discrimination Law a Chair will sit with two lay members drawn from a third pool of lay members which comprises a group of persons with knowledge or experience of, or an interest in, matters relating to equality and discrimination.

All appointments to the EDT are made following an open recruitment process overseen by the Jersey Appointments Commission in accordance with its published guidelines.

Once appointed, lay members remain entirely independent of their background; they do not represent any organisation with which they are associated and are entirely impartial, even though in work-related disputes they will have a background in either employer or employee matters.

The Chairs usually sit alone to hear unfair dismissal and breach of contract disputes but will sit with lay members for final hearings of discrimination claims and in more complex employment claims.

Membership of the Jersey Employment and Discrimination Tribunal

The members of the EDT in 2017 were:

Chairman

Mrs Hilary Griffin (*appointed May 2017 – previously Deputy Chairman*)

Nicola Santos-Costa (*retired April 2017*)

Deputy Chairmen

Advocate Claire Davies

Advocate Ian Jones

Advocate Michael Preston

Mr Michael Salter

Panel members appointed to hear work-related claims under the Employment Law and Discrimination Law

Members with experience as representatives of employers

Ian Carr (*Stepped down in 2017*)

Louise Cram

Sue Cuming

Emma Harper

Louise James

Gerry Larkins (*Stepped down in 2017*)

Mark Therin

Marilyn Wetherall

Members with experience as representatives of employees

Mike Baudains

Simon Cross

Clive Holloway

Zannah Le Moignan

Alan Kearney

John Noel

Anne Southern

Neal Vautier

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

Elizabeth Adams

Thomas Gales

Janet Brotherton

Mandlenkosi Mlambo

Melanie Cavey

Tamburi Muoni

Claire Follain-Metcalf (*Stepped down in 2017*)

Daria Sawicka

Tribunal Service Team Members

Manager

Nathan Wilczynski

Registrars

Maggie Turner

Tayla Le Mottee

Tracey Buesnel

Steph de la Cour

Chairman's Foreword

2017 saw some exciting developments for the EDT as we welcomed two new Deputy Chairs to our ranks, moved to new larger premises and carried out an overhaul of our forms and User Guides.

New Deputy Chairs

In May, the EDT appointed two new Deputy Chairs, Mr Michael Salter and Advocate Ian Jones. They each bring with them a wealth of experience; Mr Salter is a very experienced English employment barrister and judge and Advocate Jones has been a practicing Jersey lawyer for many years. They join the existing Deputy Chairs, Advocate Claire Davies and Advocate Mike Preston, to further strengthen the EDT.

New premises

In September, the EDT moved to new premises at International House. These premises are larger and, in addition to two hearing rooms, have enabled the EDT to provide waiting rooms for parties and their witnesses. This has helped to reduce some anxiety for the parties during hearings as they now have space to discuss matters with their friends or advisors. The premises are also fully equipped with disabled access and facilities and hearing loops.

The new premises have enabled us to bring in-house a more comprehensive service to our users, particularly those who live off-island. Where necessary, the EDT is now able to easily conduct Case Management Meetings either by telephone or by video conference, and did so on a number of occasions in 2017.

New EDT forms

In September 2017 we introduced new Claim Forms, Response Forms and User Guides. Our objective was to make the EDT more accessible to its users by reducing the paperwork required to both file and respond to claims. Claimants wishing to issue both employment and discrimination claims can now do so on a single form. Respondents may respond to both categories of claim on the same Response Form and may also now issue counterclaims on the Response Form.

While we continue to monitor the forms and to make minor amendments as and when required, the feedback which we have received has been overwhelmingly positive.

Reduction in panel hearings

Historically, there has been a presumption that every hearing will comprise a full tribunal panel. Whilst this was desirable while the EDT grew and created case law, in more recent years (as the number of

cases has increased) the requirement to always have a full panel has often led to delays in the listing and progressing of claims.

Having undertaken a review of the Employment and Discrimination Tribunal (Jersey) Regulations 2014, it was determined that the Chairs should sit alone on less complex cases (such as unfair dismissal and breach of contract claims) with lay members continuing to provide their expertise at final hearings for all discrimination claims and for more complex employment and collective disputes.

This new approach has afforded the EDT more flexibility in listing and, consequently, claims are now progressing more speedily.

Increase in claims and counterclaims

We saw a 20% increase in the number of claims issued in 2017. This increase occurred in both employment and discrimination claims. In relation to discrimination claims, the increase arose principally from claims within the protected characteristic of sex and related characteristics (such as sexual orientation, gender reassignment and pregnancy and maternity). The introduction of 'age' as a protected characteristic in September 2016 also contributed in part to this increase.

There was also a 33% increase in the number of employers bringing counterclaims for breach of contract against their former employees. This increase may be partly attributable to the introduction of the new Response Form in September 2017; an employer is no longer required to complete separate forms, making it less burdensome for the employer to bring a counterclaim. Of the six counterclaims which went to final hearing, four were successful.

Default judgments against Respondents

The EDT continued to see an increase in the number of cases where the Respondent failed to file a Response Form in defence of the Claimant's claim. In 2017, Respondents failed to file a Response Form in nearly 10% of cases, usually resulting in the EDT finding in favour of the Claimant. We therefore strongly urge all Respondents to engage in the tribunal process and file a Response Form within the relevant time limit in order to protect their position.

Professional representation

During 2017, for the first time we collected data on the number of parties who were represented at the commencement of proceedings through to final hearing. When issuing their Claim Forms, 23% of Claimants identified themselves as having legal or professional representation, compared to over 50% of Respondents. However, these figures changed significantly at the final hearing where only 8% of Respondents were legally represented compared to 20% of Claimants.

Unrepresented parties therefore continue to make up the majority of the EDT's users at final hearing. With this in mind, the Chairs will continue to ensure that all parties, whether or not they are represented, are fully engaged and their cases heard.

Outcomes of issues

The 2017 data shows that overall (in final and interim hearings) the EDT found in favour of the Respondent in 63% of claims. However, Claimants were more often successful at final hearing than Respondents. One should bear in mind the following points when considering these figures:

- a) On 26 occasions, Respondents failed to file a Response Form, which usually resulted in a judgment in favour of the Claimant;
- b) Claimants were overwhelmingly more successful in breach of contract claims such as unpaid wages, unpaid holiday/bank holiday pay and unauthorised deductions from wages. The figures show that in these claims, Claimants were successful on 25 out of 29 occasions; and
- c) Overall, Claimants and Respondents were equally successful in claims of unfair or constructive unfair dismissal.

