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What do Employment Tribunal claims tell us about workplace conflict? A reappraisal of the evidential base and its implications for the study of employment relations in Great Britain

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Dedication

I dedicate this thesis to my wife, Jane, for her patience, help and unstinting support, despite the long hours, days, weeks, months and years, when my attention was elsewhere. I also dedicate this thesis to my children Alex and Laura, their spouses, Katie and Tim and my grandchildren, Henry and Laurie, Talia, Theo and the latest addition, Otilie, all of whom have in their own special ways reminded me that there is more to life than a PhD. Thank You.

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Preface

Part of this thesis has been presented in the following publication:

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<https://www.theguardian.com/money/2021/apr/14/thousands-in-uk-may-have-missed-out-on-work-rights-redress-study-finds> [Accessed 16th May 2021]

Summary

Since 1972, the increasing annual number of Employment Tribunal claims has been used as a proxy for workplace conflict by academia and as 'evidence' of an increasing 'burden on business' by policy makers. By undertaking a forensic examination of the Employment Tribunal claims statistics from 1972, this thesis reappraises what Employment Tribunal claims actually tell us about workplace conflict.

The reappraisal gives the reader an understanding of multi-applicant claims for the first time and shows how the growth of Employment Tribunal multi-applicant claims have, over time, changed the makeup of the annual Employment Tribunal total claims accepted count and hence changed what conclusions can be made about the 'workplace conflict' that the annual total claims accepted number represents. This thesis goes on to conclusively show that the annual total claims accepted number is not a suitable proxy for workplace conflict or an illustration of the increasing 'burden on business'. In short, this thesis demonstrates that Employment Tribunal statistics are not an accurate indicator of the underlying levels and patterns of workplace conflict in Great Britain and highlights both a gap in the academic literature and subsequent policy implementation.

As a result of the reappraisal this thesis has generated four major contributions.

Firstly, the thesis develops an understanding of the 'missing' intermediate level, the SACs and particularly MACs, how they are different and how their relationship has changed over time and how this has changed the TCA. Understanding this 'missing' intermediate level is important because it fills in a significant gap in our knowledge of ETs. Although largely of descriptive nature, MACs will be covered in a way that has not been done before, which will enable a better understanding of MACs.

Secondly, despite often being used as a proxy for workplace conflict, this thesis offers a rejection of the idea that an increase in ET claims directly represents an increase in workplace conflict. This thesis will show that neither

genuine employment disputes nor vexatious claims are major drivers of the observed increases in the ET TCA statistics, but rather a combination of the ET's own administrative rules or processes generating administrative 'ghost claims' and a change in the nature of the claim which the ET is being asked to adjudicate from 'contended facts' as often seen in the traditional Unfair Dismissal cases to 'contended law'. This thesis reveals this change and in doing so develops our understanding of how the role of the ET has shifted and grown, over time, into both a forum for the negotiation of the rules of employment relationship through what Streeck (1997), regards as the societal benefit of beneficial constraints and a forum for the resolution of collective workplace differences, potentially substituting for collective bargaining between trade unions and employers.

Thirdly, the thesis contributions in this theme relate to the reinterpretation of what 'success' at an ET means and takes Deakin et al.'s (2015) nomenclature as a guiding principle. The contributions are based on the key finding that the ET has over time redefined the meaning of 'Struck Out' as an outcome/disposal type. 'Struck Out' has become largely interchangeable/synonymous with the outcome/disposal type Withdrawn. This finding leads to a reassessment of what successful in terms of the ET might actually mean.

Finally, using Hand D.'s (2018) guiding caveats regarding 'administrative data' the thesis shows that data around ETs are problematic and this problematic nature impacts our ability to fully understand conflict in the workplace.

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Chapter 1

Introduction

1.1 Introduction

Employment based disputes are prominent in contemporary debates in academic literature (see, for example, Dix et al., 2009; Corby, 2015; Kirk, 2018; Saundry et al., 2022), practitioner discourse (Cross, 2008; Watson, 2023) and media headlines (Ross, 2014; Humphries, 2021). Within academic literature, the debates focus primarily on the growth and opportunities of alternative ways to resolve disputes beyond Employment Tribunals (see, for example, Hann et al., 2016; Budd et al., 2020; Teague et al., 2020). In contrast, practitioner focus is often on the cost of workplace conflict (Saundry and Urwin, 2021). Drawing across these two debates is a government narrative that, over the last two decades, has reflected both a desire to move away from Employment Tribunal (ET)¹ resolution to a system whereby resolution steps are effected as early in the employment dispute as possible (Gibbons, 2007), but also a secondary strand of the debate focused on cost to employers that often runs parallel with a clear indication that these costs are seen as burdensome, especially as many claims are seen as vexatious (*BBC*, 2011; Raab, 2011; Department for Business, Innovation and Skills (BIS), 2012). Both of these strands of government agenda focus on a desire to reduce ET claim numbers:

Like Japanese knotweed, the soaring number of tribunal cases [claims] dragged more and more companies into its grip, squeezing the life and energy from Britain's wealth creators' (Ross, 2014).

The use of Japanese knotweed, 'one of the world's top 100 invasive species' (Lowe et al., 2000, p.6), as a metaphor emphasises the scale of the perceived 'problem' of vexatious claims that the Government is facing. The same article goes on to say that the Government,

¹ A list of abbreviations is included at page 450.

'hailed figures showing a 79 per cent fall in the number of tribunal cases [claims] in the last three months of 2013, when tighter regulation was introduced' (Ross, 2014).

From the foregoing, the Government agenda suggests that there was a serious problem with a system of growing workplace conflict leading to more employment disputes, often being pushed into ETs, a problem which the introduction of ET Fees in July 2013 attempted to solve.

1.2 Theoretical Contributions

This thesis will start by engaging with the notion that there is a problem with the way employment disputes are resolved in Great Britain. In the process of investigating this question, however, this thesis has developed four overall contributions/themes to broader literatures/debates.

Firstly, the thesis develops an understanding of the 'missing' intermediate level, the single applicant claims (SACs) and particularly Multi-Applicant Claims (MACs), how they are different and how their relationship has changed over time and how this has changed the annual total claims accepted (TCA) count. Understanding this 'missing' intermediate level is important because it fills in a significant gap in our knowledge of ETs. Although largely of descriptive nature, MACs will be covered in a way that has not been done before, which will enable a better understanding of MACs. The implications of this focus on MACs will also show that a lot of the academic discussion and argument around ETs which subsequently feeds into policy decisions is based on partial analysis of the available data and does not reveal the full picture. This thesis will show that there is more to ET Statistics than so far revealed. The literature review will show in detail that the relationship between TCA and the SACs, MACs and jurisdictional complaints (JCs) is/was not well understood and this thesis, in part, will go some way to rectifying this. At a fundamental level, the thesis presents and analyses MACs in way not previously undertaken before and thus extends our knowledge and understanding in this respect.

This thesis will also show that MAC claims are not uniform but multifaceted. Not only are there are large scale MACs made up of thousands of claims, particularly in the Equal Pay and Working Time Directive jurisdictions, but also many smaller scale MACs, often consisting of no more than 2 to 5 claims. This thesis will also show that over 40% of MACs brought against Private Sector employers are the result of the employer going through the process of administration/liquidation. This straightforward descriptive exploration of MACs makes a significant contribution to the data and understanding around ETs.

Secondly, despite often being used as a proxy for workplace conflict, this thesis offers a rejection of the idea that an increase in ET claims directly represents an increase in workplace conflict. This thesis will show that neither genuine employment disputes nor vexatious claims are major drivers of the observed increases in the ET TCA statistics, but rather a combination of the ET's own administrative rules or processes generating administrative 'ghost claims' and a change in the nature of the claim which the ET is being asked to adjudicate from 'contended facts' as often seen in the traditional Unfair Dismissal cases to 'contended law'.

An extension in the role of the ET towards a 'norm generating' precedent setting function, as represented by the large-scale Equal Pay MACs, where the matter at dispute is not 'contended facts' but 'contended law' reflects how, over time, the ET has become a forum, not just for resolving workplace conflict, but also for designing the rules of the employment relationship through negotiating the level of beneficial constraints (Streeck,1997). To clarify, the ETs generally adjudicate employment disputes around a previously agreed objective contractual term or a piece of statutory employment legislation. In reality, this breaks down into two types of adjudication, 'contended facts' and 'contended law'. An example of 'contended facts' adjudication would be the Unfair Dismissal jurisdiction, where claims are generally based on subjective and contended 'facts' (Dennison and Corby, 2005). Over time as more statutory employment rights have been enacted, the ET has potentially moved beyond just the adjudication of 'contended facts' towards a 'norm generating' precedent setting function, as represented, for example, by the large-scale

Equal Pay MACs, where the matter at dispute is not 'contended facts' but 'contended law'. This thesis reveals this change and in doing so develops our understanding of how the role of the ET has shifted and grown, over time, into both a forum for the negotiation of the rules of employment relationship through what Streeck (1997), regards as the societal benefit of beneficial constraints and a forum for the resolution of collective workplace differences, potentially substituting for collective bargaining between trade unions and employers.

Beyond the growth in the TCA count associated with the change in adjudicative role leading to new substantive constraints on the employment relationship, the ET data reveals procedural constraints. The rise in claims prior to the introduction of ET Fees and the subsequent fall in claims are the are largely the result of ET's own administrative procedures and processes. In Chapter 6 it will be shown that the sharp growth in the TCA from 2004/05 to 2009/10 is the result of administrative 'ghost claims' where the ET itself was generating large numbers of administrative claims to enable the *same* individual to comply with the ET's administrative procedural requirements regarding claim filing time limits in the Working Time Directive jurisdiction. The unwinding of this Working Time Directive administrative 'ghost claims' issue which took place coincidentally to the introduction of ET Fees will be shown to have contributed to the fall in MAC claims rather than the introduction of ET Fees. This is a key finding as it makes using the annual TCA statistics as a proxy for workplace conflict difficult and further undermines the vexatious claims/'burden on business' argument. The thesis, therefore, makes an important contribution in extending our understanding of the ways the 'rules' of the employment relationship are 'negotiated' in contemporary Great Britain. It also adds to debates around the role of juridification with an important nuance to this discussion.

Thirdly, the thesis contributions in this theme relate to the reinterpretation of what 'success' at an ET means and takes Deakin et al.'s (2015) nomenclature as a guiding principle. The contributions are based on the key finding that the ET has over time redefined the meaning of 'Struck Out' as an outcome/disposal type. 'Struck Out' has become largely

interchangeable/synonymous with the outcome/disposal type Withdrawn. This finding leads to a reassessment of what successful in terms of the ET might actually mean. It will be shown that a claim can be 'successful' for a claimant beyond the ET's own outcome/disposal type 'Successful at an ET hearing'. Successful can be understood as potentially including claims in the ET's outcome/disposal types 'Withdrawn', 'Struck Out' and 'Acas Conciliated Settlements' and leads to the observation that the ET is operating as part of a wider 'Dispute Resolution System' that resolves a large percentage of employment disputes without the need for an ET Hearing to determine the outcome. This 'new interpretation' of 'success' then feeds through into how effective the 'prompt conflict resolution preferably close to the source' policy strand is. It will be shown that despite policy being implemented and delivered without a full understanding of the data, the ETs have evolved over time into, firstly, a 'system' of Dispute Resolution operating much as the Gibbons Review envisioned in 2007 and, secondly, a forum for the negotiation of what Streeck (1997) regards as societal benefit of regulatory 'beneficial constraints'. The thesis therefore begins to extend the focus of existing debates around the development of alternative dispute resolution as an alternative to ETs, by suggesting they play a key role in encouraging resolution outside of formal courts.

Finally, using Hand D.'s (2018) guiding caveats regarding 'administrative data', the thesis shows that data around ETs are problematic and this problematic nature impacts our ability to fully understand conflict in the workplace.

The thesis contributions in this theme relate to problems with the ET data and statistics and the disjointed availability of the data sources and takes Hand D.'s (2018) caveats regarding 'administrative data' as a guiding principle. The ET data and statistics on ETs, provided by the MoJ and its predecessors, are not reliable or valid. It will be shown that this has been a problem from 1972 when the ETs began hearing Unfair Dismissal claims. Not only has there been on-going issues such as the complete loss of outcome/disposal statistics for the year 1996/97 (*Hansard*, 2003), but an audit of the input and output statistics from 1972 to 2016/17 reveals an unexplained difference of 461,507

between claims received and outcome/disposals over the same period. This potentially equates to an average annual claims overstatement of 12.28%. This data issue is particularly important because if the data are not reliable and valid then we must be cautious in conversations about workplace conflict as represented by ET claims.

These problems with data highlight that, although this is not a statistics thesis, even an Employment Relations thesis can add value to the discussion around data and terminology by highlighting the issues found. In this way, the thesis builds on the growing body of literature relating to the reliability and robustness of public data.

1.3 Background

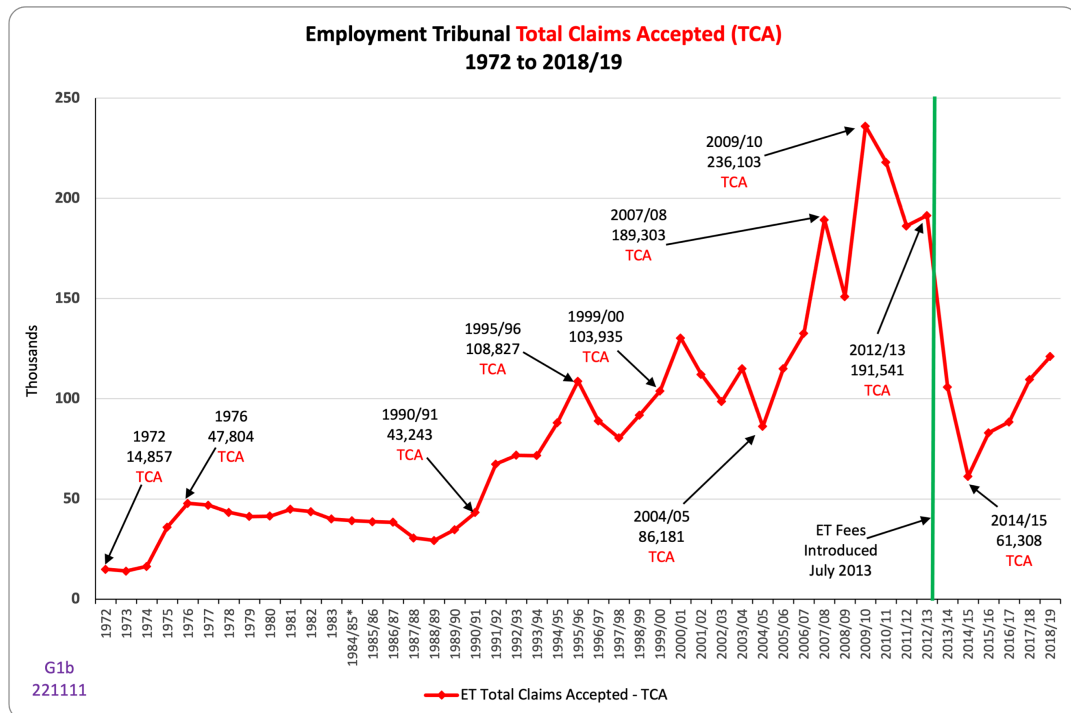
The purpose of this study is to look at how ET claims in Great Britain², as represented by the annual ET TCA count, have grown and changed over the period from 1972, to 2018/19, a subject area that has generated a wide literature at the TCA level (Dickens, 1978; Hepple, 2013; Kirk, 2018). However, the literature as well as the Government policy, such as, the April 2013 change to the Unfair Dismissal qualifying period, from 1 to 2 years and the July 2013 introduction of ET Fees, has largely ignored the intermediate level interactions between the TCA and its component parts, the SACs and MACs, leaving a gap in our understanding, which this thesis fills.

The annual TCA figures, from 1972, are shown graphically in Figure 1.1, below. The annual TCA had reached 47,804 by 1976, only breaking through 50,000 in 1991/92 after which there continued to be a steady growth in the annual TCA until 1995/96 when the TCA reached 108,827. The TCA then hovered around the 100,000 claims per annum mark until 2004/05 when the TCA increased sharply from 86,181 to 236,103 in 2009/10³.

² All Employment Tribunal statistics in this thesis refer to Great Britain only i.e., England, Wales and Scotland. Northern Ireland statistics are NOT included.

³ The annual number of total claims accepted (TCA) is shown in Appendix 2, Table A2.1, Employment Tribunal Total Claims Accepted (TCA) by Year, 1972 to 2018/19.

Figure 1.1



The growth between 2004/05 and 2009/10, as shown in Figure 1.1, highlights that there is merit in an investigation of the drivers of workplace conflict as the data appear to show that there has been an upsurge in employment disputes in the period from 2004/05, which is manifesting itself in the annual TCA count. The thesis takes, as its starting point, a desire to understand the nature of these drivers, in order to better contribute to policy and practice debates centred on the way employment disputes are resolved.

Notwithstanding the investigation of the statistics reflected in the sharp growth noted above, there is the question of what the sharp growth represents in terms of workplace conflict, if anything. Does the upsurge in the ET TCA actually represent an upsurge in workplace conflict? In a superficial interpretation this would seem to be the case, yet this thesis argues that this is too simple an interpretation. Understanding workplace conflict is of value, not only to academics, but is arguably just as much so to policy makers, particularly as the volume of ET claims is often used as a proxy indicator of workplace conflict (see, for example, Saundry, et al., 2014, p.2; Corby, 2015, p.163).

In order to examine the question of what the sharp growth represents in terms of workplace conflict, it is necessary to go beyond existing research which has extensively investigated SACs, for example, the widely used 1998, 2003, 2008, 2013 and 2017⁴ Surveys of Employment Tribunal Applications (SETA) only cover SACs (Department of Trade and Industry (DTI), 2004c; DTI, 2004a; Department for Business Innovation and Skills(BIS), 2010a; BIS, 2014; Department for Business, Energy and Industrial Strategy (BEIS), 2020). This research expands the traditional focus from SACs to also consider the growth and effects of MACs on the number and makeup of the annual ET TCA (particularly from 2000/01 onwards). This inclusion in the analysis of MACs provides for a more complete picture of claims before the ETs.

This broader focus has been taken because, from 1972 onwards, when the ETs were given jurisdiction for the adjudication of claims for Unfair Dismissal, there have been perpetual governmental concerns about the growth in the TCA (Sanders, 2009, p.33). In response to these governmental concerns various government mandated procedural changes in the ET claim process have been made, with regards to who can file a claim, and when, in an attempt to reduce the annual volume of claims reaching the TCA count. Conservative Governments have generally made procedural changes, such as, the April 2013 change to the Unfair Dismissal qualifying period, from 1 to 2 years and the July 2013 introduction of ET Fees, to 'reduce the burden on business'. In contrast, Labour Governments have generally made procedural changes, such as the 2009 introduction of Acas Voluntary Pre-claim Conciliation, to encourage the resolution of employment disputes informally and closer to the workplace. This thesis will demonstrate that these changes are based on an incomplete picture and have been made with MACs broadly absent from discussions in the existing literature and subsequent policy discussions. This absence has potentially had real world consequences because the policies subsequently implemented have not been based on a full analysis of all the

⁴ The seventh SETA report, although based on data collected in 2016/17, is referred to by the Department for Business, Energy and Industrial Strategy (BEIS) as SETA 2018 (BEIS, 2020, p.1).

data available. The policy which led to the introduction of ET Fees, mentioned above, is a good example. According to the Government narrative in 2014, ET Fees were introduced in July 2013 in response to a serious 'perceived' problem with the operation of ETs (Ross, 2014). This thesis will show, as part of its broader findings, that vexatious claims are not the driver of the growth in the TCA pre-ET Fees. Existing literature does not put forward an adequate alternate driver/cause to refute the implemented policy of ET Fees. For example, Dickens (2014) and Kirk (2018) note that the policy justifications for the introduction of ET Fees are unsupported by evidence, but neither author explains what is the driver of the increase in 'employment disputes', as reflected in the growth in the TCA pre-ET Fees. This thesis will therefore fill this gap in our understanding by providing a discussion around MACs and show how they have changed the TCA and what it says about workplace conflict. It makes the argument that the driver/cause is rooted in the negotiation of beneficial constraints (Streeck, 1997), with a growing role of ETs in helping define the boundaries of new and contended legislation which impact upon the employment relationship.

1.3.1 Historical Context

Following an initial post 1945 period of relative industrial harmony characterised by collective bargaining between trade unions and employers, the 1960s ushered in a more difficult period, partly characterised by an increase in unofficial industrial action (Davies and Freedland, 1993, p.239).

In order to deal with this increasingly difficult situation, and the unofficial industrial action in particular, the Labour Government of 1964-70, set up the 1968 *Royal Commission on Trade Unions and Employer Associations* (Donovan RC), which proposed that 'labour tribunals' should provide an 'easily accessible, speedy, informal and inexpensive procedure' for the settlement of disputes' (Donovan, 1968, p.156).

As Davies and Freedland (1993) note, the Conservative Government of 1970-74, passed the *Industrial Relations Act* in 1971 which created the statutory employment right for protection against Unfair Dismissal and added the jurisdiction to the remit of the Industrial [Employment] Tribunals which were

already responsible under the *Industrial Training Act* of 1964 for settling ‘appeals from employers against the Industrial Training Boards levy assessments’ (*Employment Gazette*, November 1984, p.487), and determining entitlement to a redundancy payment under the *Redundancy Payments Act 1965* (MacMillan, 1999, p.34). The Unfair Dismissal jurisdiction was introduced to the Industrial [Employment] Tribunals on 28th February 1972 (*Employment Gazette*, June 1974, p.503).

Following the creation of the statutory employment right not to be unfairly dismissed, further statutory employment rights, such as the right to Equal Pay and protection from Sex Discrimination, both of which became effective on 29th December 1975, (*Employment Gazette*, May 1985, p.457) have been created by subsequent governments and they, along with employment rights derived from European Union, such as the Working Time Directive, introduced in October 1998 (Wallington, 2015, p.1,260), have also been given to the Employment Tribunals as they became in 1998. In 2011, the Tribunals Service listed 66 separate jurisdictions (Tribunals Service, 2011)⁵. This thesis will show that despite there being ‘more law’, two jurisdictions, Equal Pay and the Working Time Directive, are largely responsible for almost all the increase in the TCA from 2004/05. Equal Pay, because the large-scale MACs associated with it, reflects a change in the types of claims the ET is adjudicating from ‘contended facts’ to ‘contended law’ and Working Time Directive, partly because the large-scale MACs associated with it, reflects the change to the norm-generating approach needed by cases involving ‘contended law’ and partly because of the jurisdiction’s unusual administrative requirements. Understanding this missing part of the story is important because academic literature and government policy decisions may be relying on partial analysis and therefore have real world consequences. The importance of ‘contended law’ also indicates the important and growing role played by ETs in developing the beneficial constraints (Streeck, 1997) that ensure that the employment relationships function.

⁵ For more details see Appendix 9, Employment Tribunal Jurisdiction List.

1.3.2 Employment Tribunal Trends – An Overview

In 1972, the TCA (red line in Figure 1.1 above) was 14,857, which had risen to 86,181 TCA by 2004/05 and a high of 236,103 TCA in 2009/10. Following the introduction of ET Fees in July 2013 (green vertical line in Figure 1.1 above), the number of claims fell to 61,308 TCA.

The 275% increase in the ET TCA count between 2004/05 and 2009/10 is particularly sharp, however, the Government offered no evidence to support their contention that vexatious ET claims were the cause. This thesis will develop an evidenced based approach, to show that the rise in the TCA is, firstly, the result of the ET's own administrative procedures which generated 'ghost claims' in the period leading up to the introduction of ET Fees and secondly, the consequence of a change in the role of the ET from adjudicating mostly 'contended facts' to adjudicating mostly 'contended law'. The thesis will then show that an administrative change which removed 'ghost claims' coincided with the introduction of ET Fees giving the impression that ET Fees were responsible for the sharp fall in the TCA when they were not. By noting the importance of administrative 'ghost claims' this thesis adds to the ongoing story of Employment Tribunals and provides a careful analysis which has previously been ignored in the literature and it contributes to a growing body of literature on the reliability of public data (see, for example, Hand D., 2018).

In order to understand both, how the ET's own administrative procedures generated 'ghost claims', and the ET change from adjudicating mostly 'contended facts' to mostly adjudicating 'contended law', it is necessary to understand how the annual TCA is made up of SACs and MACs. It is, perhaps, worth reiterating that MACs are largely absent from the literature as reported in January 2011, by the Department for Business Innovation and Skills (BIS) when it published *Resolving workplace disputes: A Consultation* (BIS, 2011). The consultation reported that 'no external research has been conducted into the number and effect of multiple claims in the ET system' (BIS, 2011, p.24). This acknowledged gap shows the importance of understanding how the annual TCA is made up, a step this thesis takes, and discussed in the next section.

1.3.3 Total Claims Accepted (TCA) = Single Applicant Claims (SACs) + Multi-Applicant Claims (MACs)

Having identified that ET data are made up of two types of claim, SACs and MACs, it is important to first outline what these different types of claims are and why an understanding of MACs is important. SACs are, as given in the title, claims brought by a single applicant. In contrast, MACs are brought by two or more people, usually against a common employer, where the claims arise out of the same circumstances, such as an equal pay issue which affects many employees of the same employer at the same time.

Although not widely investigated, MACs have been present in the ET System at least since the introduction of the Unfair Dismissal jurisdiction to the ETs in February 1972 (*Employment Gazette*, June 1974, p.503). They are first noted in the *Employment Gazette* of October 1987, as part of the claims outcome/disposal statistics for 1986/87 (*Employment Gazette*, 1987, p.499) and have only been separately identified in the published ET claims statistics since 1999/00 (Lord and Redfern, 2014, p.15). This lacuna also applies to the academic literature and government policy makers, in that although the SAC and MAC information has been available since 1999/00, it has not really been examined, leaving a gap in both understanding and application. The TCA figures for the years 1999/00, 2009/10 and 2014/15 are shown in Table 1.1, below.

Table 1.1

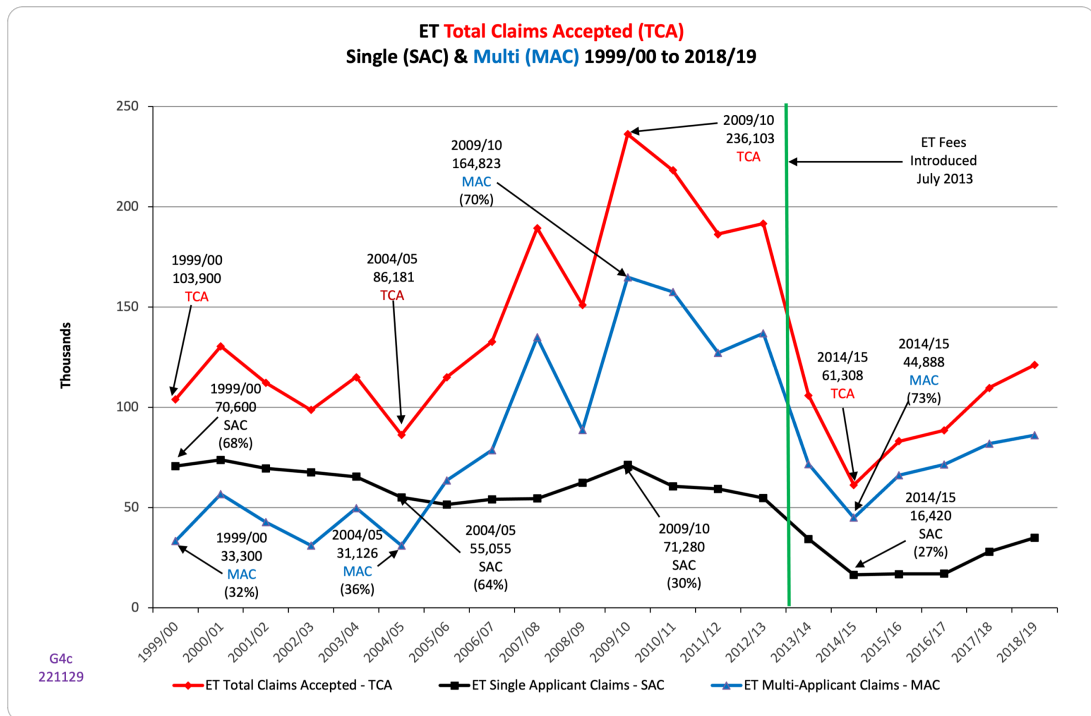
ET Total Claims Accepted (TCA) for Years 1999/00, 2009/10 and 2014/15, Showing Split between Single Applicant Claims and Multi-Applicant Claims

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	SACs as %age of TCA	Multi-Applicant Claims (MACs)	MACs as %age of TCA
	A	B	B/A	C	C/A
1999/00	103,935	70,600	68%	33,300	32%
2009/10	236,103	71,280	30%	164,823	70%
2014/15	61,308	16,420	27%	44,888	73%
√210709					
Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19 For all years from 1999/00 to 2018/19 see Appendix 6, Table A6.1, ET Total Claims Accepted (TCA) by Year 1999/00 to 2018/19 Showing Split between Single Applicant Claims and Multi-Applicant Claims					

As can be seen in Table 1.1, in 1999/00, the TCA was 103,935, with 68% of the TCA being SACs. By 2009/10 the TCA count had increased to 236,103, with SACs now representing only 30% of a much-increased TCA volume.

Following the introduction of ET Fees in July 2013, the 2014/15 figures show a sharp decline in both SACs and MACs, although MACs still represent 73% of the TCA count. The changing volume of SACs and MACs is shown graphically in Figure 1.2 and the changing TCA percentages that SACs and MACs represent are shown in Figure 1.3, below. Both Figures 1.2 and 1.3 are based on the data in Appendix 6, Table A6.1.

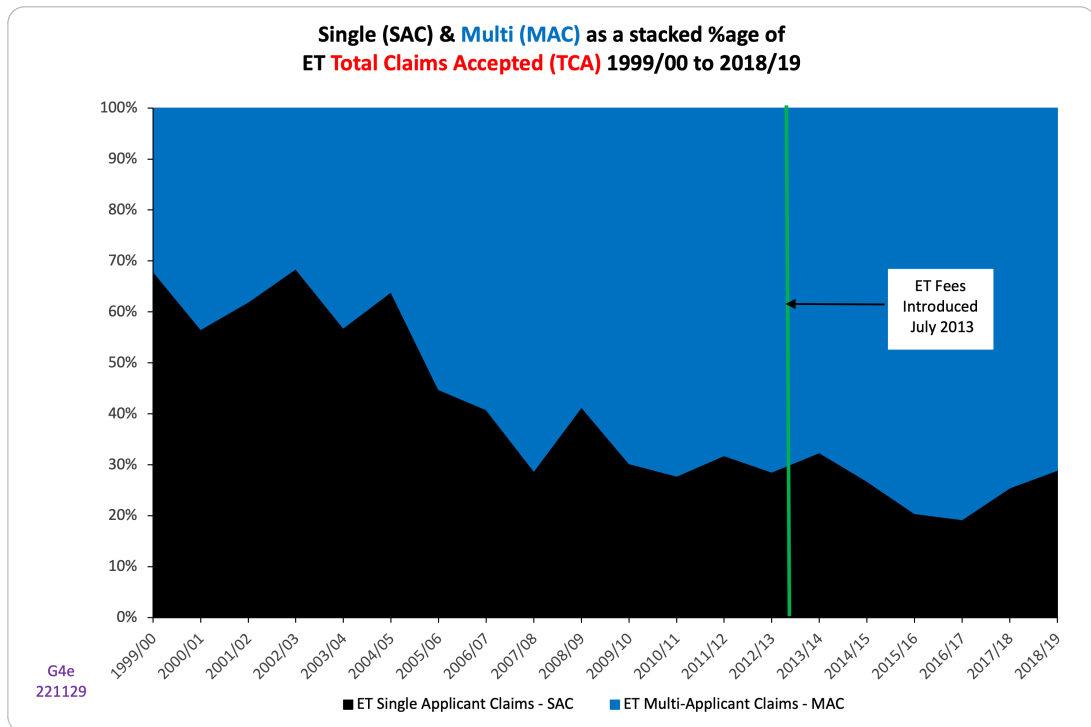
Figure 1.2



There are three fundamental changes to note from the foregoing:

1. A sharp rise in MACs (blue line) to a peak in 2009/10, followed by a subsequent fall, following the introduction of ET Fees in July 2013, as shown in Figure 1.2, above.
2. In the period 1999/00 to 2012/13 the annual SAC figures (black line) were relatively stable and declined only after the introduction of ET Fees in July 2013, as shown in Figure 1.2, above.
3. Over the period 1999/00 to 2018/19 there has been a shift from a TCA predominantly made up of SACs to a TCA predominantly made up of MACs as shown in Figure 1.3, below.

Figure 1.3



In earlier research (Mace, 2017), the author identified that the academic literature did not seem to adequately explain the ‘hidden’ changes in the TCA. The growth in MACs in the period 2004/5 to 2009/10 seemed so stark, yet the literature barely mentions the MACs directly. The literature has tended to either focus on the TCA level (Corby, 2015) or the individual claim level (Busby and McDermont, 2010). When MACs are discussed, it is either in relation to equal pay (Deakin et al., 2015; McLaughlin, 2014; Latreille, 2017) or when the growth in MACs is acknowledged, the question of what it represents is left open (Dix et al., 2009; Saundry and Dix, 2014). Despite this shift in the TCA from mostly SACs to mostly MACs, there has been very limited investigation of the drivers behind MACs per se, but rather a continued focus on, either, SACs specifically as with the SETA series (Buscha et al., 2012, p.4), or the collated TCA numbers more generally, as with Adams and Prassl (2017) and Corby (2015). This thesis focuses on the ‘missing’ intermediate level, the SACs and MACs, if and how they are different, if and how their relationship has changed over time and if and how this has changed the TCA count. Understanding this ‘missing’ intermediate level is important because it will fill in what appears to be a significant gap in our knowledge of ETs. This gap has

potentially had real world consequences because the academic discussion around ETs and the policies subsequently implemented may have been based on a partial picture. This thesis will address this gap in understanding and begin to draw out a more complete picture of the nature of disputes that pass through ETs.

The continued focus on SACs is problematic as it presents an incomplete understanding of the nature of employment disputes. This thesis will demonstrate that by developing an understanding of MACs, the perceived role of ETs shifts. This shift in understanding in turn allows this thesis to draw on the concept of beneficial constraints by Streeck (1997) to use ETs to explain the way rules and constraints that govern the employment relationship are developed rather than as a straightforward proxy for conflict.

The role of ETs in shaping beneficial constraints through 'contended law' large scale MACs as pursued by the trade unions, is an illustration of collective workplace conflict which Acas recently noted was 'not easy to measure' (Acas, 2023), meaning that the literature on collective workplace conflict beyond strike action was limited, with no systemic understanding of collective workplace conflict that manifests elsewhere. In analysing MACs, this thesis is also providing material for a taxonomy of contemporary collective workplace conflict in Great Britain.

1.4 Research Questions

So, having observed the 'hidden' changes in the TCA, the question becomes what is already known about them? The answer to this is surprisingly little. An early point to note is that while there is a wide literature on ETs covering all aspects of their history and operation to date (Davies and Friedland, 1993; Dickens, 1978, 2012a; Hepple, 2013; Kirk, 2018), MACs in particular are not widely covered and are often only tangentially referred to, usually in relation to equal pay. There has been significant interest in equal pay, by for example, Hepple et al., (2000), Deakin et al., (2015), Guillaume (2015) and McLaughlin (2014), and part of the story of equal pay involves the increasing use of MACs by trade unions (Heery, 1998; Heery and Conley, 2007) and no-win, no-fee lawyers (Deakin et al., 2015), yet the wider consequences of this MAC

development at the TCA level are largely ignored. This would appear to be an area for fruitful enquiry to broaden understanding of an under researched subject.

So, in order to understand the 'hidden' changes in the TCA and the consequences of them, the following aim will be addressed within the thesis:

What do Employment Tribunal claims tell us about workplace conflict?

This research will be examined by answering the following three questions:

- Firstly, what does Employment Tribunal claims data tell us about employment disputes in Great Britain?

This question will examine the annual ET TCA data from 1972 with a view to noting and explaining how the make-up of the TCA has changed over time with the growth of MACs in the 2000s, potentially reflecting a growth in 'contended law' employment disputes. As this change appears to have gone largely unnoticed in the academic literature and in policy circles, this thesis has attempted to fill some of this gap in knowledge by examining MACs in general and, for the first time, analysing the MACs contained in the ET Decision Index, where from February 2017, ET claim decisions were published on the gov.uk website (gov.uk, 2020). This straightforward descriptive exploration of MACs makes a significant contribution to the data and understanding around ETs.

- Secondly, what factors lie behind the observed changes in Employment Tribunal claims?

This question will examine, firstly, the phenomenon of 'administrative' claims, where the ET's own internal administrative processes generate ET claims and, secondly, the effects of changes in legal regulation such as the change in the Unfair Dismissal qualifying period, the introduction of ET Fees and Acas Early Conciliation on the ET statistics and, thirdly, the change in what the ET is being asked to adjudicate on, from 'contended facts' to 'contended law', which is associated with the rise of large scale MACs and, lastly, looks at the underlying ET total claims accepted (TCA) and total claims output/disposal

(TCOD) statistics to reveal that there are issues/problems with the reliability and construct validity of the ET data. Through this analytical exploration of the drivers of changes, this thesis uses the concept of beneficial constraints (Streeck, 1997) to suggest that ETs play a fundamental role in determining the rules that govern the employment relationship as much as resolving and managing conflict. Additionally, the analysis adds to the existing debates around the reliability of 'administrative data' (Hand D., 2018).

- Thirdly, What are the implications of the observed changes in Employment Tribunal claims?

This question will examine whether the volume of employment disputes has, in fact, increased and what effect, if any, this has had on the burden on business. The ET data will then be examined to see what they tell us about the resolution of employment disputes. The thesis makes the argument that there is limited evidence to support the arguments that the workplace conflict which funnels through ETs, represents a vexatious level of burden on business.

1.5 Thesis Structure

Chapter 2 uses the academic literature on ETs to build a picture of how ETs and ET claims in particular, have developed and been portrayed over time. The literature review then highlights how an important change in the makeup of ET claims has been largely missed. While there is a wide literature on ETs covering all aspects of their history and operation to date, MACs in particular are not widely covered and are often only tangentially referred to which leaves a gap in knowledge for this research to fill. The literature review also engages with the debate on business burden and highlights that neither side of the argument puts forward sufficient evidence to either show that ET claims are, or are not, a burden on business showing that, here again, is a gap in our understanding of what the real drivers of the increase in the TCA are. Chapter 2 then discusses the history of regulation using Hobbes, (1651), Smith (1776) and Hardin (1966,1998) who all acknowledge that markets can only function with some 'negative' form of regulation before highlighting that Streeck (1997) argues that markets and in particular economies are *improved* by regulation

which he terms 'beneficial constraints'. Throughout the thesis, Streeck's 'improving' regulation idea is then used to illustrate how through the rise of 'contended law' large scale MACs, the ETs have, in Great Britain, become a key forum for resolving the negotiation of the optimal level of 'beneficial constraints' to govern the employment relationship.

Chapter 3 highlights how the research adopts an exploratory approach to investigating ETs and ET statistics, using three research techniques. Firstly, a quantitative and qualitative archival analysis of publicly available documents, secondly a quantitative analysis of two publicly available datasets, and lastly, two semi-structured interviews. These three research techniques, taken together, enabled the various phenomena which emerged as the research proceeded to be identified and clarified.

Chapter 4 is the first of four findings chapters and looks at the procedural changes that have been applied to the ET since 1972, when the Unfair Dismissal jurisdiction was added to the ET's remit. It is also intended to provide helpful background context for subsequent findings chapters, but equally presents the negotiation of the procedural constraints within which the employment relationship operates. If we are to understand ETs as a forum for the establishment of where optimal beneficial constraints (Streeck, 1997) lie, as is contended by this thesis, then it is here that the shifts in procedural rules of these negotiations are explained and explored.

Chapter 5 looks at what the ET claim statistics tells us about employment disputes in Great Britain. By careful analysis of the ET data and statistics the change over time from mostly SACs to mostly MACs is examined in detail revealing that the phenomenon of the sharp increase in the TCA between 2004/05 and 2009/10 is MAC driven. This is followed by an in-depth analysis of MACs, which reveals, firstly that the increase in MACs is related to the Working Time Directive jurisdiction and secondly that MACs are not uniform but multifaceted. Chapter 5 expands our knowledge of the 'hidden' changes in the TCA by revealing that the growth in MACs is related to the Working Time Directive jurisdiction. Chapter 5 also develops the argument explored in the literature review that there has been a shift from contended facts type cases,

which the tribunals were established to help with, to norm-generating contended law, which speaks to the negotiations needed around beneficial constraints (Streeck, 1997) in order to develop an optimal level within which the employment relationship can operate effectively.

Chapter 6 builds on the previous discussion by examining what factors lie behind the changes in ET claims by, firstly, examining the phenomenon of 'administrative' claims where the ET's own administrative processes generates ET claims. Secondly, by looking at the effects of changes in legal regulation such as the change in the Unfair Dismissal qualifying period, the introduction of ET Fees and Acas Early Conciliation on the ET statistics. Thirdly, examining the adjudication change from 'contended facts' claims, such as Unfair Dismissal to 'contended law' claims, such as Equal Pay and Working Time Directive MACs, the consequence of which is that over time, the ET has become an essential first step in a norm-generating legal process of extending the reach and clarifying the details of employment law involving all levels of the court system and represent the ongoing negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004) and, lastly, by looking at underlying ET TCA and total claims output/disposal statistics, using Hand D.'s (2018) guiding principles regarding 'administrative data' to reveal that there are issues with the reliability and construct validity of the way the data are collected. Here it is found that the main cause of the sharp rise in MAC claims from 2004/05 on, is the ET's own administrative processes. The sharp rise in claims is largely 'self-generated' by the ET itself. Chapter 6 expands our knowledge of the 'hidden' changes in the TCA by revealing for the first time that there is a new/separate 'administrative type' of claim, which for the first time says that 'What ET claims tell us about workplace conflict' may not be what we thought.

Chapter 7 builds on the previous discussion by considering the answer to the question: What are the implications of the observed changes in Employment Tribunal claims? This will be done by, firstly, examining whether the level of employment disputes has increased and what effect, if any, this has had on the burden on business. By drawing on the literature review and the findings from Chapters 5 and 6, Chapter 7 will show that the sharp rise in ET claims,

from 2004/05 on, is not the result of a growth in 'vexatious claims' (BBC, 2011; Raab, 2011; BIS, 2012), but is largely driven by the ET's own administrative processes and the growth of norm-generating 'contended law' Equal Pay MACs. This develops our understanding of how the role of the ET has shifted and grown, over time, into both a forum for the negotiation of the rules of employment relationship through what Streeck (1997), regards as the societal benefit of beneficial constraints and a forum for the resolution of collective workplace conflict, potentially substituting for collective bargaining between trade unions and employers. The nature of this change in the adjudicative role of the ET throws doubt on the vexatious claims/burden on business argument for the increase in the TCA.

Chapter 7 also looks at what the ET data tells us about the resolution of employment disputes and here it is found that the outcome/disposal types 'Withdrawn' and 'Struck Out' have become interchangeable terms for the administrative act of removing completed claims from the ET's records. This finding facilitates the finding that a 'likely' successful ET outcome/disposal is the probable outcome/disposal of an actual ET claim. This finding leads to the conclusion that the current ET 'System' is performing an essential service in resolving employment disputes between an individual and their employer with several points during the full ET claims process where a settlement can be reached without the formal step of an ET Hearing. This 'new interpretation' of 'success' then feeds through into how effective the 'prompt conflict resolution preferably close to the source' policy strand is. It will be shown that despite policy being implemented and delivered without a full understanding of the data, the ET have evolved over time into, firstly, a 'system' of Dispute Resolution operating much as the Gibbons Review envisioned in 2007 and, secondly, a forum for the negotiation of what Streeck (1997) regards as societal benefit of regulatory 'beneficial constraints'.

Chapter 7 conclusively shows that 'What ET claims tell us about workplace conflict' is not what we thought.

Chapter 8 concludes the thesis by echoing the previous findings and their importance for interpreting workplace conflict as represented by ET claims. It

also details the four contribution themes this research makes to the body of knowledge, highlights the limitations of the research and suggests ideas for future research which builds on the work of this thesis.

From the foregoing it can be seen that by reappraising the ET evidential base, the ET has, over time, become a forum, not just for resolving workplace conflict, but also for designing the rules of the employment relationship through negotiating the level of beneficial constraints (Streeck,1997). This thesis therefore adds to the body of knowledge, furthering the academic policy discourse.

1.6 Conclusion

Taken together the thesis shares a story hidden in the intermediate level of the ET Claim Statistics, the SACs and MACs. The thesis demonstrates that by developing an understanding of MACs, the perceived role of ETs shifts from adjudicating mostly 'contended facts' to mostly adjudicating 'contended law'. This understanding in turn allows this thesis to draw on the concept of beneficial constraints by Streeck (1997) to use ETs to explain the way rules and constraints that govern the employment relationship are developed rather than as a straightforward proxy for workplace conflict.

Chapter 2
Literature Review

2.1 Introduction

What does existing literature on Employment Tribunal claims tell us about workplace conflict? That is the overarching question, which will be examined by answering the following three sub-questions:

- Firstly, what does Employment Tribunal claims data tell us about employment disputes in Great Britain⁶?
- Secondly, what factors lie behind the observed changes in Employment Tribunal claims?
- Thirdly, what are the implications of the observed changes in Employment Tribunal claims?

As noted in the previous chapter, the aim of this thesis is to gain an understanding of what Employment Tribunal (ET) claims tell us about conflict in the workplace. It will do this by looking in particular at how the growth of ET multi-applicant claims (MACs) have, over time, changed the makeup of the annual ET total claims accepted (TCA) count and hence changed what conclusions can be made about 'workplace conflict' using the annual TCA statistic.

This chapter uses the academic literature on ETs to build a picture of how ETs and ET claims, in particular, have developed and been portrayed over time. The literature review then highlights how an important change in the makeup of ET claims, the growth of MACs, has been neglected, leaving a gap in knowledge for this research, which has important implications for our understanding of the presence and nature of conflict within the workplace.

2.1.1 Multi-Applicant Claims (MACs)

An early point to note is that, while there is a wide literature on ETs covering all aspects of their history and operation to date, MACs in particular are not widely covered and are often only tangentially referred to, or even, as

⁶ All Employment Tribunal statistics in this thesis refer to Great Britain only i.e., England, Wales and Scotland. Northern Ireland statistics are NOT included.

observed by Buscha, Urwin and Latreille in 2012, in reference to the 2003 and 2008 Survey of Employment Tribunal Applications (SETA), actually excluded, but identified as an area needing research:

‘Claims involving multiple applicants (often in relation to Equal Pay or pensions provision) are excluded. This would appear a useful area for separate work’ (Buscha et al., 2012, p.12).

A simple word search highlights this. In preparation for this literature review the author has reviewed over 250 academic sources consisting of 13 complete books containing 138 chapters plus 109 journal articles and individual standalone chapters. The books, journals and chapters are all associated in some way with ETs, Employment Relations and this research and include all the major writers, such as Deakin, Dickens, Heery, Hepple and Latreille etc. The results of word searches for the word ‘tribunal’ and ‘multi’ within this ‘limited body’ of literature are shown in Table 2.1, below:

Table 2.1

Results of Word Searches for ‘Tribunal’ and ‘Multi’ in Books and Journal Articles/Individual Chapters^a

		Search Terms	
		Tribunal	Multi
Books			
No. of Books	Non searchable PDF	No. of Books Using Terms	
13	0	12	6
Total Number of Chapters	Non searchable PDF	No. of Chapters Using Terms	
138	0	75	10
		No of Times Used in Total	
		3000	28
Journal Articles or Individual Chapters			
No. of Journal Articles or Individual Chapters	Non searchable PDF	No. of Articles/Chapters Using Terms	
109	5	72	24
		No of Times Used in Total	
		2253	59

^a The full results for this word search in Books and Journal Articles/Individual standalone Chapters are shown in Appendix 16, Tables A16.1 and A16.2 respectively.