Finally, I would like to thank the Deputy Chairs and the panel members for their continuing hard work, and the Registrars for ensuring the smooth running of the EDT. We look forward to continuing to provide a fair and transparent service to our users in 2018.



Hilary Griffin
Chairman

Overview

The Employment and Discrimination Tribunal ('EDT') is an independent judicial body set up to hear and resolve claims and matters of dispute arising under the Employment (Jersey) Law 2003 ('Employment Law'), the Employment Relations (Jersey) Law 2007 ('Employment Relations Law') and the Discrimination (Jersey) Law 2013 ('Discrimination Law').

The EDT is one of several Tribunals managed by the Judicial Greffe, the administrative arm of the Jersey Courts, through the Tribunal Service. The Judicial Greffe maintains budgetary control of the Tribunal's day to day resources and the Minister for Social Security oversees the appointment of new panel members and also the introduction of employment and discrimination legislation and policy. The other Tribunals in the Tribunal Service are:-

- The Planning Tribunal
- The Health and Safety Tribunal
- Three separate Social Security Tribunals – which deal with Medical appeals, Social Security appeals and Income Support medical appeals
- The Mental Health Review Tribunal

The EDT itself is similar to a court but is less formal. Hearings are open to the public, although there are certain circumstances when hearings may be held in private. The EDT strives to provide a user-friendly service ensuring that the documentation and terminology used in its proceedings is easily accessible to all parties. The services of a translator are provided when required at no charge to a party.

The EDT's claim and response forms, together with its User Guides and other explanatory information, are available on the Tribunal Service's website: www.tribunal.je.

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

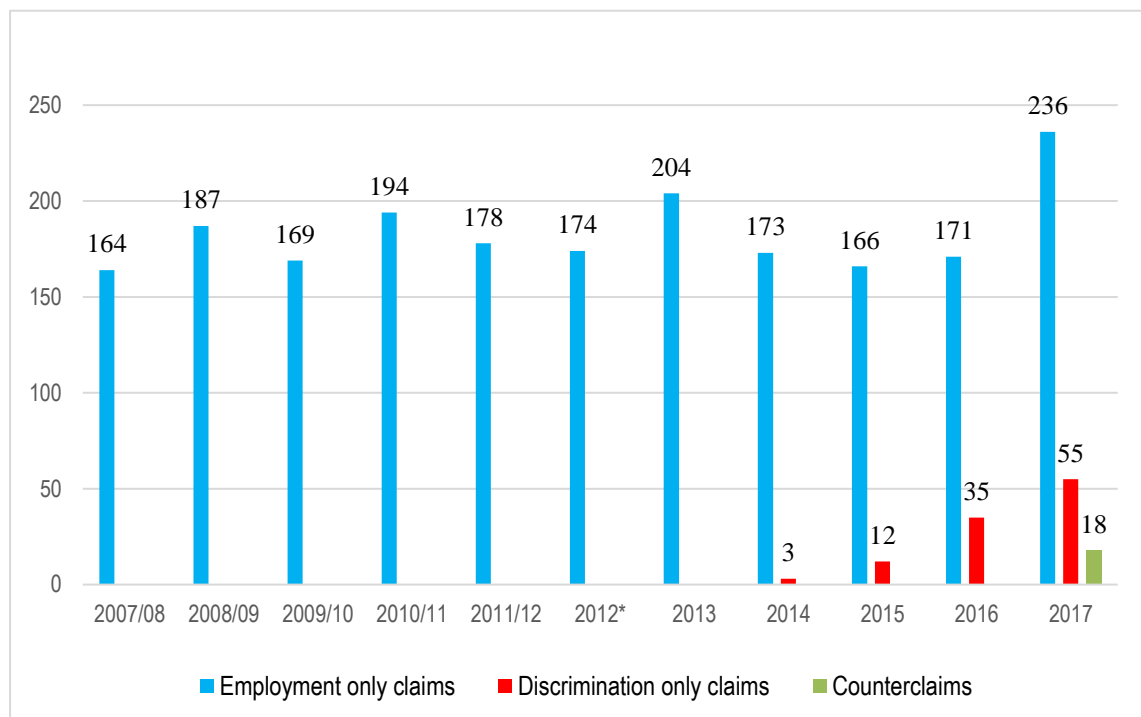
Statistics Relating to Employment and Discrimination Laws

In 2017, the EDT received:

- a) 236 employment law claims,
- b) 55 discrimination claims; and
- c) 18 counterclaims from employers.

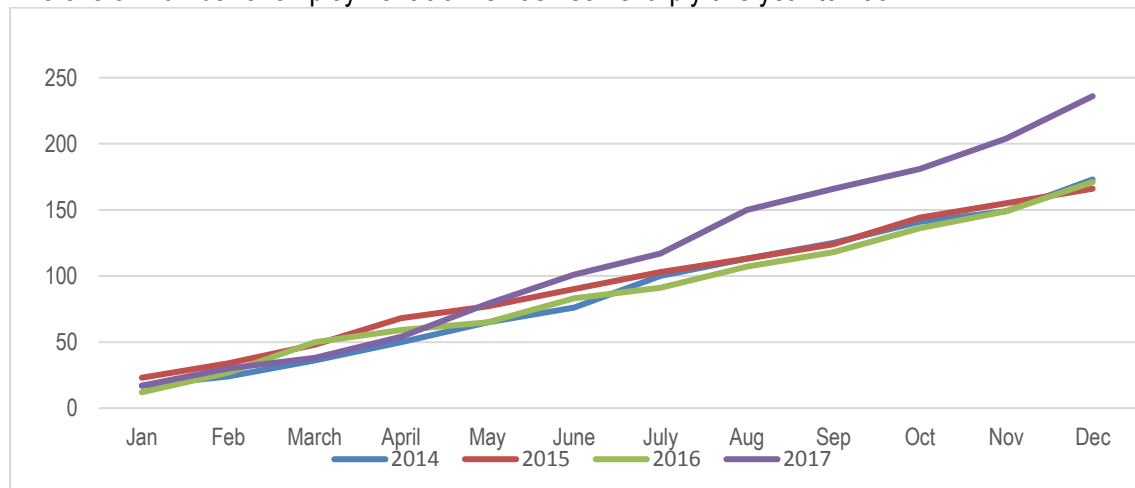
25 of these claims included both discrimination and employment issues.

Number of claims received by the Employment and Discrimination Tribunal



Employment claims

The overall number of employment claims has risen sharply this year to 236.



Counterclaims

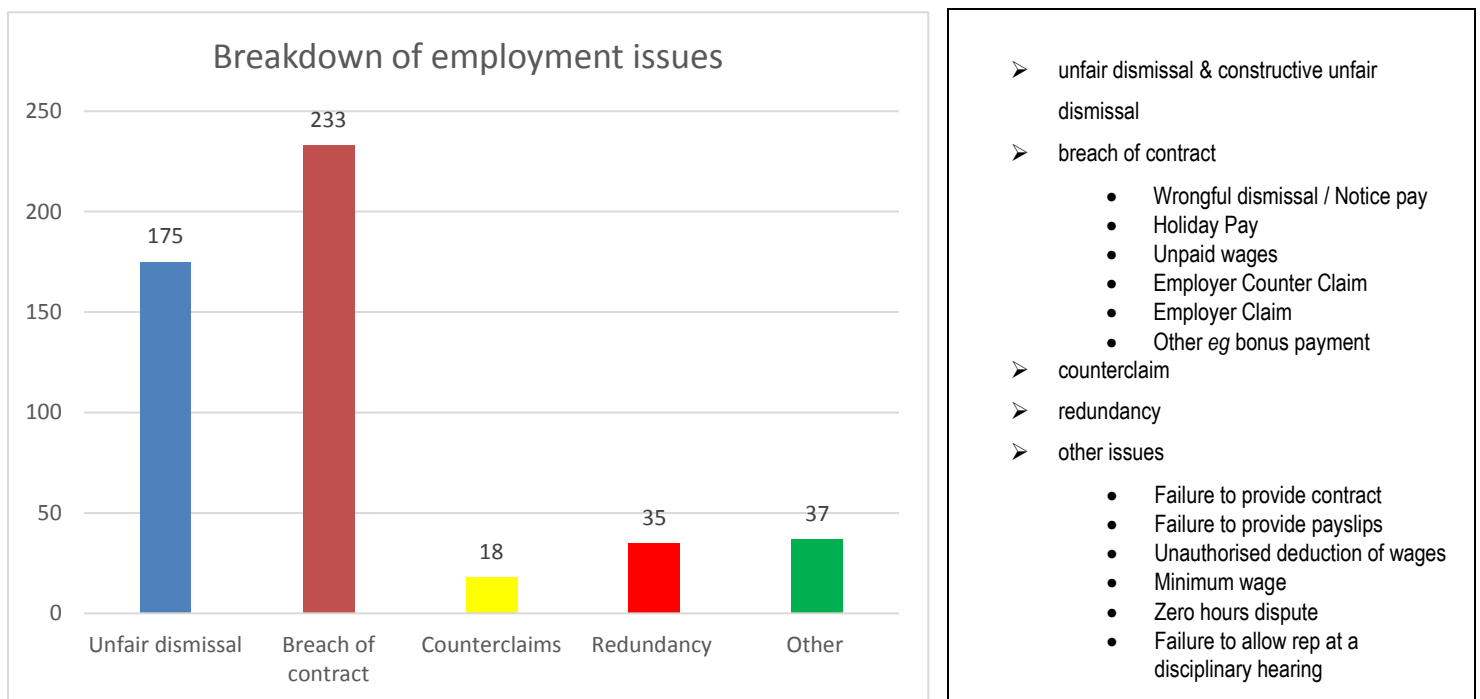
There may be circumstances in work-related disputes where an employer can, whilst defending the Claimant's claim, also issue a counterclaim against the claimant for breach of contract. In 2017, the Tribunal saw a 33% increase in counterclaims, with 18 being filed by employers.

Employer Claims

Employers are entitled to initiate proceedings against former employees for breach of contract. However in 2017 no employers initiated proceedings against their former employees.

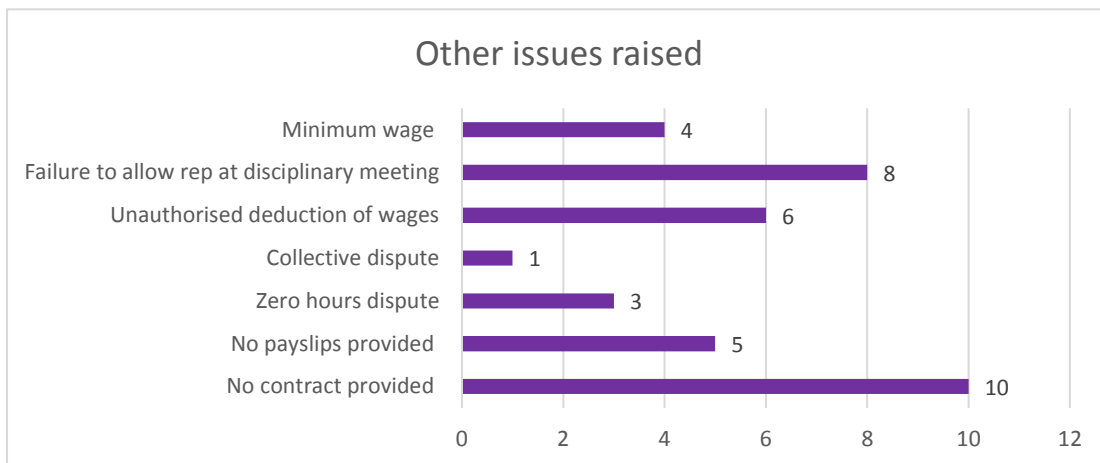
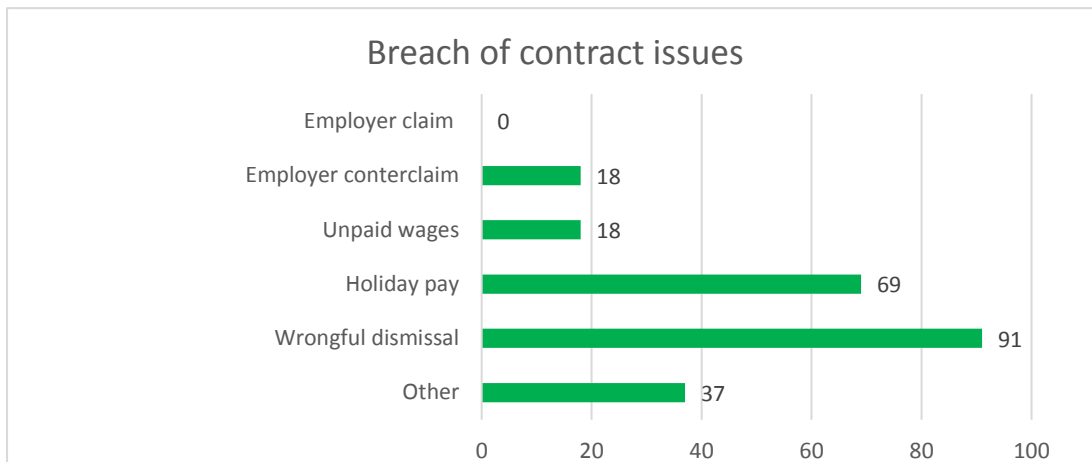
Employment issues dealt with by the EDT