The word search term 'tribunal' is used 3,000 times in the 13 Books and 2,253 times in the 109 journal articles and individual standalone chapters, making a total of 5,253 'hits' whereas the word search term 'multi' is used 28 and 59 times respectively making a total of 87 'hits'. Given that I was actively looking for literature on MACs, this is an early illustration that 'MACs' are broadly absent from this body of literature.

Part of the reason for the low number of 'hits' for 'multi' may be due to a lack of consistent and readily available ET claims data and statistics, a general problem that has been recognised in the literature by among others Burgess et al., (Department of Trade and Industry (DTI), 2001), Hand J., (2010) and Lord (2014).

2.1.2 Employment Tribunal Data

The ET claims data and statistics are currently produced by the Ministry of Justice (MoJ) as part of Tribunal statistics collection (MoJ, 2023) and are what Hand D. (2018) classed as 'administrative data', meaning that the published ET claims data have been extracted from the ET's own management systems and subsequently summarized to reflect the work of the ET System. The summarized ET data are often used to make policy decisions and as the basis of academic research.

The lack of consistent and readily available ET claims data and statistics is reflected in the literature, which tends to either focus on the TCA level (Corby, 2015) or the individual claim level (Busby and McDermont, 2010). At the TCA level there is an implied assumption that all claims are the same, with limited attempt to get behind the claim numbers, which are not available in a readily usable form beyond the aggregated TCA prior to 1999/00 (Lord and Redfern, 2014, p.15). At the individual level, the literature ranges from studies of 10 single applicant claims (SACs) in the 2010 article by Busby and McDermont (2010) where there is a wealth of detail about the individual claims and claimants, to the large scale MACs involving thousands of claims generated by Local Authority Single Status Agreement Equal Pay employment disputes of the 1990s/2000s, where the background of particular MACs is covered in great detail by multiple authors such as Conley and Page (2018) and Deakin

et al., (2015), but the focus is on the thematic equal pay aspect, not the overall interaction of MACs, SACs, jurisdictional complaints (JCs) and the TCA. This thesis focuses on the 'missing' intermediate level, the SACs and MACs. The thesis considers if and how the two types of claims are different, if and how their relationship has changed over time and if and how this has changed the TCA. Understanding this 'missing' intermediate level is important because it will fill in what appears to be a significant gap in our knowledge of ETs. Improving our understanding here is essential, because, if the relationship between the TCA, SACs, MACs and jurisdictional complaints is/was not well understood by either the academic literature or by government policy makers then academic debate and government policy is based on, potentially, incomplete understanding and analysis. This thesis will go some way to rectifying this gap in our knowledge.

Given the foregoing it would be appropriate to use the literature to understand ETs more generally to put MACs in context. This will be done by looking first, at what we know about workplace conflict using ET claims as a proxy, and importantly to clarify/define an understanding of what workplace conflict means. Second, the role of the ET will be examined from 1972, to see why the Unfair Dismissal jurisdiction was added to their remit, and subsequently to see if and how ETs have changed over time. Third, the volume of tribunal claims has changed over time. In fact, not just changed but steadily increased. Several reasons have been put forward to explain the increase and these will be discussed. Fourth, has the composition/jurisdictions of claims changed over time as more statutory rights have been added, or is the composition/jurisdiction of claims largely as it was in 1972? Which brings us to fifth, what do we know about MACs? Are they written about specifically or does the literature that exists only cover them tangentially? Sixth, what is government policy on tribunals and workplace conflict? Almost from the 1972 inception of the Unfair Dismissal jurisdiction, every government has viewed the subsequent growth in ET claims as a 'problem' to be resolved by either making it more difficult to make a claim or by looking to resolve the claim earlier and earlier in the dispute. Seventh what factors lie behind the changes in tribunal claims? Here several factors have been suggested for the

growth/changes in ET claims, such as, the individualisation of workplace conflict, increased juridification, a growing use of legal strategies involving ETs by trade unions, the rise of no-win, no-fee lawyers and finally, the economic cycle. And lastly what are the implications for the observed changes in tribunal cases? For example, have all the observed/discussed factors led to an increased burden on business or is it just possible that the growth in ET claims might say something altogether more interesting?

Beyond an understanding of the ET data relating to this intermediate level and how this affects our understanding of the nature of conflict that reaches ETs, the thesis will also consider if the ET data in and of themselves are reliable.

In 2007, the Audit Commission published *Improving information to support decision making: standards for better quality data* (Audit Commission, 2007). The Audit Commission noted that there were six key characteristics of good quality data and these are shown in Table 2.2, below:

Table 2.2

**Extract from:
Audit Commission: Improving information to support decision making:
standards for better quality data. A framework to support improvement
in data quality in the public sector**

Dimensions of data quality: There are six key characteristics of good quality data.	
Accuracy	Data should be sufficiently accurate for its intended purposes, representing clearly and in sufficient detail the interaction provided at the point of activity. Where compromises have to be made on accuracy, the resulting limitations of the data should be clear to its users.
Validity	Data should be recorded and used in compliance with relevant requirements, including the correct application of any rules or definitions. This will ensure consistency between periods and with similar organisations.
Reliability	Data should reflect stable and consistent data collection processes across collection points and over time, whether using manual or computer-based systems, or a combination. Managers and stakeholders should be confident that progress toward performance targets reflects real changes rather than variations in data collection approaches or methods.
Timeliness	Data should be captured as quickly as possible after the event or activity and must be available for the intended use within a reasonable time period.
Relevance	Data captured should be relevant to the purposes for which it is used. This entails periodic review of requirements to reflect changing needs.
Completeness	Data requirements should be clearly specified based on the information needs of the organisation and data collection processes matched to these requirements. Monitoring missing, incomplete, or invalid records can provide an indication of data quality and can also point to problems in the recording of certain data items.
Source: Audit Commission, 2007, p.5	

More recently, Hand D. (2018) notes, from a statistical perspective, such ‘administrative data’ comes with several caveats and these are particularly relevant to the ET administrative data:

1. The ‘administrative data’ are the ‘data exhaust’ from the ET management system which may not be useful for later statistical analysis. For example, certain data may not be collected because it is not needed for operational purposes.
2. Control of the methods by which the ‘administrative data’ are collected and processed rests with the MoJ and its predecessors. Although it might be expected that any data collected for operational purposes would be collected diligently and accurately, this may not

be the situation, meaning the ET data may not be complete and error free.

3. The ET 'administrative data' definitions used may change over time as operational requirements change, making longitudinal comparison difficult.

Over and above the three points noted above, between 1972, when the Unfair Dismissal jurisdiction was added to the ET's remit, to 2018/19, the ET claims data has been the responsibility of 7 different government departments⁷ which potentially compounds the issues highlighted by Hand D. (2018), as each government department may have different operational requirements, definitions, criteria, protocols and personnel for handling data, which could result in variations in how consistently, diligently and accurately the ET data are recorded over the long term.

One of the key underpinning contributions of this thesis is to consider the gaps in the data and highlight the issues around the reliability and construct validity of the ET claims data and this is fully discussed in Chapter 6. By examining the intermediate level and using Hand D.'s guiding caveats this thesis will thoroughly examine the data integrity and completeness of the ET claims data which is used widely in academic and policy debate. This examination is important because if the ET claims data are not complete and reliable then academic debate and government policy is based on, potentially, incomplete data and analysis. An important purpose of this discussion is to start debate on the degree to which ETs reflect a proxy of conflict in the workplace, whether data can be sufficiently refined to allow them to be a proxy or whether there are significant deficits in the data and our understanding and as such, these data are too problematic.

⁷ Department of Employment, Department for Constitutional Affairs, Department of Trade and Industry, Department for Business, Enterprise & Regulatory Reform, Department for Business, Innovation & Skills, Department for Business, Energy & Industrial Strategy and finally the MoJ.

As discussed above, the next section will begin the discussion with a brief look at workplace conflict in Great Britain.

2.2 Workplace Conflict in Great Britain

This section discusses what is meant by workplace conflict and then examines how workplace conflict variously manifests itself as an employment dispute. The discussion will then move on to briefly assess how the literature struggles to reconcile the apparent increase in employment disputes, as represented by the growth in ET claims, with other representations, such as the *Workplace Employment Relations Study 2011* (WERS), which showed no increase in workplace conflict over the same period.

2.2.1 What is Workplace Conflict?

Workplace conflict is, perhaps, an example of something we all instinctively know when we see it, yet find hard to articulate. Tjosvold (2006) noted that 'defining conflict is an academic issue but one with critical practical implications' (Tjosvold, 2006, p.92). In 2015, Chaudhry and Asif, noted that it was 'difficult to put forward a definition of conflict that is commonly accepted by all scholars' (Chaudhry and Asif, 2015, p.238). However, Kelly (2006) notes that while observing that 'a generally accepted definition of conflict does not exist...Walton (1966) defined conflict as processes occurring within a group in any of several forms, such as hostility, decreased communications, distrust, sabotage, verbal abuse and coercive tactics. However, this definition engenders a negative and inflammatory approach to conflict. Marquid and Huston (2000) defined conflict less malignantly as the internal discord that results from differences in ideas, values or feelings between 2 or more people.' (Marquid and Huston (2000), quoted in Kelly, 2006, p.22).

Tjosvold (2006), amongst others, noted that conflict can have positive, as well as negative, connotations with 'cooperative, open-minded discussion of opposing views' (Tjosvold 2006, p.90) being important in developing relationships. Estlund, for example, notes that 'Conflict is endemic to organizational life' (Estlund, 2014, p.53). It can range from non-cooperation (low intensity conflict), to contest, to violence (higher intensity conflict). Estlund

goes on to say that ‘most workplace conflict unfolds in less dramatic fashion⁸, and is either resolved internally or left to fester and to take a toll on the organisation in the form of resentment, [employee] turnover, low productivity, deterioration of workers health and happiness or ...litigation’ (Estlund, 2014, p.53). In a recent Acas research paper, Saundry and Urwin (2021) estimated that the total annual cost of conflict to UK organisations was £28.5 billion, over 50% of which was associated with resignation, sickness absence and presenteeism (Saundry and Urwin, 2021, p.17).

Within their definition in the *Dictionary of Human Resource Management*, Heery and Noon (2017) highlight the difference between latent conflict, which potentially always exists when there is a conflict of interests, such as between employees and their employers and manifest conflict, which is the actual resort to conflict behaviour by employees and their employers, in other words a dispute. This is an important point because workplace conflict ‘can only be measured when it results in a transparent and overt manifestation’ (Dix et al., 2009, p.177). Dix et al., go on to note that:

‘the most manifest expressions [of workplace conflict] are [employment] disputes, which may be collective or individual, involving action such as a strike, raising a grievance or taking disciplinary measures’ (Dix et al., 2009, p.177).

In defining employment disputes as the expression of workplace conflict between workers and their employers, Dix et al., and Heery and Noon make clear that their definitions of workplace conflict and employment disputes do not include interpersonal conflict. This is not to say that there is no interpersonal conflict in the workplace, but rather to highlight that Heery and Noon’s carefully crafted definitions of workplace conflict and employment disputes focus on workplace conflict *between* employee and employer whether manifested in individual or collective employment disputes.

⁸ Although the author once attended an Employment Tribunal hearing where the claimant accused another member of staff of trying to kill him with a forklift truck....

Given the foregoing discussion around the definitions, or lack thereof, of both workplace conflict and employment disputes in the literature, this thesis will follow the detailed definitions of both given by Heery and Noon (2017)⁹.

The discussion also highlights that workplace conflict is a far wider concept than what manifests as employment disputes which in turn cover a far wider range of manifestations than just employment tribunal claims. Establishing the actual level of workplace conflict in Great Britain is difficult because unless it manifests in a transparent and overt manner it is very hard to measure (Dix et al., 2009, p.177), thus the thesis focuses on employment disputes through Employment Tribunals as represented by ET claims. In the context of a discussion and thesis about ET claims this shows that ETs claims are a very imperfect proxy for workplace conflict and employment disputes, with ET claims being very much the tip of the iceberg, but they are still often used as a proxy due to their public nature (see, for example, Saundry, et al., 2014, p.2; Corby, 2015, p.163) and thus the examination holds merit.

The next section therefore briefly discusses what ETs and ET claims represent in terms of workplace conflict.

2.2.2 Employment Tribunal Claims as a proxy for workplace conflict

As mentioned, the submission of a claim to the ET is only one of a number of overt manifestations of workplace conflict (Dix et al., 2009). Some of these overt manifestations of workplace conflict, such as the annual number of strikes and the annual number of ET claims generate data which is collated and published as official statistics (Dix et al., 2009, p.177), while other overt manifestations of workplace conflict, such as the number of formal grievances raised by employees is largely unknown in the public domain. Beyond these overt actions are what Heery and Noon (2017) refer to as ‘informal’ or covert actions embracing behaviour such as absenteeism, quitting, restriction of

⁹ See Appendix 5, Thesis Definitions, for full Heery and Moon definitions of workplace conflict and employment dispute.

output, and sabotage, which by their covert nature are extremely difficult to measure.

The consequence of the challenges in collecting data on many manifestations of workplace conflict is that 'discussions of [workplace] conflict have traditionally focussed on the incidence of [employment] disputes and principally on strikes and the rate of applications to the ET' (Dix et al., 2009, p.177), because the annual statistics about these two overt manifestations of workplace conflict exists. The focus on ET claims means that there is an underlying assumption that trends in ET claim numbers reflect genuine trends in employment disputes (see, for example, Corby, 2015, p.163). This is an assumption that this thesis will look to investigate.

There are hints in the literature that the growth in ET claims, particularly in the 2000s, may not accurately reflect the level of workplace conflict. Firstly, Dix et al., make the point that 'ET claims tell us nothing about the overall extent to which employees raise formal grievances at work' (Dix et al., 2009, p.178), although this may simply reflect that there is no clear understanding of which claims make it from grievance to tribunal. Secondly, Wood et al., (2017) using WERS 2011 found that despite a weakening of the statutory disciplinary grievance and disciplinary procedural requirements following the 2007 Gibbons Review, there has not been corresponding reduction in the incidence of tribunal cases [claims] or grievances. This is, perhaps, not surprising as it is in line with Knight and Latreille's (2000) finding that 'the existence of dismissal procedures alone has little bearing on the probability that a firm will be subject to an employment tribunal claim for unfair dismissal' (Knight and Latreille, 2000, p.549). Thirdly, and perhaps most intriguingly, Dix and Saundry (2014) noted that the 2011 WERS (van Wanrooy et al., 2013) found little sign of an upward trend in individualized [workplace] conflict (Dix and Saundry, 2014, p.478), a finding in contrast to tribunal trends. This observation confirms a trend outlined by Dix et al., in 2009 when they noted that evidence from the British Social Attitudes Survey, British Household Survey and WERS series suggested 'that although perceptions of employee relations and job satisfaction dipped during the early to mid-1990s, subsequent years saw a steady improvement' (Dix and Saundry, 2014, p.479).

The foregoing discussion hints that utilising the growth in ET claims may be problematic in terms of acting as a proxy for the underlying level workplace conflict. This challenge in data usage will be investigated within the findings of this thesis. The next section examines how ETs have moved from adjudicating mostly 'contended facts' to mostly adjudicating 'contended law'.

2.3 From Contended Facts to Contended Law

The previous sections have defined workplace conflict and employment disputes and concluded with a question as to the extent to which the annual ET TCA statistic is a proxy for workplace conflict. This section moves the discussion forward to examine how ETs appear to have grown beyond their original role in adjudicating mostly 'contended facts' to a role in adjudicating 'contended law'.

ETs generally adjudicate employment disputes around a previously agreed objective contractual term or a piece of statutory employment legislation. In reality, this breaks down into two types of adjudication, 'contended facts' and 'contended law'. An example of 'contended facts' adjudication would be the Unfair Dismissal jurisdiction, where claims are generally based on subjective and contended 'facts'. Dennison and Corby (2005) referred to these contended facts as the 'adversarial mirror' because the employer's [respondent] and the employee's [claimant] version of the facts were not perfect reflections of each other but were somehow distorted and effectively required the ET to resolve the distortion (Dennison and Corby, 2005, p.22).

Over time as more statutory employment rights have been enacted, such as the Equal Pay and Sex Discrimination jurisdictional complaints, which both came into effect on 29th December 1975, the ET has potentially moved beyond just the adjudication of 'contended facts' towards a 'norm generating' precedent setting function, as represented by the large-scale Equal Pay MACs, where the matter at dispute is not 'contended facts' but 'contended law'. To quote MacMillan (1999):

'Donovan [1968 *Royal Commission on Trade Unions and Employer Associations*] cannot possibly have contemplated that a chairman [ET

Judge] sitting alone should be called on to disapply provisions of UK law, having first determined the interaction between UK and European substantive law, procedural and jurisdictional time limits in a handful of test cases representing some 40,000 applicants with claims said to be worth in excess of £100 million' (MacMillan, 1999, p.43).

There appears, therefore, to have been a shift over time in the nature of the role undertaken by ETs and this thesis will explore this under-investigated shift further. The next section looks at how and why ETs were given the Unfair Dismissal jurisdiction in 1972 and then what have been the key developments since, in order to build a picture of how ETs and ET claims in particular, have developed and been portrayed over time.

2.4 What is the role of the Employment Tribunal?

As noted above, workplace conflict is a normal part of doing business (Heery and Noon, 2017), which requires managing. Most workplace conflict is managed internally, within a workplace. However, if internal resolution fails then since 1972 ETs have acted as the final stage of the process by which workplace conflict is resolved in Great Britain. This section looks at how and why ETs were given the Unfair Dismissal jurisdiction in 1972 and then what have been the key developments.

2.4.1 How and why were ETs given the Unfair Dismissal jurisdiction?

Davies and Friedland (1993) chart the change from an initial post 1945 period of relative industrial harmony characterised by collective bargaining between trade unions and employers to the more difficult period of the 1960s as the Labour Government of 1964-70 attempted and failed to meet the incompatible economic goals of full employment and low inflation, which led to a breakdown

of the previous consensus and also ushered in an increase in unofficial industrial action¹⁰ (Davies and Freedland, 1993, p.239).

In order to deal with this increasingly difficult situation and the 'problem' of unofficial industrial action, the Labour Government set up the 1968 *Royal Commission on Trade Unions and Employer Associations* (Donovan RC), which concluded that the rise in unofficial action, often based on a difference of interests, was caused 'by the inadequacy of procedures to resolve workplace and individual disputes and grievances' (Davies and Freedland, 1993, p.262). One of Donovan's recommendations for dealing with the 'problem' of unofficial action was that 'labour tribunals' should provide an 'easily accessible, speedy, informal and inexpensive procedure' for the settlement of disputes' (Donovan, 1968, p.156) although in light of MacMillan's specific comments in the previous section there is a question as to whether they are still 'easily accessible, speedy, informal and inexpensive' (Donovan, 1968, p.156). This is a view that is widely held (see, for example, Earnshaw et. al., 2000, p.65; Colling, 2010, p.337; Corby and Latreille, 2012, p.397).

As Davies and Freedland (1993) note, following the Donovan Report the Conservative Government of 1970-74 passed the *Industrial Relations Act* in 1971, which created the statutory employment right for protection against Unfair Dismissal and added the jurisdiction, which became effective on 28th February 1972 (*Employment Gazette*, June 1974, p.503), to the remit of the Industrial [Employment] Tribunals¹¹. Although Industrial Tribunals were originally set up in 1964, under the *Industrial Training Act* of that year, for the settling of 'appeals from employers against the Industrial Training Boards levy assessments' (*Employment Gazette*, November 1984, p.487), other 'functions', such as the determination of entitlement to a redundancy payment under the *Redundancy Payments Act 1965* and the determination of 'dock

¹⁰ During the late 1960s and early 1970s, the author can remember regular news stories about 'unofficial stoppages' and 'wildcat strikes' led by 'shop stewards' at Ford, BMC (the forerunner of British Leyland), Rootes, or Vauxhall on the nightly television news.

¹¹ In 1972 when Employment Tribunals began to hear claims for Unfair Dismissal they were known as Industrial Tribunals. On the 1st August 1998 following the Employment Rights (Dispute Resolution) Act 1998, their name was changed to Employment Tribunals. For continuity I will use the term Employment Tribunal (ET) throughout.

work' for the *Docks and Harbours Act 1966*, had subsequently been added to their remit (MacMillan, 1999, p.34).

Although one of the reasons noted above for the introduction of these 'labour courts' was the problem of 'unofficial action' (also known as 'wildcat' strikes) which, by definition, are a multiple person activity, the ET System was set up to deal with individual claims only (Dickens, 2008, p.9). Claims arising from the same set of circumstances against the same employer could be heard together, but each claimant was required to file their own individual claim and if no claim was filed, then no redress was available, even if the potential claimant had suffered the same treatment as actual claimants who were successful in their claims. This situation still applies today, 50 years later, no claim made, no redress. This may have been a result of the Donovan RC focusing on solving the unofficial strike problem while attempting to preserve the existing trade union/employer collective bargaining routines. Dickens (2008) notes that at the time there was no strategic deliberation regarding the development of an ET 'system' which may explain why there was no provision for 'class' actions (Dickens, 2008, p.9).

Further statutory employment rights, created by subsequent governments and employment rights derived from European Union (EU), have been given to the Employment Tribunals as they were renamed in 1998. By 2004, according to the Department for Constitutional Affairs (DCA), ETs were responsible for 'nearly 80 jurisdictions' (DCA, 2004, p.44). A Tribunals Service Jurisdiction List and originating legislation is shown in Appendix 9 (Tribunals Service, 2011). This rise in jurisdictions in and of itself will have inevitably led to an increase in the TCA, as noted by Dickens (2002, p.630), Hepple and Morris (2002, p.247) and the Department of Business Enterprise & Regulatory Reform (2007, p.1).

This section has examined how and why ETs were given the Unfair Dismissal jurisdiction and then looked at the key developments since 1972 in order to understand how the ET has developed over time to provide the findings chapters of this thesis with greater context.

As was noted earlier, with regard to ‘administrative data’, the definition of what is being recorded may change as operational requirements change (Hand D., 2018) and the ET data are no exception, as, for example, who is eligible to file a claim and when a claim is accepted by the ET, have changed over time, which will affect the volume of ET claims recorded, It is important to examine these changes to eligibility etc. as the changes may have impact and, in particular, different impact, beyond the TCA to the ‘intermediate’ level of SACs and MACs. The next section, therefore, looks at how the volume of tribunal claims has changed over time and also examines ‘what is a claim?’.

2.5 How has the volume of Employment Tribunal claims changed over time?

This section examines how the volume of tribunal claims has changed over time. Before looking at ‘external’ explanations for variations in levels it would, perhaps, in line with Hand D.’s (2018) observations regarding ‘administrative data’, be better to examine what the TCA is actually recording. The ET claims data series began nearly 50 years ago, in 1972, and over such a long period of time it is possible that not only what is being recorded as a claim has changed, but so has the meaning and understanding of the term ‘claim’ in the literature. This section then, clarifies ‘what is a claim?’

2.5.1 What is a claim – part one: ‘terminological laxity’

Whilst claims are often used as a proxy for workplace conflict, defining a claim is a much more complicated subject than most of the literature acknowledges. There is a lacuna around defining what a claim actually is, which seems to indicate an underlying assumption that readers fully understand the specialized terminology surrounding this subject. This understanding is important if we are to attempt to use claims to represent workplace conflict. For example, Sloane and Jain (1990, p.225) have identified that 90% of ET *applications* in 1983 were in the Unfair Dismissal and Redundancy Pay jurisdictions, yet on the same page as the above quote, Sloane and Jain refer in a Table to Discrimination *applications* to the ET for each year from 1976 to

1987/8 which are actually the *outcome/disposals* of discrimination applications, i.e., have been processed by the ET to outcome/disposal¹².

Szyszczyk (1985) refers to 'completed applications' and Sloane and Jain (1990) refer to 'applications' for both applications and outcome of applications. There is a confusion of terms here, with the term applications being used to cover both submission of applications and discussions about the outcome of applications. Nowhere in the *Employment Gazette*, which is an official publication of the data, does it mention the annual number of applications RECEIVED, either in total or for Unfair Dismissal until November 1984 (*Employment Gazette*, November 1984, p.488), 10 years after the role was created, and then only at the TCA level. There is also no jurisdictional breakdown of the claims received, apart from 1983 (*Employment Gazette*, November 1984, p.488). These are early examples of the enduring 'terminological laxity' which means that any analysis of ET claims is laden with the potential for misinterpretation and subsequent misanalysis, which is problematic when these figures are subsequently used as proxies for workplace conflict.

This issue runs all the way through the history of ETs. Perhaps the best example of 'terminological laxity' is how the '*Survey of Employment Tribunal Applications*' (SETA) has been misinterpreted.

SETA is a periodic survey of a sample of claimants and employers, with the seventh SETA report, known as SETA 2018, stating that 'the core objective of the SETA series is 'to provide information on the characteristics of the parties in, and key features of, employment tribunal cases [claims] for the purposes of developing and evaluating policy in this area' (BEIS, 2020, p.16).

The SETA 2018 report is explicit in noting that:

¹² See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19.

'The findings presented in this report are statistically representative of *single claims* [italics added] disposed of', in the period between 3rd of October 2016 and 4th of October 2017 (BEIS, 2020, p.6).

From this it is clear that SETA 2018 only covers *single applicant claims* (SACs) outcome/disposals and specifically ignores multi-applicant claims (MACs) and their outcome/disposals.

The 2013 SETA report, similarly, makes explicitly clear that it is based on a survey of single applicant claims (BIS, 2014, p.17). According to Buscha et al., (2012, p.4) the same applies to both SETA 2008 and 2003 although this is not made clear in the SETA 2008 Findings Report (BIS, 2010a), the associated Technical Report (BIS, 2010b) or the SETA 2003 Findings Report (DTI, 2004a) or the associated Technical Report (DTI, 2004b). Although the SETA 1998 Findings Report (DTI, 2004c) makes no specific reference to only dealing with SACs, the accompanying Supporting documentation report does, stating that 'the ETS [Employment Tribunal Service] records some cases as having 'multiple' applications, in which a number of individuals were in dispute with an employer for the same reason. It was considered desirable that these applications were excluded in sampling because in such cases the tribunal would usually hear one specific case [claim] and apply the outcome of that case [claim] to the other applications [claims]. If these cases [claims] had been included in the sample, it would mean that an individual applicant selected for the survey may well have had no direct experience of the case [claim]' (Latreille and Latreille, 2003, p.14).

While the 1992 SETA report (Department of Employment (DoE),1994), does make reference to 'single and joint cases' (DoE, 1994, p.20) it is not clear from the report, or the methodology, if the information is of a general nature or a product of the survey research.

From the foregoing, it can be seen that the SETA surveys excluded MACs from the original survey research and focused exclusively on SACs. The

exclusion of MACs from SETA has not been fully acknowledged in the literature¹³. This has potentially led to some misinterpretation.

Moorhead (2010), for example, uses data from SETA 2003 in a paper examining ‘the notion of a claims explosion’ as a result of ‘no-win, no-fee’ lawyers. Moorhead (2010) uses data from SETA 2003 and says that:

‘It provides important quantitative evidence of the relationship between DBAs [Damage-based Agreements¹⁴] and actual outcomes’ (Moorhead, 2010, p.759).

As noted above, SETA 2003 is not specific regarding the inclusion or exclusion of MACs, but we are told by Buscha et al., (2012, p.4), that SETA 2003 does not include MACs, which must cast some doubt on its usefulness as ‘quantitative evidence’. Moorhead does not acknowledge this potential weakness.

Perhaps more concerning is Moorhead’s use of SETA 2008. Here we know from Buscha et al., (2012, p.4) that SETA 2008 does not include MACs. Moorhead relies on SETA 2008 data to select his interviewees regarding the use of ‘no-win, no-fee’ lawyers. The interviewees had taken part in SETA 2008 (Moorhead, 2010, p.760) so have to be SACs. Moorhead’s conclusion that no-win, no-fee lawyers are not responsible for the sharp increase in the TCA in the 2000s may be correct for SACs, but it is impossible to assess whether this is true for all claims before ETs, as it does not address MACs.

Perhaps more interesting is the use of SETA 2013 in an article by Adams and Prassl (2017). To quote the ESRC:

‘Research Evidence presented to the Supreme Court led to a unanimous ruling that employment tribunal fees of up to £1,200 for claimants, introduced in 2013, were unlawful’ (ESRC, 2018).

¹³ Or perhaps noticed. It does have the all-encompassing title Survey of Employment Tribunal Applications after all.

¹⁴ A damages-based agreement (DBA) is a form of “no-win, no-fee” agreement between a lawyer and client, under which the lawyer is paid an agreed proportion of the sums the client recovers in litigation (Summit Law, 2022).

Adams and Prassl (2017) used a variety of data sources including SETA 2013 to model the effect of the 2013 introduction of ET Fees on ET applications including having to 'rely on SETA [2013] to determine the average probability of success for each category of claim' (Adams and Prassl, 2017, p.428). As noted above SETA 2013 is explicit in noting that only SACs are included. Adams and Prassl (2017) make no acknowledgment of this issue which must cast some doubt on the conclusions reached by their model. In 2017, the Supreme Court concluded, partly based on the argument presented in Adams and Prassl's paper (ESRC, 2018; House of Commons Library, 2017, p.61), that ET Fees were unlawful.

The SETA series is regularly used in the literature as a source of comparative data about conflict in the workplace. However, none of the articles acknowledge that SETA only covers SACs (see, for example, Hepple and Morris, 2002; Colling, 2006; Moorhead, 2010; Adams and Prassl, 2017). This omission of MACs may mean that the conclusions drawn in these articles are potentially inaccurate or incomplete, because, as MACs are not included, SETA does not cover the full range of claims made to the ET. From an academic perspective this is not just a terminological issue but an absence of data on a particularly important topic and more than reason enough to investigate the SAC/MAC split, which this thesis does.

To help clarify matters, ET terminology is covered in Chapter 3, Section 3.7, and findings presented in Chapter 4 also partly covers terminology to help readers overcome issues with the problem of potential terminological laxity.

2.5.2 What is a claim – part two: 'definition'

In this thesis, a claim is defined as a claim made to and *accepted* by the ET. This demarcation is necessary as the literature does not actually specify what a claim is, which makes comparison between authors uncertain, as without a clear explanation the reader has to make assumptions about what each author actually means when using the term 'claim'. For example, Deakin et al., (2015), specify their data sources in general terms but make no attempt to define what a claim is. Given that the TCA, which is an annual summary of 'claims', is being used as a proxy for workplace conflict, it seems surprising that no clear

definition of the term claim is provided. Perhaps this is because the literature assumes that the definition of a claim is obvious, and therefore does not need to be specified.

The definition of a claim being a claim made to and *accepted* by the ET does not mention employee/worker or former worker because not all claims accepted by the ET are made by employee/workers or former employee/workers and the definition above takes this into account. This is because ETs existed and adjudicated on non-employment matters before being given jurisdiction over statutory employment rights in 1972 and just as the number of statutory employment rights has increased since 1972, so has the number of non-employment relationship related matters referred to ETs for adjudication, such as ‘appeals against an enforcement, improvement or prohibition notice imposed by the Health and Safety Executive or Environmental Health Inspector, or by the Environment Agency’ (Tribunals Service, 2011, reproduced as Appendix 9). Exactly how many of these non-employee/worker claims are accepted by the ET is not clear, as they are included in the jurisdictional complaints section of the MoJ ET spreadsheet under the heading ‘Others’. In 2016/17 46.4% of the 88,476 annual TCA contained a jurisdictional complaint listed as ‘Others’¹⁵ (MoJ, 2019). This subset of non-employee/worker claims in the TCA is not noted anywhere in the literature, although is it included in data analysis, either intentionally or alternatively by default. This subset of claims is potentially about administrative issues rather than employment disputes. This thesis will examine the extent of administrative issues within the TCA data and consider what this means about our understanding of employment disputes more generally. This gap in the literature is thoroughly investigated in Chapter 6.

This section has examined the definition of a claim and has found that, firstly the literature does not actually define a claim and secondly, highlighted that a claim can be made by more than an employee/worker or former worker but

¹⁵ This is shown in Appendix 6, Table A6.6c, Jurisdictional Complaint (JC) Breakdown 2012/13 to 2018/19 and A6.9c, Jurisdictional Complaint as %age of Total Claims Accepted (TCA) containing that JC 2012/13 to 2018/19.

may include administrative claims as well. The next section examines the eligibility of who can make a claim and how this has changed over time.

2.5.3 What is a claim – part three: ‘eligibility’

This section examines the eligibility of who can make a claim and how this has changed over time. The point at which the ET ‘accepted’ a claim and who is eligible to file a claim have changed over time. The literature does acknowledge this. For example, Dickens (1978) noted that the period of employment required before a claim for Unfair Dismissal would be accepted by an ET had reduced from the initial 2 years in 1972 to 1 year in September 1974 and then down to 6 months in March 1975 (Dickens, 1978, p.4). The effect of this is to increase the number of employees/workers eligible to file a claim for Unfair Dismissal. This reduction in the Unfair Dismissal qualifying period has been reversed and increased to 2 years by each Conservative Government since 1979 and reduced to 1 year by the 1997-2010 Labour Government. In total there have been 8 changes in the Unfair Dismissal qualifying period since it was set at 2 years in 1972 and these are discussed in Chapter 4, Section 4.3.

In addition to the changes in eligibility, the point at which a claim is ‘accepted’ and counted in the TCA has changed. The process of filing a claim has also changed over the period from 1972. For example, in addition to increasing the Unfair Dismissal qualifying period to 2 years in April 2013, the Coalition Government introduced Employment Tribunal Fees in July 2013 and Acas Early Conciliation in May 2014. Acas Early Conciliation required potential claimants to notify Acas and attempt to resolve their dispute through Acas before submitting a claim to the ET. The consequence of Acas Early Conciliation in particular, was intended to reduce the number of potential claims becoming actual ET claims, thereby reducing the TCA. It is hard to say whether the underlying volume of workplace conflict has changed, what changed was where or even if it was ‘officially’ recorded as part of the TCA. Eight different claims processes have been identified and these are discussed in Chapter 4, Section 4.2.

The literature notes the changes to 'eligibility' (Dickens, 1978, p.4; Saundry and Dix, 2014, p.483) and 'point of acceptance' (Saundry and Dix, 2014, p.485; Kirk, 2018, p.979), but only engages with the consequences of the changes at either the TCA level or the individual claim level. How the changes impact the 'intermediate' level of SACs, MACs and their interaction with the TCA is largely ignored. Examination of the 'missing' intermediate level is important because the changes in 'eligibility' may have a different impact on SACs and MACs. This omission is examined in Chapter 6 in relation to the Coalition Government's changes, to the Unfair Dismissal qualifying period, the introduction of ET Fees and Acas Early Conciliation, where it will be shown that although these measures have changed the 'amount' of SACs, the effects on MACs is marginal and the changes in MACs previously attributed to the Coalition Government's changes are in fact the result of changes to the ET's own administrative processes. Understanding this 'missing' intermediate level is crucial because it will fill in what appears to be a significant gap in our knowledge of ETs.

This section has examined the eligibility of who can make a claim and how this has changed over time. The next section examines possibly the most fundamental ET question of all, 'Who is making the claim?'

2.5.4 What is a claim – part four: 'Who is making the claim?'

This section takes the discussion beyond who is eligible to make an ET claim and how eligibility has changed over time to examine perhaps the most fundamental ET question of all, 'Who is making the claim?'

The earlier definition makes no reference to *who* is making the claim. The literature refers to claims and claimants. However, although it does not explicitly say so, there appears to be an underlying assumption that 'each claim equals a claimant', i.e., each claim made is matched to a unique individual claimant. All discussions in the literature talk about the increases in the number of claims (see, for example, Saundry and Dix, 2014, p.477).

Although Saundry and Dix do not explicitly say that the 236,100 applications/claims are made by 236,100 individuals/claimants, it could be

inferred that is what they mean. Corby (2015, p.163) makes similar comments. If the number of claims and the number of claimants were to be different, for example, if some claimants had two or more ET claims each, then this would have implications for how the TCA should be interpreted. This apparent universal terminological assumption may mean that the TCA is not necessarily an accurate reflection of employment disputes, and this thesis will examine this possibility and the implications for how we discuss employment disputes. Government policy and academic debate are underpinned by this terminological assumption. If the assumed link between claims and claimants proves to be invalid, then this would have real world consequences.

This section has examined the question of ‘Who is making the claim?’ and put forward the proposition that individual claimants may not equal the number of claims filed with the ET, a proposition that is not acknowledged in the literature. The next section examines ‘tip of the iceberg claims’ where the number of claims filed and recorded by the ET may not represent all the potential claims that could be filed in a particular MAC.

2.5.5 What is a claim – part five: ‘tip of the iceberg claims’

This section examines ‘tip of the iceberg’ claims where the number of claims filed and recorded by the ET may not represent all the potential claims that could be filed in a particular MAC. The TCA statistics only record claims that are actually filed and accepted by the ET. If there are other ‘tip of the iceberg’ claims *waiting* to be filed in the test cases that are successful and subsequently settled by negotiation between a trade union and employer, as implied in Gilbert and Secker (1995), then they will never appear in the TCA statistics. The point to note here, is that the literature is not always clear about the difference between claims *actually* filed and hence included in the TCA and ‘tip of the iceberg’ claims *waiting* to be filed, which may never be filed and are therefore not, and may never be, included in the TCA. This again highlights that the literature indicates that an examination of the TCA is not necessarily an accurate reflection of employment disputes.

This ‘What is a claim’ section has examined how the literature defines ‘what is a claim’ or rather does not define ‘what is a claim’. It has been shown that the

term claim is not clearly defined, leading to terminological laxity. It was also noted that the literature potentially shows a critical reliance on assumptions, or at least implied assumptions, perhaps based on partial analysis of the data, for example, that claims and individuals/claimants are matched on a one-to-one basis. This is because the literature focuses on either the TCA level or the individual claim level. How the changes impact the 'intermediate' level of SACs, MACs and their interaction with the TCA is largely ignored but will be investigated as part of this thesis. This missing part of the story is very important because, if the TCA is not an accurate reflection of employment disputes, then academic literature and government policy decisions are, potentially, relying on partial analysis of the available data. An examination of the intermediate level may offer a better picture of the extent to which employment disputes exist within the workplace.

So having examined 'what is a claim' is, it would seem appropriate to examine what happens to the claim once it is processed to conclusion by the ET and it is to this the discussion now turns.

2.5.6 Claim Outcome/Disposals

So far, the literature review has been focused on the historical *total claims accepted (TCA)* statistics and has pretty much ignored historical ET *outcome/disposals*, i.e., what happened to the applications following acceptance by the ET. Prior to 1998/99 no jurisdictional complaint data are available, only the annual TCA statistics. There is, however, claim outcome/disposal data available for Unfair Dismissal from 1972, Equal Pay and Sex Discrimination from 1976 and all jurisdictions from 1985/6.

It is apparent that the same issues around the TCA/SAC/MAC split are relevant to the ET outcome/disposals. The 'successful' outcomes of various large known MACs, such as the part-time pension cases of the late 90s, do not seem to fit with the ET outcome/disposal data.

As an example, in Heery's 1998 article on Campaigning for Part-Time Workers Heery makes reference to '60,000' claims being submitted to ETs for either Equal Pay, Sex Discrimination or both (Heery, 1998, p.355). It is acknowledged

by the Employment Tribunal Service (Employment Tribunal Service, 2002, p.4) that these claims were submitted and following the European Court of Justice judgments in the *Magorrian* and *Levez* cases they could be classed as 'successful' so they should show as successful in the outcome/disposal data, yet they do not, or at least not as 'Successful at Tribunal Hearing'. Heery (1998) does suggest that 'in all probability, the majority of these cases [claims] will be resolved through collective agreement between employers and unions involved in the TUC Campaign' (Heery, 1998, p.355). A point further illustrated by Fredman (2011), who notes that 'the rate of success before a tribunal has been derisory. In 2008/09, as many as 20,148 Equal Pay claims were disposed of by tribunals, but only 36 were successful before a tribunal' (Fredman, 2011, p.416). These discrepancies raise the question of what exactly does the outcome/disposal data mean? What is a successful claim?

Fredman's narrow interpretation appears to be that a claim is only successful if officially recorded as 'successful at tribunal hearing' by the ET. It might be that this narrow interpretation does not give the full picture. Deakin et al., (2015) make the same point as Fredman but go on to say that 'a substantial number of claims were settled with the aid of the conciliation and arbitration service Acas (37% in 2011/12 and 27% in 2012/13). Of those that were withdrawn (43% in 2011/12 and 50% in 2012/13), a substantial proportion are likely to have resulted in a payment of some kind being made to claimants. Official statistical series do not indicate whether withdrawn applications led to a settlement, but it is likely that many of them did' (Deakin et al., 2015, p.392).

Deakin et al., are clearly suggesting that 'successful' means more than 'successful at tribunal hearing'. Clarifying the meaning of a 'successful' claim would seem an area for fruitful inquiry to help us get a better understanding of the nature of workplace conflict and this thesis further investigates this in Chapter 7.

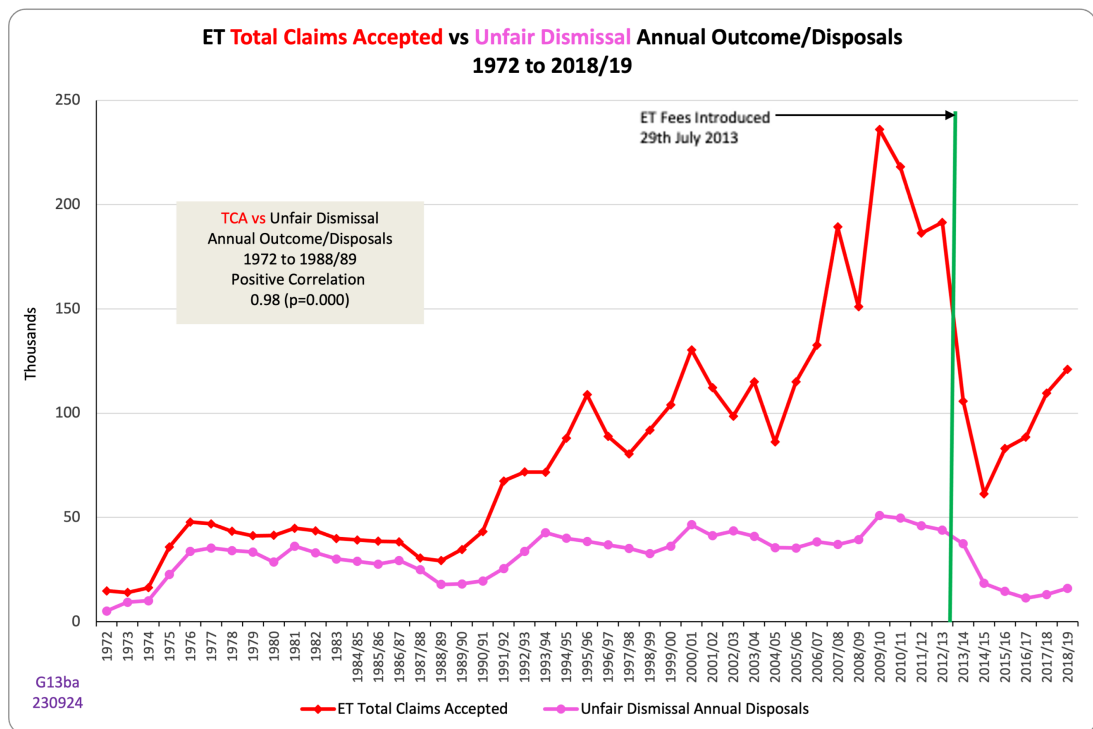
This section has examined the question of what successful at tribunal might actually mean. The next section examines how the jurisdictional composition of claims has changed over time and it is to this the discussion now turns.

2.6 How has the jurisdictional composition of claims changed?

This section examines how the jurisdictional composition of claims has changed over time. Understanding this is important because it might be that SACs are, and always have been, associated with certain jurisdictional complaints, whereas MACs are associated with ‘new’ jurisdictional complaints and this may explain some of the growth in the TCA noted earlier.

When the ETs were given jurisdiction for the adjudication of claims for Unfair Dismissal in 1972 in addition to their existing adjudications on entitlement to redundancy pay, it would hardly be surprising to note that almost all claims adjudicated by the ET in 1972 were in the Unfair Dismissal and Redundancy Pay jurisdictions. Even 11 years later in 1983, Unfair Dismissal and Redundancy Pay represented 83% of the claims processed by the ET (Dickens, 1985, p.6; Sloane and Jain, 1990, p.225).

Figure 2.1



To put this in context, Figure 2.1 compares the Annual TCA¹⁶ with the Unfair Dismissal annual outcome/disposal statistics. The dotted pink data line in Figure 2.1 shows that although the annual volume of Unfair Dismissal outcome/disposals is largely stable until the introduction of ET Fees in 2013 (Saundry and Dix, 2014, p.478) it gradually declines as a proportion of the TCA from 1988/89 onwards. This change suggests that the growth in the TCA must be the result of change in “other” employment disputes. Saundry and Dix (2014) go on to say that ‘much of the growth in tribunal application [TCA] volumes can be explained by large-scale multiple claims relating to specific issues such as Equal Pay, Redundancy, and Working Time’ (Saundry and Dix, 2014, p.478).

Although this hints at changes in the composition of claims/jurisdictions, from mostly Unfair Dismissal to mostly something else, Saundry and Dix are focused on the TCA level and limited evidence is provided to reflect what this means in practice at the intermediate level. They do not really engage with the ‘intermediate’ level of SACs and MACs or engage with the ‘specific’ issues mentioned in the quote above. The ‘intermediate’ level data could/would facilitate an understanding of what is/was driving the increase in the TCA. This missing part of the story is very important because academic literature and government policy decisions are, potentially, relying on partial analysis of the available data.

Existing literature seems to assume that all ‘claims’ are of a uniform nature, for example, see Corby (2015), whereas in practice the TCA is an agglomeration of SACs and MACs as noted by Harding et al., (2014a, p.24)¹⁷. This again illustrates that the ‘intermediate’ level interactions between the TCA, SACs, MACs and jurisdictions needs examination. The task of exploring

¹⁶ The annual number of total claims accepted (TCA) and Unfair Dismissal annual outcome/disposals is shown in Appendix 6, Table A6.2, Employment Tribunal Total Claims Accepted (TCA) by Year and Unfair Dismissal Annual Outcome/Disposals (UDAOD) 1972 to 2018/19.

¹⁷ Filed in Bibliography as: Department for Business Innovation and Skills, 2014a, *Findings from the Survey of Employment Tribunal Applications 2013*, Employment Relations Research Series No.177.

the TCA/SAC/MAC/jurisdictional complaints intermediate level will be undertaken within this thesis because if the relationship between TCA, SACs, MACs and jurisdictional complaints is/was not well understood by either the academic literature or by government policy makers then government policy is, potentially, based on partial analysis of the data available and this thesis, in part, will go some way to rectifying this. In order to begin rectifying this omission, it is important to understand what we currently know about MACs and it is to this that the discussion now turns.

2.7 What do we know about Multi-Applicant Claims (MACs)?

It has already been previously noted that the literature does not directly cover MACs in detail. There is, however, one subset of the literature that covers MACs as a by-product, namely equal pay, where there has been significant academic interest, and the subject has been covered in some detail in journal articles by among others, Deakin et al., (2015), Conley and Page (2018), Conley (2014), Dickens (2000), Dix et al., (2008), Fredman (2011), Gilbert and Secker (1995), Heery (1998), Heery and Conley (2007), McLaughlin (2014), MacMillan (1999), Rowbottom (2007), Sloane and Jain (1990) and Thornley (2006). It has also been covered in book chapters by among others, Deakin et al., (2012), Dean and Liff (2010), Dix et al., (2009) and Dex and Forth (2009)). It is also noteworthy that part of the narrative of equal pay involves the increasing use of MACs by trade unions (Dickens, 2000, p.74; Conley, 2014, p.12; Guillaume, 2015, p.364) and no-win, no-fee lawyers (Deakin et al., 2015, p.385) as a strategic tool.