Employment claims often comprise of several different issues.



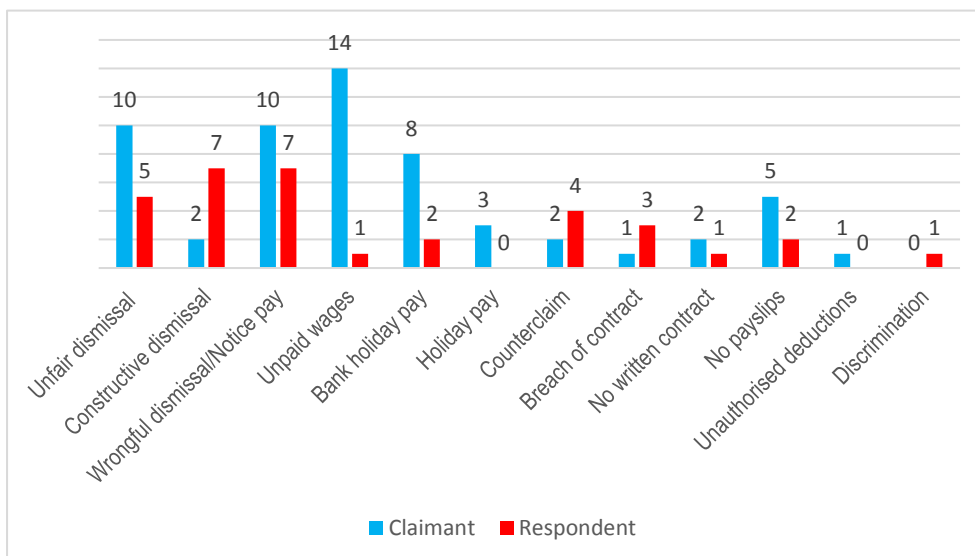
Breach of contract and other issues

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



Outcome of employment issues at final hearing

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



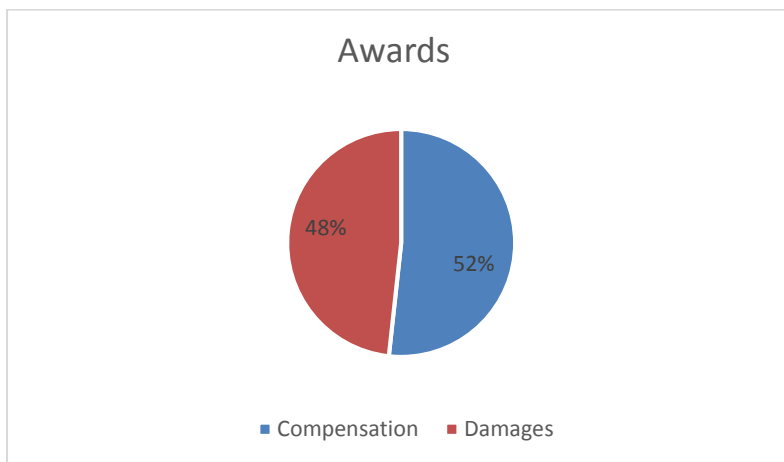
Breakdown of Employment Awards

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

The EDT awards compensation for successful statutory claims (*ie* unfair or constructive unfair dismissal, discrimination, failure to provide pay statements, failure to provide contract).

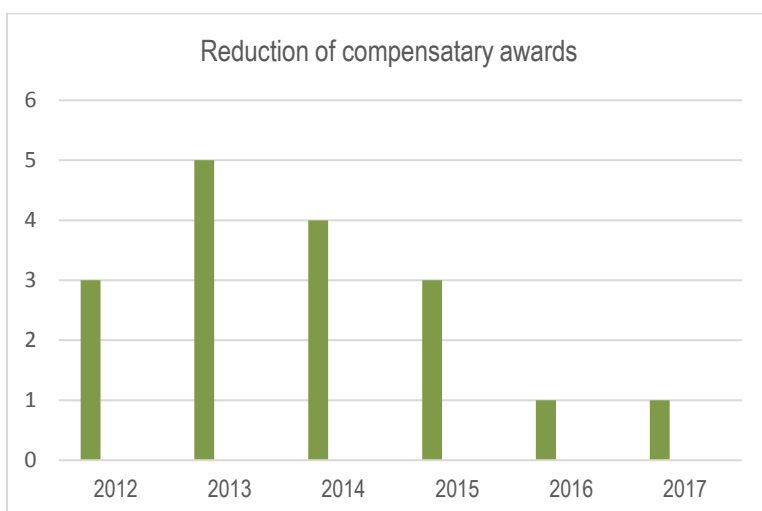
During 2017, the EDT awarded:

- £72,083.88 to by way of compensation; and
- £67,256.06 by way of damages for breach of contract



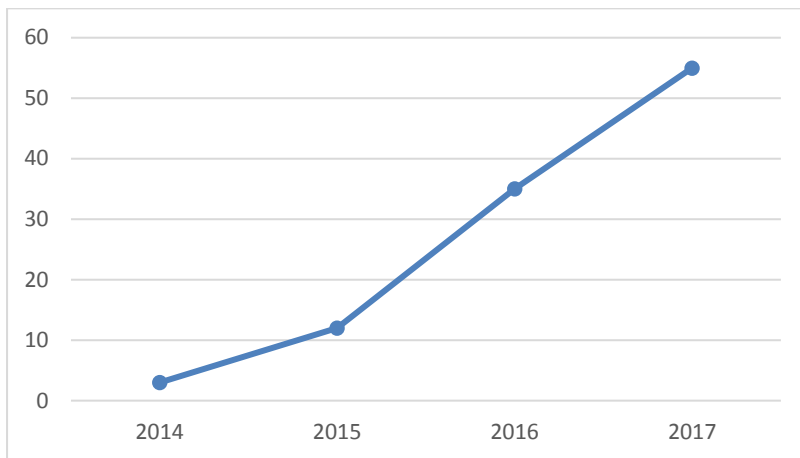
Number of cases where EDT applied a reduction to compensatory awards by year

The EDT may, in certain circumstances, apply a reduction to an award of compensation for unfair dismissal. In 2017, one such reduction was made.



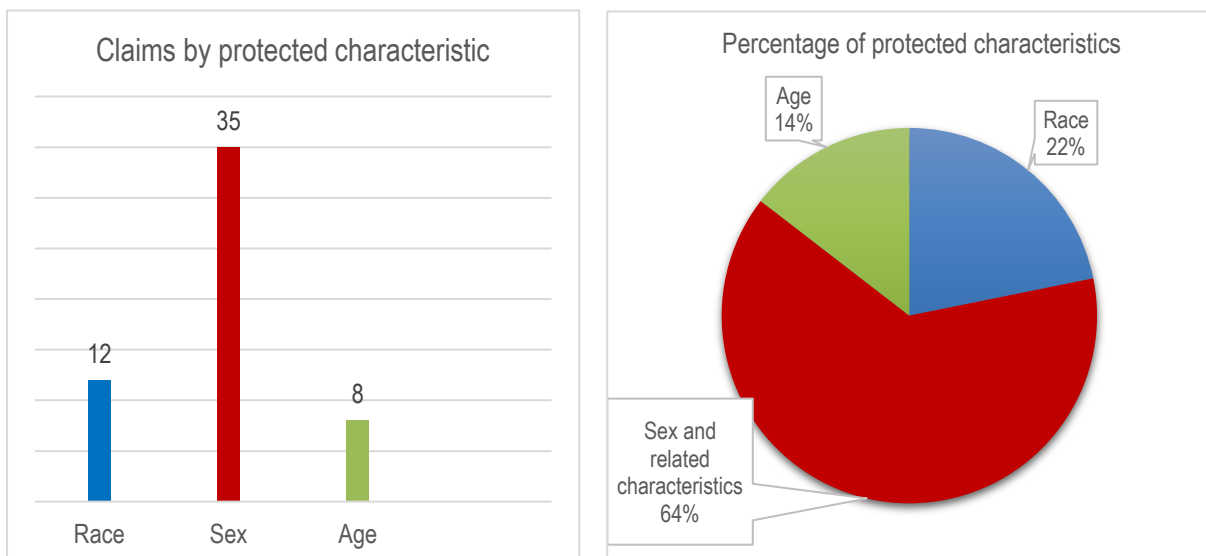
Discrimination claims

The overall number of discrimination claims rose significantly this year from 35 in 2016 to 55 in 2017.



Claims by protected characteristic

The protected characteristic of sex (and related characteristics) accounted for 64% of discrimination claims with age and race combined making up the remaining 36%.



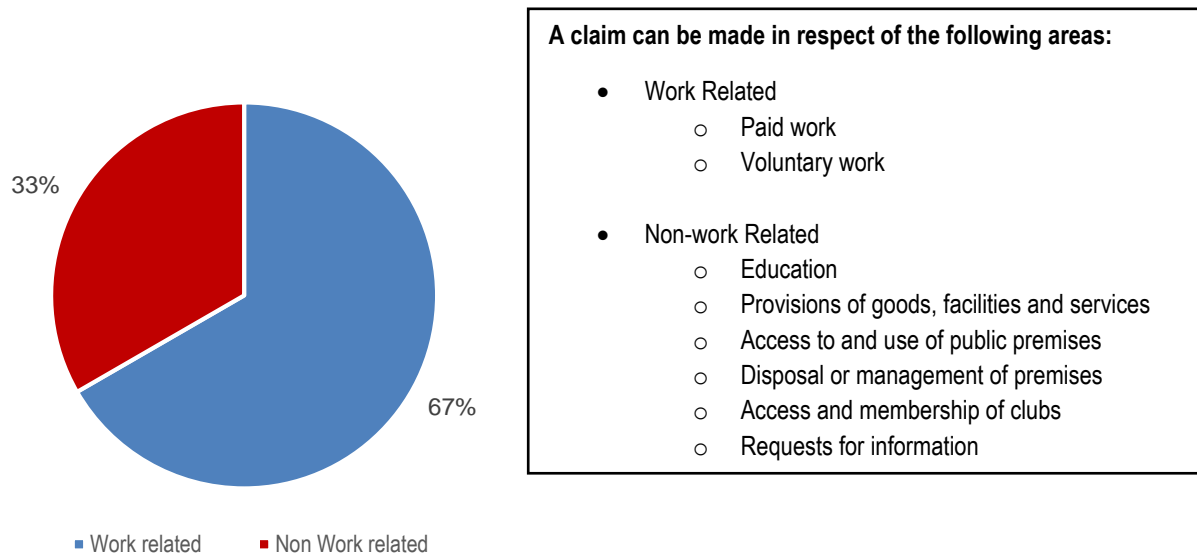
Sex and related characteristics – includes sex/gender, sexual orientation, gender reassignment, pregnancy and maternity.