In order to understand how the use of MACs has developed over time it is therefore necessary to understand the particularities of the narrative of equal pay. The narrative of equal pay is, in itself, fascinating and is discussed below in some detail, in order to provide the findings chapters of this thesis with greater context.

2.7.1 Equal Pay

What emerges from the existing academic material on equal pay is a number of developments that have over time resulted in a series of MACs that have

been used against mostly public sector employers or former public sector employers to achieve and enforce equal pay. Each development in and of itself may be a small change, and some may appear almost irrelevant, but they are *all* important and over time the cumulative effect is to change MACs from being a marginal component of the TCA to *the* major driver of the TCA. As one of the tasks of this thesis is understanding what made MACs the major driver of the TCA, the story of equal pay is an essential part of developing that understanding.

This section has briefly highlighted that although MACs are not directly covered in the literature, the equal pay literature does indirectly cover MACs. The first part of the equal pay/MAC story begins with the trade unions and the next section develops this.

2.7.1.1 Equal Pay and Trade Unions

When the *Sex Discrimination Act* was passed in 1975, the Act created the Equal Opportunities Commission which was empowered to give financial support to individual litigants in Sex Discrimination claims. The Equal Opportunities Commission used this power to support test cases [claims] to develop and clarify the law, particularly at European level via the European Court of Justice (Guillaume, 2015, p.367). This new approach to sponsoring individual test cases [claims] would contribute to the growth in MACs by, firstly, establishing the ‘reach and meaning’ of employment law in practice and secondly, by part funding trade union test cases [claims].

This coincided with the trade unions decision to strategically pivot towards the use of ostensibly ‘individual’ statutory employment rights, after the introduction of anti-union legislation from the Thatcher Government. The ‘collective laissez-faire’ that had previously existed had been steadily eroded and the trade unions began to regard stronger statutory legal rights for workers as something worth supporting (Gumbrell-McCormick and Hyman, 2017, p.175; Heery, 2011, p.14). This ‘new’ trade union ‘role’ took two forms, firstly, use of the currently existing employment rights to ‘challenge employer practice and extend the rights of workers’ (Heery and Conley, 2007, p.20) and secondly, lobbying and promoting ‘new’ employment rights either in a GB context or at

EU level which would then apply in Great Britain (Heery, 1998, p.1; Branney et al., 1999, p.208). Although it might be assumed that this is what trade unions 'do' it is important here in the context of MACs, because the trade unions are involving supranational bodies, the EU and the European Court of Justice, as part of their strategic use of ostensibly 'individual' employment rights to develop collective benefits.

The trade union strategic pivot in the early 1980s was assisted and encouraged by the Equal Opportunities Commission which 'adopted a litigation strategy... to build a strong body of case law' (Guillaume, 2014, p.370). The Equal Opportunities Commission strategy fed through into the trade unions via support with the administration of Equal Pay claims. This included assistance with legal costs (Guillaume, 2014, p.371).

There is a chicken and egg situation here in that to benefit from the effect of the European Court of Justice and to some extent the lower British Courts, required the time honoured precedent setting 'test cases' [claims] being taken to literally test or 'contend the law' and by court judgment extend and clarify the reach of Employment Law, The problem with this approach is that it takes an inordinate amount of time (Taylor and Emir, 2019), a point Hepple et al., also make about whether the ET System is the best way to regulate, mandate or enforce equal pay (Hepple et al., 2000). However, it did have the inestimable advantage that it circumvented the Thatcher Government's antipathy to the extension of EU Community Law (Davies and Freedland, 1993, p.595).

The Equal Opportunities Commission's strategy coincided with a period in which trade unions were extending their reach/appeal through an ongoing and developing program of support for the mostly female part-time workers who had previously been ignored by the unions whose main focus during the pre-1980 'golden age' of union membership had been to focus on the interests of their almost exclusively male membership (Heery and Conley, 2007, p.5).

Heery and Conley (2007) show a wide range of trade union activity regarding part-time workers, but of particular interest here is the growing use of Employment Tribunals as part of the strategy. Trade unions are using ETs as

a strategic tool to, firstly, extend their appeal to a new membership group and secondly, to counter the decline in opportunities for collective bargaining.

Guillaume (2015) observed that: ‘small, feminised unions, such as USDAW and BIFU [now part of Unite], used the threat of legal action to force employers to introduce integrated job evaluation schemes’ (Guillaume, 2015, p.373). In 1984 following the introduction of *The Equal Pay (Amendment) Regulations 1983*, which introduced the principle of ‘equal pay for work of equal value’, the GMB Union in conjunction with the Equal Opportunities Commission took the first ‘equal pay for work of equal value’ case [claim] – *Hayward v Cammell Laird*¹⁸ (Jefferson, 1985, p.76; Szyszczak, 1985, p.146; Heery, 1998, p.361; Colling, 2006, p.148; Hayes, 2014, p.38; Guillaume, 2015, p.373). The case [claim] was eventually won after a 4-year journey from the ET, the Employment Appeal Tribunal (EAT), the Court of Appeal and eventually to the House of Lords (Thompsons, 2008), an early indication/reminder of how long drawn out the legal process could be (Deakin et al., 2015, p.384). As can be seen, this case [claim] has attracted a lot of attention in the literature, all of which is focused on the equal pay aspect. Very little of the literature looks at it from a MAC perspective, so whilst this literature gives us an understanding of the strategies used in relation to Equal Pay, it draws out little about how this reflects the broader presence of workplace conflict.

This section has shown how the Equal Pay jurisdiction has provided an opportunity for the trade unions to adopt a ‘new role’ using the ostensibly individual employment rights. The next section looks at how, and if, the equal pay literature reports the number of claims resulting from this ‘new’ trade union role.

2.7.1.2 Equal Pay – Is it an Employment Tribunal claim or not? The Tip of the Iceberg

It is not clear from the literature whether *Hayward* is a test case [claim] standing for other claims filed at the same time – a MAC, or *Hayward* is a one-

¹⁸ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 4.

off claim designed to test the law so the union/s can use the ET/Final Court judgment to put pressure on other employers to comply by negotiation or face the threat of legal action. It is perhaps worth noting that the original court paperwork does not always make clear the number of claims involved in the case, but the very presence of the Equal Opportunities Commission and the GMB makes it likely that the case was pursued as a test case [claim]. This highlights one of the difficulties about the TCA statistics in that they only record claims that are actually filed and accepted by the ET. If there were other ‘tip of the iceberg’ claims waiting to be filed that were subsequently settled by negotiation with the employer, then they will never appear in the TCA statistics. In these circumstances it is possible that a greater volume of ‘employment disputes’ will be ‘resolved’ without ever appearing in the official TCA statistics.

Although the ‘tip of the iceberg’ issues with claim statistics noted above are, perhaps, understandable, it is worth noting that the literature does not really address this issue. There is a tendency for the literature to be imprecise on clarifying what the numbers represent and how they are recorded. Again, this missing part of the story is important because academic literature and government policy decisions may be relying on partial analysis and therefore have real world consequences.

ET Litigation was becoming part of the toolkit of unions particularly in the public sector (Colling, 2006, p.147). In 1986 the MSF Union (now part of Unite) launched one of the longest Equal Pay cases in employment law history *Enderby v Frenchay Health Authority*¹⁹ (Colling, 2006, p.147; Hayes, 2014, p.37; Deakin et al., 2015), looking at equal pay for work of equal value in the NHS and the case went all the way to the European Court of Justice (Guillaume, 2015, p.373, Footnote 16).

Guillaume (2015) notes that in 1985, 1,200 claims were *submitted* in *Enderby* (Guillaume, 2015, p.373, Footnote 16). This would imply that all 1,200 claims were filed with the ET. If this is the situation the claims should/would show in

¹⁹ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 7.

the Equal Pay outcome/disposal statistics. Yet they do not. The number of Equal Pay claims disposed of in any year does not rise above 1,200 until 1997/98, as can be seen in Appendix 13, Table A13.3. So, were the claims all filed with the ET and are included in the TCA for 1985 or are some of them ‘tip of the iceberg’ claims waiting to be filed? This lack of clarity again illustrates the tendency for the literature to be imprecise in clarifying what the numbers represent and how and where they are recorded. While acknowledging that the literature discussed mainly relates to equal pay, it nevertheless highlights that the ET claims data, and how they are discussed, is problematic and this problematic nature impacts our ability to fully understand conflict in the workplace. One of the contributions of this thesis is to fully highlight the issues around the reliability and construct validity of the claims data and this is fully discussed in Chapter 6.

The next section looks at how a series of Equal Pay legal cases and judgments changed the MAC landscape by redefining the ‘value at stake’ for employers, employees and no-win, no-fee lawyers.

2.7.1.3 Equal Pay – Legal Cases and Judgments

The period following the conclusion of *Hayward* in 1988 was characterised by a further series of legal cases and judgments which widened the scope for the trade unions to use the legal route to expand the application of equal pay rights. In the *Barber v Guardian Royal Exchange Group*²⁰ the European Court of Justice in 1990, decided that unequal pension entitlement ages for men and women breached Article 119 of the Treaty of Rome (Davies and Freedland, 1993, p.586) and in the 1994 cases of *Vroege v NCIV*²¹ (Deakin and Morris, 2009, p.178) and *Fisscher v Voorhuis Hengelo BV*²² the European Court of Justice ruled that the exclusion of part-time workers from occupational pension schemes contravened Article 119 of the Treaty of Rome, if exclusion affected more women than men. (Court of Justice of the European Union (CJEU),

²⁰ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 6.

²¹ For more details, see Appendix 14, Table A14.1, Case 8.

²² For more details, see Appendix 14, Table A14.1, Case 9.

2020). These cases are important from a MAC perspective, because each of them extends 'individual employment rights' beyond the previously accepted norms and created further opportunities for the trade unions to use 'individualised' rights for collective benefit. They are each part of our understanding of MACs, but a part that is not adequately discussed within existing literature.

For example, Heery (1998) notes that following the *Vroege and Fisscher* judgments, the trade union campaign for part-time workers pension rights generated over 60,000 ET claims relating to this issue (Heery, 1998, p.355). These claims led to a set of 22 test cases [claims] being heard by the ET in November 1995 as *Preston and Ors v Wolverhampton Healthcare Trust and others*²³. The ET Judge, Mr J.K. Macmillan in his judgment (ET Case No: 507497/95, Para 1, Courts and Tribunal Judiciary, 2013a), makes reference to the wide publicity of the *Vroege and Fisscher* cases and the union campaign that followed them.

However, Mr J.K. Macmillan and subsequently the Employment Appeal Tribunal (EAT) in June 1996 reached a judgment on the 22 test cases [claims] 'that ruled the vast majority of cases [claims] out of time, limited compensation for the remainder to two years and blocked a referral to the European Court of Justice' (Heery, 1998, p.355).

However, as Heery (1998) observes, this was not the end of the matter. In a 1997 judgment in *Magorrian and Cunningham v Eastern Health and Social Services Board and Department of Health and Social Services*²⁴, the European Court of Justice ruled that the 2 year time limit on potential pension loss compensation as per the *Equal Pay Act 1970*, infringed Article 119 of the EC Treaty and instead backdated the period of potential pension loss compensation to April 1976 and in a 1998 judgment in *Levez v T.H. Jennings*²⁵ the European Court of Justice ruled similarly that the 2 year time-limit for

²³ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 17.

²⁴ For more details, see Appendix 14, Table A14.1, Case 15.

²⁵ For more details, see Appendix 14, Table A14.1, Case 16.

arrears of back pay also infringed Article 119 of the EC Treaty (CJEU, 2020). When *Levez* returned to the Employment Appeal Tribunal, a 6-year limitation for back pay was applied (Deakin and Morris, 2009, p.632).

Levez is a good example of a ‘test’ case [claim]. It was a SAC, brought by Mrs Levez over an arrears of £933.33 ‘not paid by reason of discrimination on grounds of sex’ and funded by the Equal Opportunities Commission (CJEU, 2020). It is fair to say that the consequences of the judgment far outweighed the amount in dispute. The increase from a 2-year time-limit to 6-year time-limit for arrears of back pay immediately tripled the ‘value at stake’ in ALL subsequent Equal Pay claims, far and away exceeding the £933.33 arrears in the *Levez* case.

Again, these cases are each important from a MAC perspective, because each of them extends ‘individual employment rights’ beyond the previously accepted norms and created further opportunities for the trade unions to use ‘individualised’ rights for collective benefit.

This section has shown how a series of legal judgments in the Equal Pay jurisdiction both widened ‘individual employment rights’ beyond the previously accepted norms and tripled the ‘value at stake’ for employers, employees and no-win, no-fee lawyers. However, the foregoing legal judgment discussion is rather vague as to actual claims numbers because the supporting literature itself is rather vague and it is to this imprecision that the next section now turns.

2.7.1.4 Equal Pay – A Statistical Observation

At this point a statistical observation might be in order. Hepple et al., (2000, p.97) noted that 12,344 Equal Pay claims were registered between 1976 and 1998. This closely matches the ET Equal Pay claims *outcome/disposal* statistics of 12,405 for the 1976 to 1998/99 period (see Appendix 13, Table A13.3) that it must be almost certainly correct, in which case it is referring to Equal Pay claims processed to outcome/disposal by the ET by the end of 1998, not Equal Pay claims received by the end of 1998. However, this Hepple et al., (2000) figure of 12,344 represents only 1% of the 1,262,480 ET claims filed to 31st March 1998, as noted in Appendix 2, Table A2.1, and is a much

lower figure than might possibly be expected given the preceding discussion which referred to 1,200 claims involving NHS speech therapists (Colling, 2006, p.147) and 60,000 part-time pension claims (Heery, 1998, p.355), a potential claim figure of 61,200. It is difficult to know for sure whether these are claims accepted by the ET and so in the annual TCA statistic or if they are 'tip of the iceberg' claims. As already noted, the only statistic available prior to 1998/99 is the annual TCA figure. No jurisdictional or SAC/MAC breakdown is available. This is the root of the problem, a lack of information. The literature itself also does not appear to acknowledge this as a problem (see, for example, Burgess et al., 2012; Corby, 2015; Kirk, 2018). One of the goals of this thesis is to bring greater clarity to the understanding of the TCA by exploring this TCA/SAC/MAC/jurisdictional complaint 'story'. This new lens on the ET data will provide other researchers a more reliable data set from which to discuss the presence of workplace conflict and employment disputes within Great Britain.

This section has highlighted that already by 1998/99, the number of Equal Pay claims recorded in the TCA and those discussed in the equal pay literature seem to tell a different story. This divergence between claims recorded in the TCA and the literature is further illustrated by the next step in the equal pay story, the attempt by Local Authority Employers and trade unions to resolve historic pay discrimination in the Local Authority (LA) Sector and it is to this that the thesis now turns.

2.7.1.5 Equal Pay – Local Authority Single Spine Agreement

As noted above, by 1998 trade unions had achieved some success in their campaigns using employment litigation as a strategic tool (Heery, 1998). The issue that crystallised the problem and created a sharp increase in Equal Pay MAC claims, was an attempt by Local Authority employers and trade unions to resolve historic pay discrimination in the Local Authority sector. By 1997 this negotiation had resulted in a new Single Spine Agreement which is covered in the literature to varying degrees (see, for example, Deakin et al., 2015; McLaughlin, 2014; Jaffe et al., 2008; Rowbottom, 2007).

The new Single Spine Agreement was intended to resolve a problem that had grown up in the Local Authority sector whereby in male dominated services such as waste collection, the men were paid ‘bonuses’ for ‘attendance’ or ‘productivity’. In the female dominated services, such as cleaning and administration, there were no equivalent bonuses. The result of this anomaly was that men on the same grade as the women earned significantly more than the women (Cross, 2008, p.19).

However, there developed a misunderstanding between the Local Authority employers and the trade unions. The Local Authority employers envisaged a zero-cost settlement; men’s pay would be cut to pay for the increase in women’s pay. The trade unions on the other hand, envisaged that the men’s pay would be protected going forward, as the women’s pay rose. On being threatened by the Local Authority employers that there would be redundancies if the trade unions pushed for too high a level of compensation for the women, the trade unions negotiated a solution to this problem whereby the women were compensated but not necessarily at the full amount they were due. The trade unions did not fully inform the women that this was the case (Cross, 2008, p.19; Moorhead and Cumming, 2009, p.91; Deakin et al., 2015, p.391).

These events coincided with a change in the regulations governing the financing of civil litigation²⁶ which made it viable for no-win, no-fee law firms to enter the employment field (Deakin et al., 2015, p.385). In *GMB v Allen*²⁷ Stefan Cross led a MAC against the GMB union alleging that it had negotiated a discriminatory collective agreement in the form of the Single Spine Agreement which Cross eventually won.

Deakin et al., (2015) note that there are four types of MAC that emerged from the Single Spine Agreement claims:

²⁶ The Conditional Fee Agreement Regulations 2000 (legislation.gov.uk, 2020b) and The Collective Conditional Fee Agreements Regulations 2000 (legislation.gov.uk, 2020c).

²⁷ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 23.

1. 'Claimants sued for back pay in relation to past inequalities which the non-implementation or inadequate implementation of the Single Spine Agreement had failed to deal with'.
2. 'A second type of claim arose from 'pay protection schemes' under which the pay of more highly paid workers was maintained at an artificially high level for a certain period after the implementation of the Single Spine Agreement, thereby perpetuating historical differences that favoured male dominated grades'
3. A third legal strategy was to challenge the job evaluation schemes put in place at local level as part of the process of implementing the Single Spine Agreement
4. Finally, challenges were mounted to 'job enrichment schemes' under which job descriptions were redefined in an allegedly discriminatory manner'.

Deakin et al., (2015) also note that the Single Spine Agreement litigation prompted two further types of claims. When male employees were faced with a pay cut, some understandably refused to accept it. The Local Authority employer then dismissed them and reemployed them on new reduced terms leading to either Unfair Dismissal claims or claims for compensation as a result of the Local Authority employer's failure to consult (Deakin et al., 2015, p.391).

It should be noted that the *GMB v Allen* type of claim was also possible. The trade unions had to make sure that any negotiated settlement they concluded was not open to challenge via an ET; any settlement had to be as good as or better than what the women union members could expect if the matter had been resolved via an ET claim (Conley, 2014, p.27).

The number of ET claims generated as a result of the Single Spine Agreement litigation was significant. Unison is quoted as having taken 40,000 claims by 8th March 2008 (Jaffe et al., 2008, p.3). McLaughlin notes that the GMB had taken over 30,000 'cases' [claims] and Stefan Cross Solicitors 30,000 'cases' [claims] (McLaughlin, 2014, p.9).

This section has given a brief outline of what turned out to be a long drawn out attempt by Local Authority employers and trade unions to resolve historic pay

discrimination in the Local Authority sector. It has also been shown that the relevant equal pay literature has made reference to 100,000 claims. The question is, what does this 100,000 number represent and it is to this that the thesis now turns.

2.7.1.6 Equal Pay – What is a claim – Redux

Again, the issue of what is meant by a 'claim' is relevant. In the above section Jaffe et al., state that Unison supported 40,000 Equal Pay claims. Having looked up this reference, Jaffe et al., are themselves quoting a Unison Press Release dated 8th March 2008 which is no longer available on the Unison website, despite other press releases going back to 2002 being available, so it is not clear if this is a reference to actual ET claims or Unison members affected. McLaughlin refers to 30,000 cases [claims] being supported by the GMB. Again, the reference given for this figure is problematic – the GMB union press office were unable to identify the document referred to. The final figure quoted by McLaughlin relates to 'Claimants law firms having taken a further 30,000 cases [claims] in this period' and gives a reference of Gibson 2013. This turns out to be an article from *The Journal*, a regional newspaper from the northeast of England, in which no reference is made to the number of claims made in the period referred to by McLaughlin (2015), although it does quote Stefan Cross, a leading no-win, no-fee lawyer, as saying: 'there have been over 250,000 Equal Pay settlements...with £2billion already paid back' (Gibson, 2013). So here we have disparities between 100,000 (40,000 + 30,000 + 30,000) 'claims' that may refer to actual ET claims and the '250,000 Equal Pay settlements' mentioned by Stefan Cross. Have they all been filed with the ET or are they 'tip of the iceberg claims?' If the claims had been filed with the ET then following a test case [claim] all *filed* claims would be settled as per the outcome of the test case [claim]. However, if the claims had not been filed with the ET would the same apply? It is possible that a settlement could be negotiated for 'potential 'tip of the iceberg' claims' following a test case [claim] if the employer accepts that any settlement following a test case [claim] applies to all 'tip of the iceberg' claims, *not yet filed*, whose circumstances are the same as the test case [claim]. There is no way to be sure and the references given are at best not helpful. All that can be said is

that only claims filed with the ET count in the TCA. Quite simply, we do not actually know what the data are telling us and one of the goals of this thesis is to bring greater clarity to the understanding of the TCA by revealing this TCA/SAC/MAC/jurisdictional complaint 'story'.

So, in summary the pace of Equal Pay claims is largely explained by the following factors:

- The involvement of the European Court of Justice and hence European Union in the process leading to,
- Increase in time limit on back pay arrears from 2 years to 6 years leading to.
- increase in amount of money at stake for claimants AND employers followed by,
- change in civil litigation financing rules leading to,
- interest of no-win, no fee lawyers, leading to,
- increase MAC Equal Pay claims

Two of the factors noted above acted like a multiplier for MACs - the increase in value at stake and the change in the civil litigation rules, both of which made it viable for no-win, no-fee law firms to enter the employment field (Deakin et al., 2015, p.385). This is highlighted in Appendix 14, Table A14.1, where out of the 32 cases listed between 2004 to 2012, cases numbered 18-32, 15 cases in total, 9 are taken by the no-win, no-fee law firms.

As noted above, Hepple et al., (2000) observed that between 1976 and 1998 there were 12,344 Equal Pay claims registered which represented 1% of the 1,261,480 of the ET TCA during the same period. If the Equal Pay claims numbers had remained at this volume, they would probably have been of marginal interest. However, in the period 1998/99 to 2012/13 the number of Equal Pay claims increased to 349,680 which represented 16.2% of the 2,158,341 TCA in the same period. A significant change indeed from the 1% for the period 1976 to 1998, as noted by Deakin et al., (2015, p.386).

In a 2012 Court of Appeal Judgment in *Huq and Ors v The Audit Commission* Lord Justice Mummery said: 'Equal Pay litigation in the ETs has now reached

almost epidemic proportions' (Court of Appeal, 2012, p.1, para.5). At first glance, from the foregoing this might appear to be the situation. However, Renton (2012) argues that although the number of individual claims is very high they form only a small proportion of the actual workload of the ET because many of the claims are joined together as part of a MAC and heard together as a case which should take up no more time than a SAC (Renton, 2012, p.59).

This section has used the equal pay story as a proxy for the development and often invisibility of MACs. As has been shown, the story of equal pay involves the increasing use of MACs by trade unions and no-win, no-fee lawyers as a strategic tool. These are major developments in the story of MACs that are not directly covered in the wider literature leaving a gap in our understanding.

This section has also shown that the literature around equal pay is not very specific in its use of the terminology around claims, statistics and the TCA. Quite simply, we do not actually know what the data are telling us and one of the goals of this thesis is to bring greater clarity to the understanding of the TCA by revealing the TCA/SAC/MAC/jurisdictional complaint 'story'.

As the focus of this section has been on the Equal Pay jurisdiction the next section examines what the literature says about the relationship between the TCA, SACs, MACs and jurisdictional complaints beyond the Equal Pay jurisdiction.

2.7.2 What do we know about Multi-Applicant Claims (MACs)? - Other Jurisdictions

Having considered the Equal Pay jurisdiction, the literature review now moves to consider the other jurisdictions of the ET, which leads to an obvious question. If the 349,680 Equal Pay claims represented 16.2% of the TCA between 1998/99 and 2012/13, what about the other 1,808,661 claims which represented 83.8% of the 2,158,341 TCA? What does the literature say about the relationship between the TCA, SACs, MACs and jurisdictional complaints beyond the Equal Pay jurisdiction? The answer is, not much.

To demonstrate this omission, requires a brief statistical digression, the purpose of which is to illustrate that, although the Equal Pay jurisdictional complaint is very important for the story of MACs, there is something else going on with the other jurisdictional complaints that the literature is largely silent about.

The digression is necessary because there is a disconnect between the TCA and jurisdictional complaints. There are more jurisdictional complaints filed than claims in the TCA which means that it is difficult to determine how the TCA is split across jurisdictions. This data problem is likely to be one of the reasons the literature does not engage with the TCA/SAC/MAC/jurisdictional complaint interaction. As a result of this data issue the only statement that can be made with some certainty is that 16.2% of the TCA in the period 1998/99 to 2012/13 contained an Equal Pay jurisdictional complaint. This is calculated by dividing the Equal Pay jurisdictional complaint total for the period 1998/99 to 2012/13 of 349,680 by the TCA for the same period of 2,158,341 to give 16.2%. If the same calculation is done for all jurisdictional complaints filed, 3,696,680 divided by the 2,158,341, the result is 171.2% which matches the average of 1.712 jurisdictional complaints per claim. This calculation is being used here to tentatively illustrate how the number of Equal Pay claims compares to the other jurisdictional complaint claim numbers and is further developed in Chapter 5 in an attempt to identify the relationship between the TCA, jurisdictional complaints, SACs and MACs. The same calculation has been done from 1998/99 to 2012/13 for each of the 22 jurisdictional complaints that the MoJ publishes data for and the results are shown in Appendix 6, Table A6.11b. A ranked summary of the 7 jurisdictional complaints over 100,000 in the period is shown in Table 2.3, below.

Table 2.3

**Summary of ET Jurisdictional Complaints
1998/99 to 2012/13**

Jurisdictional Complaint		1998/99 to 2012/13	%age of TCA
Total Claims Accepted (TCA)		2,158,341	
Total Jurisdictional Complaints		3,696,889	171.28%
Average Jurisdictional Complaints per claim		1.7128	
1	Unfair Dismissal (UD)	715,368	33.14%
2	Unauthorised Deductions (UaD)	660,118	30.58%
3	Working Time Directive (WTD)	584,721	27.09%
4	Breach of Contract (BoC)	452,756	20.98%
5	Equal Pay (EP)	349,680	16.20%
6	Sex Discrimination (SD)	254,049	11.77%
7	Redundancy Pay (RP)	157,860	7.31%
8	All Others ^a	522,337	24.20%
Total		3,696,889	171.27%
^a For Breakdown of 'All Others', see Appendix 6, Table A6.11b, Total Jurisdictional Complaints breakdown for 1998/99 to 2012/13 showing %age of TCA containing that JC			
Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19			

Despite all the foregoing Equal Pay discussion, Equal Pay is only the fifth most commonly filed ET jurisdictional complaint, behind Unfair Dismissal, Unauthorised Deductions, Working Time Directive and Breach of Contract. It is followed by Sex Discrimination and Redundancy Pay. It should be noted that although the SAC/MAC breakdown of the TCA statistic is made available from 1999/00, there is NO corresponding breakdown of the jurisdictional complaints, making it difficult to know how many Unfair Dismissal or Equal Pay jurisdictional complaints are SACs or MACs.

This information shows that the preceding discussion around the intertwining of the particularities of the Equal Pay jurisdictional complaint and the development of MACs is not the full story. The literature shows the interaction of trade unions, no-win, no-fee lawyers, Equal Opportunities Commission, the EU and the European Court of Justice has greatly facilitated the extension of equal pay rights and paved the way for increased use of MACs, but as the

statistics show, there is a greater story to be told beyond the Equal Pay jurisdictional complaint, on which the literature is largely silent.

As previously noted, there is a difficulty interpreting the TCA and its relationship with the SACs, MACs and jurisdictional complaints and what follows is an example of how the literature struggles to reconcile this.

Dix et al., (2009) have pointed out that in 2005/06, 55% of the TCA were MACs (63,543 MAC/115,039 TCA). They also say that a sizeable proportion of MACs relate to Equal Pay claims. This does not fit with Equal Pay claims only representing 15.01% of TCA in 2005/06 as shown in Appendix 6, Table A6.9b. Or the 16.2% of TCA for the period 1998/99 to 2012/13 as shown in Table 2.3, above. The 15.01% of TCA represented by Equal Pay claims in 2005/06 is unquestionably less than the 55% of TCA represented by MACs. One conclusion from these calculations is that something else is driving the increase in MACs. A point that this thesis will explore further in Chapters 5, 6 and 7.

With regard to jurisdictions beyond the Equal Pay jurisdiction, the literature is less informative in relation to MACs. In the Unfair Dismissal, Unauthorised Deductions, Breach of Contract and Redundancy Pay jurisdictions there is a dearth of literature on the split between SACs and MACs. This is entirely understandable as prior to 1999/00 the SAC/MAC split of the TCA is simply not available and as noted the SAC/MAC split is still not available at the jurisdictional complaint level. It seems that currently this ambiguity can only be explained when a particular MAC or linked series of MACs is examined, as in the case of Equal Pay, for reasons unrelated to the issue of MACs in general.

Occasionally, the literature will discuss union run MACs outside the Equal Pay jurisdiction, such as on the Friction Dynamics/TGWU Unfair Dismissal dispute involving 190 employees which began in 2000 (Davies, 2009), although again it focuses on the specifics of the Friction Dynamics dispute and not on the wider aspect of MACs.

We can also pick up evidence of MACs in literature on Sex Discrimination. The growth in the Sex Discrimination jurisdiction is partly covered by the Equal

Pay discussion above. The two jurisdictions are similar enough in nature to create an element of overlap. It is possible that when a claim is filed by a claimant in the Equal Pay jurisdiction the circumstances may be such that a claim is justified under the Sex Discrimination jurisdiction as well. Hand J. (2010) explicitly links the growth in the Sex Discrimination jurisdiction in this period to the 'the ongoing Local Authority Equal Pay claims' (Hand J., 2010, p.589).

Additionally, there is some discussion around MACs in the area of working time claims. With regard to the Working Time Directive jurisdiction, the literature does acknowledge that the number of Working Time Directive claims is increasing, often linked to working time protection (Deakin et al., 2015; Saundry et al., 2014). From Table 2.3, above, it can be seen that 584,721 or 27.09% of the TCA in the period 1998/99 to 2012/13 contained a Working Time Directive jurisdictional complaint. The Working Time Directive jurisdiction was the 3rd highest in this period.

Despite these high numbers, 27.09% of the TCA containing a Working Time Directive jurisdictional complaint, there is not a great deal of information in the literature about this jurisdiction. The growth is acknowledged but not much more (Saundry and Dix, 2014, p.478). There are, however, several references in the literature to Working Time Directive claims being resubmitted (Hand J., 2010, p.589; Morris, 2012, p.15; Lord, 2014, p.112). However, there is no clarification of what this means.

Again, there is a lack of understanding in the literature of how the TCA, SAC, MACs and jurisdictional complaints interact. Quite simply, we do not actually know what the data are telling us and one of the goals of this thesis is to bring greater clarity to the understanding of the TCA by exploring this TCA/SAC/MAC/jurisdictional complaint 'story', which in relation to the Working Time Directive jurisdictional complaint produces findings in Chapter 6, that are somewhat surprising.

This section has looked at what we know about MACs. It has been shown that the literature does not really cover MACs in much detail. This lack of direct detail has been partly compensated by using the literature about equal pay as

a proxy for the development of MACs. As noted above one of the consequences of this lack of detail is that government policy is based on partial analysis of the data available. The next section looks at what factors lie behind the observed changes in Employment Tribunal claims.

2.8 What factors lie behind the changes in Employment Tribunal claims?

As noted above in the equal pay discussion, the literature indicates that there is an interaction between the individualisation and juridification of employment law, the Equal Opportunities Commission, the European Union, trade unions and no-win, no fee lawyers which leads to the rise of MACs and this, along with a potential link between the TCA and the Economic Cycle, is now developed below.

2.8.1 Individualisation of workplace conflict

One of the aspects of the development of employment law in Great Britain in the period since 1972 that has been noted in the literature is an increase in 'individualisation'. In 2000, Dickens referred to 'an 'explosion' in employment rights' (Dickens, 2000, p.69). However, this 'explosion' rests on the 'victim complaining' (Dickens and Hall, 2006, p.349) 'if necessary by making a claim at an employment tribunal' (Dickens, 2012b, p.1).

From 1972, when the ETs were given jurisdiction for the adjudication of claims for Unfair Dismissal, the ETs have required an *individual* to complain to an ET. There was, and is, no provision for a 'class action' where a case could/can be brought on behalf of a 'class' of employees against an employer, meaning every employee in the 'class' would be compensated even if they had not filed an individual claim. Since 1972, if an employee has suffered a breach of his or her employment rights, he or she must file an ET claim. If no claim is filed, then no compensation will be awarded – even if another employee has won a claim in exactly the same circumstances. (Gilbert and Secker, 1995, p.200; Branney et al., 1999, p.209).

Latreille et al., (2007) also note that:

‘the increase in claims is also likely to be a consequence of the ‘individualisation’ phenomenon identified by some observers, with the supplanting of collective disputes by individual manifestations of [workplace] conflict and the increased propensity to litigate in pursuance of an increasing array of statutory employment rights’ (Latreille et al., 2007, p.137).

There is no doubt that ET claims as represented by the TCA have increased, as already discussed, but at a simple level if the increase was the result of ‘individualisation’ then it should manifest as SACs. However, as has been shown earlier, the increase in claims has manifested in MACs, which, may actually be collective disputes by a different route (Colling, 2012). This thesis will explore the intermediate level of the TCA, where the relationship between SACs, MACs and jurisdictional complaints is revealed. There may be more to this story than the increase in ‘individualisation’ as outlined by Latreille et al., (2007).

This section has looked at the ‘individualisation’ phenomenon and highlighted that because the literature is only looking at the TCA and not the ‘intermediate level, part of the picture, the rise of MACs, is missing, which when included could give a different interpretation. Closely related to the ‘individualisation’ phenomenon is the ‘increasing juridification’ of the employment relationship and it is to this that this thesis now turns.

2.8.2 Juridification

In addition to a growth in individualisation, there has also been an ‘explosion’ in employment rights’ (Dickens, 2000, p.69). From the *Contracts of Employment Act 1963*, there has been ‘a progressive juridification of the employment relationship as legal regulation has encompassed more and more aspects of the wage-work bargain’ (Deakin and Morris, 2005, pp.25-26, in Heery, 2011, p.1). As the process of juridification has proceeded, the potential for employment disputes, as represented by the ET, increased.

One way to illustrate the scale of juridification from 1972 and how far the ETs have moved from being an ‘easily accessible, speedy, informal and

inexpensive procedure' for the settlement of disputes' as originally intended by the Donovan RC (Donovan, 1968, p.156), would be to compare the size of the *Butterworths Employment Law Handbook*, which first appeared in 1980 (Corby and Latreille, 2012, p.396), from the 4th Edition in 1987, which was already a hefty 906 pages to the 27th Edition in 2019, which is now 3,134 pages (Wallington, 1987, 2019).

Corby and Latreille (2012) argue that this process of juridification was almost inevitable. Once the ETs were given jurisdiction for the adjudication of claims for Unfair Dismissal in 1972 and staffed by the legal profession, the ETs began a 50-year long journey towards an ever more court like appearance. Corby and Latreille have termed this journey 'institutional isomorphism' (Corby and Latreille, 2012). The scale of this juridification leads Shackleton (2002) to argue that the unpredictability and uncertainty of the law contributes to the 'continuing high levels of tribunal claims' because the level of change is hard for small employers in particular to keep up with (Shackleton, 2002, p.60), although this seems to assume that the employees of small companies can cope with the unpredictability and uncertainty if they make claims (Mangan, 2013, p.418).

In a wide-ranging review of Employment Tribunals, Corby (2015), observes that 'claims to employment tribunals increased significantly, from 13,555 in 1972 to 192,000 in 2012/13' and then goes on to note that at the same time collective regulation or collective bargaining has also declined over the previous 50 years (Corby, 2015, p.163).

From the foregoing, it would appear from the literature that the growth in Individualisation/juridification from 1972 could be perceived as an obstacle to the original intentions of ETs. Indeed, from a single applicant claimant's perspective, the increasing individualisation and juridification of the ET process is an ever increasing 'barrier' to the idea that 'labour tribunals' should provide an 'easily accessible, speedy, informal and inexpensive procedure' for the settlement of disputes' (Donovan, 1968, p.156).

While it is irrefutable that the direction of travel since 1972 has been 'more law' and more individualised law in particular, Colling (2012) notably observed that

'it may be too trite to argue that the expansion of individual employment rights has led directly to the weakening of collective rights' (Colling, 2012, p.190).

Following Colling's point it may be that the increasing individualisation and juridification of the ET process has contributed to the increase in the use of MACs by trade unions as a result of the opportunities that juridification has provided to 'test' or 'contend' the extent of the law. From a trade union members point of view in some circumstances - equal pay - the increasing individualisation and juridification could be viewed as an opportunity to exploit.

This section has looked at juridification and highlighted that from a trade union point of view the increasing juridification noted in the literature could be an opportunity to exploit and it is to this that this thesis now turns.

2.8.3 Drive by Trade Unions

This section examines how trade unions have exploited the increase in juridification noted in the previous section.

It has been suggested by some authors (Hepple and Morris, 2002, p.247; Howell and Givan, 2011, p.248; Corby, 2015, p.163; Kirk, 2018, p.976) that the rise in ET claims is the result of the decline in trade union power and influence. For example, Shackleton (2002) observed that 'the growth of tribunal applications is the flipside of the decline in union power' (Shackleton, 2002, p.45). Renton (2012) also argues 'that the reason why there are now so many Tribunal claims is that litigation fills a space left by the partial decline of industrial bargaining and by the decreasing independence of workplace dispute resolution procedures, so that someone who has a genuine grievance about their work increasingly has no option but to sue' (Renton, 2012, p.138).

Shackleton (2002) also observes that 'total applications to tribunals rose broadly as industrial stoppages fell' (Shackleton, 2002, p.45). As Dix et al., (2008) discuss, superficially at least the rise in the TCA statistic and the decline in the number of workers involved in industrial action appear to be related (Dix et al., 2008, p.10).

Earlier material in this chapter, however, identified a growing role for trade unions in ET cases. Heery (2011) has described the trade unions combination of collective bargaining and legal regulation noted above as 'recombination' (Heery, 2011, p.89). As the Industrial Relations landscape became more hostile to the trade unions and collective bargaining from 1979, with the election of the Thatcher Conservative Government (Dix et al., 2009, p.188), the trade unions adapted the 'collective approach' beyond the traditional understanding of collective bargaining and incorporated the use and threat of legal sanction (Dickens, 2000, p.74) to enhance their activities for, and appeal to, their existing and potential membership.

The Equal Pay cases discussed earlier demonstrated several aspects of how the unions used the 'individualised' ET system to pursue a 'collective goal' (Dickens, 2000, p.74). Dickens also refers to a 1988 case where a trade union appeared to be using the Wages Act jurisdictional complaint [now Unauthorised Deductions] (Dickens, 2000, p.74). The trade union may have been using the ET as a way of forcing an employer to the negotiating table or possibly testing and demonstrating the application of the law to a wider group of employers beyond the initial dispute. Dickens notes there is no provision for a class action in ETs – if an individual does not file a claim then there can be no redress unless the trade union negotiates that all of its members receive redress. There is also no provision for the trade union to act on behalf of a group of employees, although they can play a role in supporting and representing individuals. This does make it more difficult for a trade union to manage a dispute using the ET route as it requires a union member or members to file the claims themselves or at least be made fully aware of any claim being made on their behalf.

The use of litigation by trade unions is interpreted by some writers as a 'positive mediator of legislative rights with unions providing a mechanism for monitoring and enforcement' (Dickens and Hall, 2009, p.350; Brown et.al., 2000, p.627) of statutory legislative rights. Hyman (1997) noted that the TUC acknowledged the benefits of trade unions and their representatives playing an important role in the enforcement of individual rights (Hyman, 1997, p.324)

a role that Dickens (1999) described as 'Social Regulation' (Dickens, 1999, p.14).

However, Dickens and Hall (2009) also draw attention to the downside of relying on trade unions mediating employment rights. Without trade unions to protect their employment rights, individuals, firstly, need to know what their employment rights are, secondly, know if they have been infringed and, thirdly, know how to take steps to protect them if they have been infringed, plus have the emotional and financial wherewithal to act (Dickens and Hall, 2009, p.351). A big ask, that has steadily been rendered more challenging as the ability to access justice has been made steadily more difficult, for example, by restrictions to legal aid (Pollert, 2007, p.121) and the introduction of ET Fees.

As noted above, the literature makes clear that trade unions were a catalyst in development of Equal Pay MACs. However, as has also been noted above, despite a wide literature, Equal Pay claims only represent 16.2% of the TCA between 1998/99 and 2012/13. It would be easy to assume that trade unions were equally active in the other jurisdictions and this would partly explain the overall growth in MAC claims over the period 1998/99 to 2012/13. By investigating MACs in detail this thesis will examine this possibility.

This section has examined how trade unions have been a catalyst in the development of Equal Pay MACs and hence in MACs generally. The next section examines the impact of no-win, no-fee lawyers.

2.8.4 No-Win, No-Fee Lawyers

No-win, no-fee lawyers have certainly been portrayed as being responsible for the increase in ET claims (Raab, 2011, p.7; BIS, 2011, pp.15-16; BIS, 2012, p.7). Stefan Cross, a no-win, no-fee lawyer, has been the focus of a lot of attention from employers, trade unions and in Parliament for his work in the Equal Pay jurisdiction (Robins, 2013).

Stefan Cross maintains that the trade unions only pursued ET claims for Equal Pay in geographic locations where he was operating (Cross, 2008, p.18). Deakin et al., (2015) found evidence that supported Stefan Cross' contention (Deakin et al., 2015, p.398). This points to the possibility that although trade

unions developed the use of MACs as a strategic tool in the Equal Pay jurisdiction, they only used the tool in a relatively selected way (Deakin et al., 2015, p.398). The presence of no-win, no-fee lawyers forced trade unions to regard equal pay as more than just a periphery issue. Following *GMB vs Allen*²⁸ the trade unions were acutely aware that once exposed, the entitlement to equal pay was non-negotiable (Conley, 2014, p.27). It is, therefore, fair to say that the no-win, no-fee lawyers have effectively crystalized a pre-existing dispute that employer/trade union collective bargaining had consistently failed to resolve, and potentially would never resolve, to the full benefit of the low paid female employees. The use of MACs by the no-win, no-fee lawyers stimulated institutional and organisational change (Deakin et al., 2015, p.401) and arguably widened access to litigation (Gibbons, 2007). Dix et al., (2009) refer to the use of MACs in the Equal Pay jurisdiction by trade unions as 'overt collective action' (Dix et al., 2009, p.186). By extension, the use of MACs in the Equal Pay jurisdiction by no-win, no fee lawyers could also be described as an alternative form of 'collective action', which would make it a good example of Michelson et al.'s, (2008) reference to 'new actors in employment relations' (Michelson et al., 2008, quoted in: Heery et al., 2012, p.47).

The literature (Deakin et al., 2015, p.385; McLaughlin, 2014, p.13; Godwin, 2006, quoted in Dickens, 2007, p.483) makes clear that no-win, no-fee lawyers were a catalyst in development of Equal Pay MACs. However, as has already been noted above, despite a wide literature, Equal Pay claims only represent 16.2% of the TCA between 1998/99 and 2012/13. It would be easy to assume that no-win, no-fee lawyers were equally active in the other jurisdictions and this would partly explain the overall growth in MAC claims over the period 1998/99 to 2012/13. By investigating MACs in detail this thesis will examine this possibility.

This section has examined how no-win, no-fee lawyers have played a key part in the development of Equal Pay MACs and hence in MACs generally. The

²⁸ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 23.

next section examines the potential relationship between the Economic Cycle and Employment Tribunal claims.

2.8.5 The Economic Cycle and Employment Tribunal claims

This section looks at how the cycle of growth and recession in the UK economy potentially interacts with the annual number of claims accepted by the ET, with the idea that the TCA increases when the UK economy falls into recession. There may be an expectation that ET claims and the economic cycle are linked and this is reflected by Sanders (2009), who, after noting a 30% rise in the TCA between 2005/06 and 2006/07, went on to note that following the 2007/08 financial crash, it was predicted by 'nearly all economic commentators and also the European Commission ..that there will be a sharp rise [in the TCA] again later this year in light of the worsening global economic climate' (Sanders, 2009, p.35). However, the evidence on the relationship between the economic cycle and ET claims is, at best, mixed.

Brown et al., (1997) in a study of demand for 'grievance procedures' in Germany and the UK, found that economic cycle changes, such as 'the flow into unemployment' were more important than employment law changes on the number of unfair dismissal claims (Brown et al., 1997, p.344). This finding supports the idea that the economic cycle and the level of claims are related.

Likewise, Burgess et al., (2001) found that 'the number of claims in the 1980s appeared to move with the economic cycle, but after a rise in the 1990s recession, the subsequent [economic] recovery did not see a return to former [ET claim] levels' (Burgess et al., 2001, p.3).²⁹ Burgess et al., also found that there was no match between the TCA and the unemployment rate (Burgess et al., 2001, p.18). Schulze-Marmeling, (2013) also found that in the UK 'the relationship between unemployment and court claims [TCA] grows stronger as the amount and complexity of labour law increases and as the provision of

²⁹ However, Burgess et al., note that as they only had 11 TCA observations, 1985 to 1997, this limited the scope for statistical analysis.

collective employee voice through trade unions disappears from large parts of the economy' (Schulze-Marmeling, 2013, p.153).

Whilst there is some research that suggests a link between economic changes and changes in the TCA, there is also research that suggests that these links are often used as justification for policy choice. Latreille and Saundry (2015) refer to the 'Great Recession' following the 2007/08 financial crash by highlighting how various macroeconomic indicators, such as the Gross Domestic Product (GDP) percentage change and the unemployment rate, all reflected the UK economy shrinking (Latreille and Saundry, 2015, p.242 and p.245). Latreille and Saundry then note that the ET TCA has risen from '30-40,000 in the late 1980s to a peak of 236,000 in 2009/10' (Latreille and Saundry, 2015, p.243). However, this juxtaposition is not to illustrate that the 'Great Recession' is the sole cause of the rise in the TCA, but just the opposite. Latreille and Saundry are pointing out that, while the Coalition Government used the 'Great Recession' as justification for deregulation to improve business competitiveness, there are several other reasons for the increase in the TCA, such as the increased number of ET jurisdictions and the rise in MACs. However, in 2017, Wood et al., using the Workplace Employment Relations Study (WERS) 2011 data, found a link between the 2008 recession and an increase in ET claims in workplaces that had experienced recessionary effects (Wood et al., 2017, p.14).

As can be seen, the literature is, at best, mixed, regarding the relationship between the Economic Cycle and Employment Tribunal claims. However, both Schulze-Marmeling (2013) and Latreille and Saundry (2015) note that there does seem to be a relationship in the 2000s and by investigating the TCA/SAC/MAC relationship in detail, this thesis will examine this possibility further.

This section has examined what factors lie behind the changes in ET claims and discussed the interaction between the individualisation and juridification of employment law, the Equal Opportunities Commission, the European Union, trade unions and no-win, no fee lawyers, along with a potential link between the TCA and the Economic Cycle. It has been noted that the literature

has tended to focus on the TCA and there is the beginning of a thread which shows that the intermediate level, the SACs and MACs, may tell a different story. It may be that increasing individualisation and juridification have facilitated an alternative manifestation of collective action as MACs for both trade unions and no-win, no-fee lawyers, through the use of 'contended law' which this thesis will examine. The next section examines government policy on Employment Tribunals and workplace conflict.

2.9 What is government policy on Employment Tribunals and workplace conflict?

The desire of governments of all political stripe has been to control the growth in the TCA (Sanders, 2009, p.33), which is seen to represent a failure in conflict resolution between the employee/worker and the employer. Some of the steps, such as the introduction of Acas Early Conciliation in 2014, have aimed at promoting the resolution of a potential claim before it becomes an actual claim (Kirk, 2018, p.979), whereas other changes, such as the introduction in April 2013 of a 2-year qualifying period for Unfair Dismissal, seem to be driven by nothing more than a desire to reduce the 'burden on business' through reducing the opportunity to claim (Ewing and Hendy, 2012, p.116). All the evidence put forward to support these various policies ignores the differing nature of claims, including the rise in MACs. This thesis will bring greater clarity to the understanding of the TCA by exploring the differences in the TCA/SAC/MAC/jurisdictional complaint and what this might mean for the resolution of tribunal claims.