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

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

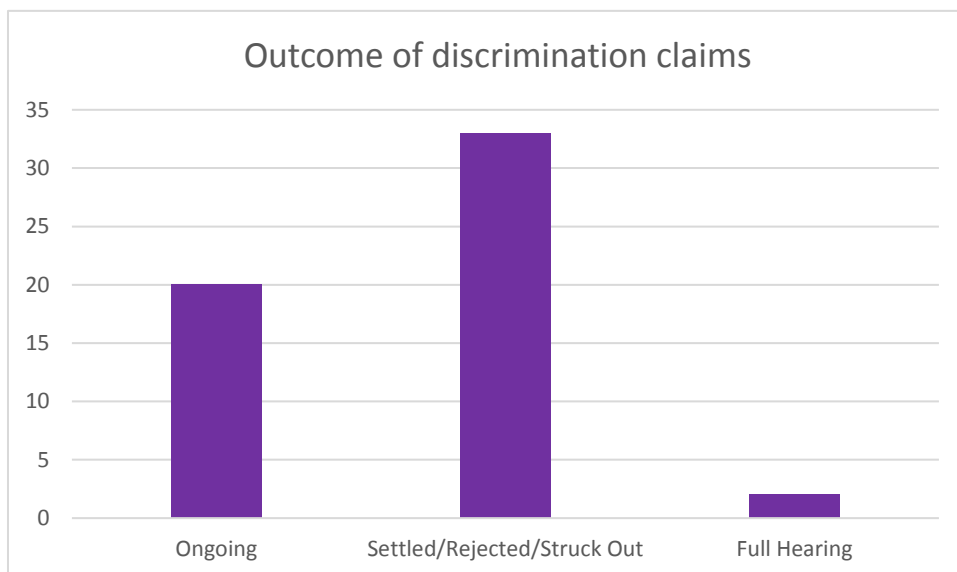
Work related versus non-work related discrimination claims

Work related discrimination formed the majority of the discrimination claims issued to the Tribunal.



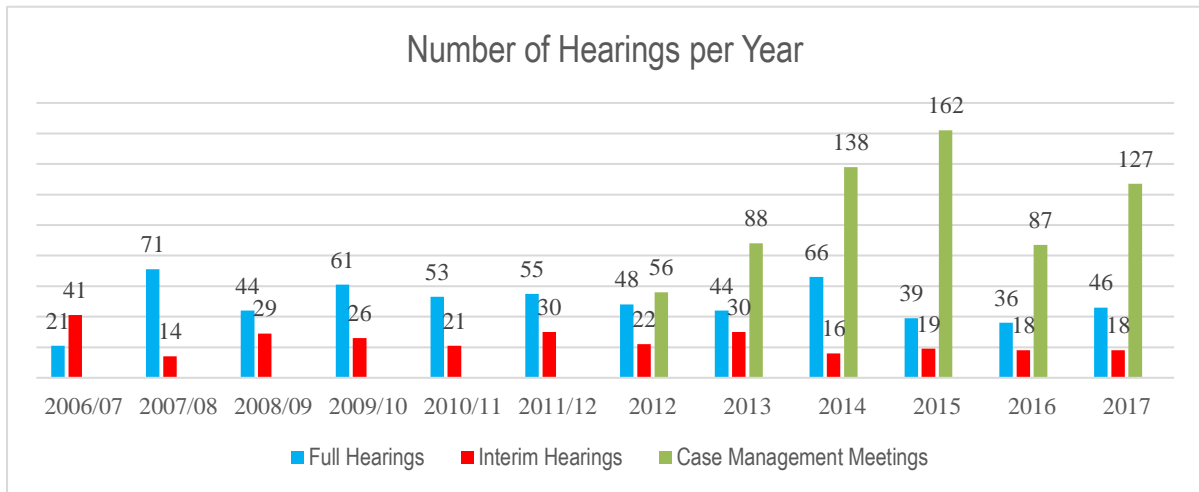
Outcome of Discrimination claims

Of the 55 discrimination claims which were filed in 2017, two went to a final hearing (at which they were dismissed), 33 were settled, struck out or withdrawn and 20 remain on-going.

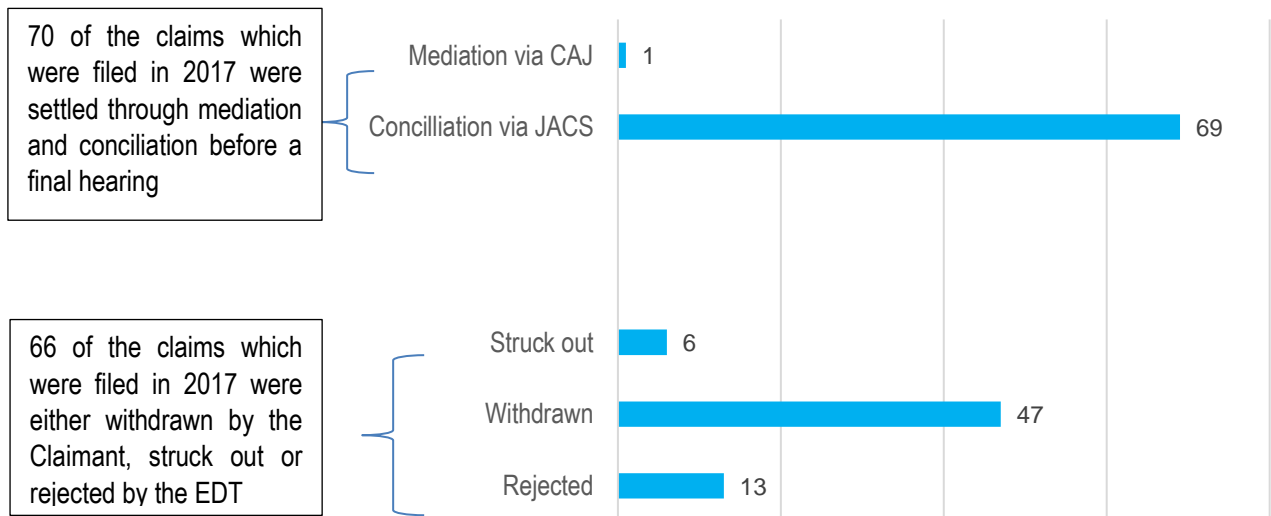


Administration of claims

The EDT conducted 191 hearings during 2017.