Although the statutory employment right for protection against Unfair Dismissal was created by the Heath Conservative Government in 1971, by 1979 the newly elected Thatcher Conservative Government regarded 'employment protection legislation' as a 'burden' (House of Commons Parliamentary Papers Online, 1986, p.36; Hepple, 2013, p.210). This terminology created an ongoing narrative in public policy which drew on this debate.

Yet it could be said that during the Conservative Governments of Thatcher and Major, 1979 to 1997, the ET Claims Process was effectively ignored or

perhaps accepted. The underlying perception of 'burden' had not gone away, as shown by the introduction in 1980 of the Pre-Hearing Assessment (Dickens, 1985, p.15) and in 1993, the change to the Pre-Hearing Review (legislation.gov.uk, 2020h, p.11), both of which were introduced to weed out 'unmeritorious' claims plus the Unfair Dismissal qualifying period was increased from 6 months to 2 years in 1980 (Dickens, 1985, p.18), but employees could still submit a claim directly to the ET without attempting resolution with their employer. It was also the case that the ET could not actually reject an ET claim (legislation.gov.uk, 2020h, p.8).

In 1997, with the election of the Blair Labour Government, there began a refocussing of attention on the ETs and their place in the regulation of the labour market. New legislation was proposed barring an ET application until all internal workplace procedures were exhausted (Pollert, 2007, p.113). This was an attempt to make ETs the last resort for the resolution of employment disputes rather than what was thought to be the first resort.

In 1999 the Unfair Dismissal qualifying period was reduced from 2 years to 1 year and in 2001 *Routes to Resolution: Improving Dispute Resolution in Britain: A Consultation* was published. It noted that:

'...more disputes between employers and employees are ending up in litigation, as shown in the three-fold rise in applications to employment tribunals over the past decade [1989/90 TCA 34,697, 1999/00 TCA 103,935]. Recourse to litigation as a first resort is neither good for the individual nor the business. The government is convinced that many of these disagreements could be resolved successfully in the workplace, if employers and employees work together' (DTI, 2001a, p.2).

The consultation proposes that applications can only be made to an ET if workplace dispute and grievance procedures have been completed (DTI, 2001a, p.16), which would remove the opportunity for an employee to file an ET claim without attempting to resolve the dispute. The consultation also highlights that the Government is 'keen' to promote alternative dispute resolution (DTI, 2001a, p.25).

One point to note is that the consultation focuses on the *individual*, as represented by SACs (DTI, 2001a, p.2). MACs are mentioned in passing but in reality, the consultation's approach and recommendations are aimed at individual employment disputes between individual employers and individual employees. This might be a result of the evidence sources used to support the proposals, one of which is the *Survey of Employment Tribunal Applications 1998* (SETA 98). The consultation uses SETA 98 evidence on 10 occasions to support the proposals, however, as was noted earlier, SETA 98 only uses data from SACs (Latreille and Latreille, 2003, p.14), meaning that the influence of MACs is overlooked. The consultation itself only makes one reference to MACs and that is as a note to a graph (DTI, 2001a, p.28).

The changes in the TCA and the interaction of the TCA, SACs, MACs and jurisdictional complaints are largely ignored by the authors of the consultation despite the data showing that the number of MAC claims filed in 1999/00 was already 33,300 (Lord and Redfern, 2014, p.15) out of a TCA of 103,935 (Employment Tribunal Service, 2001, p.21) and at least 17 of the leading Equal Pay MAC Cases are already in progress³⁰ including *Preston and Others v Wolverhampton Healthcare Trust and Others*³¹ which Heery noted in 1998 contained 60,000 claims (Heery, 1998, p.355). Ignoring the rise in MACs reinforces the point made above, that the consultation and consequently policy solution focuses on the *individual* whereas the reason for the rise in the TCA in this period may likely be MAC related, so problem and policy solution are potentially mismatched.

When the Government introduced the *2002 Employment Act* which followed *Routes to Resolution: Improving Dispute Resolution in Britain: A Consultation*, some criticism was generated for its 'selective misrepresentation' of SETA 98. This involved several alleged misrepresentations, such as, deliberately overstating the number of claims made to the ET with no prior attempt at resolve the problem with their employer, in order to support their proposal for

³⁰ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references.

³¹ For more details, see Appendix 14, Table A14.1, Case 17.

a Statutory Dispute Resolution Procedure (Hepple and Morris, 2002, p.251; Pollert, 2007, p.124). However, both the Government and its critics were misinterpreting the data – SETA 98 ignored MACs (Latreille and Latreille, 2003, p.14).

However, the consultation is the first attempt by government to develop a broader system for resolving disputes between the employees and employer with ETs forming an integral and essential last enforcement step in the 'system'. The consultation appears to be a genuine attempt to resolve potential ET claims before they became actual claims. The consultation accepts that employment disputes between employee and employer are an everyday fact of business life and should be managed as such, like every other business problem and builds on the 1968 Donovan RC recognition that unless a safety valve was provided, employment disputes had the potential to quickly escalate into much more serious problems (Donovan, 1968, p.143). This is a change in rhetoric from the previous government view that employment disputes are unusual and ET claims are somehow a burden on business which government policy should minimise by making claims more difficult to file, through such steps as increasing the Unfair Dismissal qualifying period.

The proposals contained in the 2001 consultation were brought into effect on 1st October 2004, with the introduction of a Statutory Dispute Resolution Procedure. Unfortunately, the Statutory Dispute Resolution Procedure very quickly came under sustained criticism. It was alleged that the requirements to follow the Procedure to the letter led the parties to focus on following the Procedure rather than resolving the underlying problem (Kirk, 2018, p.978).

This tension led to Michael Gibbons being asked to conduct a further review of the options with a focus on simplifying and improving all aspects of employment dispute resolution (Gibbons, 2007). The Gibbons Review concluded that the Statutory Dispute Resolution Procedure exacerbated and accelerated employment disputes that would have been better dealt with informally, within the workplace, because the employer was aware that a dismissal could be deemed 'automatically unfair', while an employee could have an application to the ET rejected if the procedures were not followed.

The 'strong link' between internal employer procedures and potential ET proceedings was deemed to be the problem, which, it was suggested, led to an increase of between 30% to 40% in ET claims (Gibbons, 2007, p.25). Consequently, the Gibbons Review recommended the complete repeal of the Statutory Dispute Resolution Procedure (Gibbons, 2007, p.4). The Gibbons Review emphasises resolving employment disputes between employees and their employer in the workplace and recommends greater use of alternative dispute resolution methods. (Gibbons, 2007, p.41). Despite the policy agenda of earlier governments, the burden on business narrative is dismissed by Gibbons with the comment that 'Weak and vexatious cases make up only a small minority of Tribunal claims' (Gibbons, 2007, p.51) which may be partly explained by the finding 'that there is a poor understanding of the realities of employment tribunals by both claimants and respondents [employers]' (Gibbons, 2007, p.34). The Gibbons Review goes on to recommend that the Government 'increase the quality of advice to potential claimants and respondents through an adequately resourced helpline and the internet' (Gibbons, 2007, p.5).

Unfortunately, and somewhat perversely, the Gibbons Review, in criticizing the Statutory Dispute Resolution Procedure and by default the ETs, fuelled the view that the ET was 'broken and in need of dramatic change' (Renton, 2012, p.136), this, in spite of the Gibbons Review's clear dismissal of the 'burden on business' narrative and noting that 'vexatious cases make up only a small minority of Tribunal claims' (Kirk, 2018, p.978).

As with the 2001 *Routes to Resolution: Improving Dispute Resolution in Britain: A Consultation*, the focus of the 2007 Gibbons Review is on the *individual*, as represented by SACs. The Gibbons Review does acknowledge MACs, but in reality its approach and recommendations are aimed at individual employment disputes between individual employers and individual employees. Just like the 2001 report, the Gibbons Review relies on the latest *Survey of Employment Tribunal Applications*, which was carried out in 2003 (SETA 2003). As was the case with SETA 98, SETA 2003 only uses data from SACs (Buscha et al., 2012, p.14), meaning that the influence of MACs is again largely overlooked.

The introduction of Voluntary Acas Pre-Claim Conciliation, as a response to the Gibbons Review, is effectively an extra step in the ET claim process between the employee/employer relationship and the filing of an ET claim. It is a voluntary step, as either party can decline to take part and is the realisation of the Gibbons Review recommendation that the Government 'offer a free early dispute resolution service, including where appropriate mediation, before a tribunal claim is lodged' (Gibbons, 2007, p.41).

In 2010 with the election of the Conservative/Liberal Democrat Coalition Government, the tone of government policy changed. Government policy reverted to reducing 'the supposed regulatory burden on businesses' (Welch, 2016, p.89).

In January 2011, the Department for Business Innovation and Skills (BIS) published *Resolving workplace disputes: A Consultation* (BIS, 2011). In the first paragraph of the foreword, we are told:

'Concerns about ending up in an employment tribunal can be a significant barrier that prevents employers, particularly small firms, from taking on staff in the first place' (BIS, 2011, p.3).

The foreword goes on to say that 'In this paper, we have sought to address concerns raised by business about the existing system and reduce the burden on the taxpayer' (BIS, 2011, p.3). The report continues that: 'we have seen a dramatic increase in the number of claims submitted to ETs. Between 2008/09 and 2009/10 the number of claims [TCA] rose by 56%, from 151,000 to 236,100, a record number' (BIS, 2011, p.15). The TCA figures are quoted from the ET statistics publicly provided by the MoJ (MoJ, 2019).

The Consultation in the next paragraph of the report goes on to give five quotes from business organisations, such as, the Confederation of British Industry which refer to 'weak and vexatious claims', 'unmeritorious claims' and 'no-win, no-fee lawyers' (BIS, 2011, pp.15-16). The implication appears to be that the increase in annual claims from 151,000 to 236,100 and the references to 'vexatious claims' are somehow related. The references to 'vexatious claims' also contradict the earlier Gibbons Review (Gibbons, 2007, p.51).

In relation to MACs, the Consultation acknowledges them, but goes on to conclude that as 'no external research has been conducted into the number and effect of multiple claims in the ET system...it has not been possible to forecast meaningful activity insofar as multiple claims are concerned' (BIS, 2011, p.24), despite noting that the Tribunals Service had provided information to the consultation showing 'that at 31 March 2010 there were 1,470 multiple claims within the system where the number of claims in each of the multiples exceeded 10. The total number of individual claims in those multiples was c375,000' (BIS, 2011, p.24). Although the consultation has been provided with this information, no further reference is made to it. It is effectively overlooked, although it does comment 'that smaller multiple claims [presumably 10 or fewer claims] might be suitable for early conciliation' (BIS, 2011, p.24). So, despite half acknowledging that there may be a different story hidden in the MACs, the consultation chooses not to look at the interaction of the TCA, SACs, MACs and jurisdictional complaints and instead develops government policy based on a partial analysis of the data. This thesis will, by examining the TCA/SAC/MAC/jurisdictional complaints, show just how problematic this analysis was.

The consultation also raises the prospect of charging fees. The justification provided is that 'the volume of claims brought in employment tribunals has increased steadily in recent years...Given this pressure, it is vital that we ensure the system is resourced adequately to meet its challenges' (BIS, 2011, p.49).

This is the third government report or consultation to raise the prospect of ET Fees. In 1986, the then Conservative Government raised the idea in *Cmnd. 9794 Building Businesses...Not Barriers*, (House of Commons Parliamentary Papers Online, 1986, p.36), and in 2001, the then Labour Government raised the idea in *Routes to Resolution: Improving Dispute Resolution in Britain: A Consultation* (DTI, 2001a, p.30). On both previous occasions the idea was shelved, although it should be noted that when in government all three mainstream political parties, Conservative, Labour and now the Conservative/Liberal Democrat Coalition had/have formally broached the idea of ET Fees.

The Coalition Government's *Resolving workplace disputes: A Consultation* (BIS, 2011) is a Janus like document in that it faces two ways. The acknowledgement that the Acas Voluntary Pre-Claim Conciliation should be extended to all claims before they are lodged with the ET is a continuation of the policies outlined in previous consultations and the Gibbons Review (2007) in particular. However, the references to 'weak and vexatious claims' and the apparent lack of interest in the underlying causes of the growth in ET claims and the prospect of ET Fees are complete opposites to the previous reports and 'are not based on hard evidence but are mainly ideological, supported by the subjective perceptions of some employers' (Hepple, 2013, p.203).

Part of this Janus like approach might be explained by the burden on business narrative that infuses the Coalition Government consultation and appears to be swirling around, and in, the Government rhetoric at this period. Following the conclusion of the consultation in April 2011 (BIS, 2011, p.56), the Government announced that:

'We are ending the one way bet against small businesses. We respect the right of those who spent their whole lives building up a business, not to see that achievement destroyed by a vexatious appeal to an employment tribunal. So, we are now going to make it much less risky for businesses to hire people' (BBC, 2011).

The Government's announcement is framed from a unitarist perspective and develops the 'burden on business' narrative. The announcement implies that otherwise viable businesses are somehow 'threatened' by 'vexatious' claims to the ET. There is no acceptance or acknowledgment, as would be accepted from the pluralist standpoint, that employment disputes are an everyday part of business life, which need institutions to 'manage' said workplace conflict. It also ignores the idea that there may be a better way to resolve workplace conflict than by trying to 'prohibit' it, or 'wish it away'.

Several other 'reports' are published around this time, all focusing on the burden on business narrative. In November 2011 Dominic Raab, then a Conservative backbench MP, claimed that:

‘Employers are being swamped by a tidal wave of allegations of unfair treatment. In 2009/10 employment tribunals received over 236,000 claims – an increase of 173% in five years. This rise has been driven by a surge in weak and vexatious claims, as some employees – sometimes encouraged by unscrupulous lawyers – seek to take advantage of the system. It is a mark of how spurious many claims are that almost a third are withdrawn by the applicant’ (Raab, 2011, p.7).

Three points follow. Firstly, Raab’s comments on weak and vexatious claims again contradict the Gibbons Review which noted that ‘Weak and vexatious cases make up only a small minority of Tribunal claims’ (Gibbons, 2007, p.51).

Secondly, Raab goes on to comment that ‘It is a mark of how spurious many claims are that almost a third are withdrawn by the applicant’. However, Raab appears to have either misunderstood or be making a misleading statement about what ‘Withdrawn’ means in the context of an ET claim. ‘Withdrawn’ may mean that the claimant has Withdrawn the claim because they have given up or it may be Withdrawn because a settlement has been negotiated and the ET can formally remove it from the list of live cases (Deakin et al., 2015, p.392). As far back as June 1974 the *Employment Gazette*, commenting on the first published ET outcome/disposal figures for the years 1972 and 1973, observed ‘the likelihood that some ‘successful’ cases are concealed in the data under the ‘withdrawal’ heading’ (*Employment Gazette*, 1974, p.504).

Thirdly, the rhetoric surrounding the ‘burden on business’ debate also fails to fully acknowledge that a high proportion of cases [claims] in the period prior to the introduction of ET Fees were MACs (Kirk, 2018, p.978) and Raab is no exception. This is, perhaps, a reflection of the narrative that the ET claims represented by the TCA statistic are of a uniform nature, a large number of which are weak and vexatious, as articulated by Raab, above, which could not be further from the truth as this thesis will show.

The Report on Employment Law or Beecroft Report (BIS, 2012) was prepared by businessman and Conservative Party donor Adrian Beecroft and presented to the Government in September 2011. The report is 16 pages long and provides no evidential support. Among the subjects it covers are ET Fees,

including the statement ‘It seems likely that such a step would indeed sharply reduce the number of unjustified claims’ (BIS, 2012, p.7). Dickens observes that ‘despite their often shaky foundations, the report’s recommendations have provided an agenda for the ongoing legislative reforms and a benchmark against which progress is being measured’ (Dickens, 2014, p.242). Hepple (2013), Mangan (2013), and Corby and Latreille (2012) make similar points.

Following the October 2011 announcement, that ET Fees would be introduced in April 2013, the MoJ carried out a specific consultation on the subject, *Charging Fees in Employment Tribunals and the Employment Appeal Tribunal, Consultation Paper CP22/2011* (MoJ, 2011b). As Mace (2017) observes, the language of this document is much more direct – ‘in need of reform’, ‘exploitation of taxpayers’ and ‘one-way bets’.

Charging is justified within the report because:

- Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT) are similar to Civil Courts. Civil Courts charge fees, so should ETs and EAT,
- A significant proportion of taxpayers will never use ETs, so why should all taxpayers fund the cost of ETs
- Government policy to charge fees – user pays
- Change behaviour of claimants – encourage earlier dispute resolution
- Other factors will be more influential in the decision to make a claim than a fee.
- The fee remission scheme used by civil courts in England and Wales is proposed for claimants who have difficulty paying the ET Fees (Mace, 2017, p.47).

The Consultation again admits that there is little evidence about the level of ‘unmeritorious’ claims, (MoJ, 2011b, p.15).

In the Government’s *Response to consultation* (MoJ, 2012) we are told that there were 140 responses to the consultation (MoJ, 2012, p.7). The summary of responses shows that organisations representing employees strongly disagreed with the principle of charging fees altogether.

At the conclusion of the consultation process following *Resolving workplace disputes: A Consultation* (BIS, 2011), the Coalition Government pressed ahead with three significant changes to the ET Claims process:

- 6th April 2013, The Unfair Dismissal qualifying period changed from 1 to 2 years
- 29th July 2013, ET Fees were introduced
- 6th May 2014, Mandatory Acas Early Conciliation was introduced.

Following these three changes the TCA drops sharply. The fall between 2012/13, the last full year before the changes were introduced and 2014/15, the first full year after the changes, is consistent at around 70% across the total, single and multiple claims, although in the literature only the fall in the TCA is noted. Kirk (2018), for example, comments that 'post fees there was a 76% fall in the number of claims' (Kirk, 2018, p.979). Adams and Prassl (2017) similarly note that the volume of claims fell by 73% between the second and third quarter of 2013/14 (Adams and Prassl, 2017, p.416). It would be easy to conclude that the three changes to the ET in 2013/14 were successful in achieving the government's aims, as outlined above. However, this conclusion would be wrong as this thesis will show. Once the story of interaction of the TCA, SACs, MACs and jurisdictional complaints is explored, it will be shown that the Government policy changes were based on a partial analysis of the data available.

The fall in the TCA following the introduction of ET Fees led to the conclusion that ET Fees were responsible for the 70% fall in the TCA. In *R (on the application of Unison) (Appellant) v Lord Chancellor [2017]*: UKSC 51: 26th July 2017, The Supreme Court highlights that 'the fall in the number of claims has ... been so sharp, so substantial, and so sustained as to warrant the conclusion that a significant number of people who would otherwise have brought claims have found the fees unaffordable' (Supreme Court, 2017, p.29). The Supreme Court judgment then goes on to find that 'the Fees Order effectively prevents access to justice and is therefore unlawful' (Supreme Court, 2017, p.30).

The Supreme Court judgment is, perhaps understandably, heavily focused on the overall fall in the TCA and whilst concerns about access to justice may be valid, the Supreme Court makes no distinction between SACs and MACs. It assumed that the fall in both SACs and MACs had the same underlying causes. This thesis will demonstrate that there is much more to the fall in MACs at this time than ET Fees.

This section has examined government policy towards ETs and found it to be twofold. Firstly, to prevent potential claims becoming an actual ET Claim and instead resolving the claim before it turns into an actual ET claim, either through Acas with Early Conciliation, ADR or better still between Employee and Employer and this was expressed in *Routes to Resolution: Improving Dispute Resolution in Britain: A Consultation* (DTI, 2001), *Better Dispute Resolution: A review of dispute resolution in Great Britain* (Gibbons, 2007) and in *Resolving workplace disputes: A Consultation* (BIS, 2011). Secondly, to reduce the 'burden on business' and this was expressed in *Cmnd. 9794 Building Businesses...Not Barriers* (House of Commons Parliamentary Papers Online, 1986) and *Resolving workplace disputes: A Consultation* (BIS, 2011).

So, have all the observed/discussed changes in ET claims led to an increased burden on business or is it just possible that the growth in ET claims might say something altogether more interesting?

2.10 Burden on Business

This section examines the 'burden on business' argument in greater detail by firstly reviewing how the literature refutes the notion that ET claims are 'burden on business' and secondly, examines the ideology behind the burden on business narrative.

2.10.1 Is there a Burden on Business?

The notion that ET claims are a burden on business began almost as soon as the ETs were given jurisdiction for the adjudication of claims for Unfair Dismissal in 1972. In 1978 Dickens noted that 'some employers argue that application is too easy and that staff in job centres and local Department of

Employment offices, where application forms are kept, encourage applications even in worthless cases [claims] as the applicant has ‘nothing to lose’ (Dickens, 1978. p.1). Dickens early observations are repeated throughout the history of ETs and the sentiment runs through to the modern day.

Presumably for the burden on business notion to persist there should be some evidence to bear it out, however, Kirk pointedly observes that ‘despite being central to the narrative of successive reforms, there has been no clear definition of ‘vexatiousness’, let alone demonstrable evidence’ (Kirk, 2018, p.979).

Kirk notes that ‘employers are complaining about claims with which they disagree (i.e., contest)...‘weak and vexatious’ appear to be code for ‘disputed’ by employers’ (Kirk, 2018, p.980). This divergent viewpoint is potentially the nub of the matter – employers are very unlikely to have a positive view of any ET claim. Within a unitarist, neoliberal approach, any ‘dispute’ could be interpreted as a threat to management prerogative, a position supported by Hepple (2013) in relation to the Coalition Government’s ‘ideology’ of a burden on business, whereby ‘there is a presumption that regulation interferes with the efficient working of free markets by limiting the employer’s freedom to manage and hire and fire without restraint’ (Hepple, 2013, p.220).

Scott and Williams (2014) suggest the media and pressure groups such as the Taxpayers’ Alliance rely on myth and hyperbole to highlight ‘the existence of a ‘compensation culture’ whereby malevolent and calculating employees seek redress against hapless employers for real or imagined wrongs’ (Scott and Williams, 2014, p.1,636). Dickens (2014) highlights this, by pointing out that in the Department of Business, Innovation and Skills (BIS) January 2011 consultation paper *Resolving Workplace Disputes: A Consultation*, the Government acknowledges that ‘it is acting not on hard evidence but on employers’ perceptions and concedes that there is a gap between these perceptions and reality’ (Dickens, 2014, p.241). It is, perhaps, worth emphasising that the issue here is not about the existence of ‘vexatious claims’, they exist (as footnote 41 in Chapter 3, p.133, makes clear), but about the perception that the main reason for the continued growth in the TCA is

vexatious claims, which contradicts the Gibbons Review comment that ‘Weak and vexatious cases make up only a small minority of Tribunal claims’ (Gibbons, 2007, p.51).

The perception of ‘vexatious claims’ as the main reason for the continued growth in the TCA reached its apogee with *The Report on Employment Law or Beecroft Report* (BIS, 2012) which gave a ‘voice’ to perceived business concerns and articulated ‘valid’ solutions to these concerns which were readily heard by some members of the Government. The perception of ‘vexatious claims’ peaked with the introduction of ET Fees in July 2013.

However, a more nuanced interpretation of the ‘burden on business’ perception is outlined by Kitching (2006) who, in relation to small business, draws attention to the difficulty of actually establishing business owners’ perceptions of regulation. Kitching is critical of quantitative surveys of business owners’ perceptions of regulation as a ‘burden/barrier/obstacle’ to ‘success/performance/growth’. Kitching observes that two such studies (Atkinson and Hurstfield, 2004; The Small Business Service, 2006) ‘reflect and reinforce, notions of regulation as a ‘burden’ or constraint, but neither examines how regulation constitutes an obstacle to success...Neither study considers how regulation might enable business owners to attain their business objectives’ (Kitching, 2006, p.802).

Kitching, who looks at burdens for employers, is effectively saying that if you ask business owners’ if regulation is a ‘burden’ then they are likely to say yes, particularly if the question uses pejorative language such as ‘red tape’ (Kitching, 2006, p.804). The thesis will explore the evidence behind these claims and consider the level to which ET moves from perceived burden to actual burden.

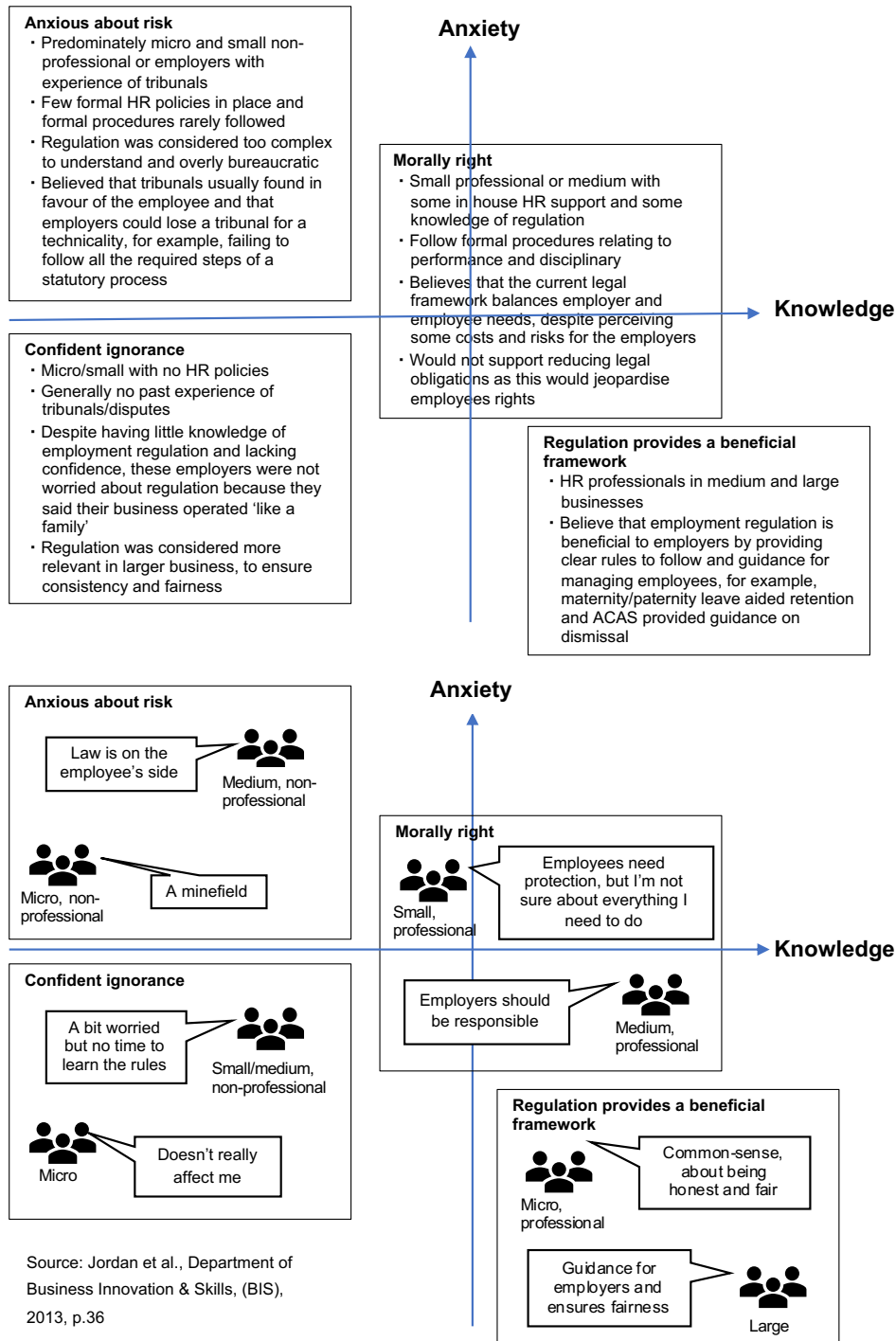
Kitching also highlights, in reference to small businesses, that ‘owner/manager awareness of specific regulations has been found to be limited and/or levels of compliance variable in relation to employment’ (Atkinson and Curtis, 2004; Harris, 2002; Harris and Foster, 2005; Marlow, 2002; Pratten and Lovatt, 2005; Scott et al., 1989; Thomson/GEE, 2004; Westrip, 1982; Woodland et al., 2003; all quoted in Kitching, 2006, p.803). This is borne out by Jordan et al., in

Employment Regulation. Part A: Employer perceptions and the impact of employment regulation, (BIS, 2013), who interviewed 16 Micro (1-9 employees), 9 Small (10-49), 8 Medium (50-249) and 7 Large (250+) companies using an in-depth interview technique, in an attempt to avoid the issues noted above by Kitching (2006) regarding surveys. Jordan et al., (BIS, 2013) also found that 'the perception of [employment] regulation being burdensome was influenced by anxiety and the belief that regulation was overly complex, rather than by the actual legal obligations that employers had to meet' (BIS, 2013, p.i).

Jordan et al., (BIS, 2013) found an inverse relationship between anxiety and knowledge. Anxiety about employment legislation reduced as knowledge of employment legislation increased. It was also found that the level of knowledge about employment legislation increased as the size of the business increased. These relationships are shown in Figure 2.2, below, which is reproduced from Jordan et al., (BIS), 2013.

Figure 2.2

Attitudes to Regulation
(reproduced from Jordan et al., (BIS), 2013, p.36)



Jordan et al., (BIS, 2013) concluded that 'employers were often supportive of the need for a regulatory framework and recognised that the impact of regulation on their business was minor. This and other research (Peck et al., 2012; Kitching, 2006) indicates that the general perception of regulation as

burdensome may reflect an 'anti-legislation' view and be a poor indicator of the actual impact on businesses' (BIS, 2013, p.ii).

It is possible that Jordan et al.'s interview methods may have revealed an example of 'myside bias' which occurs when people evaluate evidence in a manner biased towards their own prior opinions and attitudes (Stanovich et al., 2013). Because Jordan et al.'s interview methods have probed beyond employers own prior opinions and attitudes Jordan et al., have revealed employers more considered views on employment legislation, that employment legislation is in fact a necessary requirement for business to take place as opposed to a burden.

Kitching (2006) and Jordan et al., (BIS, 2013) highlight how difficult it is to establish what business owners actually think about regulation and employment laws, beyond a potential general 'anti-legislation bias' (BIS, 2013). It is also worth noting that Jordan et al., who only mentions MACs once in a clarification footnote (BIS, 2013, p.30, Footnote 11) and Kitching, who is specifically looking at small businesses, are both focused on SACs as opposed to MACs. This focus on SACs highlights again that MACs are broadly absent from the literature, an omission that this thesis will help rectify with a consideration as to how this other type of claims, MACs, impacts on businesses.

As can be seen from the foregoing, there is a great deal of rhetoric surrounding ET claims. The 'weak and vexatious' term has been around as long as ETs, yet in almost 50 years no hard evidence of 'weak and vexatious' claims have ever been provided and various authors such as, Dickens, (1978, 2014) and Kirk (2018) have consistently pointed this out. However, as noted above, the rhetoric appears to have been taken as 'fact' by policy makers particularly when the Conservative Party forms the Government.

If all ET claims are regarded as somehow the 'same', perhaps 'represented' by an Unfair Dismissal claim, which might have been true in 1983, then a one size fits all solution may be regarded as appropriate. This 'view' has not been dispelled by the literature because although the literature has consistently pointed out that the rise in the TCA is not driven by 'weak and vexatious' claims

the literature has not adequately explained what was causing the rise in the TCA, leaving policy makers to find their own solutions to a wrongly identified problem. This thesis argues that once the story of interaction of the TCA, SACs, MACs and jurisdictional complaints is revealed it will be shown that the literature and government policy were based on a partial analysis of the data available.

This section has looked at how the literature refutes the notion that ET claims are 'burden on business'. The next section examines the ideology behind the burden on business narrative.

2.10.2 Burden on Business 'guiding' paradigm/ideology.

As has been highlighted above, in 2010 with the arrival of the Conservative/Liberal Democrat Coalition Government, the tone of government policy changed. Government policy reverted to reducing 'the supposed regulatory burden on businesses' (Welch, 2016, p.89), a position which Hepple regarded as 'mainly ideological' (Hepple, 2013, p.203). This section will firstly, briefly examine the paradigm/ideology that is allegedly guiding the Conservative/Liberal Democrat Coalition Government and then, in the next section articulate how ETs, rather than being a Burden on Business, are a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory 'beneficial constraints'.

As was noted above, in the early part of the Coalition Government several 'reports' are published, by Dominic Raab (Raab, 2011), Adrian Beecroft (BIS, 2012) and others (BBC, 2011; Kwarteng et al., 2012), all focusing on the burden on business narrative. The reports all make a similar critique: regulation imposes costs on businesses and stifles growth, innovation, and impedes start-ups. This type of burden on business narrative has previously been noted in the academic literature on regulation by Kitching (2006) and Helm (2006). Helm observes that these 'strident demands' for the 'regulatory burden' to be reduced, predominantly come from 'industrial interests' (Helm, 2006, p.169). These 'strident demands' and the 'burden on business' narrative feed into the currently prevailing 'benchmark for policy evaluation', the neo-classical economics paradigm (Kaufman, 2010, p.91), which contends that

'the competitive model produces an allocation of goods and services in which no one can be made better off without making someone else worse off' (Trzcinski, 2005, p.171).

This condition is labelled 'a Pareto-efficient allocation of goods' (Trzcinski, 2005; Kaufman, 2010). In the neoclassical paradigm, 'policy cannot improve on the outcomes generated by the competitive model and the policy solution to any imperfections that occur 'is to make the market more competitive' (Wachter, 2004, in Kaufman, 2004) by removing the imperfection. Superficially, the neoclassical paradigm appears reasonable.

However, on second examination the neoclassical paradigm is found wanting. Kaufman (2010) highlights that the neoclassical labour economics paradigm is based, firstly, on the assumption of perfectly competitive commodity markets and secondly, on the assumption that all the inputs to the market are commodities, including the labour input (Polanyi, 1944), which is homogenous and available with frictionless supply (Kaufman, 2010). These assumptions may or may not be valid in relation to inputs beyond labour but have been criticised in relation to the labour input, because labour is not a commodity in the same way as, for example, water. Each gallon of water can be specified and measured and reproduced ad infinitum. It has no emotions. It is not human and is not encumbered or endowed with all that it is to be human, such as, fitness, work ethic, intelligence and education etc. Labour is very definitely not frictionless and it is infinitely variable as an input, and this is effectively ignored. Kaufman (2010) argues that the neoclassical paradigm provides 'an intellectual rationale for a laissez-faire and unregulated regime of free trade in labor' (Kaufman, 2010, p.17).

The neoclassical paradigm leads to the conclusion that all regulation, including ETs, is a burden on business. However, although the neoclassical paradigm is the currently prevailing 'benchmark for policy evaluation' (Kaufman, 2010), it has not been universally accepted and implemented. A different view would be that regulation is required for a modern market economy to function (Kitching, 2006, p.800; Kitching et al., 2015, p.136).

The next section briefly examines, firstly, how the need for regulation and hence burden, has been discussed and framed and then, secondly examines the possibility that ETs and ET claims are a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory 'beneficial constraints'.

2.11 Regulation – Burden or 'Beneficial Constraint'?

The literature on the need for regulation has a long history. In 1651 Thomas Hobbes published *The Leviathan or the matter, forme and power of a commonwealth ecclesiasticall and civil* (Hobbes, 1651). Hobbes makes clear that without some form of overarching power to keep men in awe, life would be 'solitary, poore, nasty, brutish and short' (Hobbes, 1651, p.97) and 'in such a condition, there is no place for Industry, because the fruit thereof is uncertain' (Hobbes, 1651, p.96). Although 'Industry' is completely 'unburdened' and unregulated the situation is not a conducive environment for 'Industry' to thrive. To solve this problem and create a more conducive environment, Hobbes suggested 'that people should 'contract' with a protector as their sovereign' (British Library, 2023), an early recognition, perhaps, that some regulation is better than no regulation.

Adam Smith is today held up as 'the guru of the market economy: a one-idea man propagating only the excellence and self-sufficiency of the market' (Sen, 2010, p.52). However, Adam Smith 'did not take the pure market mechanism to be a *free-standing* [italics added] performer of excellence' (Sen, 2010, p.53). Smith noted that the importance of the 'invisible hand' (Smith, 1776, p.349) needed the assistance of a rather more visible hand, in the form of regulation. (Smith, 1776, p.200). Smith was also clear that the interests of the 'dealers' and the interests of wider society are not the same (Smith, 1776, p.200).

However, despite what Adam Smith actually wrote and thought, an assumption has grown up, 'that decisions reached individually will, in fact, be the best decisions for an entire society' (Hardin, 1966, p.1,244). Hardin illustrates the fallacy of this assumption through the 'Tragedy of the Commons' (Hardin, 1966), which, as a concept, demonstrates that there is such a thing as too much freedom.

In the economic example of the 'Tragedy of the Commons', a community of farmers has unrestricted access to a finite area of common grazing land for their animals. The common grazing land has a finite limit to the number of animals that can be grazed and provided this is not exceeded, all is well. However, if there is no limit, or regulations, governing the number of animals that can be grazed, then it is in the self-interest of each farmer to increase his own number of animals to benefit from the 'free' grazing. However, if all the farmers in the community act according to their own self-interest, then the common land will be overgrazed to the detriment of all. In 1998, when he revisited 'The Tragedy of the Commons', Hardin noted that the metaphor had been included in anthologies on ecology, environmentalism, health care, economics, population studies, law, political science, philosophy ethics, geography, psychology and sociology. (Hardin, 1998, p.682). The power of this metaphor is that it applies to any finite resource that can be exploited in a similar way. Hardin concludes that 'we institute and (grumblingly) support taxes and other coercive devices to escape the horror of the commons' (Hardin, 1966, p.1,247).

As can be seen from the foregoing, Hobbes (1651), Smith (1776) and Hardin (1966, 1998) were all fully aware that a completely free market without some form of regulation was problematic. Indeed, Hobbes (1651) version of a world without regulation is dystopian.

Streeck argues that the economy is *improved* by social constraints or as he refers to them 'beneficial constraints' (Streeck, 1997). To clarify, the point he is making is that:

'a society exists only to the extent that it is capable of imposing normative constraints, or social obligations, on the pursuit of individual interest. Without such constraints, social order gives way to anomy, ultimately depriving self-interested rational actors of essential conditions for the pursuit of self-interest, in part by allowing them to consume those conditions through their own activities' (Streeck, 1997, p.199).

Streeck is going further than Hobbes, (1651), Smith (1776) and Hardin (1966,1998) who acknowledge that markets can only function with some 'negative' form of regulation. Streeck is arguing that markets and in particular economies are *improved* by the regulation or constraints. The regulation, in and of itself, leads to a well performing economy and is therefore a 'positive'. Streeck refers to this aspect of regulation as beneficial constraints. For Streeck, this positive aspect of regulation has two parts, firstly, a social aspect and, secondly, an entrepreneurial aspect, both of which are intertwined.

For Streeck, the social aspect relates to decisions taken at a societal level as a result of, either political decisions or through custom and practice (normative regulation) (Wright, 2004), to regulate and restrict the behaviour of entrepreneurs and other members of society. With regards to entrepreneurs and business in general the 'regulation' may take many forms, for example, levying and ensuring the payment of taxes, creating and enforcing a national minimum wage, or creating a body of employment law and an associated enforcement mechanism, trade unions, environmental regulations and informal codes of how to do business in particular industries or regions (Streeck, 2004, p.426).

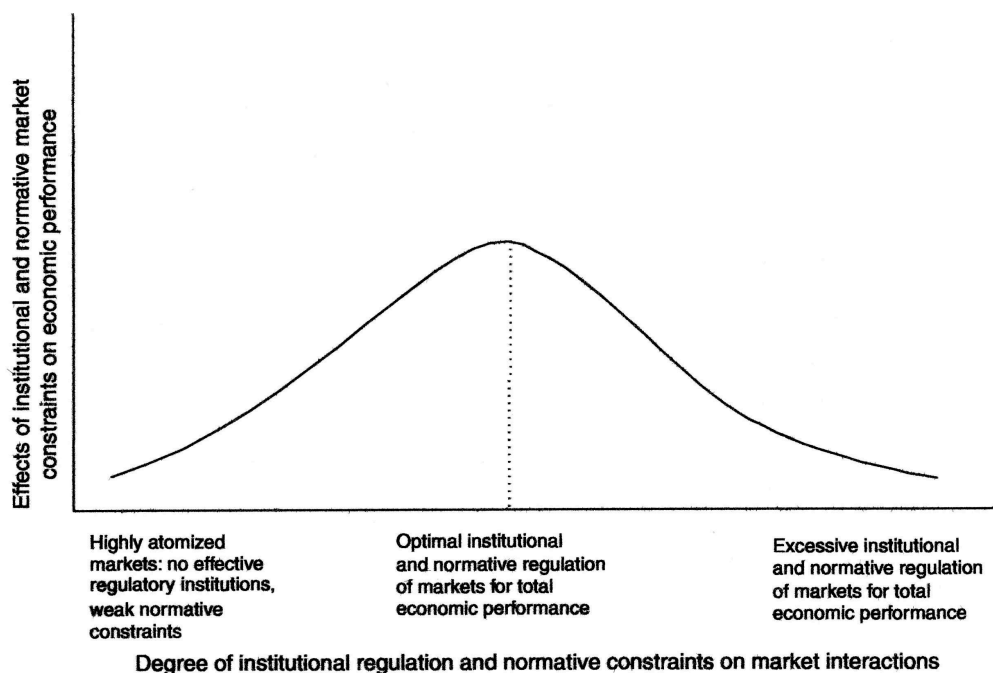
Streeck's argument is that the social aspect of regulation brings out a positive entrepreneurial response. The body of 'regulation' developed by society in relation to the operation of business may be perceived by entrepreneurs and business in general as a constraint on their behaviour, as noted by Helm (2006), but Streeck makes the point that the very existence of the constraints will bring out the entrepreneurial vim and vigour of business, leading to productivity enhancing improvements which will lead to a better economic performance in the long term. Allen (2011) gives a good example of just such an event. He posits that the Industrial Revolution took place in eighteenth century Britain because the wage cost of labour was exceptionally high compared to other parts of Europe and Asia, while the costs of capital and energy in Britain were exceptionally low, giving British businesses an exceptional incentive to invent technology that substituted capital and energy for labour (Allen, 2011).

Whilst Streeck's argument is very compelling, at no point in the foregoing discussion has any reference been made to the optimum level of regulation or 'beneficial constraints' required. Streeck acknowledges that '*not all* [italics in original] constraining social institutions are economically beneficial' (Streeck, 1997, p.213).

The 'ideal' level of regulation is not easily apparent, although for Streeck too much regulation is better than not enough. Streeck's regulation continuum is illustrated in Figure 2.3, below, which is reproduced from Wright, 2004. What is also unclear is how this optimum is reached.

Figure 2.3

Degree of institutional regulation and normative constraints on market interactions (reproduced from Wright, 2004, p.409)

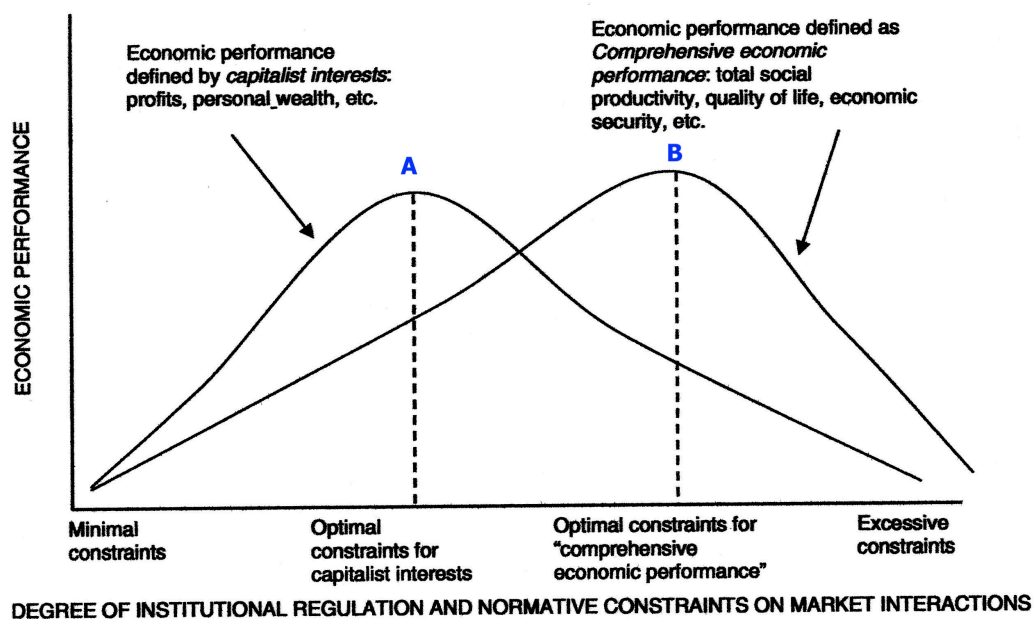


As can be seen, on the left-hand side of the graph, under a Hobbesian dystopian framework, with little or no regulation, economic performance is weak and as more beneficial constraints are added economic performance improves until an optimal amount of regulation is reached, whereafter as further constraints are added economic performance falls away on the right-hand side of the graph.

In discussing Streeck's beneficial constraints, Wright (2004) notes that the optimal level of economic performance requires a greater level of beneficial constraints than the 'optimal level for realizing the interests of capitalists' (Wright, 2004, p.412). This difference is shown in Figure 2.4, below, which is again reproduced from Wright, 2004.

Figure 2.4

Effects of socially embedded institutional and normative constraints on economic performance and on capitalist interests (reproduced from Wright, 2004, p.411)



As can be seen, the optimal level of constraints for the capitalist interests is shown as point A, whereas the optimal level of constraints for economic performance is shown as point B. From the capitalist's point of view, anything to the right of point A is likely to be regarded as a burden. Where the actual level of constraints settles will be 'determined by the relative power of the contending forces' (Wright, 2004, p.412). There will be a tension between the capitalist interests view of the appropriate level of constraints and what society determines is appropriate. Wright is also highlighting an important point, which is that, even capitalists accept that markets can only exist with some form of regulation, just not the level of regulation that society requires.

Going from the general to the specific, this is where ETs come in. ETs adjudicate the statutory employment rights that Parliament has created. The ETs and the resulting ET claims are the manifestation of the statutory employment rights that society, through Parliament, has determined should apply in Great Britain. The question is where do ETs and ET claims fit on the continuum of 'constraints'? Are they a societally imposed constraint towards the excessive (right) end of continuum in Figure 2.3, or are they actually at point B, in Figure 2.4, as in just the optimal amount of constraint for the best economic performance? Or are they at Point A, in Figure 2.4, as in just the optimal amount of constraint for capitalist interests?

2.12 From Contended 'Facts' to Contended 'Law' - part two

Early in the literature review it was noted that Dennison and Corby (2005) observed the employer's [respondent] and the employee's [claimant] version of the facts at issue in an ET claim were not perfect reflections of each other but were somehow distorted and effectively required the ET to resolve the distortion (Dennison and Corby, 2005, p.22). The facts of the claim were 'contended'. Dennison and Corby's findings relate to SACs, because their data source is SETA 2003 (Dennison and Corby, 2005, p.21), which, as noted above only covers SACs (Buscha et al., 2012, p.14), meaning that the influence of MACs is largely ignored.