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



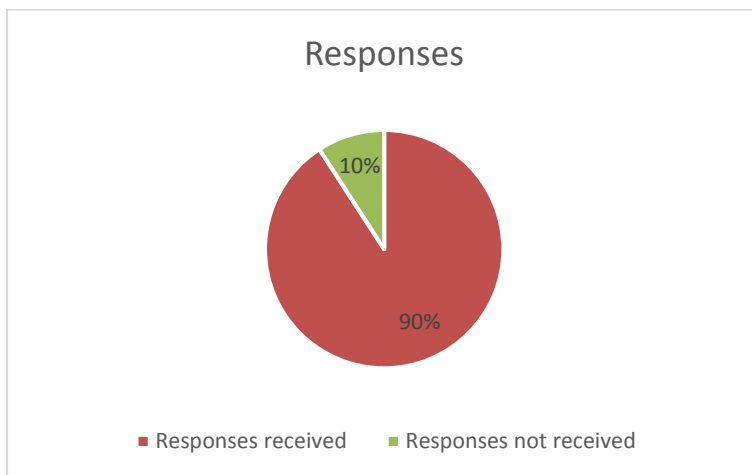
In addition to claims which were issued and settled in 2017, an additional 19 claims were carried over from 2016 were settled by JACS and CAJ.

Respondents failing to file Response Forms

When a Respondent fails to file a response form, a Chair must determine the claim on the papers unless the Chair considers that a hearing is necessary. In the absence of pleadings or evidence from the Respondent, this usually results in a decision in favour of the Claimant.

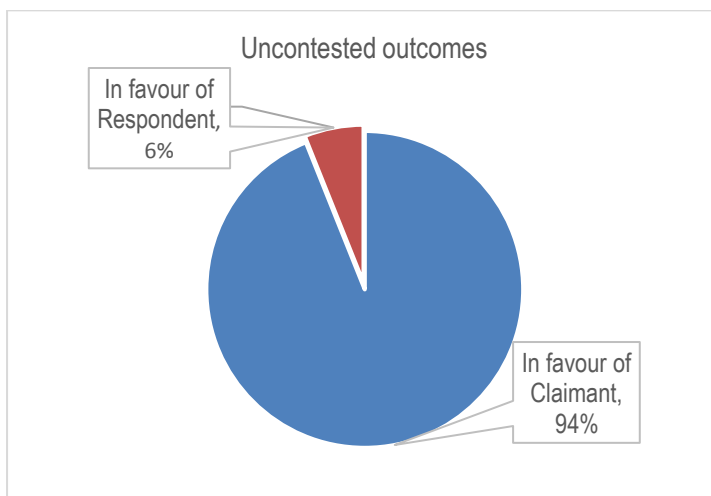
Percentage of responses received

2017 saw an increase in the number of Respondents failing to defend the claim.

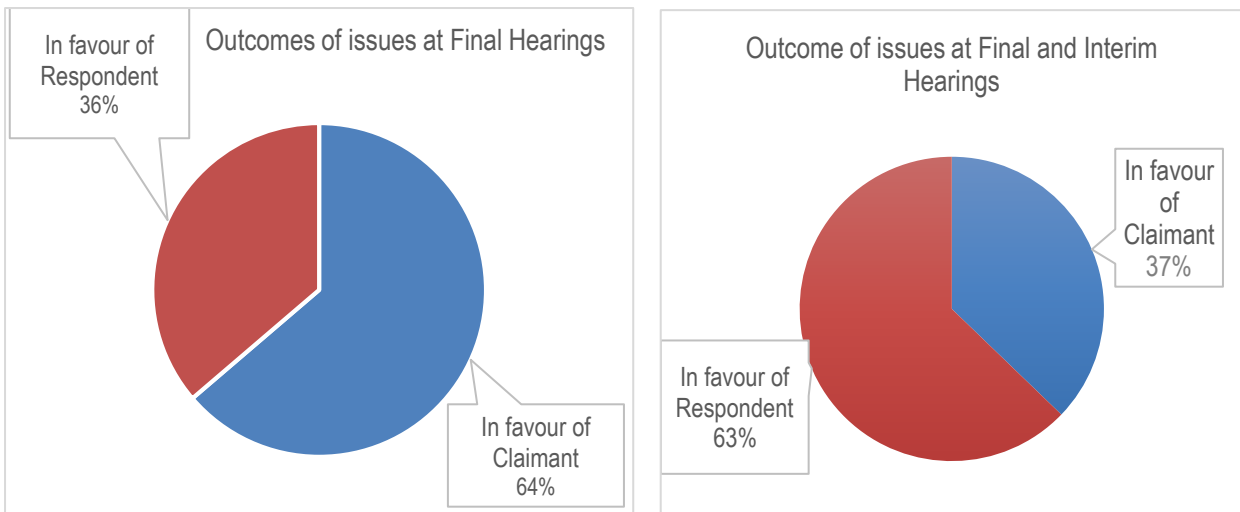


Outcome of uncontested cases

Where the Respondent (usually the employer) failed to file a response form, the outcome was usually in favour of the Claimant.



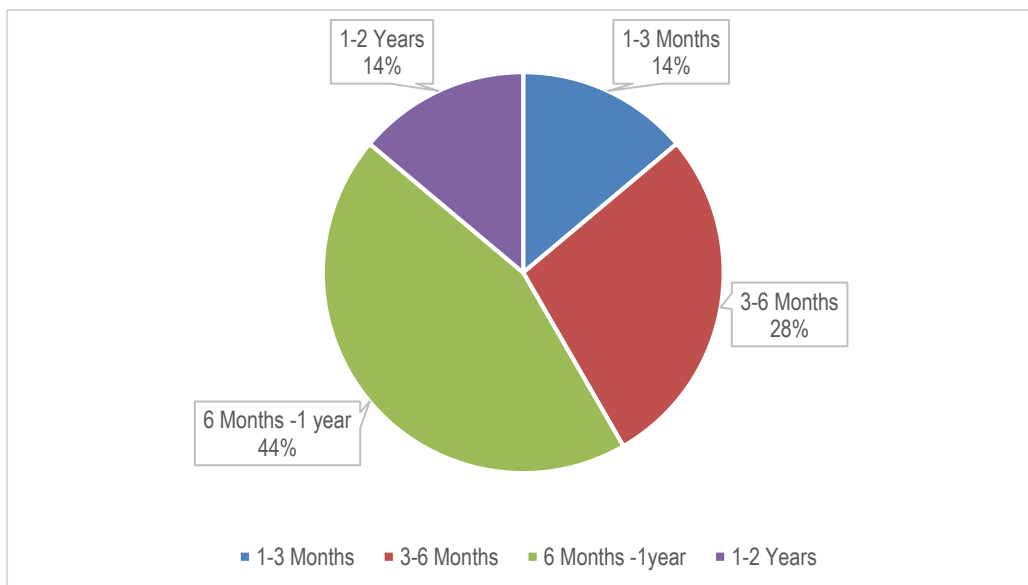
Outcome of issues at hearings



At final hearing, Claimants were more successful than Respondents. However when final hearings and interim hearings were assessed together, Respondents were, overall, more successful than Claimants.