The previous sections have highlighted how the growth of MACs have, over time, changed the makeup of the annual TCA count, from mostly SACs to mostly MACs. Various potential reasons for this change have been put forward, as noted above, such as, Individualisation (Dickens, 2012b, p.1; Latreille et al., 2007, p.137), Juridification (Dickens, 2000, p.69), a strategic drive by trade unions (Dickens, 2000, p.74; Dickens and Hall, 2009, p.350), and the rise of no-win, no-fee lawyers (Deakin et al., 2015, p.401; McLaughlin, 2014, p.13). However, the Equal Pay discussion highlights a common thread through all these potential reasons. The large-scale Equal Pay MACs are largely about norm-generating contended law. There is an increase in Individualisation and Juridification but in the Equal Pay jurisdiction the trade unions and the no-win, no-fee lawyers are contesting an *existing* jurisdiction

in new ways. The facts of the equal pay claims are largely accepted by both employers and employees as represented by the trade unions or no-win, no-fee lawyers. The matters at issue revolve around interpretation of the law. The 32 leading Equal Pay MACs discussed in the Equal Pay literature by among others, Szyszczak (1985), Rowbottom, (2007), Deakin and Morris, (2009) and Hayes (2014)³² are shown in Appendix 14, Table A14.1, where it can be seen that 27 of the 32 MACs listed are only resolved on appeal to superior courts such as the Employment Appeal Tribunal, Court of Appeal, House of Lords/Supreme Court³³ and the European Court of Justice. The legal complexity of these Equal Pay MACs potentially results from the fact that they are 'norm-generating'. They are establishing case law and precedent, a familiar process in the legal profession, which these 'contended law' cases reflect. Masood and Lineberger (2020) found that 'precedent matters because that is the way lawyers are taught to think' (Masood and Lineberger, 2020, p.715). The rise of large-scale 'contended law' MACs is, perhaps, institutional isomorphism exemplified (Corby and Latreille, 2012).

Beyond institutional isomorphism, it is the contention of this thesis that the rise of large-scale 'contended law' MACs, as opposed to 'contended facts' SACs, is also, perhaps, a manifestation of the tension between the optimal 'capitalist' level of employment law beneficial constraints, and the level that society determines is appropriate, as illustrated respectively by point A and B in Figure 2.4, above. Parliament and the EU, as society's representatives, have determined what statutory employment rights employees should have and the ET is the forum 'where the actual level of 'beneficial constraints' is 'negotiated via 'contended law' MACs which are a form of collective workplace conflict. This is an aspect of ETs that has not previously been discussed and by

³² The full list of references in the 32 leading Equal Pay MACs in Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references are: Bach (2010), Branney (1999), Christie (2005), Colling (2006, 2010), Conley (2014), Conley et al, (2018), Davies and Freedland (1993), Deakin et al. (2015), Deakin and Morris (2009), Guillaume (2015), Hayes (2014), Heery (1998), Heery and Conley (2007), Jefferson (1985), McLaughlin (2014), Oliver et al. (2014), Rowbottom (2007), Szyszczak (1985), Thornley (2006).

³³ The Supreme Court replaced the House of Lords in October 2009 (The Supreme Court, 2023).

analysing MACs, this thesis will develop a new understanding of contemporary collective workplace conflict in Great Britain.

Beyond beneficial constraints, the rise of 'contended law' MACs as pursued by the trade unions, as discussed above, is an illustration of collective workplace conflict which Acas recently noted was 'not easy to measure' (Acas, 2023), meaning that the literature on collective workplace conflict beyond strike action was limited, with no systemic understanding of collective workplace conflict that manifests elsewhere. In analysing MACs, this thesis is providing material for a taxonomy of contemporary collective workplace conflict in Great Britain.

2.13 Conclusion

The aim of this thesis is to gain an understanding of what Employment Tribunal claims tell us about workplace conflict. This literature review has attempted to use the academic literature on ETs to build a picture of how ETs and ET claims in particular have developed and been portrayed over time.

As the literature review has progressed it has been shown that, despite a large literature surrounding ETs, when it comes to ET claims, the literature suffers from terminological laxity, as illustrated by the lack of a definition of what an ET claim is, or indeed, what it represents. It was also observed that the literature potentially shows a critical over reliance on assumptions, or at least implied assumptions. For example, the literature seems to assume that claims and individuals/claimants are matched on a one-to-one basis. This is perhaps the most fundamental point, particularly as the annual TCA is often taken as a proxy for workplace conflict, for if turns out that these assumptions are incorrect then any discussion around the TCA is potentially compromised. This then raises the question: What does the TCA represent beyond the number of claims filed? The literature provides no answer, and this thesis will closely examine this question.

Following on from the issue of claim definition, the literature review has illustrated how an important change in the makeup of ET claims, the growth of MACs, has been missed. This overlooked change required the proxy use of

the literature on equal pay to tease out the story of MACs. This was necessary because the general ET literature focuses on either the TCA level or the individual claim level. How the changes in the makeup of the TCA impacts the 'intermediate' level of SACs, MACs and their interaction with the TCA is largely ignored, leaving a gap in knowledge for this research, which has important ramifications for our understanding of the presence and nature of conflict within the workplace. The consequence of this omission is that academic understanding and government policy is based on partial analysis of the data and this thesis in part will go some way to rectifying this.

The literature review also engaged with the debate on business burden and highlighted that neither side of the argument puts forward sufficient evidence to either show that ET claims are, or are not, a burden on business showing that, here again, is a gap in our understanding of what the real drivers of the increase in the TCA are.

The next chapter will outline the research methods used in the exploratory research that revealed these unexpected academic and policy gaps in our understanding of Employment Tribunals and Employment Tribunal claims.

Chapter 3
Methodology

3.1 Introduction

This chapter summarises the research methods used to examine what Employment Tribunal (ET) claims tell us about workplace conflict. What follows is an explanation of the research methods that have enabled a new understanding to emerge.

The work has adopted an exploratory approach and thus the research objective itself changed as it became clear that the exploration of English, Welsh and Scottish Employment Tribunal claims and associated ET statistics³⁴ was indicating an academic and policy gap in our understanding of Employment Tribunals. The question that this thesis therefore seeks to examine is: *What do Employment Tribunal claims tell us about workplace conflict?* This research objective has been examined/discussed by answering the following three questions:

- Firstly, what does Employment Tribunal claims data tell us about employment disputes in Great Britain?

This question examines the annual ET total claims accepted (TCA) data from 1972, when the ETs first began hearing Unfair Dismissal claims, with a view to noting and explaining how the make-up of TCA has changed over time. As this change appears to have gone largely unnoticed in the academic literature and in policy circles, this thesis develops knowledge in this area by examining Multi-Applicant Claims (MACs) in general and, for the first time, analysing the MACs contained in the ET Decision Index. In particular, the thesis will focus on the growth of MACs in the 2000s and the fact that this reflects a growth in norm-generating 'contended law' based claims as opposed to 'contended fact' based claims. This shift means that prior understanding of the nature of employment disputes brought to the ETs in Great Britain may not provide a full picture.

³⁴ All Employment Tribunal statistics in this thesis refer to Great Britain only i.e., England, Wales and Scotland. Northern Ireland statistics are NOT included.

- Secondly, what factors lie behind the changes in Employment Tribunal claims?

This question, firstly, examines the phenomenon of 'administrative' claims, where the ET's own administrative processes generates ET claims and, secondly, the effects of changes in legal regulation, such as the change in the Unfair Dismissal qualifying period, the introduction of ET Fees and Acas Early Conciliation on the ET statistics and, thirdly highlights a change in what the ET is being asked to adjudicate on from 'contended facts' to norm-generating 'contended law' and, lastly, looks at the underlying ET TCA and total claims output/disposal statistics to reveal that there are issues with the reliability and construct validity of the data. This question will show that it is not employment disputes per se that are driving the changes, but rather changes in and negotiations of boundaries within law and tribunal process, as well as basic data issues.

- Thirdly, what are the implications of the observed changes in Employment Tribunal claims?

This question analyses the volume of claims and, drawing on the work of Kitching and Streeck earlier on, considers what effect, if any, this has had on the burden on business. The ET data are then examined to see what they tell us about the resolution of employment disputes. This thesis draws on the findings to redefine the burden on business argument as a reflection of the negotiation of important but beneficial constraints which make the employment relationship function effectively, as defined by Streeck (1997) with the employment tribunal as an important forum for this in a world where juridification is increasing and collective bargaining waning.

The overall aim of this thesis is to gain an understanding of what ET claims tell us about conflict in the workplace. It does this by looking in particular at how the growth of ET MACs have, over time, changed the nature and makeup of the annual ET TCA count and hence changed what conclusions can be made about the 'workplace conflict' that the annual TCA statistics are often taken to represent, but also the role of ETs within this. In summary the findings

that flow from these questions question the 'burden on business' argument in relation to ETs and conflict more generally.

3.2. Research Philosophy

The following section will explain and justify the approach taken within this project in order to give 'context' to the discussion of the epistemological and ontological positions adopted. The approach developed stems from the personal experiences of the researcher as a general manager with responsibility for HR, working within the constraints on business and the impact of ETs as a potential burden on business. In addition to this practical experience the researcher has a background in numbers/quantitative approaches. The impact of the researcher's past experiences is important as philosophical world views are shaped by the researcher's past experiences (Crotty, 1998, quoted in Lord, 2014, p.136).

Additionally, this previous experience and the location of this thesis within employment relations conversations means that the work adopts a pluralist frame of reference (see Heery, 2016, p.2). This perspective acknowledges that any organisation is made up of groups of individuals, such as management and workforce, who will have divergent aims and interests, not only between groups, but within groups. The work therefore starts from a point of conflict being expected and endemic, but manageable if approached in a pragmatic and flexible way with structures in place to do so. The research finds that the role of the employment tribunal within this framing is important in today's working world.

It is important to mention this personal experience and also frame of reference to help examine the researcher's epistemological and ontological positions.

3.2.1 Epistemology

The researcher identifies as a positivist, which Roscoe (1995) describes as aiming to 'construct a perfectly impersonal or objective, value-free cognitive representation of reality as a whole' (Roscoe, 1995, p.494).

This epistemological position lends itself to quantitative research methods with large data sets enabling statistical analysis in order to ascertain measurable and observable facts (Saunders et al., 2012, p.135). The social scientist must study social phenomena 'in the same state of mind as the physicist, chemist or physiologist when he probes into a still unexplored region of scientific domain' (Durkheim, 1964, quoted in May, 2011, p.10).

However, although the researcher has self-identified as a positivist, the researcher appreciates that in social science research the data are not always out there in any readily identifiable pre-packaged way. This is the case in the current research project, which, as will be discussed in more detail below, requires both quantitative and qualitative research methods. This mixed methods approach, therefore, requires a philosophical adjustment and a move from positivism to pragmatism:

'Pragmatists recognise that there are many different ways of interpreting the world and undertaking research, that no single point of view can ever give the entire picture and that there may be multiple realities. This does not mean that pragmatists always use multiple methods, rather they use the method or methods that enable credible, well founded, reliable and relevant data to be collected that advance the research' (Kelemen and Rumens, 2008, quoted in Saunders et al., 2012, p.130).

This adjustment is put forward as an acceptable compromise in accordance with the pragmatic and flexible aspects of the worldview articulated above and would also seem to fit with a pluralist frame of reference which recognises the different interests of the various groups that make up an organisation etc. and requires a degree of pragmatism and flexibility to contain.

As a practical note, the adjustment from positivism to pragmatism facilitated the collection of relevant quantitative and qualitative data in a way that has enhanced the research findings beyond what could have been achieved by just a positivist approach, given the ET data issues noted in the literature review by Burgess et al., (DTI, 2001), Hand J., (2010), Lord (2014) and Hand D., (2018). For example, it was necessary to go beyond the quantitative data

to more qualitative sources, such as legal websites to identify and understand several previously unknown phenomena relating to MACs.

3.2.2 Ontology

Ontology in the social sciences is concerned with the nature of social entities. Saunders et al., (2012) highlight two ontologies, Objectivism and Subjectivism, which are defined as follows:

‘Objectivism represents the position that things, such as social entities, exist as a meaningful reality external to those social actors concerned with their existence’ (Saunders et al., 2012, p.131). Objectivists regard the management of an organisation as something that exists in line with similar structures to those in other organisations. ‘Aspects of the structure in which management operates may differ but the essence of the function is very much the same in all organisations’ (Saunders et al., 2012, p.131).

Whereas ‘Subjectivism holds that social phenomena are created through the perceptions and consequent actions of affected social actors’ (Saunders et al., 2012, p.131). Subjectivists would regard each organisation’s management as unique, in that it is made up of individuals who each have their own ideas of how their job roles should be fulfilled, so no two organisations can be the same.

However, objectivism and subjectivism do not exist in a vacuum. They may represent different views of the world but perhaps they should be regarded as the ends of a continuum and to some extent both views of the nature of social entities have merits and can exist to varying degrees simultaneously. In the management examples above it would not be unreasonable for both objectivism and subjectivism to show how management is both similar and different across organisations.

In this thesis, the need to compensate for the ET data issues identified in the literature review by Burgess et al., (DTI, 2001), Hand D., (2018), Hand J., (2010) and Lord (2014), means that although the preferred research approach is toward the objective end of the ontology continuum, there is a realisation, in line with the researcher’s past experiences outlined above, that the subjective

end of the continuum has value in revealing the nuances behind structures, not least the continued existence of 'institutional isomorphism' (Corby and Latreille, 2012). This was particularly apposite in revealing the new phenomena regarding the ET, highlighted in the research findings. The next section outlines the research strategy.

3.3 Research Strategy

The research has been carried out using three research techniques:

- Quantitative and qualitative archival analysis of publicly available documents,
- Quantitative analysis of two publicly available datasets:
 - Ministry of Justice (MoJ), Annual ET Statistics 2007/08 to 2018/19 (MoJ, 2019)
 - ET Decision Index, 1st February 2017 to 5th February 2019 (gov.uk, 2020)
- Semi-Structured interviews.

In addition, a Freedom of Information (FOI) request was made to the Ministry of Justice in January 2018, in an attempt to get detailed information on the TCA, SACs, MACs and jurisdictional complaints relationship. As detailed in a later section of this chapter, this FOI request was less successful than hoped.

It is not possible to separate the three techniques by Research Question, as the interaction between each technique enhanced the overall understanding of the phenomena revealed, which then generated the three Research Questions. This is effectively an inductive approach (Bryman, 2012, p.26).

Mainly quantitative in approach, a large proportion of the data analysed in this thesis, such as the annual TCA prior to 2007/08, and the annual total claims outcome/disposals (TCOD) prior to 2009/10, has only been possible because of the ET statistical data directly extracted from the publicly available original

source documents, such as the (*Department of Employment Gazette*³⁵, its successor *Labour Market Trends*, the Employment Tribunals Service Annual Report and Accounts from 2000 to 2007 and other documents as summarised in Tables 3.2, 3.3 and 3.4, below. It should be, perhaps, noted that the *Employment Gazette* and *Labour Market Trends* are the original source documents, where in the period 1972 to 1998/99, ET data are published. In addition, the archival analysis of the publicly available documents, such as the 420 editions of the *Employment Gazette* and its successor *Labour Market Trends*, and other documents as summarised in Table 3.1 and detailed in Appendix 1, Table A1.1, was also a qualitative endeavour yielding valuable insights into the history and background of the Employment Tribunals, which when combined with the analysis of the ET statistical data gleaned from the same sources enabled the research to be undertaken and completed.

As was highlighted in the literature review, there is a lack of consistent and readily available ET claims data and statistics, a problem that has been recognised in the literature regarding ETs by among others, Hand J. (2010) and Lord (2014) and generally in reference to administrative data by Hand D. (2018). For example, ET claims statistics are not available in a readily usable form beyond the TCA prior to 1990/00 (Lord and Redfern, 2014, p.15). It is to compensate for this lack of consistent data that a large effort has been expended to collate as much ET claims and ET claims outcome/disposal data from original official sources as possible. This level of detail has been provided from original sources precisely because the information was not, as has been noted, readily available.

³⁵ The *Employment Gazette* is the official journal of the Department of Employment (see, for example, *Employment Gazette*, January 1991, p.1), and as such is the original data source. Until 1980 it was formally published with the title *Department of Employment Gazette* and subsequently with the title *Employment Gazette*. In this thesis it will be referred to as the *Employment Gazette*.

3.3.1 Quantitative and qualitative archival analysis of publicly available documents

In this thesis the secondary archival analysis of the publicly available documents is both a quantitative and qualitative method, because a large proportion of the original statistical ET data from 1972, when the ETs first began hearing Unfair Dismissal claims, is scattered throughout the archival documents as shown in Tables 3.2, 3.3 and 3.4, below.

Scott (1990, as quoted in Bryman 2012, p.544) put forward four criteria for assessing the quality of documents:

1. Authenticity: Is the evidence genuine and of unquestionable origin?
2. Credibility: Is the evidence free from error and distortion?
3. Representativeness: Is the evidence typical of its kind, and, if not, is the extent of its untypicality known?
4. Meaning: Is the evidence clear and comprehensible?

Official documents should comply with the four points above, although it should be noted that the documents under review have been produced for a particular purpose and may contain bias.

As the detailed research into the archival publicly available documents and the MoJ annual ET Statistics dataset was undertaken, it became clear there were credibility issues with these ET data sources. These credibility issues are explored further in Chapter 6. However, despite these credibility issues, it is also evident that without the archival analysis of the publicly available documents and the MoJ dataset then the research could not have been undertaken as no alternative data sources are available.

3.3.2 Quantitative analysis of publicly available datasets

After careful reconstruction from the publicly available documents, all the statistics relating to the annual ET TCA by year from 1972 are available and the ET Decision Index is newly available from February 2017 and both are therefore suitable for secondary analysis. As Bryman (2012, p.312) notes secondary analysis has the potential advantages of:

1. saving cost and time
2. high quality data
3. opportunity for longitudinal analysis
4. subgroup analysis
5. opportunity for cross-cultural analysis
6. more time for data analysis
7. reanalysis may offer new interpretations
8. facilitate use of data for wider use

and the potential disadvantages of:

1. lack of familiarity with the data
2. complexity of the data
3. no control over data quality
4. absence of key variables

The advantage of re-analysis offering new interpretations and the disadvantage of no control over data quality are relevant here, but perhaps, more relevant is the absence of key variables, a common problem with administrative data (Hand D., 2018), such as the disconnect between the TCA, SACs, MACs and jurisdictional complaints as highlighted in Chapter 2.

The findings generated by the analysis of the annual TCA from 1972, when the ETs first began hearing Unfair Dismissal claims, directly addresses all three Research Questions, but the analysis and findings generated from the ET Decision Index are largely related to answering Research Question 1, What does Employment Tribunal claims data tell us about employment disputes in Great Britain? It addresses MACs in particular.

3.3.3 Semi-Structured Interviews

Two formal semi-structured interviews with individuals who have first-hand practitioner experience in this area were undertaken, plus , use is made of the author's notes from three brief informal telephone conversations with practitioners.

The first formal interview was with an employment solicitor and the second was with a leading 'no-win, no-fee' lawyer. This has proven particularly relevant in relation to MACs where the emergent phenomena have been confirmed and elaborated on by individuals involved in the actual phenomena themselves. Semi-structured interviews have been chosen as they allow the interviewees to tell the story themselves while following the general interview structure as defined by the interviewer. As Bryman points out "the emphasis is on elucidating the experience of the interviewees" (Bryman 2012, p.63).

This research technique was particularly useful in addressing Research Question 2, What factors lie behind the changes in Employment Tribunal claims?

Although an important part of the thesis, the formal interviews were limited to the employment solicitor and the leading 'no-win, no-fee' lawyer for two main reasons.

Firstly, the primary focus of this thesis is on the intermediate level interactions between the TCA and its component parts, the SACs and MACs, which as noted in the literature review, has largely been ignored, leaving a gap in our understanding which this thesis will fill. This led to a focus on developing the emergent phenomena around MACs and the particular practical and theoretical contributions that these would/could lead to, and while interviewing employees and employers involved in MACs is certainly a worthwhile project in its own right, it would be a different project to the one that is at the core of this thesis. It would be more akin to extending the SETA series, The Survey of Employment Tribunal Applications, which as noted earlier, only covers SACs, to include MACs. The 1998 SETA Supporting Documentation gives a summary of why MACs are excluded from the SETA series:

'The ETS [Employment Tribunal Service] records some cases as having 'multiple' applications, in which a number of individuals were in dispute with an employer for the same reason. It was considered desirable that these applications were excluded in sampling (as noted above), because in such cases the tribunal would usually hear one specific case and apply the outcome of that case to the other

applications. If these cases had been included in the sample, it would mean that an individual applicant selected for the survey may well have had no direct experience of the case' (Latreille and Latreille, 2003, p.14).

In other words, as MACs can contain hundreds, if not thousands, of generic claimants it was not necessary to individually interview them to understand trends in the MAC data.

Secondly, there are potential ethical issues around interviewing employees and employers. During the process of gaining ethical approval for this research the issue of claimant confidentiality was raised as an issue of paramount importance. It was made very clear in the ethical approval process, by the Cardiff Business School Research Ethics Committee, that if individual claimants were to be interviewed, it was unlikely that ethical approval would be granted. The researcher and supervisors agreed in writing that no individual claimants would be interviewed.

In addition to the two formal semi-structured interviews, discussed above, use is made of the author's notes from three brief informal telephone conversations with practitioners. These were, firstly, an employee of the Bury St Edmunds ET Office (see Section 3.4.3), secondly, a member of Acas (see Chapter 4, Section 4.3), and, lastly, the Unite Civil Aviation National Officer (see Chapter 6, Section 6.22).

3.4 Data Sources

This section covers the data sources used in this research. It begins, firstly, with an explanation of how the quantitative and qualitative archival analysis of publicly available documents was achieved and then, secondly, looks at how the data were carefully assembled from multiple quantitative and qualitative sources to enable the quantitative analysis of the ET claims statistics that is at the heart of this thesis. Thirdly, following on from this, an account is given of the innovative, yet careful, analysis of the information contained within the ET Decision Index. Fourthly, a brief account is given of the Semi-Structured

Interviews, and finally, the reasoning behind the FOI request is covered along with the circumstances which led to its rejection.

3.4.1 Quantitative and qualitative archival analysis of publicly available documents

In order to analyse ET claims from 1972, when the ETs first began hearing Unfair Dismissal claims, it was necessary to study the history and timeline of statutory employment protection in Great Britain to follow the introduction of legislation and in particular the jurisdictions that may have facilitated the use of MACs. The growth in employment protection has been facilitated partly by UK legislation and European Union influence. This historical analysis was achieved partly through the literature review, and partly by reviewing the various documents that the seven government departments³⁶ responsible for the ETs since 1972 have issued from time to time and partly by using a wide range of alternate sources, such as legal databases, law firm websites, trade union websites and Twitter, which was instrumental in identifying a hitherto unknown phenomenon relating to MACs. Table 3.1, below, summarises these sources.

One obvious source of information, particularly about MACs, would be the Case [claim] Decision/Judgment records which would give details about the number of claims and claimants associated with a MAC. However, it should be noted that the Ministry of Justice have systematically destroyed³⁷ all ET case [claim] records prior to 2010. Some important MAC case [claim] records, such as *British Airways PLC v Ms S. Williams & Others*, have been preserved by third parties, such as the British and Irish Legal Information Institute legal database (bailii.org, 2021), but the vast majority of case [claim] records have been destroyed. This means that the important elements of this story have had to be recreated from the remaining preserved fragments found after an exhaustive search of legal databases, such as bailii.org and law firm websites,

³⁶ Department of Employment, Department for Constitutional Affairs, Department of Trade and Industry, Department for Business, Enterprise & Regulatory Reform, Department for Business, Innovation & Skills, Department for Business, Energy & Industrial Strategy and the Ministry of Justice.

³⁷ The administrative act of removing the hard copy records.

such as oldsquare.co.uk. Once located the documents used for the archival analysis are almost all available online and have been downloaded, printed and notated with relative ease³⁸.

The archival analysis of publicly available documents has necessarily been a wide-ranging search for information about ETs and ET statistics. Once it became clear that the relevant information was spread over a wide range of sources, a 'snowball' approach was used. Each document and source, including all the literature used in the literature review, was closely scrutinised for other useful sources. This led to a wide range of, perhaps, unusual sources such as Bloomberg.com, which threw up an article about Sex Discrimination research based on the ET Decision Index (Bloomberg.com, 2019).

Plus, it cannot be overemphasised that a large proportion of the quantitative data analysed in this thesis, such as the annual TCA prior to 2007/08, and the annual total claims outcome/disposals (TCOD) prior to 2009/10, has only been possible because of the ET statistical data directly extracted from the publicly available documents, such as the *Employment Gazette*, the Employment Tribunals Service Annual Report and Accounts from 2000 to 2007 and a significant number of other documents. The full list of all 1187+ documents, sources, databases and websites can be found in Appendix 1, Table A1.1. As can be seen in Table 3.1, below, more than 1,187 Documents, databases and websites have been reviewed, including 420 editions of the *Employment Gazette/Labour Market Trends* from 1971 to 2006; 76 documents that the seven government departments responsible for the ETs since 1972, when the ETs first began hearing Unfair Dismissal claims, have issued; at least 295 documents, websites and sources directly related to Employment Tribunals; and four law websites. The 1,187+ Documents reviewed are in addition to the 26,293 individual ET Decision Index entries detailed in Section 3.4.3, below.

³⁸ A small number of documents proved impossible to find.

Table 3.1

Summary of Sources and Number of Documents/Websites Reviewed

Sources	Number of Documents/Websites
Accountancy website	1
Advice Centres	2
Employer related documents	2
Employment Tribunal related documents and websites including in excess of 100 Employment Tribunal Judgments	295+
European Union related documents and websites	2
Government Agency related documents and websites (including Acas)	49
Government Departments/Ministries	76
Government Publications (<i>Employment Gazette/Labour Market Trends</i>)	420
Legal Databases	22
Law Firms	14
Law websites	14
Newspapers and Magazines	48
News websites	10
Office for National Statistics	19
Parliament related documents and websites	28
Professional bodies related documents and websites	2
Think Tank related documents and websites	2
Survey of Employment Tribunal Applications	15
Union related documents and websites	152
University MA/MSc/PhD Dissertations	3
Websites - miscellaneous	11
Total documents and websites etc. reviewed	1,187+
A full list of all 1187+ documents, databases and websites can be found in Appendix 1, Table A1.1, List of Sources and Number of Documents/Websites Reviewed	

A lot of the required quantitative information was only available in annual publications, such as the Employment Tribunal Service Annual Report and Accounts³⁹, or quarterly in the MoJ *Tribunals Statistics Quarterly*. As far as possible all annual or quarterly copies of each such series were found,

³⁹ The Employment Tribunal Service Annual Report and Accounts for 1997-1998 and 1998-1999 proved impossible to find despite an exhaustive search.

downloaded and used where relevant to extend the ET statistics dataset. This type of document revealed not only quantitative data but usually contained a qualitative narrative element that enabled the piecing together over time of the emergent phenomena, such as the discovery that with regard to MAC claim outcome/disposals, the terms 'Withdrawn' and 'Struck Out' were used interchangeably and effectively had the same meaning, an important finding discussed in Chapter 7: What are the implications of the observed changes in Employment Tribunal claims?

Time has necessarily limited the document search, but every endeavour has been made to locate and review as many relevant documents as is practicable. The search has been made easier by the availability of most of the documents online. The only real exception to this was the 288 editions of the *Employment Gazette* and the 132 editions of its successor, *Labour Market Trends*, covering the period from 1971 to 2006, which were only available in hard copy. This also required a trip to the London School of Economics Library to review the *Employment Gazette* editions between 1971 and 1979 as these were not available in the Cardiff University Library. Each of the 420 hard copy editions of the *Employment Gazette* and *Labour Market Trends* was examined for ET information and statistics, with a total of 30 editions yielding useful quantitative and qualitative information.

Another source of useful quantitative and qualitative information were legal databases, such as the British and Irish Legal Information Institute legal database (*baillii.org*). These legal databases have preserved legal case [claim] records from the various 'court' stages of the ET claim legal process such as the Employment Appeal Tribunal, Court of Appeal and House of Lords/Supreme Court. These documents usually include a history of the original ET claims. For example, in *British Airways PLC v Ms S. Williams & Others*, the Employment Appeal Tribunal Judgment (*baillii.org*, 2021) confirmed the definitive number of claimants involved in the MAC and the existence of 'administrative claims', a major finding, as discussed in Chapter 6: 'What factors lie behind the observed changes in Employment Tribunal claims?'.

3.4.2 Quantitative analysis of Employment Tribunal Statistics

The data required to carry out the quantitative analysis and comparison of the ET statistics has been sourced as follows,

Firstly, the MoJ publish a Tribunal dataset (MoJ, 2019), which is the only up to date public source of data available on the number and types of claims submitted to the ETs. This dataset is a compendium of all data from the Tribunals the MoJ is responsible for, including ETs.

The information provided on ET claims by the tribunal dataset includes both annual TCA, the split between SACs and MACs and the jurisdictional complaints (JCs), although there is no granular information that explains how the SAC/MAC split relates to the jurisdictional complaints.

The main users of the MoJ Tribunal dataset, as noted in the June 2017 *Guide to Tribunals and Gender Recognition Certificate Statistics Quarterly*, are 'Ministers and officials in central government responsible for developing policy with regards to tribunals' (MoJ, 2017a, p.26), indicating that the dataset should have authenticity and credibility as defined by Scott (1990, as quoted in Bryman, 2012, p.544).

Secondly, however, the MoJ dataset only goes back to 2007/08. To compile the ET TCA data going back to 1972, when the ETs first began hearing Unfair Dismissal claims, has required a search through the archives of various publicly available documents to identify a further 11 data sources, as detailed in Table 3.2, below, to compile a complete TCA dataset. It is perhaps worth noting that the SAC/MAC split is only available from 1999/00 and the jurisdictional complaint data from 1998/99. Prior to 1998/99 only the TCA is available.

The 11 data sources for the TCA in Table 3.2, below, are all original sources of data, apart from Hawes (2000), which covers the TCA for the period 1984/85 to 1997/98. At first glance Hawes stands out as a notably different source to the other 10 sources. It would seem that an important part of the TCA data from 1972 to 2018/19 is based on a second-hand source. Hawes has been used because the data is not directly available from an original source. It is not

published in the *Employment Gazette*, unlike the prior years, 1972 to 1983. However, Hawes quotes the Employment Tribunal Service as his source (Hawes, 2000, p.19) and the data has been compared against 2 other comparable references, Burgess et al., (2001) and *Hansard* (2003), both of which also quote the Employment Tribunal Service as their sources. This comparison is shown in Appendix 3, Table A3.2, where it can be seen that all three data series are very similar (although strangely, not exactly the same). Certainly, similar enough to give comfort that the Hawes (2000) data are of a reasonable level of credibility.

One of Hawes (2000) references was to the *Employment Gazette* and *Labour Market Trends*. This is an example of the 'snowball' effect in action as the *Employment Gazette* and *Labour Market Trends* proved invaluable as a source of quantitative ET data, particularly for the ET output/disposal statistics for the pre 1999/00 period.

Table 3.2

Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19

Year	Total Claims Accepted	Cases	SAC/MAC Split	Jurisdictional Complaints	Source	
1972	Page 488	No	No	No	<i>Employment Gazette</i> , November 1984	
1973						
1974						
1975						
1976						
1977						
1978						
1979						
1980						
1981						
1982						
1983						
1984/85 ^a	Page 19	No	No	No	Hawes W.R., 2000, <i>Setting the pace or running alongside? Acas and the changing employment relationship</i> , In: Towers, Brian and Brown, William, eds. <i>Employment relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service</i> , Oxford: Blackwell	
1985/86						
1986/87						
1987/88						
1988/89						
1989/90						
1990/91						
1991/92						
1992/93						
1993/94						
1994/95						
1995/96						
1996/97						
1997/98						
1998/99						
1999/00	Page 21 ^b	No	No	Page 21	Employment Tribunal Service Annual Report and Accounts 2000-2001	
	No		Page 15	No	Lord and Redfern, 2014	
2000/01	No		Page 4 ^c	No	Employment Tribunal Service Annual Report and Accounts 2001-2002	
2001/02	Page 23 ^b		No	Page 23	Employment Tribunal Service Annual Report and Accounts 2002-2003	
2002/03	Page 23 ^b		Page 4 ^c	Page 23	Employment Tribunal Service Annual Report and Accounts 2003-2004	
2003/04	No		No	Page 28	Employment Tribunal Service Annual Report and Accounts 2004-2005	
2004/05	Page 28		No	Page 8	Employment Tribunal Service Annual Report and Accounts 2005-2006	
2005/06	No		Page 8	Page 28	ET and EAT Statistics (GB) 1 st April 2006 to 31 st March 2007	
2006/07	Table 1		No	Table 1	BIS, <i>Resolving workplace disputes: A Consultation</i> , Impact Assessment, Jan 2011, p.40	
2007/08	No		No	Page 40		
2008/09	Yes		Yes	No	Yes	Ministry of Justice, 2019, Main Tables (July to September 2019), <i>Tribunals statistics quarterly: July to September 2019</i>
2009/10						
2010/11						
2011/12						
2012/13						
2013/14						
2014/15						
2015/16						
2016/17						
2017/18						
2018/19						

✓210709

^a In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April - March.

^b The Total Claims Accepted (TCA) statistic is shown as the 'Main Jurisdiction' total in the Employment Tribunal Service Annual Reports in this period

^c The SAC and MAC statistics are not directly quoted but are estimated using the information provided on page 4 of the relevant Employment Tribunal Service Annual Reports

With regards to the outcome/disposals of claims, the MoJ dataset provides the data from 2009/10 to 2018/19. To compile the claims outcome/disposals dataset going back to 1985/86 has required a search through the archives of various publicly available documents to identify a further 20 original data sources, such as the *Employment Gazette*, *Labour Market Trends* and the Employment Tribunal Service Annual Reports. Table 3.3, below, shows the full list of original sources that was required to compile a complete total claims outcome/disposal (TCOD) dataset. It is perhaps worth noting that the SAC/MAC outcome/disposal split is only available from 2009/10 to 2018/19. This dataset directly addresses part of the answers to all three Research Questions.

With regards to the jurisdictional outcome/disposal of claims, again the MoJ dataset only goes back to 2009/10. To compile as much data as possible going back to 1972 for the Unfair Dismissal, Equal Pay, Sex Discrimination, Race Discrimination, Redundancy Pay, Unauthorised Deductions, Breach of Contract and Working Time Directive jurisdictions has required a search through a further 39 primary data sources such as the *Employment Gazette*, *Labour Market Trends* and the Employment Tribunal Service Annual Reports, as detailed in Table 3.4, below.

The 1996/97 annual outcome/disposal statistics are not available. This is reported in *Hansard* as being 'Due to changes in the Employment Tribunals Service computerised records in 1996' (*Hansard*, 2003). Figures for the missing 1996/97 values have been imputed from the mean of the relevant data points for 1995/96 and 1997/98. This will have a minimal impact on the interpretation of longitudinal trends but care should obviously be taken in using the imputed figures as proxies for the missing data in 1996/97.

Table 3.3

Data Sources for Employment Tribunal Total Claim Outcome/Disposal (TCOD) Statistics 1985/86 to 2018/19

Year	TCOD	Cases	Single Applicant Claim Outcome/Disposals (SACOD)/ Multi-Applicant Claims Outcome/Disposals (MACOD)/ Split	Jurisdictional Complaints Outcome/ Disposals	Source			
1985/86	Page 499	No	No	Yes	<i>Employment Gazette</i> , October 1987			
1986/87					<i>Employment Gazette</i> , May 1989			
1987/88	Page 258				<i>Employment Gazette</i> , April 1990			
1988/89	Page 214				<i>Employment Gazette</i> , May 1991			
1989/90	Page 304				<i>Employment Gazette</i> , December 1991			
1990/91	Page 682				<i>Employment Gazette</i> , November 1993			
1991/92	Page 528				<i>Employment Gazette</i> , October 1994,			
1992/93	Page 368				<i>Labour Market Trends</i> , July 1996			
1993/94					<i>Labour Market Trends</i> , April 1997			
1994/95	Page 306				Not available ^a			
1995/96	Page 152				No	No	Yes	<i>Labour Market Trends</i> , September 1999
1996/97	Not available ^a							
1997/98	Page 494	No	No	Yes				Employment Tribunal Service Annual Report and Accounts 1999-2000
1998/99								Employment Tribunal Service Annual Report and Accounts 2000-2001
1999/00	Page 22							Employment Tribunal Service Annual Report and Accounts 2001-2002
2000/01	Page 22 ^b							Employment Tribunal Service Annual Report and Accounts 2002-2003
2001/02	Page 22 ^b							Employment Tribunal Service Annual Report and Accounts 2003-2004
2002/03	Page 24 ^b							Employment Tribunal Service Annual Report and Accounts 2004-2005
2003/04	Page 24 ^b							Employment Tribunal Service Annual Report and Accounts 2005-2006
2004/05	Page 29							ET S ET and EAT Statistics (GB) 1 st April 2006 to 31 st March 2007
2005/06	Page 29							ETS ET and EAT Statistics (GB) 1 st April 2007 to 31 st March 2008
2006/07	Table 2				Tribunals Service ET and EAT Statistics (GB) 1 st April 2008 to 31 st March 2009			
2007/08	Table 2				Yes	Yes	Yes	Ministry of Justice, 2019, Main Tables (July to September 2019), <i>Tribunals statistics quarterly: July to September 2019</i>
2008/09	Table 2							
2009/10	Yes							
2010/11								
2011/12								
2012/13								
2013/14								
2014/15								
2015/16								
2016/17								
2017/18								
2018/19								

✓210706

^a 1996/97 Annual Outcome/Disposals Statistics not available – see *Hansard*, 30th October 2003
^b The Total Claims Outcome/Disposal (TCOD) statistic is shown as the 'Main Jurisdiction' total in the Employment Tribunal Service (ETS) Annual Reports in this period

Table 3.4

**Data Sources for Selective ET Jurisdictional Complaints
Annual Outcome/Disposals 1972 to 2018/19**

Year	UD ^a	EP ^b	SD ^c	RD ^d	RP ^e	UaD ^f	BoC ^g	WTD ^h	Source	
1972	p.504								<i>Employment Gazette</i> , June 1974	
1973										
1974	p.535								<i>Emp Gazette</i> , June 1975	
1975	p.595								<i>Emp Gazette</i> , June 1976	
1976		p.458	p.460						<i>Emp Gazette</i> , May 1977	
	p.1079								<i>Emp Gazette</i> , October 1977	
1977		p.435	p.437						<i>Emp Gazette</i> , April 1978	
	p.555								<i>Emp Gazette</i> , May 1978	
1978		p.361	p.363						<i>Emp Gazette</i> , April 1979	
	p.866								<i>Emp Gazette</i> , Sept 1979	
1979		p.384	p.386						<i>Emp Gazette</i> , April 1980	
	p.82								<i>Emp Gazette</i> , Feb 1981	
1980		p.239	p.240						<i>Emp Gazette</i> , May 1981	
	p.539								<i>Emp Gazette</i> , Dec1981	
1981		p.202	p.204	p.544					<i>Emp Gazette</i> , May 1982	
	p.520									<i>Emp Gazette</i> , Dec1982
1982		p.167	p.169							<i>Emp Gazette</i> , April 1983
	p.490									<i>Emp Gazette</i> , Nov 1984
1983		p.541	p.542							<i>Emp Gazette</i> , Dec 1984
		p.53	p.54		p.55					<i>Emp Gazette</i> , Feb 1986
1984/85 ⁱ	p.48									
1985/86		p.499							<i>Emp Gazette</i> , October 1987	
1986/87										
1987/88			p.258							<i>Emp Gazette</i> , May 1989
1988/89			p.214						<i>Emp Gazette</i> , April 1990	
1989/90			p.304						<i>Emp Gazette</i> , May 1991	
1990/91			p.682						<i>Emp Gazette</i> , Dec 1991	
1991/92			p.528						<i>Emp Gazette</i> , Nov 1993	
1992/93										
1993/94			p.368						<i>Emp Gazette</i> , October 1994	
1994/95				p.306					<i>Lab Mkt Trends</i> , July 1996	
1995/96				p.152					<i>Lab Mkt Trends</i> , April 1997	
1996/97				Not available ^j						
1997/98										
1998/99				p.494					<i>Lab Mkt Trends</i> , Sept 1999	
1999/00				p.22					ETS Ann Rpt. & Accts 99/00	
2000/01				p.22					ETS Ann Rpt. & Accts 00/01	
2001/02				p.22					ETS Ann Rpt. & Accts 01/02	
2002/03				p.24					ETS Ann Rpt. & Accts 02/03	
2003/04				p.24					ETS Ann Rpt. & Accts 03/04	
2004/05				p.29					ETS Ann Rpt. & Accts 04/05	
2005/06				p.29					ETS Ann Rpt. & Accts 05/06	
2006/07				Table 2					ETS ET and EAT Statistics (GB) 1 st April 2006 to 31 st March 2007	
2007/08				Table 2					ETS ET and EAT Statistics (GB) 1 st April 2007 to 31 st March 2008	
2008/09				Table 2					Tribunals Service ET and EAT Statistics (GB) 1 st April 2008 to 31 st March 2009	
2009/10				Tab ET_3					Ministry of Justice, 2019, Main Tables (July to September 2019), <i>Tribunals statistics quarterly: July to September 2019</i>	
2010/11										
2011/12										
2012/13										
2013/14										
2014/15										
2015/16										
2016/17										
2017/18										
2018/19										

^a Unfair Dismissal, ^b Equal Pay, ^c Sex Discrimination, ^d Race Discrimination, ^e Redundancy Pay, ^f Unauthorised Deductions, ^g Breach of Contract, ^h Working Time Directive

ⁱ In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April - March.

^j 1996/97 Annual Outcome/Disposals Statistics not available – see *Hansard*, 30th October 2003

3.4.3 Employment Tribunal Decision Index

So far in this thesis it has been noted that there is a disconnect between the TCA, SACs, MACs and jurisdictional complaints. However, there is one point in the ET Claims Process when the disconnect is fully resolved and that is at the claim outcome/disposal point when the ET outcome/disposal decision is published.

Prior to February 2017, ET claim outcome/disposal decisions were only available for physical inspection at the Bury St. Edmunds ET office. A copy of a particular claim outcome/disposal decision could be requested from the Bury St Edmunds office, but this required claim specific knowledge, such as the seven-digit claim reference and the year the claim was filed with the ET. An enquiry to the Bury St Edmunds ET office revealed that the Claim database is based on a legacy bespoke system, is not in spreadsheet format, is not transferable to a PC and only covers claims from 2010 to 2017. Prior years have been destroyed⁴⁰ (telephone enquiry).

In February 2017, ET claim decisions began to be published on the gov.uk website (gov.uk, 2020). This was a significant step forward, as all ET outcome/disposals were now to be available online and searchable by claimant name, respondent (employer), jurisdiction or claim reference and presented an opportunity to resolve the statistical disconnect between the TCA, SACs, MACs and jurisdictional complaints. Each ET outcome/disposal decision could be examined to see exactly what jurisdictional complaints it contained and whether it was a SAC or MAC.

The ability to resolve this disconnect is of particular relevance for this thesis and Research Question 1: What does Employment Tribunal claims data tell us about employment disputes in Great Britain? By examining the MACs contained within the ET Decision Index over the period 1st February 2017 to

⁴⁰ The administrative act of removing the hard copy records.

5th February 2019 a picture of workplace conflict as represented by MACs could be revealed.

Unfortunately, there is one drawback, no matter how an ET Decision Index search is specified, only individual records are made available. Any analysis of the ET Decision Index required individual examination of all 26,293 decision records (at the time of study) between the dates specified. To compile any useful data on MACs to answer Research Question 1, requires examination of each record to determine if it is a MAC.

Each claim decision provides 26 variables of information on the claim/claims, including exactly how many claimants there are, how many claims they have made, exactly which jurisdictional complaints the claim relates too and what year the claims were filed. Each decision is displayed on the website in the format shown below:

[Mr A Doughty and others v Phones 4U Ltd \(in Administration\) and others: 1306072/2014](#)

The example is a MAC, as shown by the claim being made by Mr A Doughty *and others*. There is now a wealth of information available regarding ET claims right down to the individual claim level in a way that was previously effectively unobtainable because the information was only available in hard copy. This thesis has made use of this new data source to improve our understanding of MACs as outlined in Research Question 1: what does Employment Tribunal claims data tell us about employment disputes in Great Britain?

3.4.3.1 Employment Tribunal Decision Index: Data Collection

So, how best to collect information from this new data source? As noted above, the ET Decisions webpage displays the ET Decisions in an individual format. Each ET decision is displayed separately. In reality, the ET decisions webpage is just an index, it takes the user to the raw data, it does not provide the data in any aggregated form. The only way to analyse the data in the aggregate, is to examine the individual decisions and record the information of interest. To meet the exploratory research aim, a 'no specified criteria' search was carried

out on 6th February 2019. This yielded 26,293 entries, which was the entirety of the database at the date of search, covering a period of 2 years.

Sorting the 26,293 entries by claim reference number highlighted a potential problem with duplicates. Further analysis revealed that there were 1,466 entries that required further investigation, as on first view they appeared very similar to other entries. These potential duplicate entries were resolved as follows:

1. There were 1,166 entries where it appeared that the same details were repeated 2 or occasionally 3 times. The entries were identical. On further examination it was found that the weblink appeared in the ET decisions index 2 or 3 times. Removing these duplicate index entries removed 583 records reducing the number of entries in the spreadsheet to 25,710.
2. There were 104 entries where it appeared that the claimant, claim reference, claim year and respondent details were repeated 2 or occasionally 3 times. Here, however, the dates of the ET decision were different. On investigation, this was the result of the ET process itself. As a claim progresses, interim decisions can be made and published on the ET Decisions webpage resulting in this situation. Removing these 'decision' duplicates removed 54 records reducing the number of entries in the spreadsheet to 25,656.
3. There were 184 entries where it appeared that the claimant, and respondent details were repeated 2 or occasionally 3 times. However, there were different claim references and occasionally different claim years. On investigation, these claims appear to be genuine, so no adjustment was made to the number of entries in the spreadsheet.
4. There were 14 entries for a Mr Mallon. This series of entries is unusual in that the only commonalities are Mr Mallon and the filing year, 2018. All the other details are different. On further investigation, as at 26th December 2020, Mr Mallon has 40 entries in the ET Decision Index. All his claims relate to disability discrimination and are against different

employers⁴¹. As his claims are against different employers, they are SACs, and have been left in the database.

Having identified and removed the 637 obvious duplicate entries from the 26,293 entries initially downloaded from the ET Decision index, the number of entries is reduced to 25,656. As the purpose of this thesis is to tease out information on MACs and their effects on the ET System, attention now turns to identifying the MACs within the 25,656 records to begin the analysis.

As a reminder MACs are brought by two or more people, usually against a common respondent [employer], where the claims arise out of the same or similar circumstances (Employment Tribunal Service, 2000, p.9, footnote 3). A review of the ET Decision index data shows that there are a large number of entries such as the example below:

[Ms H Burton and others v \(1\) C R Foreman Ltd \(2\) Secretary of State 2301406-2016](#) (gov.uk, 2020)

This entry complies with the definition given above regarding MACs, as shown by the claim being made by Ms H Burton *and others*. 1,028 similar entries were identified and analysed. However, it quickly became obvious that the ET was not consistent in how it processed and recorded MACs. The decision entry for Mrs H. Burton *and others* identified above is a MAC made up of seven claims and seven claimants, i.e., one claim each. Other entries in the ET Decision index are much less clear cut. An example is the entry shown below:

[Mr A R Neal v Derbyshire Fire & Rescue Service & others: 1902756/2000](#) (gov.uk, 2020)

⁴¹ From the claim records, it would appear that Mr Mallon applies for a job, potentially with the intent of filing an ET claim if he is unsuccessful, alleging discrimination for not making certain provisions for his disability. For details, see Claim: 2410801/2018 (gov.uk, 2020). This is potentially an example of what is often portrayed as a vexatious claimant. However, it is, perhaps, worth noting that this is the only example of its type that appears in the 25,656 entries investigated, covering a period of 2 years.

This entry suggests that this is a SAC against the Derbyshire Fire & Rescue Service filed in 2000 as there is only one claimant, Mr A.R. Neal⁴². Except it almost certainly is not. There are 34 more entries for claims against the Derbyshire Fire & Rescue Service, all filed in 2000, all with the same jurisdictional complaints. This is almost certainly a MAC. All the claims are for Breach of Contract and Part-time Workers' (Prevention of Less Favourable Treatment) Regulations 2000. The ET has processed the decisions for these 35 claims as individual decisions which show in the ET Decision Index as separate entries giving the initial impression that they are SACs. This is a problem for analysis as it turns out there are many similar apparently SAC entries that are actually very likely MACs. This has been resolved by sorting the 25,656 entries in the spreadsheet by respondent (employer) to reveal potentially related claims. If the claims are in the same jurisdictions, have similar ET references (as in sequential or nearly sequential numbers to suggest filing at the same time), are filed in the same year and against the same employer, then they have been classified within this thesis as MACs, although will be identified and referred to within the thesis as "SACs but actually MACs" (SACaMACs) to ensure clarity.

Up to this point two ET decision index claim types have been specified representing 1,382 MACs:

1. 1,028 MACs: as per definition outlined above and below in Section 3.7.1.
2. 2,407 SACs but actually 354 MACs (SACaMACs)

⁴² It is ET protocol that the claimant is ALWAYS shown to the left of the 'v'. If there is only one name shown to the left of the 'v' then the claim should be a SAC. If a second claimant or the word 'others' is shown to the left of the 'v' in addition to the first named claimant, then the claim is a MAC. The respondent/employer is always shown to the right of the 'v'. In this claim the use of 'others' to the right of the 'v' as in *Derbyshire Fire & Rescue Service & others* only indicates that there is more than one respondent/employer involved. In the ET, the determination of a SAC or MAC is ALWAYS determined by what is to the left of the 'v'. This protocol ONLY applies to the ET. If, following an ET judgment, a claim is appealed to the Employment Appeal Tribunal, then, confusingly, the relationship to the 'v' may be reversed, depending on which party appeals the ET judgment. In the Employment Appeal Tribunal judgment discussed above in Section 3.4.1., British Airways PLC has appealed, so the appeal is therefore listed as *British Airways PLC v Ms S. Williams & Others*.

These are not the only decision types identified in the dataset. A further 6 decision types were found and although these are NOT analysed in this thesis, they are described below for completeness to reassure the reader that all 25,656 records in the dataset were indeed reviewed.

3. MAC or Not MAC? Although one claim decision does include the suffix *and others* it is not clear that it is a MAC. This claim has only one claim reference yet seems to have multiple claimants. The entry shown below:

[Unite the Union and others v Basta Parsons Ltd and others: 1303276 2016](#)

(gov.uk, 2020)

The case of Unite the Union and six other claimants is one where the union is making a claim against Basta Parsons Ltd, who have entered a Creditors Voluntary Liquidation, for a Protective Award. The entry above does refer to 'Unite the Union and others' which would indicate that it is a MAC, yet the decision paperwork only refers to one claim reference, although more than one claimant is involved. The problem for the analysis is that if there are other entries in the ET decision index without the suffix 'and others' then they will not be analysed as they will fall under the SAC type.

4. Multiple claims for a single claimant of which there are two subgroups,
 - a. Mr Mallon who has 14 entries in the spreadsheet, all against different employers as noted above,
 - b. Single claimants who have several claims against the same employer. An example is the entry shown below:

[Mr K Hirani v Institute and Faculty of Actuaries and Others: 2203743/2013 and Others](#) (gov.uk,2020)

Clicking on this link reveals that Mr Hirani filed four claims against Institute and Faculty of Actuaries and Others, two in 2013 and two in 2014. All four claims are in the Disability Discrimination jurisdiction. This highlights that claims and claimants are not the same. In this example there is one claimant with four claims and as this is not a MAC as defined within this thesis then claims of this

type will not be analysed as they will fall under the SAC type. It is unknown exactly how often this occurs.

5. Beyond the standard definition of an ET claim are a series of claims that could be classed as administrative. The first of these are claims that are brought against the Health and Safety Executive (HSE). An example is the entry shown below:

[Jewson Ltd v Alex Pender Inspector for North North Hertfordshire District Council: 3325859/2017](#) (gov.uk, 2020)

The details of the claim show that Jewson are appealing against the HSE, in the Health and Safety jurisdiction. The ET is the body that hears employer appeals if the employer disagrees with an enforcement order that has been issued by the HSE. Claims of this type will not be analysed.

The second of the series of administrative claims are claims brought against Her Majesty's Revenue & Customs (HMRC). An example is the entry shown below:

[G & J Properties Ltd v HM Revenue and Customs: 2404934/2017 and 2404935/2017](#) (gov.uk, 2020)

The claim of G & J Properties Ltd reveals that the employer is appealing against the HMRC over two Notices of Underpayment of the National Minimum Wage pursuant to section 19 of the *National Minimum Wage Act 1998*. As above with the HSE, the ET is the body that an employer appeals to if the employer disagrees with an enforcement order that has been issued by the HMRC regarding National Minimum Wage. Claims of this type will not be analysed.

6. The last ET Decision entry type to be noted is the SACs. An example is the entry shown below:

[Mrs A Marsh v Hermes Parcelnet Ltd 1801288.2017](#)(gov.2020)

Mrs Marsh is making a claim against Hermes Parcelnet Ltd for Unfair Dismissal and Disability Discrimination. It is an unremarkable example of a SAC and, as already noted, claims of this type will not be analysed.

The different ET decision index claim type entries are shown in Table 3.5, below, along with the number of each in the spreadsheet.

Table 3.5

**ET Decision Index Claim Type 'Entries'
1st Feb 2017 to 5th Feb 2019**

Claim Type Number	Claim Type	Total Identified Published 'Entries'	Analysed Yes/No
1	MAC	1,028	Yes
2	SAC but Actually MAC	2,407(=354 MACs)	Yes
3	Single Claim Record for Multiple Claimants	1	No
4a	Single Claimant with Claims against Multiple Employers	14(=1 Claimant)	No
4b	Single Claimant with Multiple Claims against Same Employer	26	No
5	HSE	20	No
6	HMRC	45	No
7	SACs	22,115	No
	<i>Total Entries</i>	<i>25,656</i>	

It would undoubtedly be of great interest to analyse all of the 25,656 entries in the spreadsheet, to enable all the differences between the types to be teased out, particularly the differences between MACs and SACs, but unfortunately time does not permit such a detailed analysis. Therefore, the focus of this thesis will be on types 1, MACs, and 2, SAC but Actually MAC (SACaMAC), giving a total of 3,435 entries which equates to 1,382 MACs (1,028 + 354) to be analysed.

**3.4.3.2 Employment Tribunal Decision Index:
Respondent/Employer**

Part of the information provided by the Employment Tribunal Decision Index is the name of the respondent/employer who the claims have been made

against. The respondent/employers in the MAC spreadsheet have been allocated between, Public Sector, Other Non-Company and Private Sector.

Public Sector respondent/employers have generally been easy to identify as the ET Decision Index weblink gives clear information enabling identification. The following Public Sector Types have been identified in the MAC Spreadsheet, Education, Fire, (Central) Government, Higher Education, Local Authorities, NHS and Police.

Details of Limited Company respondent/employers have been gleaned from the Companies House Webcheck service. Using this Webcheck service, information on Status (i.e. is the company active or in administration), Date of incorporation, nature of the business and the date to which the last accounts were made up, were gathered and added to the claim details in the MAC spreadsheet, for all respondent/employers identified as Limited Companies and found in the Companies House Webcheck service database, enabling a more detailed analysis of the respondent/employers who are Limited Companies contained in the 1,382 MACs from the ET Decision Index under analysis.

Respondent/employers that are identified as Limited Companies in the claim details but are not found in the Companies House Webcheck service database are classified in the MAC spreadsheet as Not Found.

Respondent/employers that are neither Public Sector nor Limited Companies have been classified as Other Non-Company. There are three types, Charity, Mutual and Not a Company. Charity respondent/employers are identified as a Charity through the Charity Commission website. Mutual respondent/employers are identified as Mutual through the Companies House Webcheck service website as above for the Limited Company respondent/employers, although the only information available re Mutuals is that Companies House identifies them as a Mutual.

'Not a Company' respondent/employers are respondents/employers where the claim is made against either a named person or a business that is not registered at Companies House. Unfortunately, claims against a 'Not a

Company' respondent/employers yield no information about the respondent/employers other than they are 'Not a Company'.

Analysing the ET Decision Index was particularly useful in addressing Research Question 1, What does Employment Tribunal claims data tell us about employment disputes in Great Britain?

3.4.4 Freedom of Information Request

One of the main aims of this research project is/was to examine the growth and effects of MACs on the number and makeup of the annual ET TCA. As noted above, the TCA split between SACs and MACs is available from 1999/00 onwards, but unfortunately no information is made available regarding the jurisdictional complaints split between SACs and MACs. This frustrating disconnect between the jurisdictional complaints information and the SAC/MAC split makes understanding how SACs/MACs and jurisdictional complaints interact difficult.

In an attempt to partially answer Research Question one: 'What does Employment Tribunal claims data tell us about employment disputes in Great Britain?', a Freedom of Information (FOI) request was made to the MoJ on 5th January 2018 (Appendix 10a). On 24th January 2018, the MoJ confirmed that it held the data requested, but rejected the FOI request on the basis of cost (Appendix 10b). The MoJ response suggested a more limited request might fall within the cost limit. Following a brief telephone conversation with the MoJ, the researcher submitted a second FOI request to the MoJ on 29th January 2018 (Appendix 10c), which asked for the following information:

1. The annual total multiple jurisdictional complaints associated with the multiple claim cases for each year from 2007/08 to 2016/17.
2. A breakdown of the jurisdictional complaint types associated with each year's multiple claim cases, i.e., Age Discrimination, Breach of Contract etc.

The MoJ responded on 26th February 2018 (Appendix 10d&e) with the information requested for the period 1st April 2014 to 31st March 2017, with the

caveat that the ET 'System only holds robust data from 1st April 2014' (see Appendix 10d, p.2).

The purpose of requesting the MAC jurisdictional complaints data was twofold:

1. To create a separate list of MAC jurisdictional complaints,
2. To create a list of SAC jurisdictional complaints by subtracting the MAC jurisdictional complaints data from the TCA jurisdictional complaints data provided by the MoJ as part of the regular quarterly ET Main Table Data spreadsheet release (MoJ, 2019).

These two steps would have enabled an examination of the specific SAC and MAC jurisdictional complaints and a comparison of same, i.e., were the Unfair Dismissal jurisdictional complaints mostly SACs?

On receipt, the information received via the FOI request was compared against the comparable quarterly ET Main Table Data spreadsheet release (MoJ, 2019). The comparison is reproduced in Table 3.6, below. The initial analysis revealed several anomalies:

1. For the year 2015/16, the data from the quarterly MoJ Main [statistics] Tables (MoJ, 2019) shows a total number of jurisdictional complaints for both SACs and MACs of 178,079, whereas the FOI data supplied shows the number of jurisdictional complaints as 173,989 for MACs alone (highlighted in orange).
2. Following on from above, for the year 2015/16, there are 3 separate jurisdictional complaints where the FOI multiple data show a higher volume of claims than the published MoJ Main Tables. These are highlighted in yellow⁴³.

⁴³ There are several jurisdictional complaints, such as Disability Discrimination, where the FOI multiple data shows a much lower level of claims than the published MoJ main tables. Although this might be indicative of a problem, it is impossible to know, as it might actually reflect reality, whereas a jurisdictional complaint where the FOI multiple data shows a higher level of claims than the published MoJ main tables can definitively be determined as incorrect.

Table 3.6

Comparison between MoJ Main Table Data and Data from 2018 FOI Request

Type of Jurisdiction Complaint	ET Fee Type	Data from MoJ Main Tables			Data from 2018 MoJ FOI Request		
		2014/2015	2015/2016	2016/2017	2014/2015	2015/2016	2016/2017
		A	B	C	D	E	F
Total Claims Accepted		61,308	83,031	88,476			
SAC		16,420	16,935	17,005			
MAC		44,888	66,096	71,471	34,320	63,485	63,547
Average No. of claims per MAC		23.37	51.04	64.91	23.7	51.5	58.5
No. of MAC Cases		1,921	1,295	1,101	1,447	1,233	1,086
Total Jurisdictional Complaints		129,966	178,079	143,946	75,224	173,989	111,857
Average Jurisdictional Complaints per claim		2.1199	2.1447	1.6269	2.1918	2.74	1.76
Age Discrimination	A	1,087	12,636	7,628	88	19,796	6,786
Breach of Contract	A	8,250	9,279	7,934	3,091	3,654	2,089
Disability Discrimination	B	3,106	3,470	3,794	163	155	212
Equal Pay	B	9,621	17,063	10,467	674	24,730	3,225
National Minimum Wage	B	161	239	224	53	110	105
Part Time Workers Regulations	B	304	215	374	38	76	245
Public Interest Disclosure	B	1,395	1,400	1,497	153	135	128
Race Discrimination	B	1,858	2,002	2,240	218	771	542
Redundancy – failure to inform and consult	B	2,307	4,085	2,410	3,215	4,566	2,234
Redundancy Pay	A	2,939	3,944	2,317	1,499	2,679	1,183
Religion or belief discrimination	B	339	340	384	27	30	20
Sex Discrimination	B	4,471	5,380	8,841	244	4,625	6,457
Sexual Orientation discrimination	B	189	188	197	18	23	15
Suffer a detriment/unfair dismissal - pregnancy	B	790	865	872	71	45	22
TUPE – failure to inform and consult	B	568	635	811	440	571	557
Unauthorised deductions	A	28,701	36,362	9,152	22,215	29,658	26,152
Unfair dismissal	B	12,652	13,302	12,038	1,888	3,190	1,608
Working Time Directive	A	31,451	36,813	30,313	27,400	30,727	25,876
Written pay statement	A	282	375	263	25	103	51
Written statement of reasons for dismissal	A	209	210	159	19	35	4
Written statement of Ts & Cs	A	925	1,023	976	155	255	194
Others		18,361	28,253	41,055	220	598	375
To be Allocated					13,310	47,457	33,777
Sources:							√210706
Data from MoJ Main Tables: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19							
Data from MoJ FOI response: See Appendix 10e.							
HMCTS – Employment tribunal fees for individuals (Ref: T435, 2015)							

These anomalies rendered the comparison problematic and this was referred back to the MoJ for review and clarification (Appendix 10f). The MoJ reviewed the original response, but on 6th July 2018 (Appendix 10g) insisted the FOI data supplied in the 26th February 2018 response was correct, despite it conflicting with the data publicly available from the MoJ Main [statistics] Tables (MoJ, 2019). Because of this anomaly the matter was then referred to the Information Commissioner who agreed that the data supplied in response to the FOI request was incompatible with the MoJ Main [statistics] Table data and forced the MoJ to review the original request again. The MoJ responded on 1st October 2018 by saying that the Information requested is not held by MoJ 'in the scope of your request' (Appendix 10h, p.2). There was also no acknowledgement of the inconsistency between the data supplied in response to the FOI request and the data publicly available from the MoJ Main [statistics] Tables (MoJ, 2019). This response prompted a follow-up referral to the Information Commissioner, who yet again agreed that the data supplied by the MoJ in response to the 29th January 2018 FOI request was incompatible with the MoJ Main [statistics] Table data and forced the MoJ to review the original request yet again. The MoJ then confirmed on 11th December 2018 (Appendix 10i) that they held the data requested but cited Section 12 of the FOI Act, the cost exclusion, and so did not then provide it.

In summary, the original 5th January 2018 FOI request (Appendix 10a) was too broad and a subsequent more limited request made on 29th January 2018 (Appendix 10c) appeared at first to be successful, in that the MoJ provided data that, at first sight, met the requirements of the second FOI request. However, as detailed above, the information provided by the MoJ was NOT compatible with the MoJ Main [statistics] Table data, an anomaly that the MoJ never acknowledged and which fundamentally undermined the reliability of the FOI data or the MoJ Main [statistics] Table data. This point cannot be overemphasised. Both the MoJ FOI data and the MoJ Main [statistics] Table data should match. As they do not, then, either the MoJ FOI data is correct and the MoJ Main [statistics] Table data is wrong or the MoJ Main [statistics] Table data is correct and the MoJ FOI data is wrong.

Because the MoJ FOI enquiry turned out to be less successful than hoped, the only remaining route for examining the growth and effects of MACs on the number and makeup of the TCA is an analysis of the published claims data contained in the MoJ Annual ET Statistics 2007/08 to 2018/19 and the publicly available documents as detailed in Tables 3.2, 3.3 and 3.4 above.

3.5 Limitations and potential problems

A potential major limitation of this work was the lack of availability of full sets of ET statistics data. This chapter has detailed how the ET TCA and total claims outcome/disposal statistics and their associated components have been painstakingly rebuilt from multiple data sources into usable datasets. This has potential implications for the construct validity of the data, particularly given the risk that more data sources allow more opportunity for transcription errors. To avoid this problem the greatest care possible has been taken in assembling the datasets, for example, all ET data tables used in this thesis were compiled from, and carefully double checked against, the original sources to ensure accuracy.

However, there are reliability issues beyond the compilation of the rebuilt ET datasets. In any long-term dataset there will be issues of stability or consistency (Hand D., 2018). As Bryman notes 'Reliability is fundamentally concerned with issues of consistency of measures' (Bryman, 2012, p.168). As was highlighted by the substantial discussion in the literature review, the definition of what is a claim and who can claim has changed over time, meaning that longitudinal comparisons across the dataset are not as clear-cut as it first appears. It is, therefore, firstly, acknowledged that the analyses carried out in this thesis are indicative, but are put forward as valid findings on the basis that they are based on the best information available and, secondly, one of the contributions of this thesis is to fully highlight these issues.

There are also the issues of construct validity beyond the compilation of the rebuilt datasets, as in, what do the datasets actually represent? As Bryman notes 'validity refers to the issue of whether an indicator that is devised to gauge a concept really measures that concept' (Bryman, 2012, p.171). As was highlighted in the literature review, the annual ET TCA statistic in particular is

often taken as a proxy for workplace conflict (Dix et al., 2009. p.177; Saundry, et al., 2014, p.2;). Does the TCA measure workplace conflict or does it just measure the number of claims submitted to the ET? It turns out that one of the findings of the research strategy is that the principles of reliability and construct validity with regards to the ET statistics are hard to sustain, meaning that academic debate and government policy is based on, potentially, incomplete data and this is fully discussed in Chapter 6.

The research has also highlighted a steady repetition of problems with the ET statistics resulting in either delay, partial data loss or in 1996/97, the complete data loss of the outcome/disposal statistics (*Hansard*, 2003). Even in 2018 the MoJ admit that the data are only 'robust' from April 2014 (see Appendix 10d, p.2).

These data issues are so serious that Chapter 6 is entirely given over to a discussion of these problems with the TCA, total claims outcome/disposal (TCOD) and associated data and what the annual TCA represents.

3.6 Ethics

The research was carried out in compliance with the British Sociological Association's Statement of Ethical Practice (BSA, 2017). Cardiff Business School Research Ethics Committee approved the research in August 2019.

The main ethical considerations identified to the Cardiff Business School Research Ethics Committee related to the Semi-Structured Interviews which were:

- *Confidentiality*. Due care will have to be taken to ensure that matters of a confidential nature are treated appropriately, however, as the Employment Lawyer interviewees were only be asked general questions about MACs, the concerns about confidentiality should be minimized.
- *Individual Claimant confidentiality*. **No individual claimants were to be interviewed**. As MACs contain hundreds if not thousands of generic claimants it was not necessary to individually interview them.

- *Interviewee Anonymity.* There was no need for the Employment Lawyer interviewees to be directly identified.
- *Data Storage.* Interview recordings and transcripts are only be stored on the University 'H' drive network. Recorded raw data were uploaded to the 'H' drive as quickly as possible to reduce the likelihood of risk. Once safely stored on the 'H' drive, recorded data were deleted from the recording device.
- Data are held confidentially and not shared with anyone apart from those directly involved in providing support and advice of the research analysis (for example, PhD supervisors).

Beyond the Semi-Structured Interviews and the requirement that no individual claimants were to be interviewed, no further ethical concerns were raised by the Cardiff Business School Research Ethics Committee, as the remaining data collection only involved the use of publicly available secondary sources.

3.7 Terminology

Soon after the author began work on this thesis it became clear that the terminology surrounding the Employment Tribunal was not clearly understood by the general public, national media, politicians or some of the academic literature. Therefore, to ensure a common understanding, this section will clarify the ET claim acceptance [input] terminology used in this thesis. It should be noted that this section does not cover the terminology of the 10 ET claim outcome/disposal types, such as 'Withdrawn' and 'Struck Out', as these are covered in detail in Chapter 7, along with the associated findings.

3.7.1 Employment Tribunal Claims Acceptance [Input] Terminology

The generally used statistic that is quoted in reference to Employment Tribunal (ET) claims is the ET *total claims accepted (TCA) by year* (see, for example, Colling, 2006, p.142; Raab, 2011, p.7; Renton, 2012, p.55). Prior to 1998/99 it is the only claims statistic available and is shown from 1972 to 2018/19 in Table 3.7, below:

Table 3.7

**Employment Tribunal
Total Claims Accepted (TCA) by Year
1972 to 2018/19**

Year	Total Claims Accepted	Year	Total Claims Accepted	Year	Total Claims Accepted
1972	14,857	1988/89	29,304	2004/05	86,181
1973	14,062	1989/90	34,697	2005/06	115,039
1974	16,320	1990/91	43,243	2006/07	132,577
1975	35,897	1991/92	67,448	2007/08	189,303
1976	47,804	1992/93	71,821	2008/09	151,028
1977	46,961	1993/94	71,661	2009/10	236,103
1978	43,321	1994/95	88,061	2010/11	218,096
1979	41,244	1995/96	108,827	2011/12	186,331
1980	41,424	1996/97	88,910	2012/13	191,541
1981	44,852	1997/98	80,435	2013/14	105,803
1982	43,660	1998/99	91,913	2014/15	61,308
1983	39,959	1999/00	103,935	2015/16	83,031
1984/85 ^a	39,191	2000/01	130,408	2016/17	88,476
1985/86	38,593	2001/02	112,227	2017/18	109,698
1986/87	38,385	2002/03	98,617	2018/19	121,075
1987/88	30,543	2003/04	115,042		
√210709					
Sources: See Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19, above					
^a In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April – March.					

The annual TCA number is made up of several different subsets and Table 3.8, below, shows how the annual TCA statistic relates to these various subsets based on the information published alongside the annual TCA from 1999/00 by the Ministry of Justice (MoJ) and its predecessors.

Table 3.8

**Breakdown of ET Total Claims Accepted (TCA) by Year
1999/00 to 2018/19**

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Actual number of Multi-Applicant Claims (MAC) Cases	Average number of Claims per Multi-Applicant Case	Total Number of Cases	Jurisdictional Complaints (JCs)	Average number of Jurisdictional Complaints per Claim
	A	B	C	D	E	F=B+D	G	H=G/A
1999/00	103,935	70,600	33,300				176,749	1.70
2000/01	130,408	73,726	56,682				218,101	1.67
2001/02	112,227	69,553	42,674				194,120	1.73
2002/03	98,617	67,527	31,090				172,322	1.75
2003/04	115,042	65,364	49,678				197,365	1.72
2004/05	86,181	55,055	31,126				156,081	1.81
2005/06	115,039	51,496	63,543				201,514	1.75
2006/07	132,577	54,100	78,600				238,546	1.80
2007/08	189,303	54,500	134,800	6,582	20.48	61,082	296,920	1.57
2008/09	151,028	62,370	88,658	7,356	12.05	69,726	266,542	1.76
2009/10	236,103	71,280	164,823	7,339	22.46	78,619	392,777	1.66
2010/11	218,096	60,591	157,505	5,956	26.44	66,547	382,386	1.75
2011/12	186,331	59,247	127,084	5,662	22.45	64,909	321,836	1.73
2012/13	191,541	54,704	136,837	6,278	21.80	60,982	332,859	1.74
2013/14	105,803	34,219	71,584	3,126	22.90	37,345	193,968	1.83
2014/15	61,308	16,420	44,888	1,921	23.37	18,341	129,966	2.12
2015/16	83,031	16,935	66,096	1,295	51.04	18,230	178,079	2.14
2016/17	88,476	17,005	71,471	1,101	66.45	18,106	143,946	1.63
2017/18	109,698	27,916	81,782	2,016	40.57	29,932	172,731	1.57
2018/19	121,075	34,974	86,101	2,592	33.22	37,566	198,715	1.64
								√201105

Sources: See Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19, above

Using the year 2009/10 as an example, the 236,103 *Total Claims Accepted* (TCA) (column A), is made up of two different numbers, *Single Applicant Claims* (SACs) (column B) and *Multi-Applicant Claims (MACs)* (column C). As previously discussed, SACs are brought by an individual employee or worker against his/her individual employer. In 2009/10 there were 71,280 SACs, i.e., 71,280 individuals filed 71,280 claims which were unrelated to each other. *MACs* are brought by two or more people, usually against a common respondent [employer], where the claims arise out of the same or similar circumstances (Employment Tribunal Service, 2000, p.9, footnote 3). In 2009/10 there were 164,823 *MACs*, i.e., 164,823 claims filed in association with other claims which were subsequently grouped together into *Cases*. For Employment Tribunal reporting purposes, it is *always* the total number of claims that is counted and thus the total of 236,103 is published.

However, there is a difference between claims brought and cases submitted/heard in the Employment Tribunal statistics. Each SAC is a *Case* in

its own right, so by definition, the 71,280 SACs for 2009/10 equals 71,280 Single Cases. The 164,823 MAC claims are grouped together to be heard in MAC Cases. In 2009/10 there were 7,339 MAC Cases (column D), which are reported as a mean average of 22.46 claims (column E) per MAC Case. So, in 2009/10 the 236,103 Total Claims Accepted (TCA) by the ET translates into 71,280 Single Cases + 7,339 MAC Cases = 78,619 Cases (column F) accepted by the Employment Tribunal.

Within each claim, there are often more than one Jurisdictional Complaint included. Each of the 236,103 TCAs in 2009/10 must contain at least one jurisdictional complaint or jurisdiction, which in this context refers to each separate employment right such as Unfair Dismissal or Sex Discrimination. Each jurisdictional complaint is a separate reason for an individual to make a claim. A claim can involve several jurisdictions, i.e., an individual can make one ET claim which alleges both Unfair Dismissal and Sex Discrimination. In 2009/10 there were 392,777 jurisdictional complaints (column G) which gives an average of 1.66 jurisdictional complaints per claim (column H).

The MoJ and its predecessors regularly publish data on 21 jurisdictional complaints and aggregates the remaining jurisdictions under the term 'Other' (MoJ, 2019). In 2011, the Tribunals Service listed 66 separate jurisdictions (Tribunals Service, 2011), which are shown in Appendix 9. A list of the 21 jurisdictions, for which the MoJ publishes separate data, as at 2019, is shown in Table 3.9, below.

Table 3.9

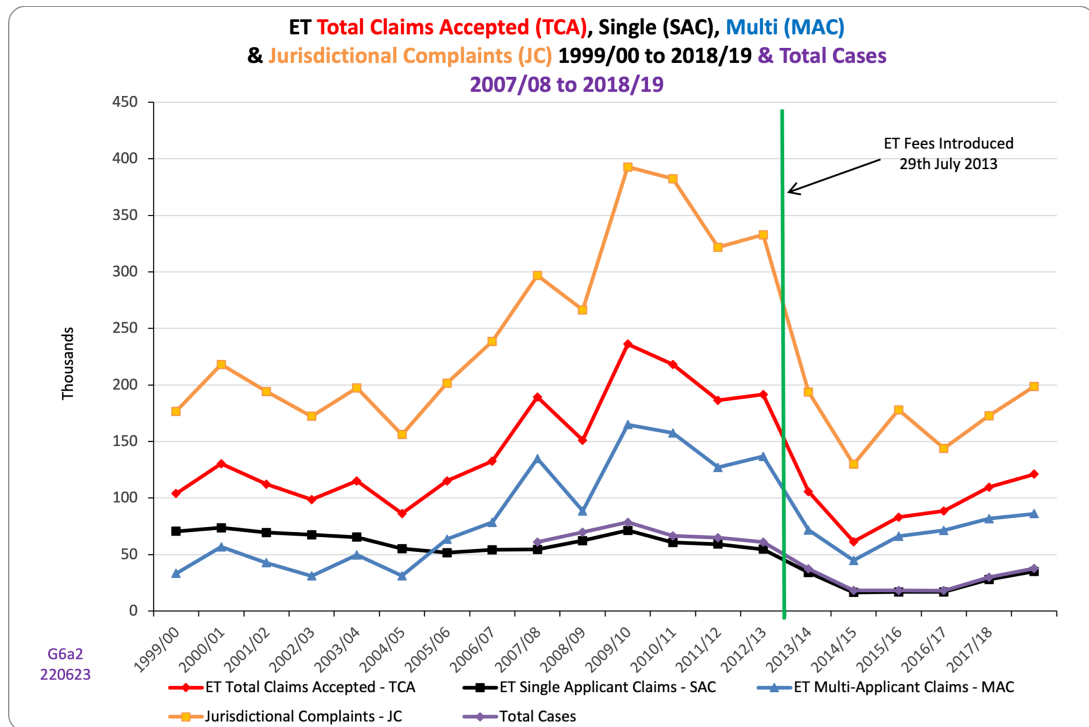
**List of Jurisdictional Complaints for which
MoJ publishes separate data as at 2019**

Jurisdictional Complaints	ET Fee Type
Age Discrimination	A
Breach of Contract	A
Disability Discrimination	B
Equal Pay	B
National Minimum Wage	B
Part Time Workers Regulations	B
Public Interest Disclosure	B
Race Discrimination	B
Redundancy – failure to inform and consult	B
Redundancy Pay	A
Religion or belief discrimination	B
Sex Discrimination	B
Sexual Orientation discrimination	B
Suffer a detriment/unfair dismissal – pregnancy	B
TUPE – failure to inform and consult	B
Unauthorised Deductions	A
Unfair Dismissal	B
Working Time Directive	A
Written pay statement	A
Written statement of reasons for dismissal	A
Written statement of Ts and Cs	A
Others	
Source: MoJ 2019	

The information shown in Table 3.8, above, is summarised⁴⁴ in Figure 3.1, below:

⁴⁴ The colour coding used is carried through all tables and graphs.

Figure 3.1



3.8 Conclusion

Taken together the research techniques, outlined above, have enabled a credible, valid and reliable exploration of Employment Tribunals and Employment Tribunal claim statistics which has not only revealed an unexpected gap in our understanding of ETs but enabled the newly revealed phenomena to be explained and understood.

The research demonstrates that there is a previously unknown claim type, administrative claims, which when taken into account, means that the annual TCA statistics cannot be used as a proxy for workplace conflict or to demonstrate a 'burden on business'.

Chapter 4
Employment Tribunal
Procedural Changes

4.1 Introduction

The previous chapter covered the exploratory research path and the associated research methods that enabled a new understanding of Employment Tribunal (ET) claims to emerge. This chapter is the first of four findings chapters and looks at the procedural changes that have been applied to the ET since 1972, when the Unfair Dismissal jurisdiction was added to the ET's remit. It is also intended to provide helpful background context for subsequent findings chapters.

In the literature review, it was noted that there have been changes in the filing and processing of an ET claim, including changes in the point at which the ET 'accepted' a claim, and who is eligible to file a claim. Three types of procedural change have been identified and these are summarised below.

- Firstly, government mandated procedural changes, such as the introduction of ET Fees and changes to the Unfair Dismissal qualifying period. These are mandated through legislative regulation, either Acts of Parliament or Statutory Instruments.
- Secondly, court mandated procedural changes, usually from the House of Lords/Supreme Court or the European Court of Justice, such as resulted in the 2017 removal of ET Fees by the Supreme Court.
- Thirdly, internal ET administrative procedural changes, where the ET administration changes how the ET processes all or some jurisdictional complaints. Internal ET administrative procedural changes, although identified here, will be discussed in detail in Chapters 5, 6 and 7.

It is argued that almost all of these procedural changes represent changes in the search for the optimal level beneficial procedural constraints (Streeck, 1997; Wright, 2004) as represented by the ET. These are discussed in the following sections, beginning with the ET Claim Filing and Process changes, followed by the changes in and around the Unfair Dismissal qualifying period and lastly, the effect of claim filing time limits, all of which changed when the ET accepts a claim and who is eligible to file a claim.

4.2 Employment Tribunal Claim Filing and Process Changes

This section details the ET Claim filing and process procedural changes that have occurred since the ETs first began hearing Unfair Dismissal claims in 1972.

Over time the process of filing and processing an ET claim has steadily shifted to become more formalised. Between 1972 and 2018/19 there have been seven government mandated and one court mandated procedural changes to the ET filing and claim process, and these are shown in Table 4.1, below and in the following ET Claim Process Summaries #1 to #8. These shifts reflect movements in the search for the optimal level of beneficial constraints (Streeck, 1997). This reflects the tensions identified in existing literature and speaks to the perceptions identified by Kitching (2006) that identifies that employers see regulations such as ETs as problematic and a burden. Although this narrative has a clear impact on the shifting approach to claims filing, it is worth noting that in practice this impact is less clear in the findings on the actual nature of cases (see findings in Chapters 5, 6 and 7).

Table 4.1

Employment Tribunal Claim Process Summary (ETCPS) List

ETCPS #	Mandate Source	Dates Applied		Changes
		From	To	
#1	Government	28/2/1972	30/9/1980	Initial ET Claim Process
		<i>The Industrial Tribunals (Industrial Relations, etc.) Regulations 1972</i>		
#2	Government	1/10/1980	15/12/1993	Introduction of Pre-hearing assessment
		<i>The Industrial Tribunals (Rules of Procedure) Regulations 1980</i>		
#3	Government	16/12/1993	30/9/2004	Change from Pre-hearing assessment to Pre-hearing review
		<i>The Industrial Tribunal (Constitution and Rules of Procedure) Regulations 1993</i>		
#4	Government	1/10/2004	31/3/2009	Introduction of Statutory Dispute Resolution Procedure
		<i>The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004</i>		
#5	Government	1/4/2009	28/7/2013	Introduction of Voluntary Acas Pre-Claim Conciliation & removal of Statutory Dispute Resolution Procedure
		<i>As recommended by 2007 Gibbons Review</i>		
#6	Government	29/7/2013	5/5/2014	Introduction of ET Fees & change from Pre-hearing review to Preliminary Hearing
		<i>The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013</i>		
#7	Government	6/5/2014	25/7/2017	Introduction of mandatory Acas Early Conciliation in place of Voluntary Acas Pre-Claim Conciliation
		<i>The Enterprise and Regulatory Reform Act 2013</i>		
#8	Supreme Court	26/7/17	To date	ET Fees ruled unlawful by Supreme Court
		<i>Supreme Court, 2017, R (on the application of Unison) (Appellant) v Lord Chancellor [2017]: UKSC 51: 26th July 2017</i>		
Sources: #1: legislation.gov.uk, 2020d #2: legislation.gov.uk, 2020f #3: legislation.gov.uk, 2020h #4: legislation.gov.uk, 2020k #5: Acas, 2015a, p.11 #6: legislation.gov.uk, 2020l #7: Acas, 2015a, p.11 #8: Supreme Court, 2017				

4.2.1 Employment Tribunal Claim Process Summary #1, 28th February 1972 to 30th September 1980, *Initial ET Claim Process, Government Mandated*

In 1972, when the ETs first began hearing Unfair Dismissal claims, the ET claim process was set out by the then Conservative Government in *The Industrial Tribunals (Industrial Relations, etc.) Regulations 1972* (legislation.gov.uk, 2020d) and is represented by ET Claim Process Summary #1 shown as Figures 4.1a&b, below:

Figure 4.1a

Employment Tribunal Claim Process Summary #1
28th February 1972 to 30th September 1980,
Initial ET Claim Process, Government Mandated

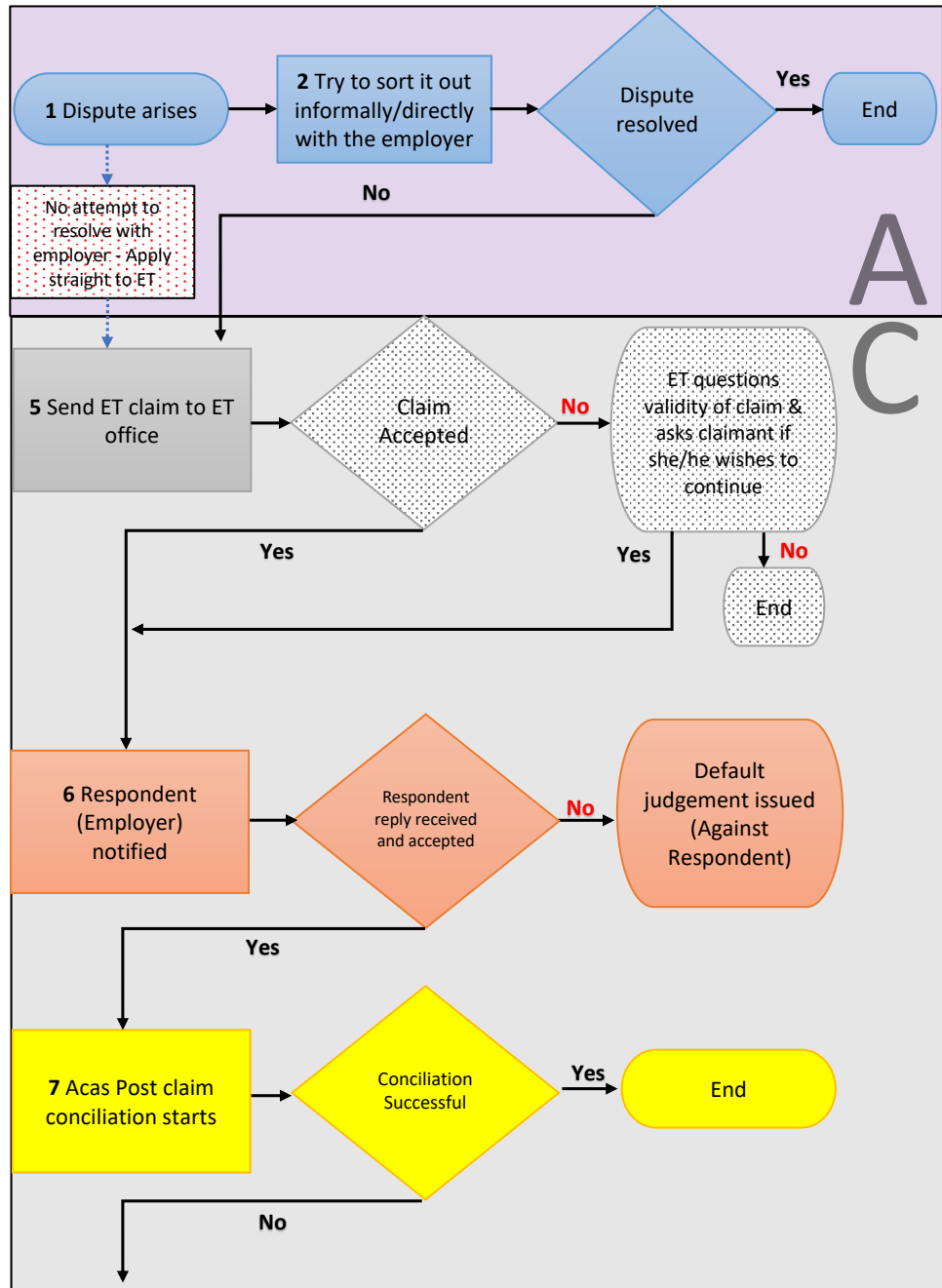
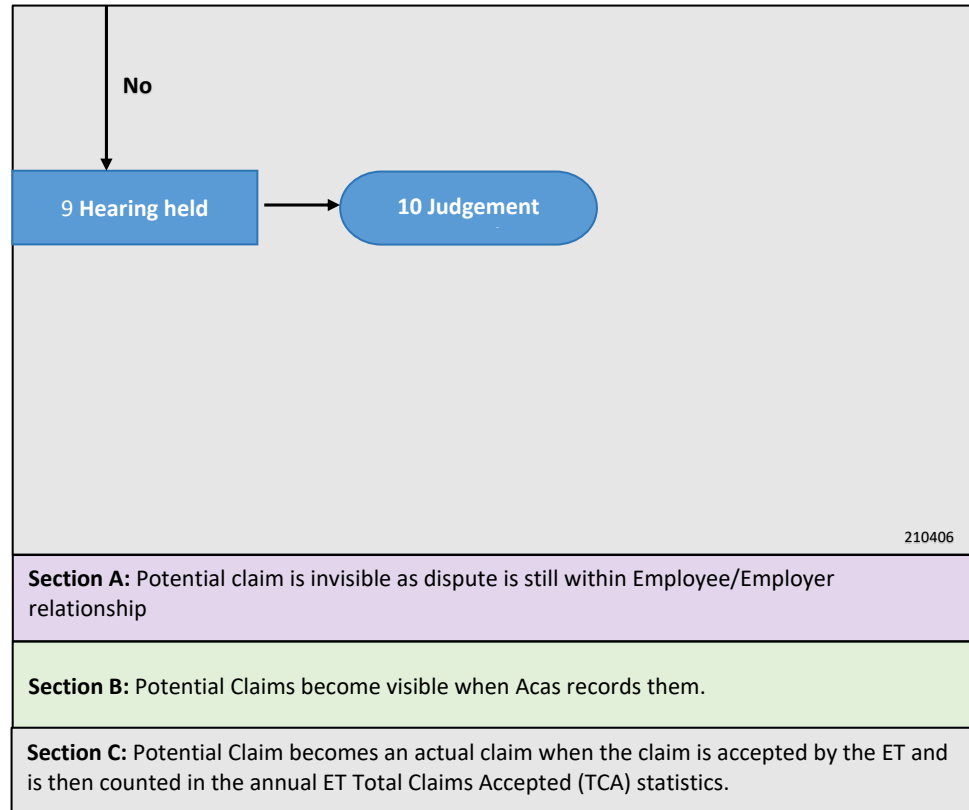


Figure 4.1b

Employment Tribunal Claim Process Summary #1
28th February 1972 to 30th September 1980,
Initial ET Claim Process, Government Mandated



Following the process through from beginning to end is relatively straight forward. There are 2 points to note, however. Firstly, the process makes an assumption that the employee would try to 'resolve' a dispute with the employer (Section A in the Figure 4.1a above) before filing a claim with the ET, but it did not specifically require this, as an employee could make an ET claim without informing his employer, as represented by the red spotted box in Section A. Secondly, once a claim arrived at the ET (Section C in the Figure 4.1a above) the ET could not reject it. As noted in the grey spotted box in Section C, the ET could question the validity of the claim and ask the claimant if she/he wished to continue. If, subsequently, the claimant wished to continue then the ET had to accept the claim (Dickens, 1985, p.13).

4.2.2 Employment Tribunal Claim Process Summary #2, 1st October 1980 to 15th December 1993, *Introduction of Pre-hearing assessment, Government Mandated*

In 1980, the process of filing a claim was amended, by the then Conservative Government, partly in response to a growing narrative that suggested, for the first time, concern about vexatious complaints causing a burden on business with employers noting that claims were being made ‘even in worthless cases as the applicant has ‘nothing to lose’ (Dickens, 1978, p.4). This identification of the burden created by this constraint resonates with arguments Kitching (2006) makes to a general narrative of all regulation being a burden and speaks to the tensions identified in the literature linked to beneficial constraint (Streeck, 1997), with the shift in the claim process reflecting the way in which institutions that drive constraints shift over time to create the optimal level as identified by Wright (2004). *The Industrial Tribunals (Rules of Procedure) Regulations 1980* (legislation.gov.uk, 2020f) introduced a special Pre-Hearing Assessment filter procedure to weed out claims [or responses] that appeared ‘unmeritorious’ (Dickens, 1985, p.15) by issuing an expense order against the claimant or respondent (employer) if the claim (or response of the respondent (employer)) subsequently fails at the ET Hearing. Here we see the tensions identified between the optimal level of constraint for economic performance and the optimal level for capital, identified by Wright (2004) start to play out. This change is shown as ET Claim Process Summary #2 in Figures 4.2a&b, below:

Figure 4.2a

Employment Tribunal Claim Process Summary #2
1st October 1980 to 15th December 1993,
Introduction of Pre-hearing assessment, Government Mandated

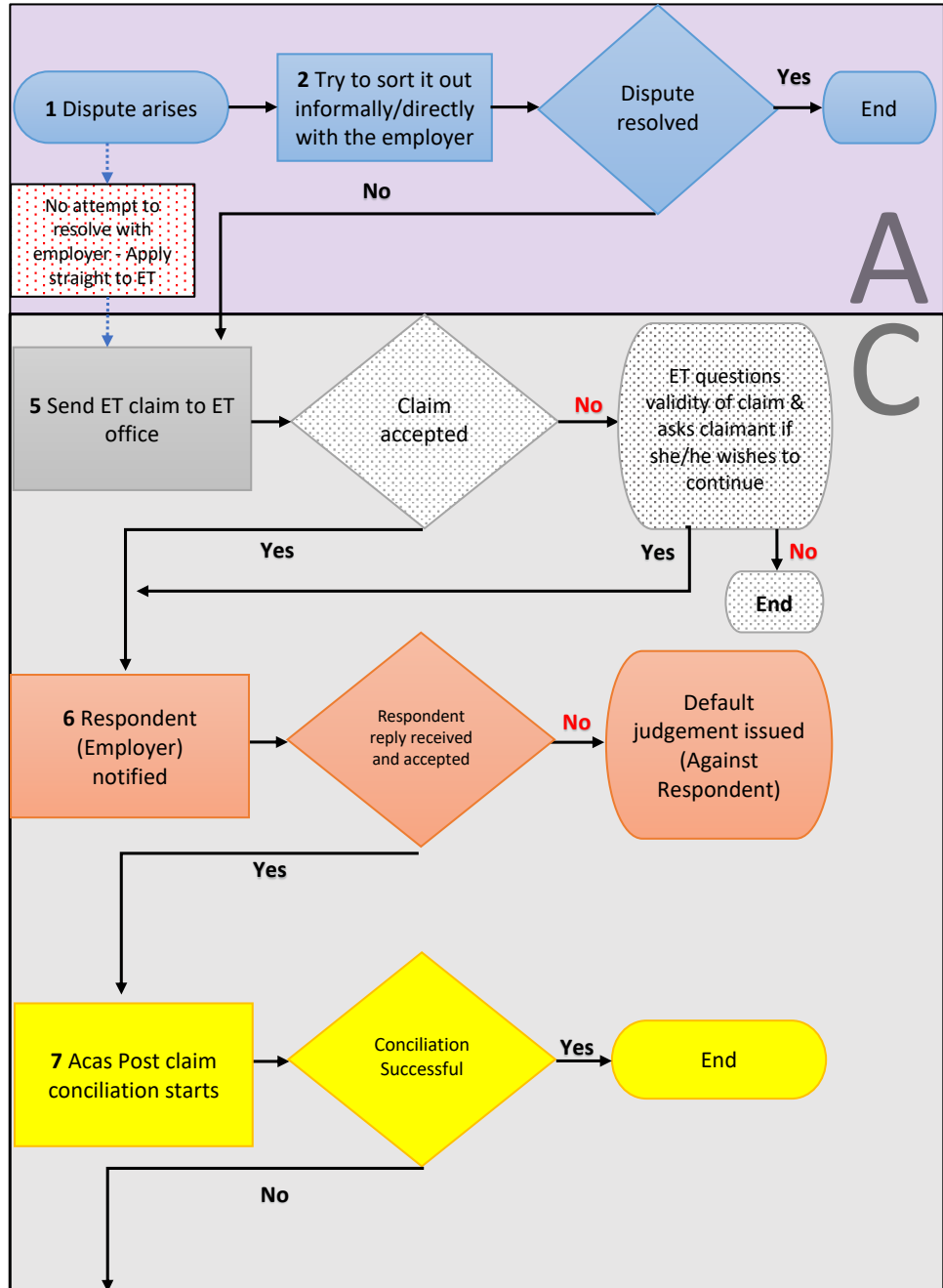
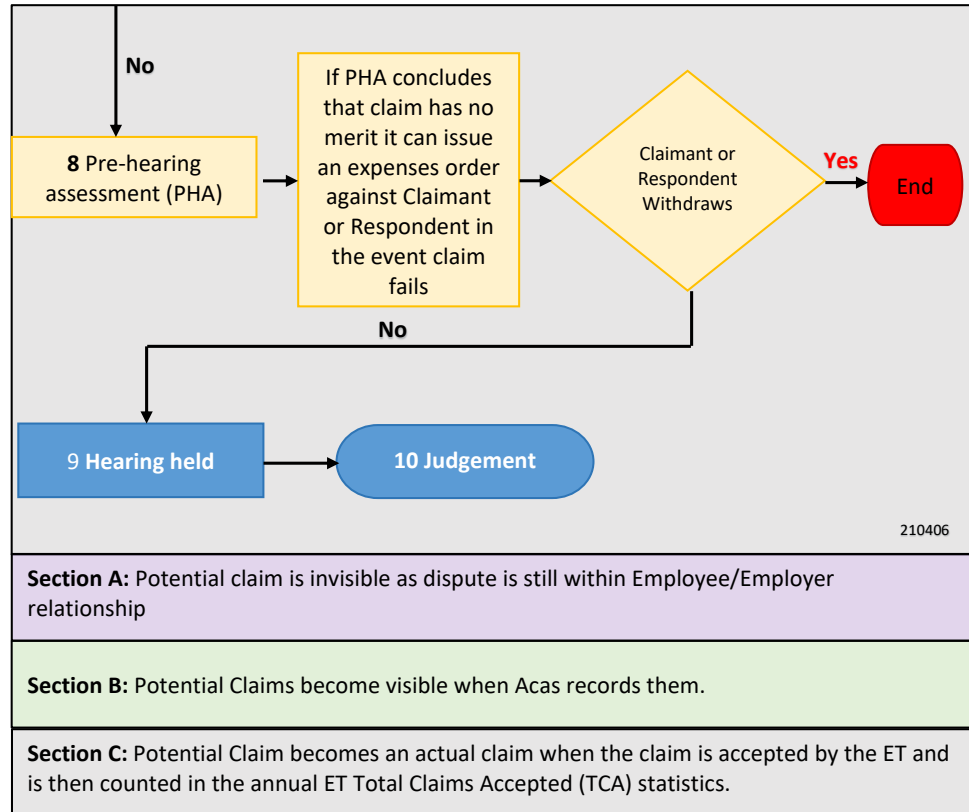


Figure 4.2b

Employment Tribunal Claim Process Summary #2
1st October 1980 to 15th December 1993,
Introduction of Pre-hearing assessment, Government Mandated



The Pre-Hearing Assessment takes place as almost the last step before the ET hearing itself. This shift in constraints related to the ET Claim Process still leaves to the ability of a claimant to file a claim directly with the ET without notifying the employer intact and still leaves the ET unable to actually reject a claim.