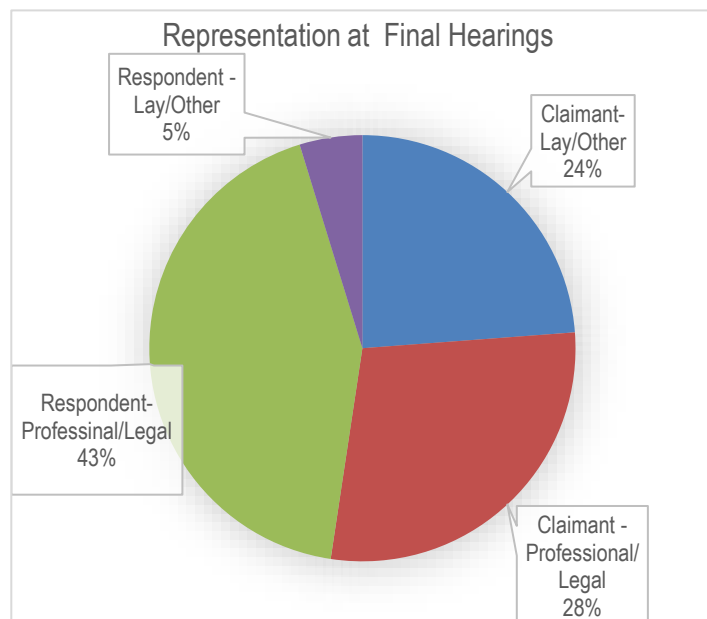
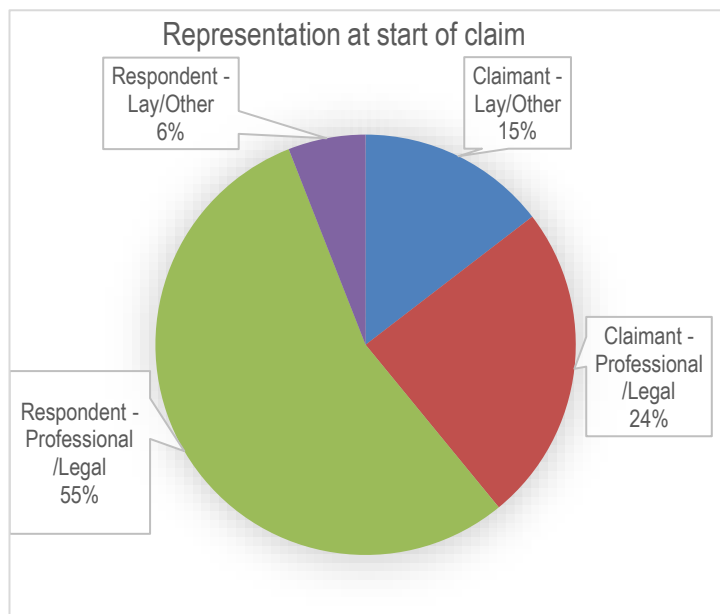
Time taken from receipt of claim form to EDT's final judgment

Nearly half of all claims were heard within six months of issue of the claim.



Representation of Parties

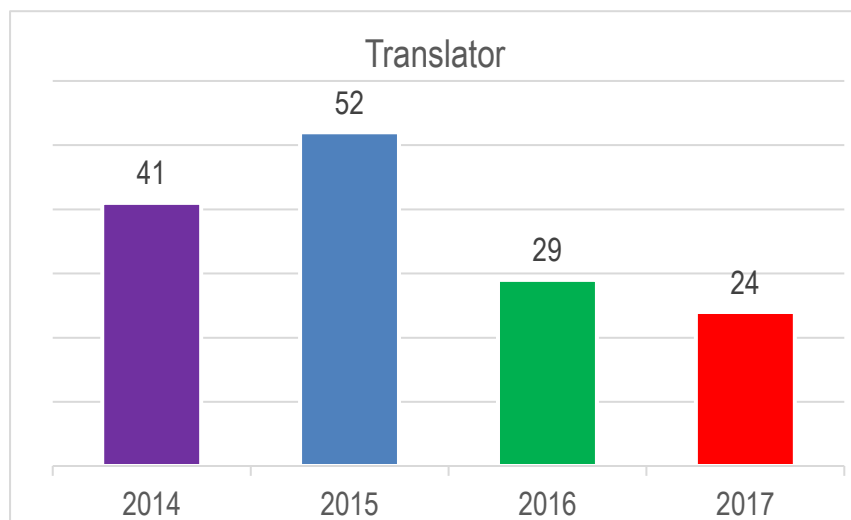
Whilst parties often included the name of a representative on their claim forms or response forms, representation dropped significantly for Respondents by the Final Hearing.



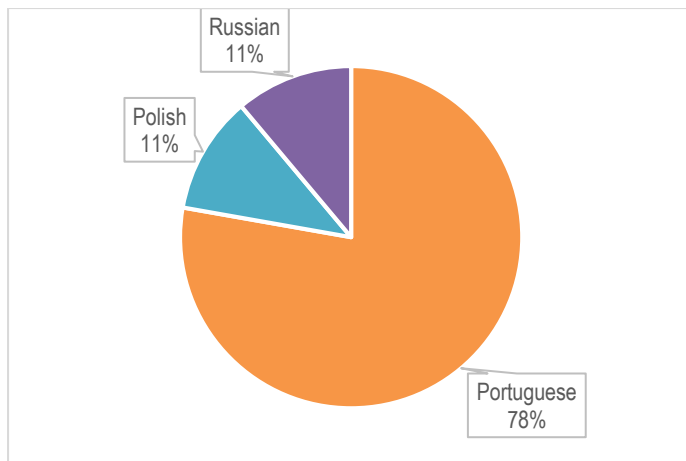
Use of Translators

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

Number of occasions when a translator was required for hearings



In 2017 Portuguese, Polish and Russian translators were required to assist parties in Tribunal proceedings.



Contact details of the Tribunal Service

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