4.2.3 Employment Tribunal Claim Process Summary #3, 16th December 1993 to 30th September 2004, *Change from Pre-hearing assessment to Pre-hearing review, Government Mandated*

The next change in the ET Claim Process is introduced, by the then Conservative Government, in 1993, by *The Industrial Tribunal (Constitution*

and Rules of Procedure) Regulations 1993 (legislation.gov.uk, 2020h), which changed the Pre-hearing assessment into a Pre-hearing review. Now instead of issuing an expense order against either the claimant or respondent (employer) if the ET considered a claim (or response of the respondent (employer)) had little merit, the ET could now issue a deposit order against either the claimant or respondent (employer) if she/he wished to proceed with a claim that the ET considered had little merit. However, this shift in constraint to the ET Claim Process still leaves to the ability of a claimant to file a claim directly with the ET without notifying the employer intact and still leaves the ET unable to reject a claim. This continuing ability to file a claim without notifying an employer, challenges the Government agenda that links to the importance of early and proactive resolution (DTI 2001a). This tension between lack of opportunity for early resolution but growing constraint within the employment relations tests the notion of beneficial constraints, as outlined by Streeck (1997). It begins to identify that in making these changes the different governments over the years have changed and altered where these constraints lie in order to achieve the optimal procedural constraints linking to shifting aims, as the focus has moved between burden and early resolution.

The change from the Pre-hearing assessment to a Pre-hearing review is shown as ET Claim Process Summary #3 in Figures 4.3a&b, below:

Figure 4.3a

Employment Tribunal Claim Process Summary #3
 16th December 1993 to 30th September 2004,
 Change from Pre-hearing assessment to Pre-hearing review,
 Government Mandated

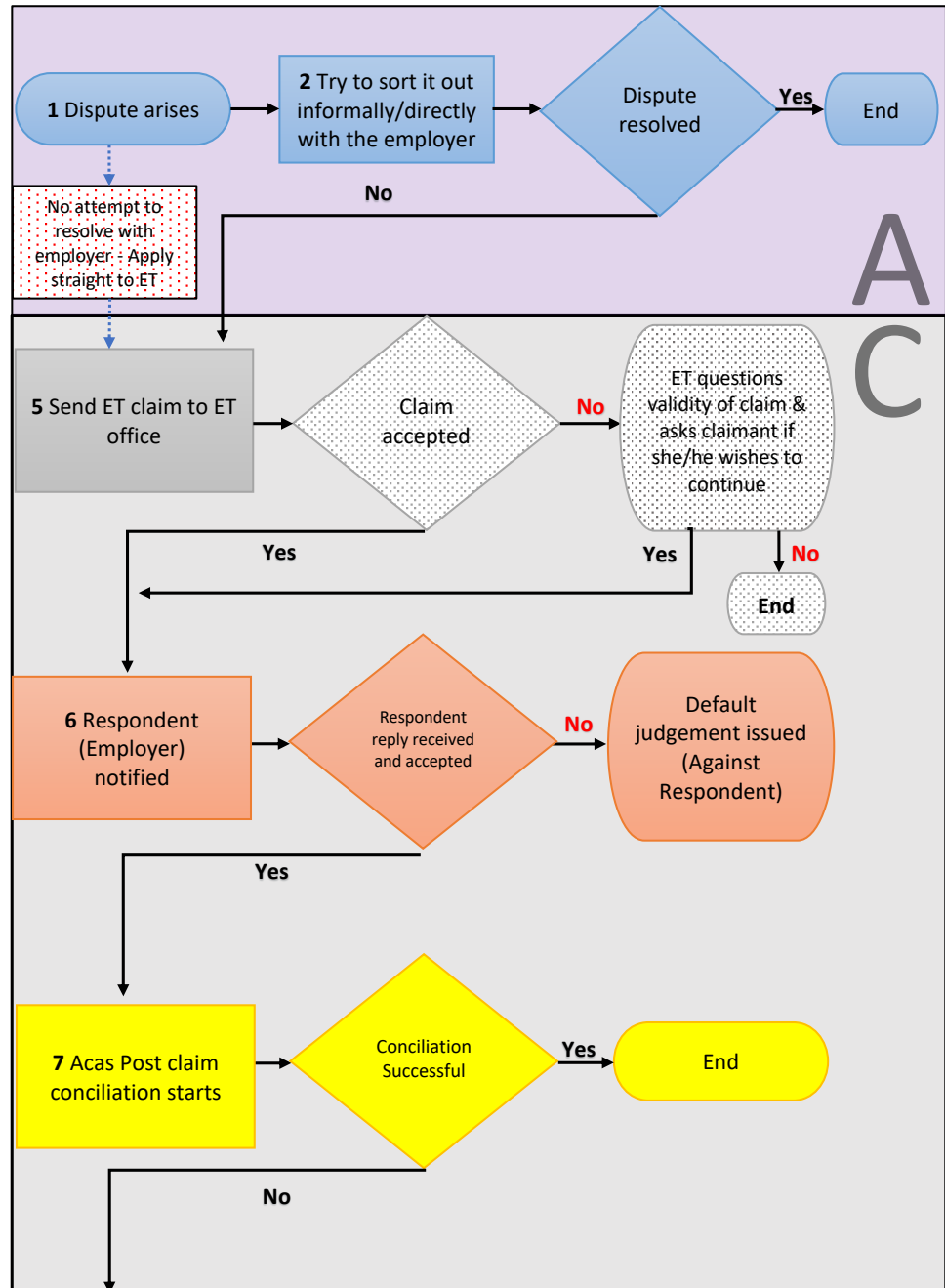
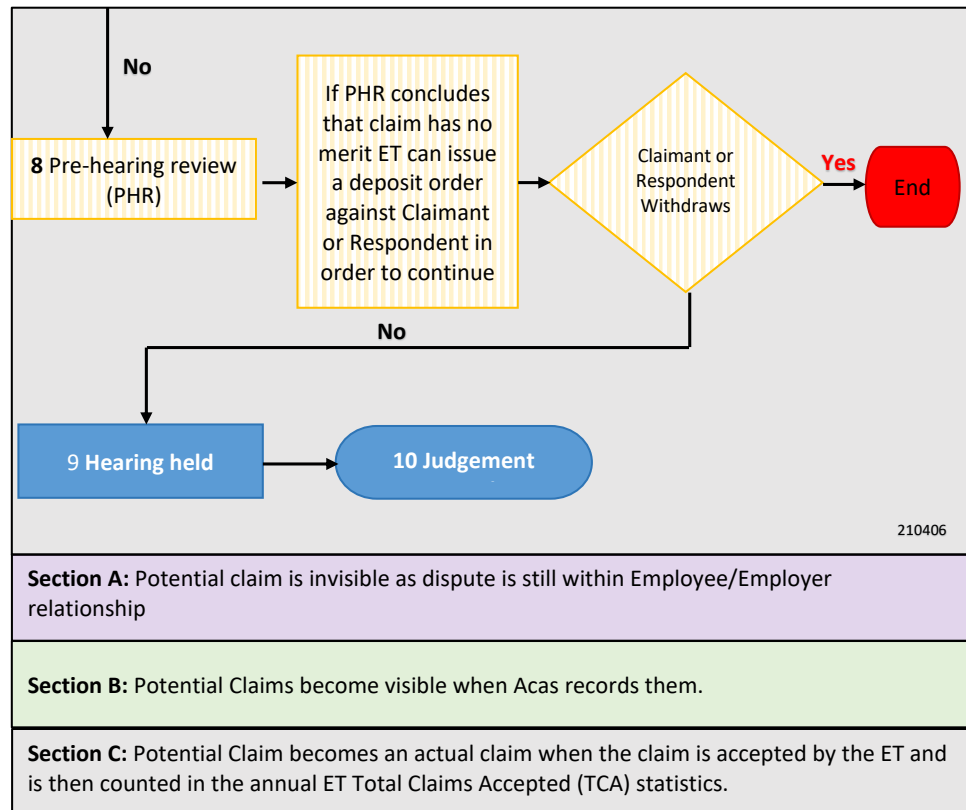


Figure 4.3b

Employment Tribunal Claim Process Summary #3
16th December 1993 to 30th September 2004,
Change from Pre-hearing assessment to Pre-hearing review,
Government Mandated



4.2.4 Employment Tribunal Claim Process Summary #4, 1st October 2004 to 31st March 2009, Introduction of Statutory Dispute Resolution Procedure, Government Mandated

In 2004, with an eye to encouraging early resolution amongst parties, the then Labour Government, introduced *The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004* (legislation.gov.uk, 2020k) creating the Statutory Dispute Resolution Procedure, which must be followed by the employee and employer. This change is shown as ET Claim Process Summary #4 in Figures 4.4a&b, below.

Figure 4.4a

Employment Tribunal Claim Process Summary #4
1st October 2004 to 31st March 2009,
Introduction of Statutory Dispute Resolution Procedure,
Government Mandated

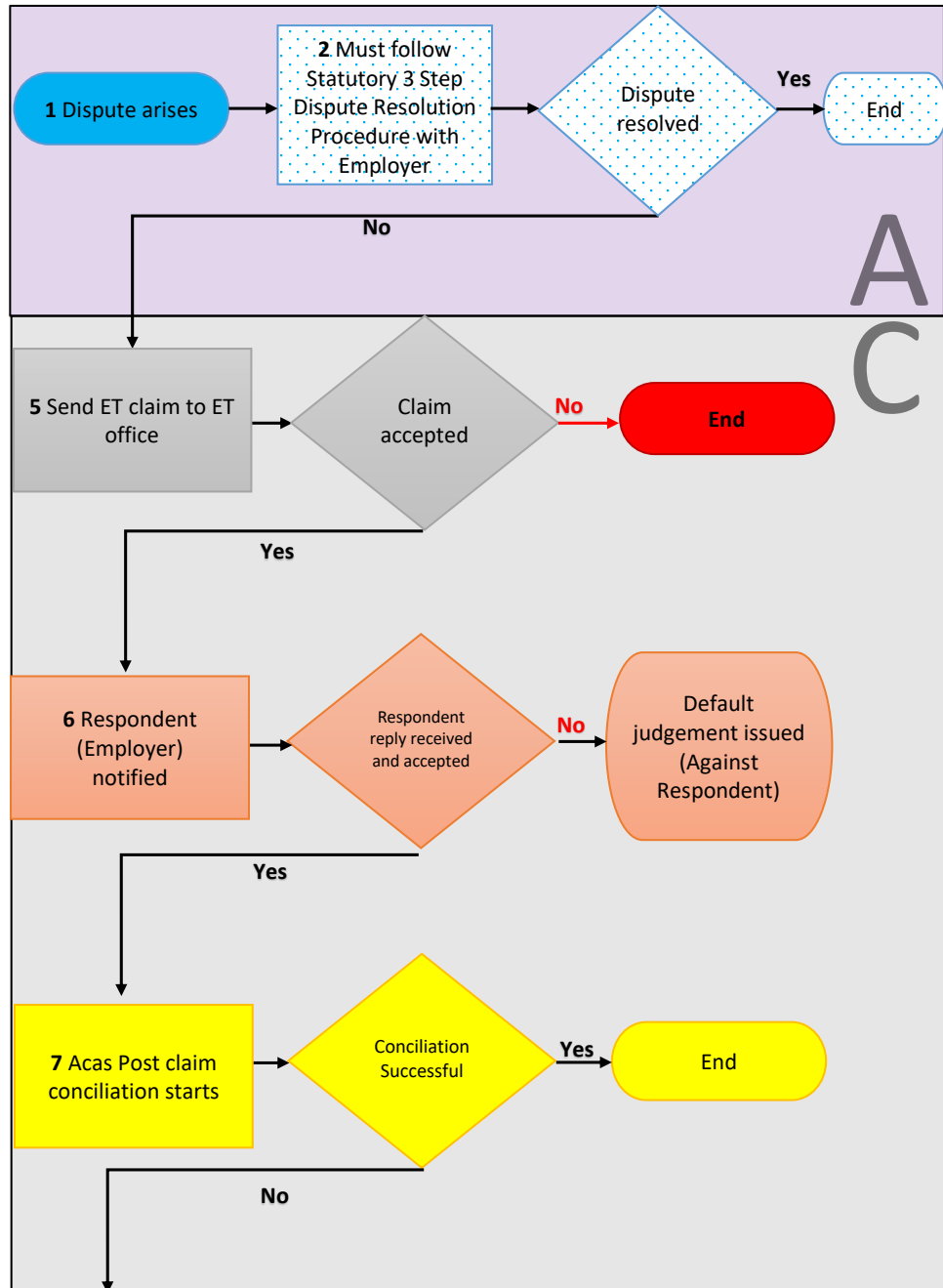
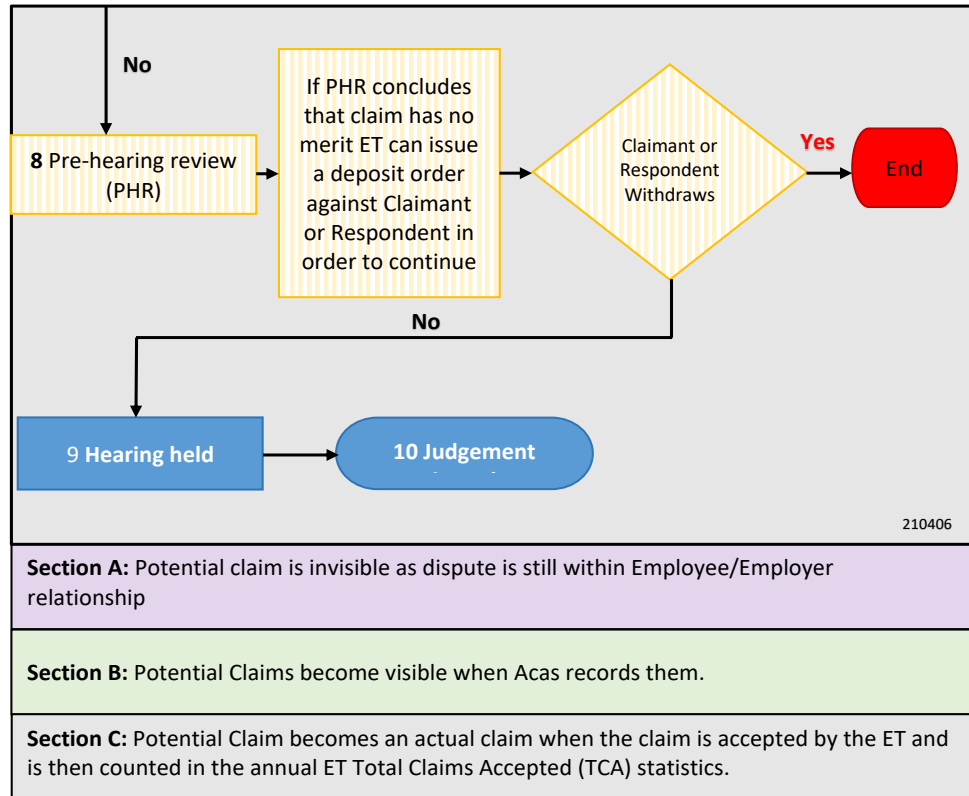


Figure 4.4b

Employment Tribunal Claim Process Summary #4
1st October 2004 to 31st March 2009,
Introduction of Statutory Dispute Resolution Procedure,
Government Mandated



The option of an employee filing a claim directly with the ET has been removed as has the inability of the ET to reject a claim. If the ET considers a claim invalid, it can now be rejected. This encouragement for organisations to resolve the situation before the ET constraint ‘kicks in’ is a reflection of the notion that social aspects of regulation bring out a positive entrepreneurial response (Streeck, 1997).

4.2.5 Employment Tribunal Claim Process Summary #5, 1st April 2009 to 28th July 2013, *Withdrawal of Statutory Dispute Resolution Procedure and Introduction of Voluntary Acas Pre-Claim Conciliation, Government Mandated*

The Statutory Dispute Resolution Procedure was considered to be less than successful in achieving the early resolution hoped for by the Government agenda (DTI, 2001a), as it was alleged that the requirements to follow the Procedure to the letter led the parties to focus on following the Procedure rather than resolving the underlying problem (Kirk, 2018, p.978; Gibbons, 2007, p.25). Indeed, the Gibbons Review heard evidence from the retail sector of 30 to 40% increases in formal employment disputes (Gibbons, 2007, p.25). Following the Gibbons Review (2007), in 2009, the then Labour Government mandated that the recently instituted Statutory Dispute Resolution Procedure be withdrawn and introduced Acas Voluntary Pre-Claim Conciliation (Acas, 2015a, p.11) and this is shown as ET Claim Process Summary #5 in Figures 4.5a&b, below.

Figure 4.5a

Employment Tribunal Claim Process Summary #5
 1st April 2009 to 28th July 2013,
 Withdrawal of Statutory Dispute Resolution Procedure and
 Introduction of Voluntary Acas Pre-Claim Conciliation,
 Government Mandated

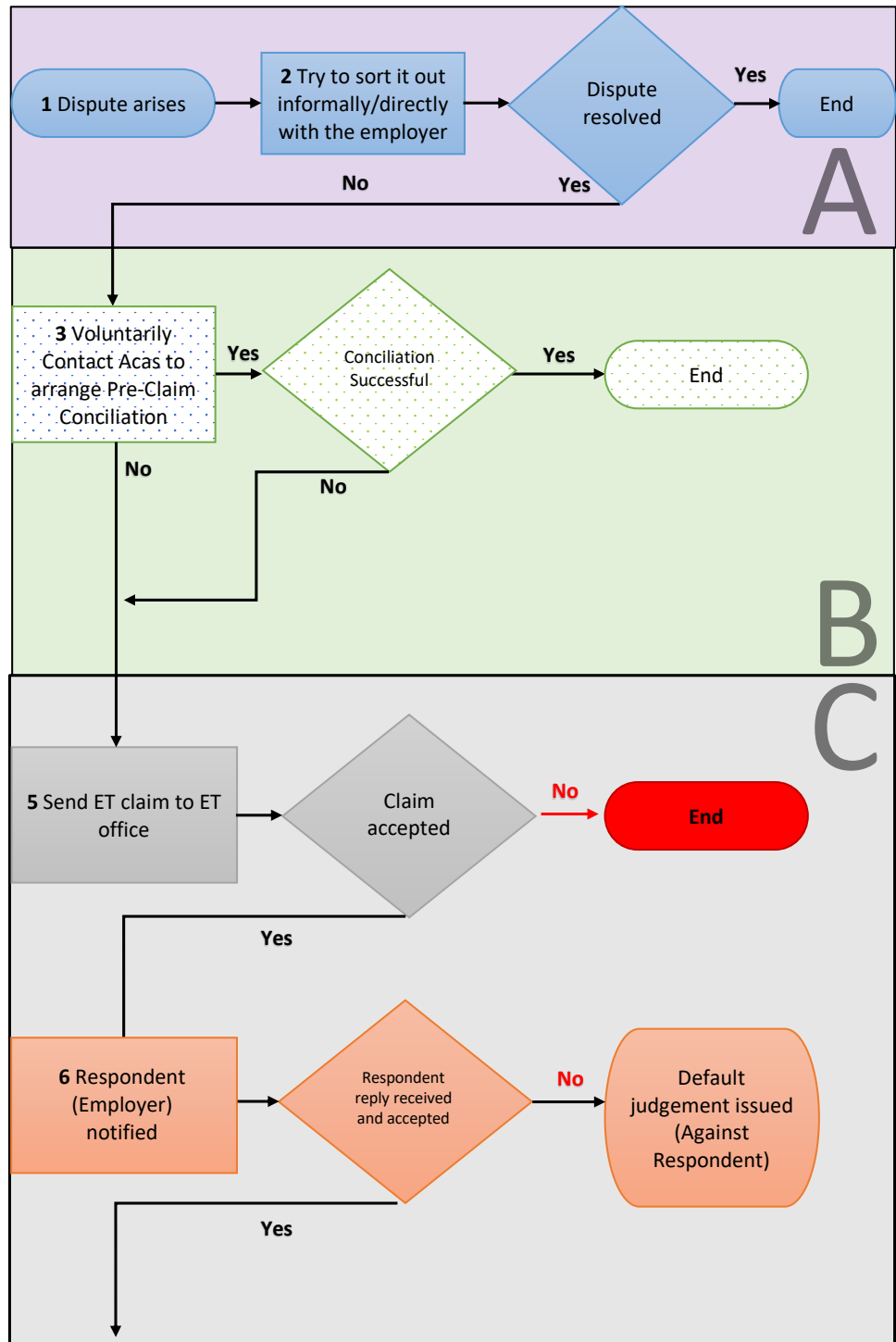
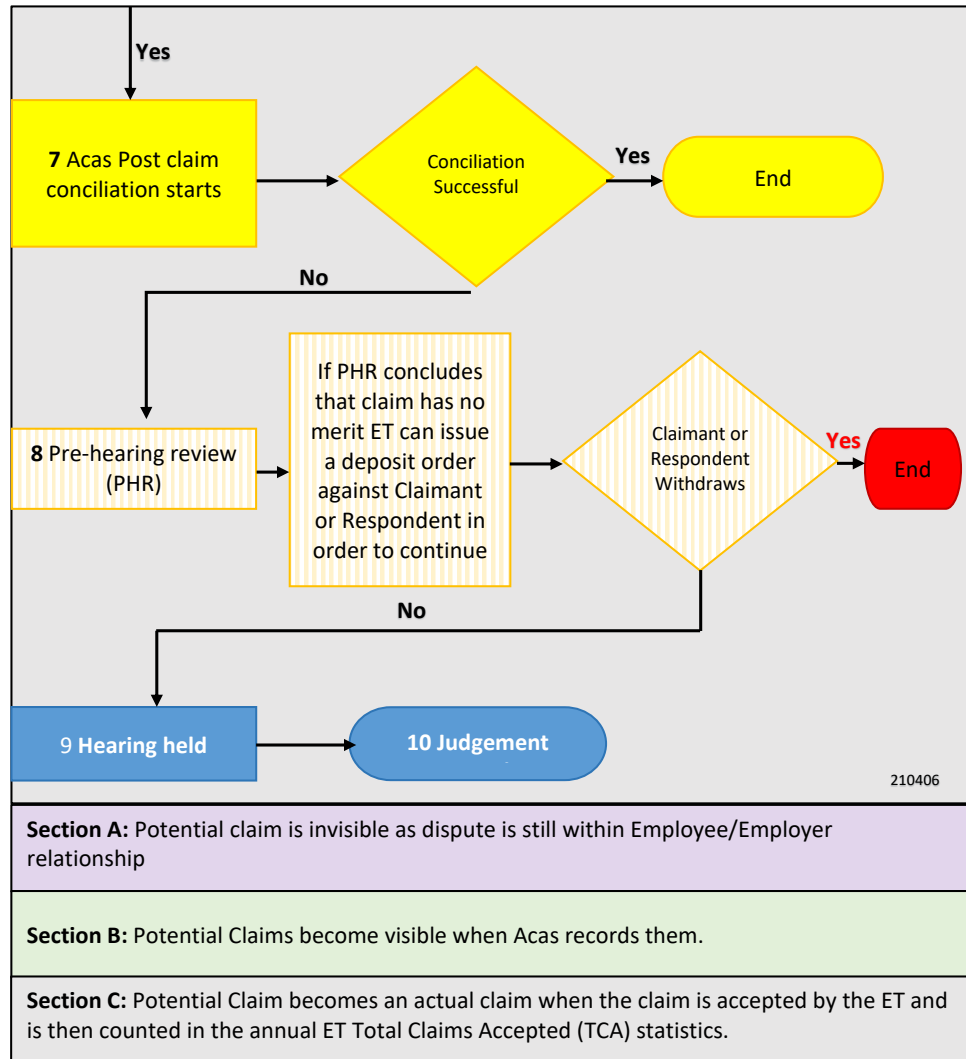


Figure 4.5b

Employment Tribunal Claim Process Summary #5
1st April 2009 to 28th July 2013,
Withdrawal of Statutory Dispute Resolution Procedure and
Introduction of Voluntary Acas Pre-Claim Conciliation,
Government Mandated



Acas Pre-Claim Conciliation is different to Acas Post-Claim Conciliation. Acas Pre-Claim Conciliation is offered before an ET claim is filed. It is voluntary and there is no obligation on the claimant or respondent (employer) to take it up. It is the first time that an attempt is made to resolve a dispute after attempting to resolve it internally with an employer (Section A in the Figure 4.5a above) but before filing a claim with the ET (Section C in the Figure 4.5a above). The Acas Voluntary Pre-Claim Conciliation sits between Sections A and C as

Section B, although it is still possible for an employee to ignore Acas and go directly from Section A to Section C and file a claim. The introduction of this Pre-claim conciliation is a further attempt to stimulate entrepreneurial response (Streeck, 1997) with a soft constraint of suggested early resolution, before a level of harder constraint kicks in through the ET. Again, we see ongoing negotiation of where beneficial constraints stop and burdensome constraints started, as suggested by Wright (2004).

4.2.6 Employment Tribunal Claim Process Summary #6, 29th July 2013 to 5th May 2014, Introduction of ET Fees and change from Pre-hearing review to Preliminary Hearing, Government Mandated

In 2013, with the introduction of *The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013* (legislation.gov.uk, 2020), the Coalition Government, introduced Employment Tribunal Fees into the ET Claim Process and changed the name of the Pre-hearing review to Preliminary Hearing. This is shown as ET Claim Process Summary #6 in Figures 4.6a&b, below.

Figure 4.6a

Employment Tribunal Claim Process Summary #6
 29th July 2013 to 5th May 2014, Introduction of ET Fees and change from
 Pre-hearing review to Preliminary Hearing, Government Mandated

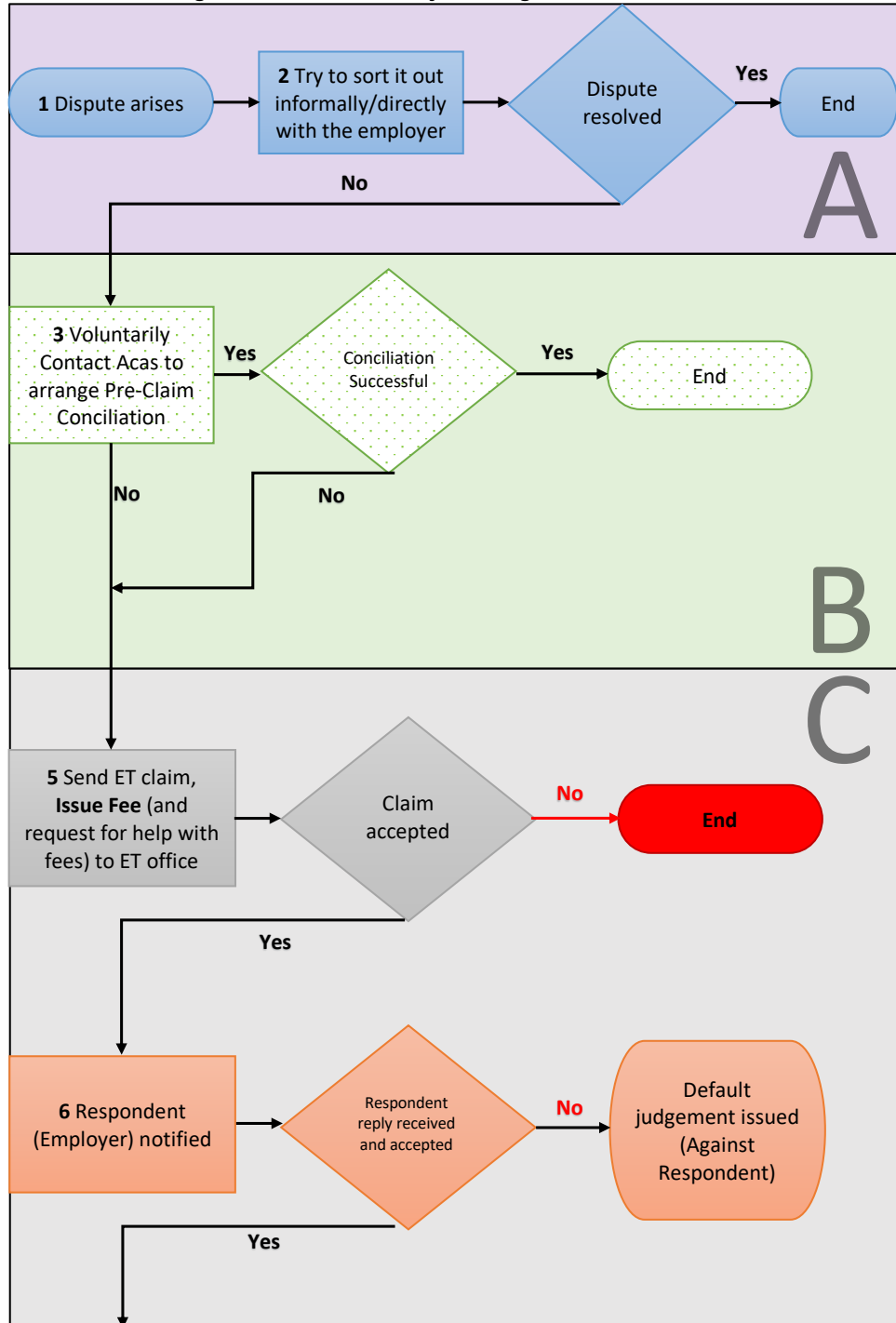
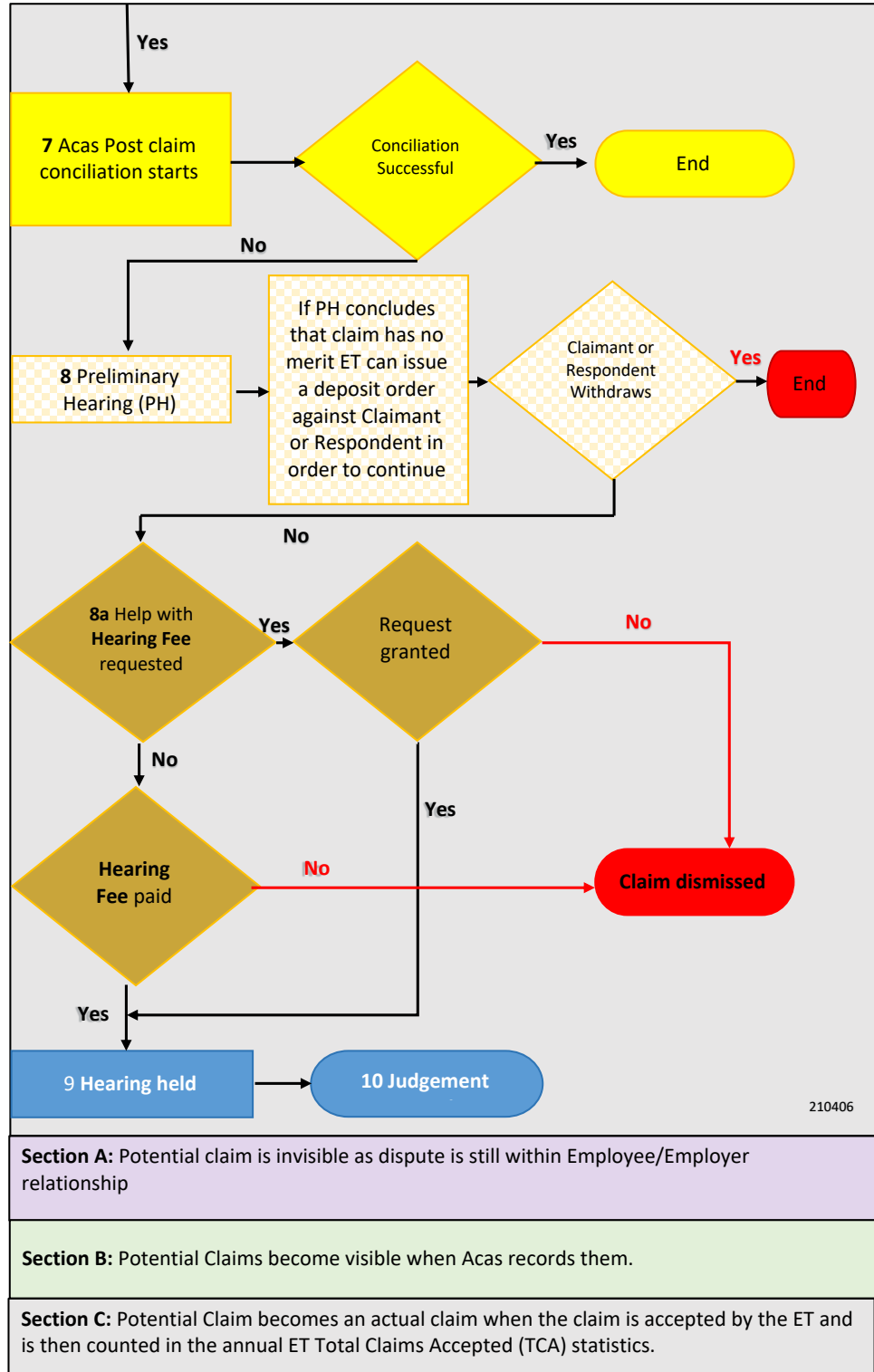


Figure 4.6b

Employment Tribunal Claim Process Summary #6
 29th July 2013 to 5th May 2014, *Introduction of ET Fees and change from Pre-hearing review to Preliminary Hearing, Government Mandated*



The introduction of ET Fees is split into two parts. To file a claim requires the claimant to pay an Issue Fee. If the Issue Fee is not paid or a request for help with the Issue Fees is denied, then the ET will not accept the claim, even if it is valid in all other respects. The second part of the fee is the Hearing Fee. Before a claim can proceed to a Hearing, either a Hearing Fee is paid or a request for help with the Hearing Fees is granted. If neither is the case, then the claim ends without adjudication. The introduction of ET Fees again represents the ongoing tension between the optimal level of beneficial constraints for business and optimal level of beneficial constraints for economic performance, as suggested by Wright (2004), with the balance potentially shifting towards business.

4.2.7 Employment Tribunal Claim Process Summary #7, 6th May 2014 to 25th July 2017, *From Introduction of Acas Early Conciliation to the End of ET Fees, Government Mandated*

The final change to the ET Claim Process mandated by the Coalition Government in *The Enterprise and Regulatory Reform Act 2013* (Acas, 2015a, p.11) was on 6th May 2014 when Acas Early Conciliation was introduced to replace the Acas Voluntary Pre-Claim Conciliation. This is shown as ET Claim Process Summary #7 in Figures 4.7a&b, below.

Figure 4.7a

Employment Tribunal Claim Process Summary #7
 6th May 2014 to 25th July 2017,
 From Introduction of Acas Early Conciliation to the End of ET Fees,
 Government Mandated

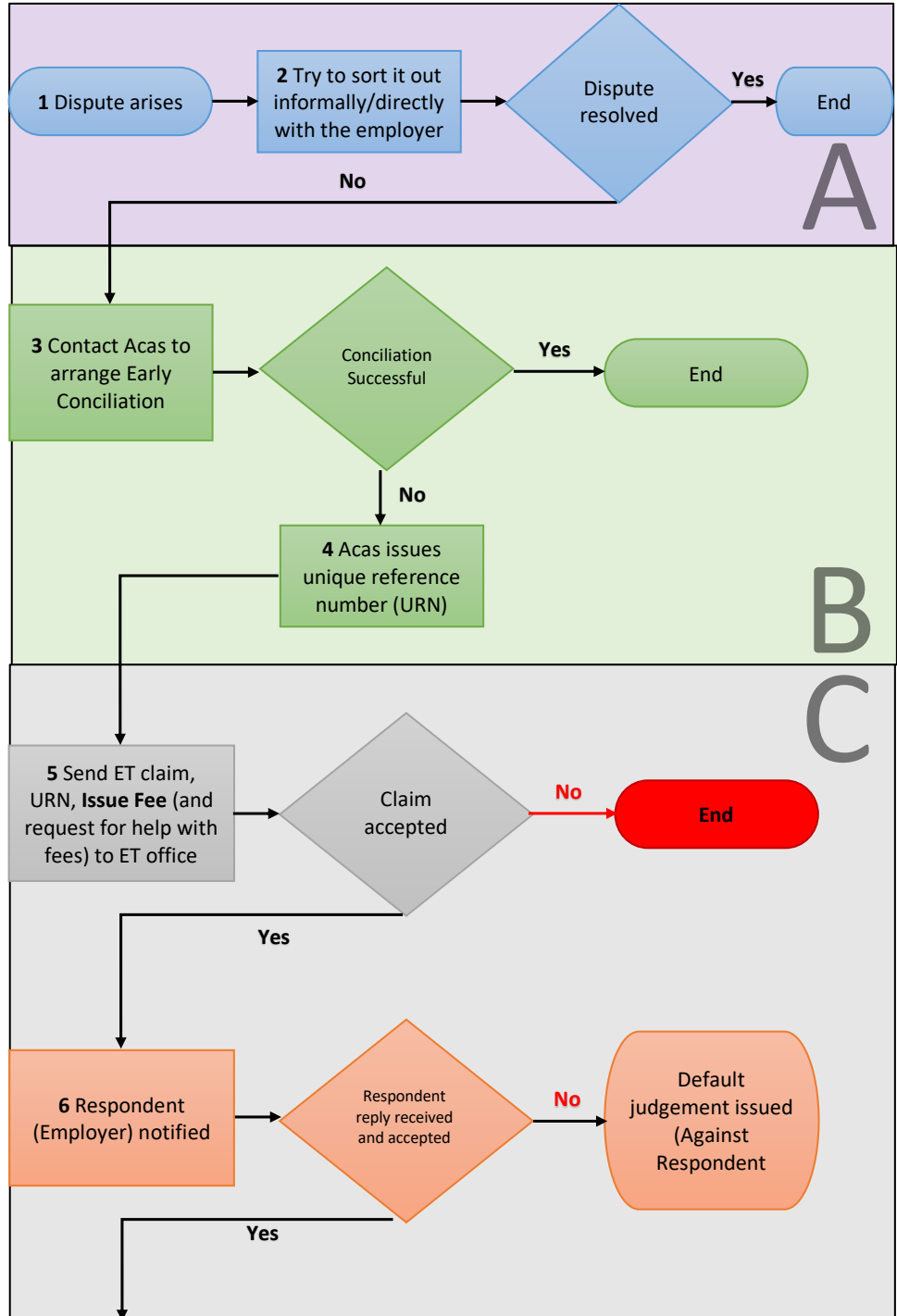
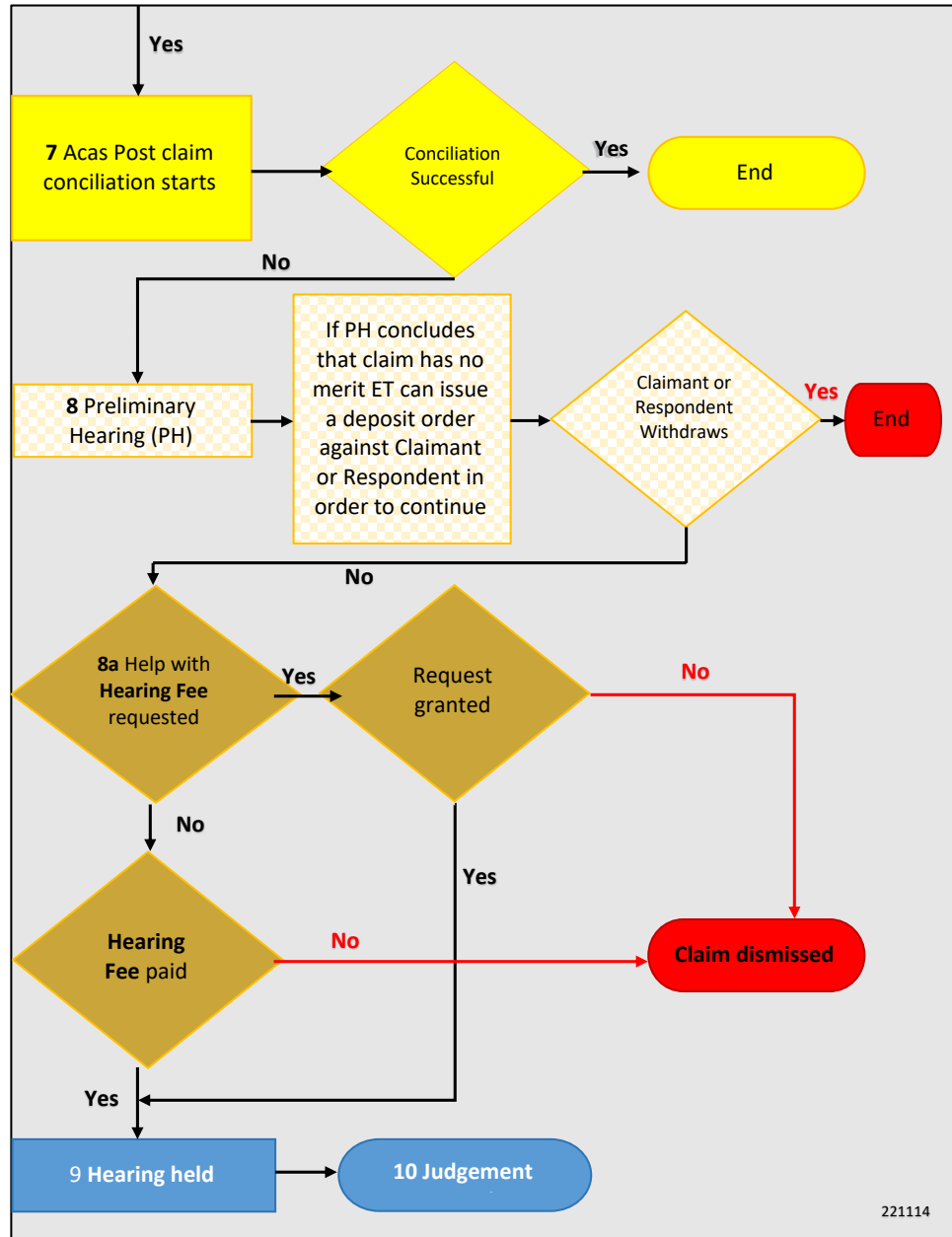


Figure 4.7b

Employment Tribunal Claim Process Summary #7
 6th May 2014 to 25th July 2017,
 From Introduction of Acas Early Conciliation to the End of ET Fees,
 Government Mandated



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Section A: Potential claim is invisible as dispute is still within Employee/Employer relationship

Section B: Potential Claims become visible when Acas records them.

Section C: Potential Claim becomes an actual claim when the claim is accepted by the ET and is then counted in the annual ET Total Claims Accepted (TCA) statistics.

With the introduction of Acas Early Conciliation, it is no longer possible to move directly from Section A of the claim process to Section C. All claimants are now required to contact Acas before submitting a claim to the ET (Acas, 2015a, p.11), although neither party, employee nor employer, have to engage in the conciliation process, contacting Acas is sufficient. If the Acas Early Conciliation does not resolve the dispute, then Acas will issue a Unique Reference Number for submission with the ET claim.

4.2.8 Employment Tribunal Claim Process Summary #8, 26th July 2017 to date, Post ET Fees, Supreme Court Mandated

The final change in the ET Claim Process came as a result of a legal challenge to the introduction of ET Fees by Unison. In 2017 The Supreme Court in *R (on the application of Unison) (Appellant) v Lord Chancellor* (Supreme Court, 2017) ruled that the ET Fees were unlawful. This legal challenge again reflects the ongoing tensions to find the 'right' level of beneficial constraint (Streeck 1997, Wright 2004) and indicates that there is a key role for actors in negotiating this. This is shown as ET Claim Process Summary #8 in Figures 4.8a&b, below.

Figure 4.8a

Employment Tribunal Claim Process Summary #8
26th July 2017 to date,
Post ET Fees, Supreme Court Mandated

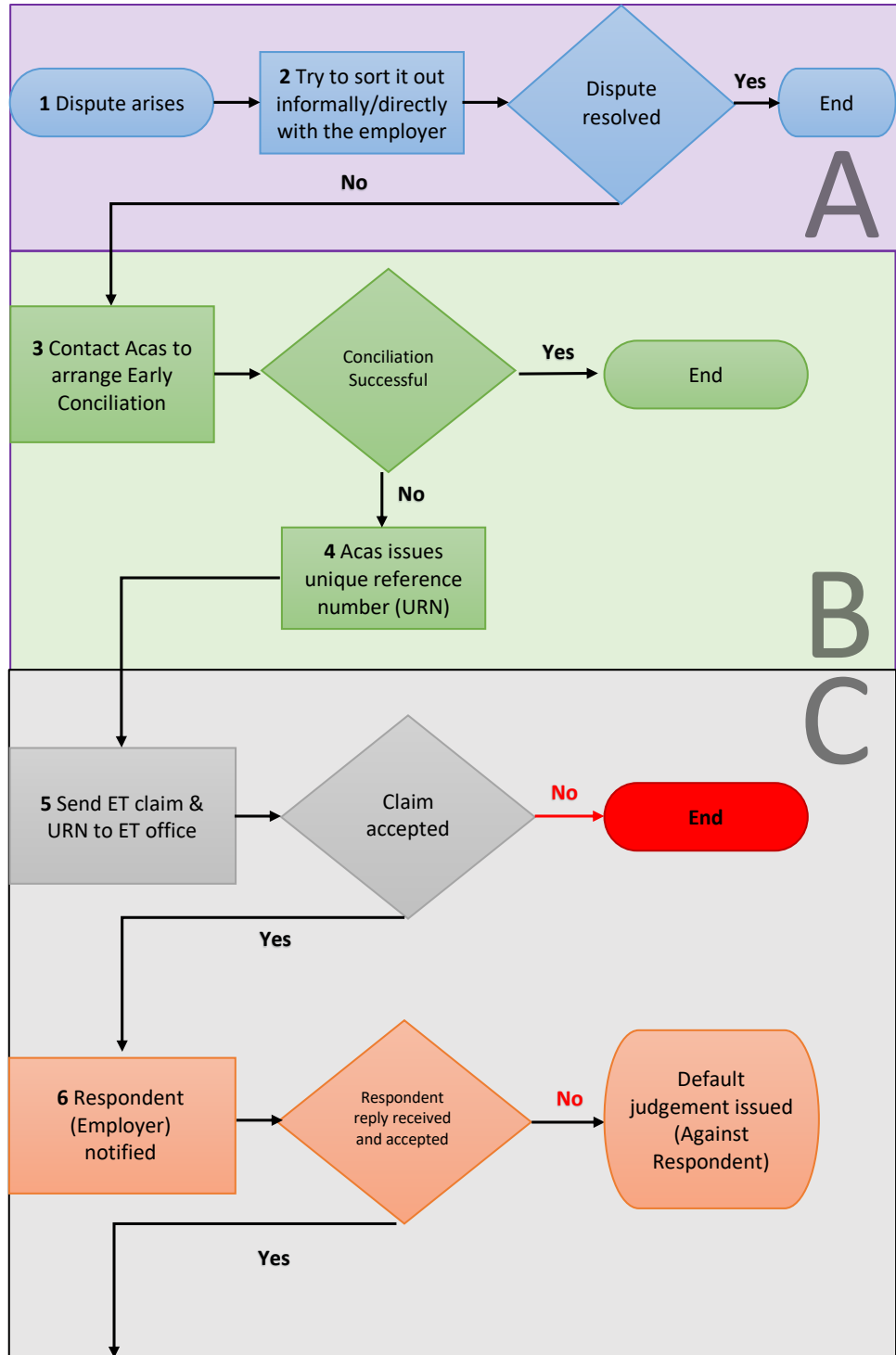
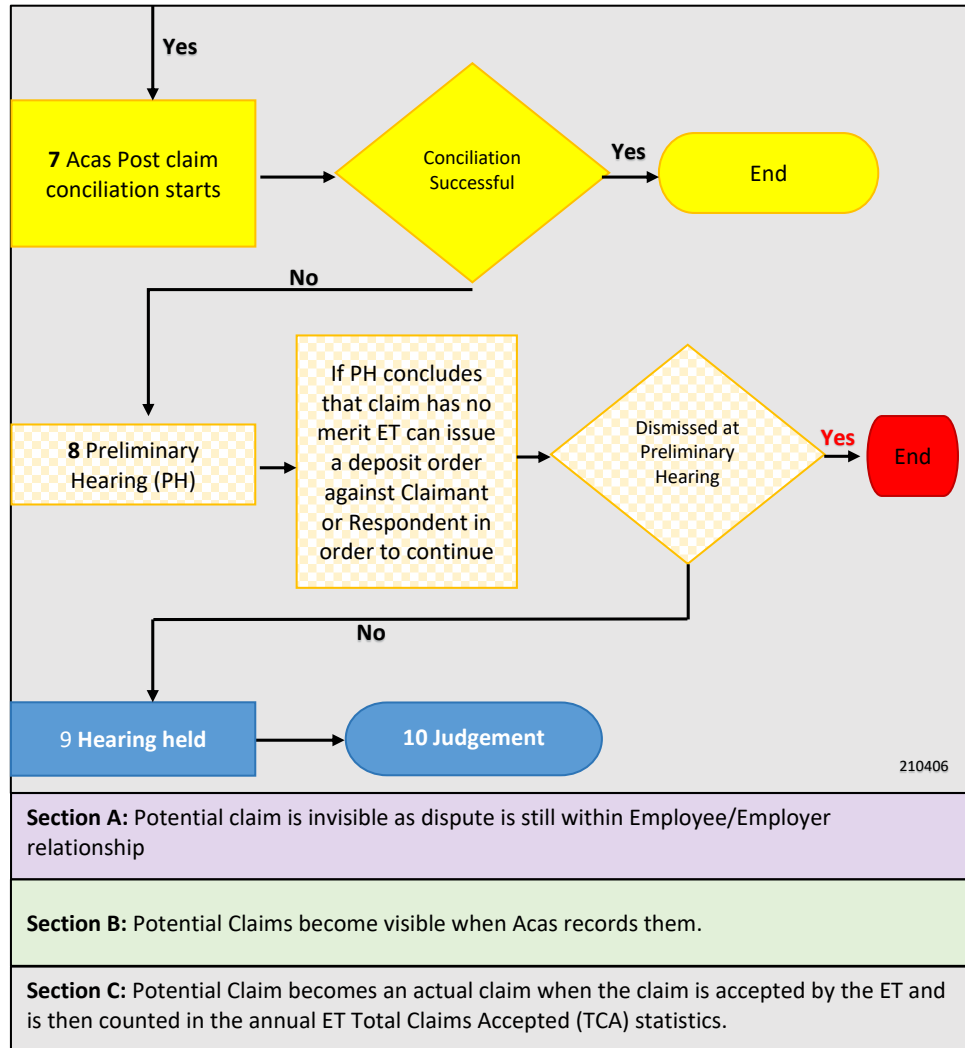


Figure 4.8b

Employment Tribunal Claim Process Summary #8
 26th July 2017 to date,
 Post ET Fees, Supreme Court Mandated



As can be seen in the ET Claims Process Summaries #1 to #8, above, the claim process is made up of 3 sections:

Section A: Potential claim is ‘invisible’ as dispute is still within Employee/Employer relationship.

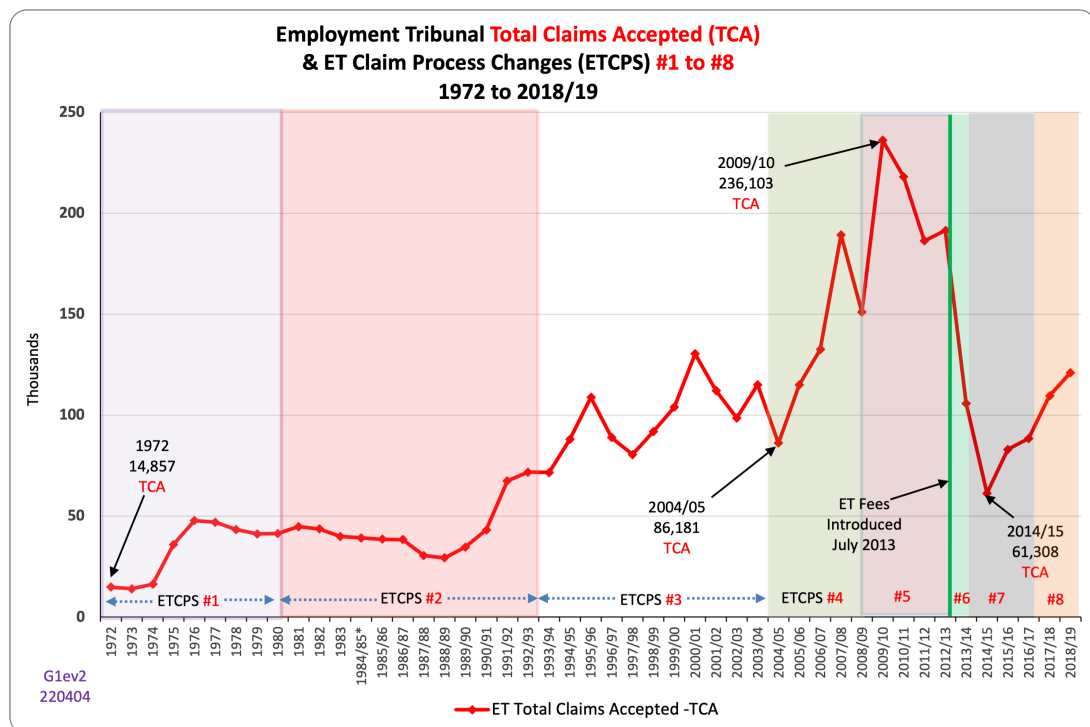
Section B: Potential claims become visible when Acas records them.

Section C: Potential claim becomes an actual claim when the claim is accepted by the ET and is then counted in the annual ET TCA statistics.

The claim only becomes part of the annual TCA when it enters Section C. Prior to that it is only a potential claim. By looking through ET Claims Process Summaries #1 to #7, it can be seen that the direction of the seven government mandated procedural changes has been to move the potential resolution of the employment dispute from Section C, the ET, to Section B, Acas, and Section A, the workplace, reflecting the long-term governmental aim of reducing the number of claims reaching the ET and hence the TCA, which as a consequence makes longitudinal comparison of this public data source more difficult and thus builds on arguments in existing literature (Hand D., 2018).

The eight different ET claims processes are represented in Figure 4.9, below:

Figure 4.9



It is, perhaps, interesting to note that the rate of change speeds up as the annual TCA count increased, with five of the eight changes taking place in the last 15 years compared to 3 changes in the first 32 years. This chart partially reflects the formal governmental procedural input into the negotiation of the mechanism for managing the beneficial constraints within which the

employment relationship operates, although it is important to note that this negotiation is also subject to other outside impacts, such as the ‘contended law’ judgements of the legal system as represented above by Employment Tribunal Claim Process Summary #8 and changes in the number of pieces of employment legislation (both of which are facets of constraint). These will be discussed later in the thesis.

This section has detailed the 7 government and 1 court mandated procedural changes to the ET Claims Process between 1972 and 2018/19. The next section looks at one of the other aspects of the formal governmental procedural input into the negotiation of the mechanism for managing the beneficial constraints within which the employment relationship operates, Unfair Dismissal qualifying period changes.

4.3 Unfair Dismissal Qualifying Period Changes

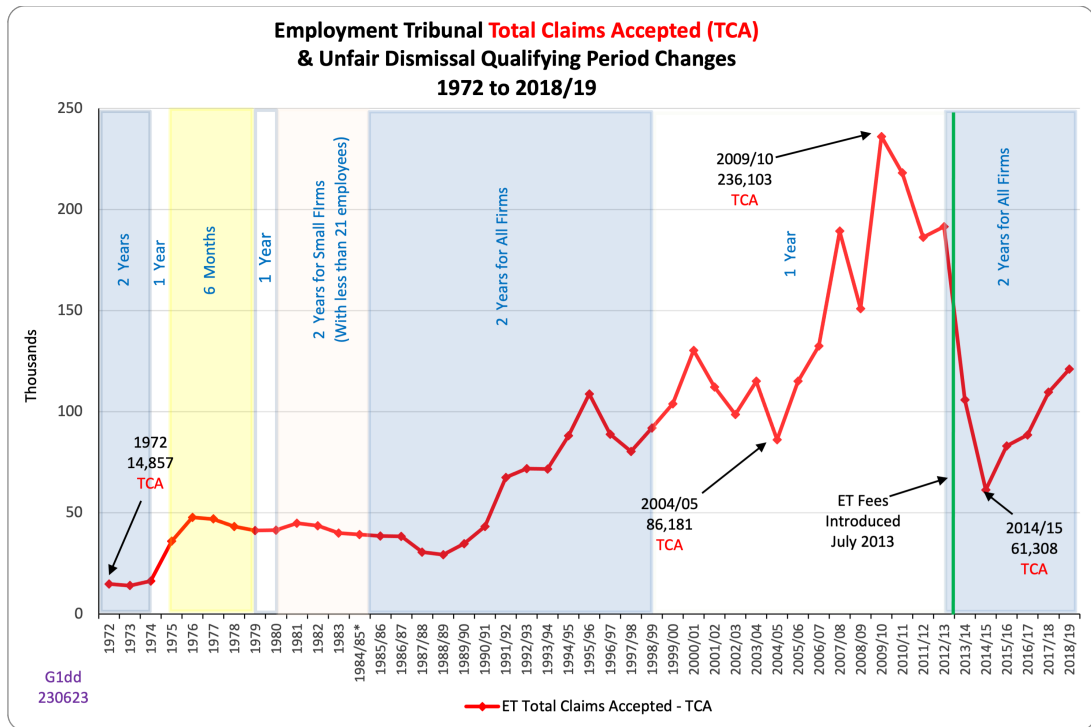
As was noted in the literature review, the point at which the ET ‘accepted’ a claim and who is eligible to file a claim have changed over time. As early as 1978, Linda Dickens noted that the period of continuous employment required before a claim for Unfair Dismissal would be accepted by an ET had reduced from the initial 2 years in 1972 to 1 year in September 1974 and then down to 6 months in March 1975, (Dickens, 1978, p.4, House of Commons Library, 2018, p.8). The effect of this qualifying period change was to increase the number of employees/workers eligible to file a claim for Unfair Dismissal. This reduction in Unfair Dismissal qualifying period has been reversed and increased to 2 years by both Conservative Governments since 1979 and reduced to 1 year by the 1997-2010 Labour Government. In total there have been 8 government mandated changes in the Unfair Dismissal qualifying period since it was set at 2 years in 1972. The details of the Unfair Dismissal qualifying period changes are shown in Table 4.2 and in Figure 4.10, below:

Table 4.2

Unfair Dismissal (UD) Qualifying Period Changes

Year	Governing Party	Mandate Source	Act/Regulation	Qualifying Period	Minimum Weekly Qualifying Hours
1971	Conservative	Gov	<i>Industrial Relations Act 1971</i>	2 Years	21 hours
1974	Labour	Gov	<i>Trade Union and Labour Relations Act 1974</i>	1 Year	
1975		Gov		6 Months	
1975	Labour	Gov	<i>Employment Protection Act 1975</i>		16 hours (Reduced to 8 hours after 5 years' service)
1979	Conservative	Gov	<i>Unfair Dismissal (Variation of Qualifying Period) Order 1979</i>	1 Year	
1980	Conservative	Gov	<i>Employment Act 1980</i>	2 Years (for small firms with less than 21 employees)	
1985	Conservative	Gov	<i>Unfair Dismissal (Variation of Qualifying Period) Order 1985</i>	2 Years (All firms)	
1994	Conservative	House of Lords	<i>The Employment Protection (Part-time employees) Regulations 1995</i>		0 hours
1999	Labour	Gov	<i>Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999</i>	1 Year	
2012	Conservative/ Liberal Democrat Coalition	Gov	<i>The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012</i>	2 Years	
					√200721
Source: House of Commons Library Briefing Paper 4526, 20 th June 2018, <i>Unfair Dismissal: qualifying service rule</i>					

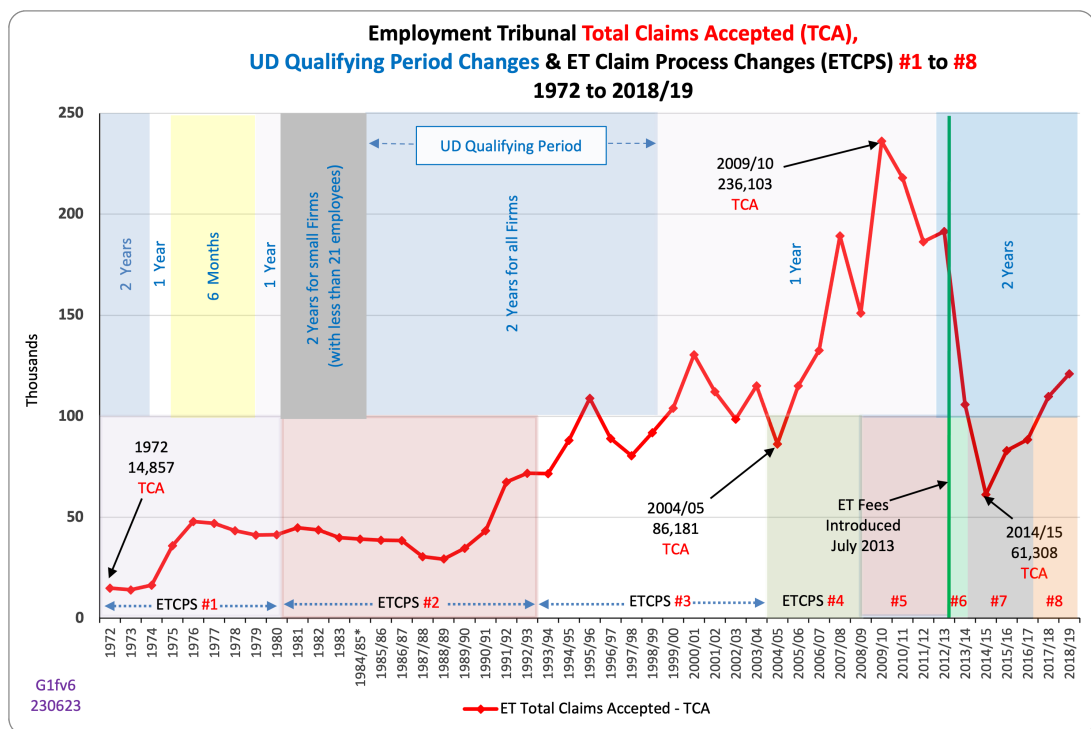
Figure 4.10



In addition to the changes in the Unfair Dismissal qualifying period noted above from 1972 to 1985, there was also a qualifying minimum number of hours worked per week required, which has seen 2 government mandated and 1 court mandated changes, as noted in Table 4.2 above. From 1971 to 1974 this was set at 21 hours per week which was reduced to 16 hours per week (reduced to 8 hours after 5-years' service) in 1975. This remained the case until 1994 when the House of Lords, in *Regina v Secretary of State for Employment ex parte Equal Opportunities Commission and Another* [1994] UKHL2, ruled that 'this law amounted to indirect discrimination against women as more women than men worked under 16 hours per week. It was therefore incompatible with EC Law' (House of Commons Library, 2018, p.8). The effect of these changes has been to raise and lower the number of potential Unfair Dismissal claimants. In a telephone conversation with the Author, a member of Acas mentioned that since the Unfair Dismissal qualifying period was increased to 2 years in 2013, there had been an increase in claims with alternate jurisdictional complaints such as Breach of Contract, where there is no qualifying period as potential claimants tried to avoid the 2-year Unfair Dismissal qualifying period (Author's notes).

The changes noted above are for the Unfair Dismissal jurisdiction and further illustrate how government mandated procedural changes raise or lower the number of potential claimants and thence the TCA. The same applies to other jurisdictions. The 15 government and 1 Supreme Court mandated procedural changes, made up of 8 changes in Unfair Dismissal Qualifying Period and 8 changes in the ET Claim Filing and Process are shown in Figure 4.11, below (the changes in qualifying minimum number of hours worked per week are not included in graph).

Figure 4.11



This chart further reflects the formal governmental procedural input into the negotiation of the mechanism for managing the beneficial constraints within which the employment relationship operates, although, as noted above, it is important to note that this negotiation is also subject to other outside impacts, such as the ‘contended law’ judgements of the legal system as represented above by Employment Tribunal Claim Process Summary #8 and changes in the number of pieces of employment legislation (both of which are facets of constraint). Indeed, as other statutory employment rights were added to the ET’s jurisdiction then over time adjustments were made to the application of statutory rights which either widened or narrowed the scope of the rights with

a parallel widening or narrowing of the number of potential claimants thereby increasing or reducing the number of potential claims that can become 'accepted' and therefore part of the TCA. Some of the adjustments were made by the Government of the day and some were made by 'contended law' legal precedent following a decision in the House of Lord/Supreme Court, or European Court of Justice (ECJ), such as the 1994 cases of *Vroege v NCIV*⁴⁵ (Deakin and Morris, 2009, p.178), *Fisscher v Voorhuis Hengelo BV*⁴⁶ (Court of Justice of the European Union (CJEU), 2020) and 1993 case of *Levez v T.H. Jennings*⁴⁷ (Heery, 1998, p.355) as discussed in the literature review.

This section has detailed the government and court mandated procedural changes to the Unfair Dismissal qualifying period and qualifying minimum number of weekly hours between 1972 and 2018/19. The next section looks at one of the other aspects of the formal governmental procedural input into the negotiation of the mechanism for managing the beneficial constraints within which the employment relationship operates, time limits.

4.4 Employment Tribunal Claim Filing Time Limits

As has been noted in the previous sections, not only has the process of filing a claim changed over the period from 1972, so has the Unfair Dismissal qualifying period. There is, however, one further aspect to the filing of a claim that has changed, claim filing time limits. In 1972, when the ETs first began hearing Unfair Dismissal claims, claims to the ET had to be filed no more than 4 weeks from the date of dismissal. In 1974, the time limit was changed to three months from the date of dismissal (Dickens, 1985, p.13) where it has remained (HMCTS, 2020, p.7). As more statutory employment rights have been added, the three-month time limit for filing has been applied to the new jurisdictions. Although the claim time limit is strictly applied by the ET, as the current guidance publication makes clear, the time limit can be extended at the discretion of the ET in exceptional circumstances (HMCTS, 2020, p.8).

⁴⁵ For more details, see Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, Case 8.

⁴⁶ For more details, see Appendix 14, Table A14.1, Case 9.

⁴⁷ For more details, see Appendix 14, Table A14.1, Case 16.

How many claims this 'hard' limit affects are unknown but once a potential claim passes out of time it ceases to be a potential claim, thereby restricting the number of potential claims that become 'accepted' and therefore part of the TCA.

Whilst it is impossible to determine the number of potential claims that time out, the principle, as a constraint, is important in terms of later findings in this thesis. As will be seen in Chapter 6, Section 6.2, following the introduction of the Working Time Directive jurisdictional complaint, the three-month filing time limit has an unexpected and profound effect on the TCA. Chapter 6 will show that the wording of the three-month time limit clause in the Working Time Directive jurisdictional complaint leads to the generation of large numbers of administrative 'ghost claims', an example of an internal ET administrative aspect, beyond government mandate, in the negotiation of the mechanism for managing the beneficial constraints (Streeck, 1997) within which the employment relationship operates.

4.5 Conclusion

This chapter has looked at the source of the procedural changes that have been applied to the ET since 1972, when the Unfair Dismissal jurisdiction was added to the ET's remit, and how these changes alter the constraints within which the employment relationship operates. Three types of procedural change have been identified, firstly, government mandated, secondly, court mandated and lastly internal ET administrative changes. This chapter has largely focused on government and court mandated procedural changes as internal ET administrative changes are covered in chapters 5, 6 and 7.

The government and court mandated procedural changes have been highlighted in the ET Claim Filing and Process, the Unfair Dismissal qualifying period and lastly, through the effects of claim filing time limits, all of which changed when the ET accepts a claim and who is eligible to file a claim, and thus the number of claims recorded in the TCA. It has also been argued within this chapter that all of these ET procedural changes are in themselves negotiation of optimal procedural constraints, but constraints that are in turn

part of the search for the optimal level of beneficial substantive constraints (Streeck, 1997) as represented by the ET.

This chapter has covered two of the three observed ET procedural change types in detail and the thesis now moves on reveal the third procedural change, internal ET administrative changes along with uncovering, What does Employment Tribunal claims data, tell us about employment disputes, in Great Britain?

Chapter 5

***What does Employment Tribunal claims data tell us
about employment disputes in Great Britain?***

5.1 Introduction

The previous chapter looked at the procedural changes that have been applied to the Employment Tribunal (ET) since 1972, when the Unfair Dismissal jurisdiction was added to the ET's remit. This chapter is the second of four findings chapters and looks at what the ET claims data tell us about employment disputes in Great Britain. The chapter develops our understanding of the potential contextual drivers of ET claims, challenging and building on existing literature. The chapter also develops an explanation and analysis of the nature of MACs in way not previously developed. Finally, the chapter, with a focus on the particular nature of MACs, explores the degree to which the ETs operate as a forum for beneficial constraints (Streeck, 1997). This will be done by:

- Firstly, by examining how the volume of tribunal claims has changed over time.

This section will show that following the introduction of the Unfair Dismissal jurisdiction to the ETs on 28th February 1972 (*Employment Gazette*, June 1974, p.503), there were 14,857 total claims accepted (TCA) in the 10 months ending 31st December 1972, which grew quickly to 47,804 in 1976 and stayed around that level until 1990/91. Thereafter, the TCA grew steadily, reaching 108,827 in 1990/91, where it hovered until 2004/05, when the TCA sharply increased, reaching 236,103 in 2009/10. Superficially this would suggest that the ET is ineffective as a vehicle for constraining claims. In the literature review it was noted that there were potentially several causes for this growth, such the decline in trade union membership (Shackleton, 2002, p.45; Renton, 2012, p.138), the increase in the number of statutory rights (Dickens, 2000, p.69) and the interaction of the economic cycle with the rise and fall in the TCA (Sanders, 2009; Schulze-Marmeling, 2013) and these are examined in this section along with the possible consequences of the 8 million increase in the number of people in employment between 1972 and 2018/19. Two of these four potential causes, the decline in trade union membership and the increase in the number of people in employment would have increased the number of claims made to the ET, but their effects would have been over a long period.

This thesis will contest these commonly cited causes by demonstrating that neither of them were majorly responsible for the sharp increase in the TCA from 2004/05. With regard to the interaction of the economic cycle and the rise and fall of the TCA, the analysis in this section shows that, although there appears to be a relationship, particularly in the 2000s, the evidence is not conclusive. It will then be shown that the introduction of one particular statutory right to one particular industry, in April 2004, does potentially explain the sharp increase in the TCA from 2004/05. The impact of this one piece of legislation leaves questions as to whether there is some evidence here of an example of a disadvantageous constraint. To put this another way, the increase in juridification, as identified in the literature, is shown to have an impact on the level of ET claims, but this thesis will add nuance to this existing argument and show that it is not as simple as saying more law equates to more claims.

- Secondly, by looking at how the type of claim has changed from single applicant claims (SACs) to multi-applicant claims (MACs).

This section will show that the TCA is the sum of two types of claim, SACs and MACs and highlights that over time the TCA has moved from being mostly SACs to a TCA made up of mostly MACs. This change will be shown to coincide with the sharp growth in the TCA from 2004/05, highlighting the need to understand MACs in greater detail and this is done with an analysis of the data on MACs in the ET Decision Index between Feb 2017 and Feb 2019. This section begins to address the lack of understanding of MACs highlighted in the literature review.

- Thirdly, by looking at how the jurisdictional composition of claims has changed.

The Unfair Dismissal jurisdiction was introduced to the ETs on 28th February 1972 (*Employment Gazette*, June 1974, p.503). Over time, the number statutory rights (jurisdictions) that the ET deals with has grown. The ideal data for analysis would be a statistical breakdown of exactly how the TCA and associated jurisdictional complaints relate to SACs and MACs. However, this is not possible, so this chapter examines how this relationship can be teased out from the existing TCA and jurisdictional complaints data in an attempt to

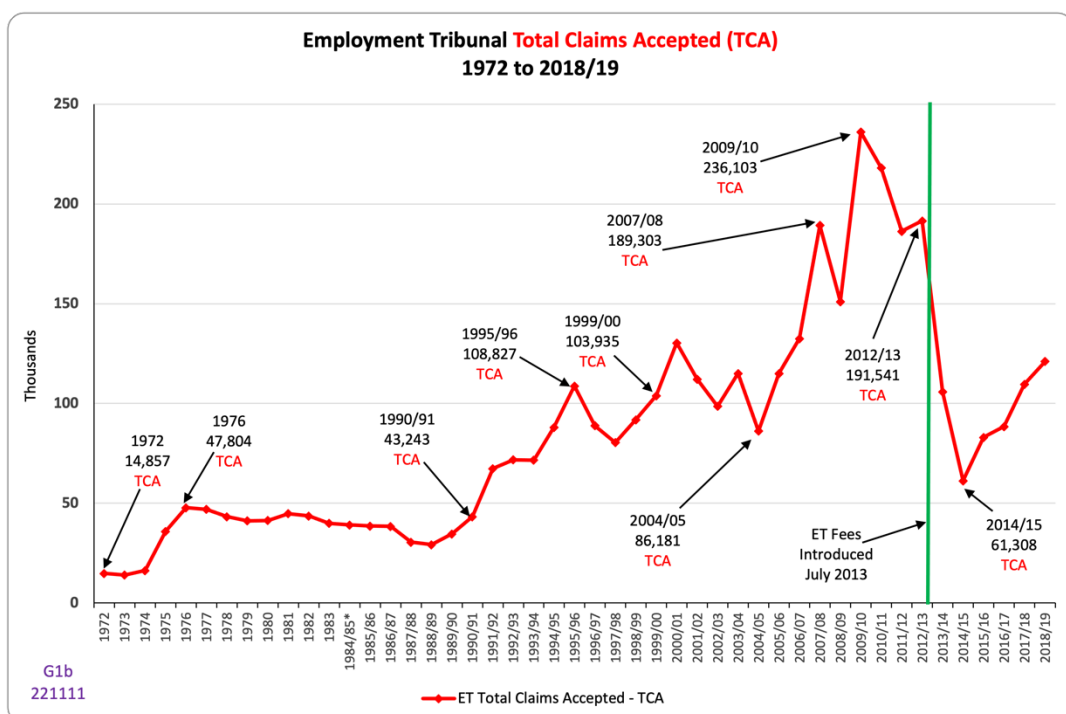
show how certain jurisdictional complaints relate to either SACs or MACs and see what this tells us about the changing nature of workplace conflict. The key findings develop the argument explored the literature review that there has been a shift from contended facts type claims, which the tribunals were established to help with, to norm-generating contended law claims, which speaks to the negotiations needed around beneficial constraints (Streeck, 1997; Wright 2004) in order to develop an optimal level within which the employment relationship can operate effectively.

5.2 How has the volume of Employment Tribunal claims changed over time?

The annual TCA statistic, available from 1972, when the Unfair Dismissal jurisdiction was introduced to the Industrial [Employment] Tribunals (*Employment Gazette*, June 1974, p.503), is the generally used statistic that is quoted in reference to ET claims.

The TCA from 1972 to 2018/19, drawn from the 12 sources listed in Chapter 3, Table 3.2, and enumerated in Chapter 3, Table 3.7, is shown in Figure 5.1, below:

Figure 5.1



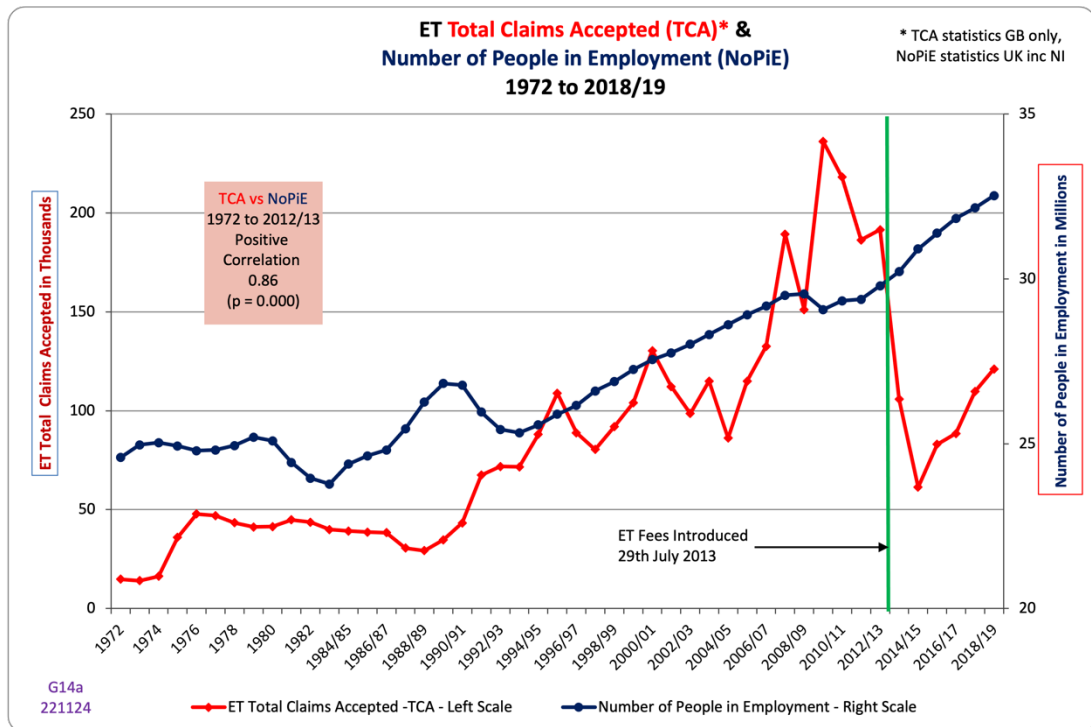
Superficially, the data in Figure 5.1 would appear to confirm that there has been a recent rapid increase in claims. After an initial increase to 47,804 claims in 1976, the TCA line flatlines and then declines before picking up in 1990/91 to reach a new high of 108,827 in 1995/96. The TCA then hovers around the 100,000 mark until 2004/05, when it sharply increases to an all-time high of 236,103 in 2009/10, before falling to 191,541 in 2012/13, the last full year before the introduction of ET Fees, following which the TCA declines to 61,308 in 2014/15. This would, on the face of it, suggest that workplace conflict had increased significantly over the last 40 years only to be addressed by the introduction of ET Fees.

5.2.1 Number of People in Employment

One factor which might have potentially influenced the growth in the TCA is the 32% increase in number of possible claimants over the period from 1972 to 2018/19. In 1972 the number of people in employment⁴⁸ (NoPiE) was 24.5 million people which by 2018/19, had increased to 32.5 million, an increase of 8 million (Office for National Statistics, 2020a). This is shown in Figure 5.2, below, which is based on the TCA data shown in Chapter 3, Table 3.7, above, and the number of people in employment shown in Appendix 7, Table A7.3.

⁴⁸ Number of people in employment annual statistic is based on ONS Data series MGRZ, which is for all UK including NI (Office for National Statistics, 2020a). The annual total claims accepted statistics are for GB only, i.e., England, Scotland and Wales.

Figure 5.2

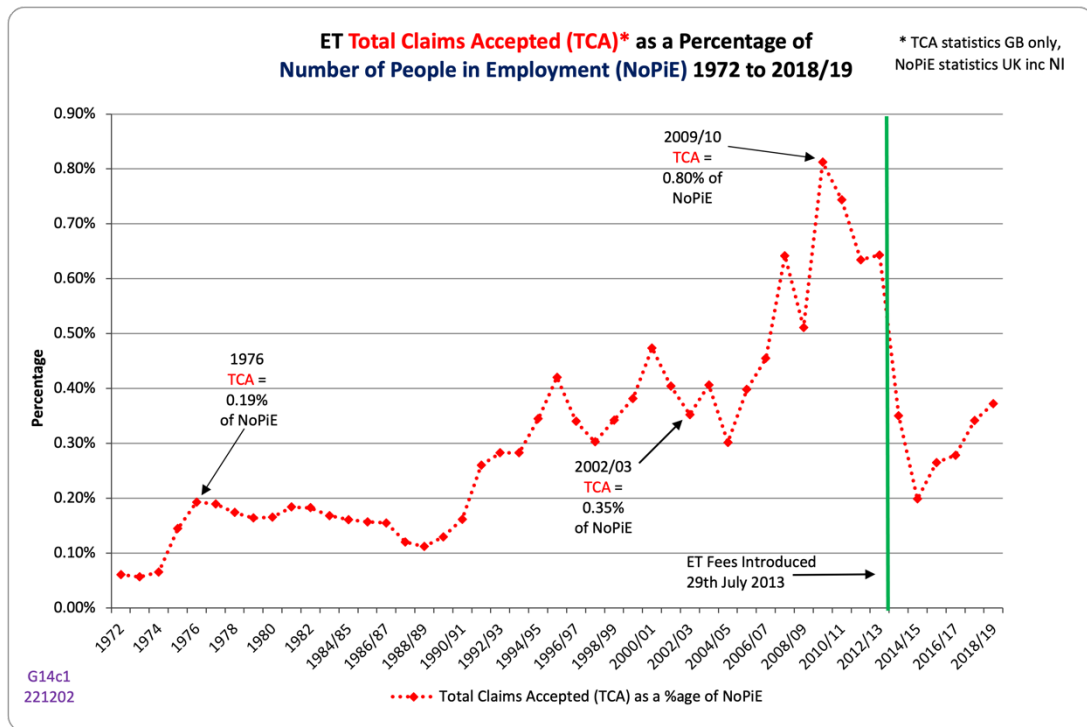


Between 1972 and the introduction of ET Fees in July 2013 these two datasets closely follow each other with a positive correlation statistic of 0.861 ($p=0.000$)⁴⁹. While it would be simplistic to assert that the rise in the ET TCA over this period is entirely related to a rising number of people in employment, it would seem reasonable to at least acknowledge that the 8 million increase in the number of people in employment may have, in some way, contributed to the growth in the TCA.

Another way to look at TCA vs number of people in employment is to look at the TCA as a percentage of the number of people in employment and this is shown below in Figure 5.3, which is based on the data shown in Appendix 6, Table A6.3.

⁴⁹ Correlation and p-value calculations for Figure 5.2 shown in Appendix 6, Table A6.15.

Figure 5.3



The TCA percentage of the number of people in employment submitting claims reached 0.19% in 1976 and stayed between 0.10% and 0.20% until 1990/91 when it steadily increased, reaching just over 0.80% in 2009/10. This equates to a range between 1 person in 1,000 (0.10%) and 8 people in 1,000 (0.80%). In 2007, the Gibbons Review noted that in 2002, just 0.4% of the working population in Great Britain submitted an employment claim (Gibbons, 2007, p.15). When the Gibbons Review was published in 2007, the quoted comment regarding the rate of 0.4% was still valid, having fallen back to 0.35% from 0.47% in 2000/01⁵⁰. However, by 2009/10 it had increased to 0.8%, a doubling

⁵⁰ The Gibbons Report (2007, p.15) gives *Acas Policy Discussion Paper: 03/2006, New rules, new challenges: Acas' role in the employment tribunal system* (Acas, 2006) as the source for the 0.4% figure for the TCA percentage of the number of people in employment submitting claims figure for 2002. However, the Acas policy paper only discusses the associated statistics in general terms, saying 'Britain's working population stood at around 26 million during the corresponding period [2002] and there were just under 100,000 tribunal applications' (Acas 2006, p.17), yielding a figure of 0.38% (100,000/26,000,000) which the Gibbons Report presumably rounds up to 0.4%. Acas provide no source for this information, which is unfortunate, because in the period in question, 2002, the Employment Tribunal Service give a TCA figure of 98,617 for 2002/03 and the ONS give a corresponding figures of 28,019,250 people in employment for the UK and 27,387,865 people in employment for GB, yielding 0.35% (TCA 98,617/NoPiE 28,019,250) and 0.36% (TCA 98,617/NoPiE 27,387,865) respectively as detailed in Appendix 7, Table A7.5.

in just 3 years. The increase in the TCA is not matched, or caused, by an increase in the number of people in employment. Superficially, this increase from 0.4% to 0.8% appears to indicate a sudden and sharp increase in workplace conflict. Or it would if the TCA was a valid proxy for workplace conflict. It should, perhaps, be noted that the TCA vs the number of people in employment comparison shown above, and which is quoted in the Gibbons Review (2007), is based on the underlying assumption that each claim in the TCA statistic equates to an individual. This assumption is challenged in detail in Chapter 6.

5.2.2 The Economic Cycle

The literature review also highlighted a potential relationship between the Economic Cycle and ET claims. Although the evidence for this relationship was mixed, with Brown et al., (1997) finding a relationship and Burgess et al., (2001) being less supportive of a relationship. However, Schulze-Marmeling (2013) noted that there did seem to be a relationship in the 2000s and this is reflected in Figure 5.4, below, which shows the TCA from 1972 against the GDP year-on-year growth percentage and Figure 5.5, below, which shows the TCA from 1972 against the number of people unemployed. The correlations, p-values and data sources for Figures 5.4 and 5.5 are shown in Table 5.1, below:

Figure 5.4

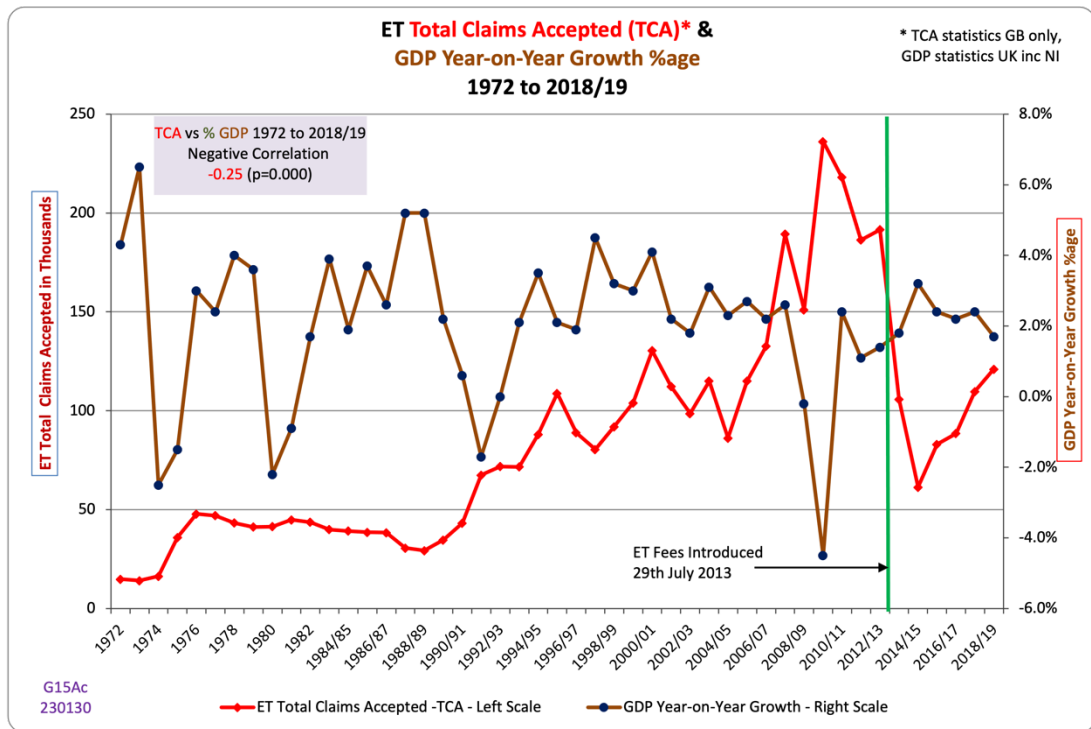
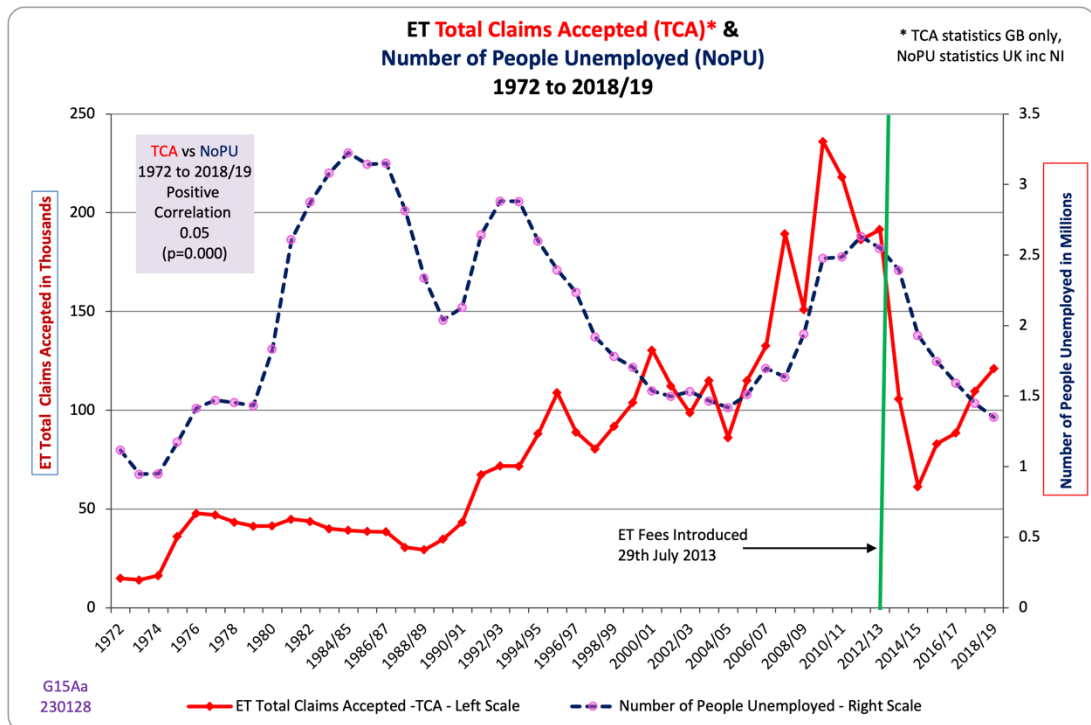


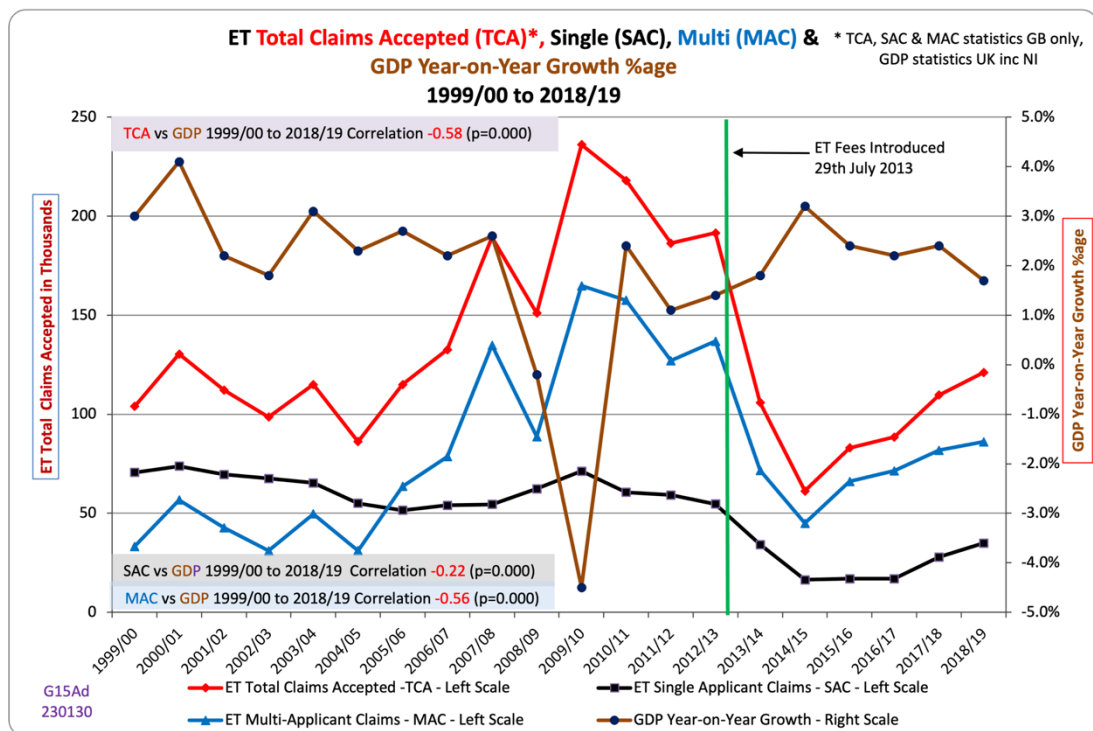
Figure 5.5



As can be seen in Figure 5.4 the TCA and GDP year on year growth percentage statistics have a negative correlation between 1972 and 2018/19 of 0.25 (p=0.000). Figure 5.5 shows that the TCA and number of people

unemployed statistics have a positive correlation between 1972 and 2018/19 of 0.05 ($p=0.000$). However, in Figure 5.4 the movement of the TCA and the GDP growth percentage in the 2000s does appear have a negative relationship, as GDP growth falls so the TCA increases, and similarly, in Figure 5.5 the movement of the TCA and the number of people unemployed statistics in the 2000s does appear to be positively related, or in other words as the number of people unemployed increases, so the TCA increases. This is confirmed in Figures 5.6 and 5.7, below, which show the relevant data from 1999/00 to 2018/19. The correlations, p-values and data sources for Figures 5.6 and 5.7 are shown in Table 5.1, below.

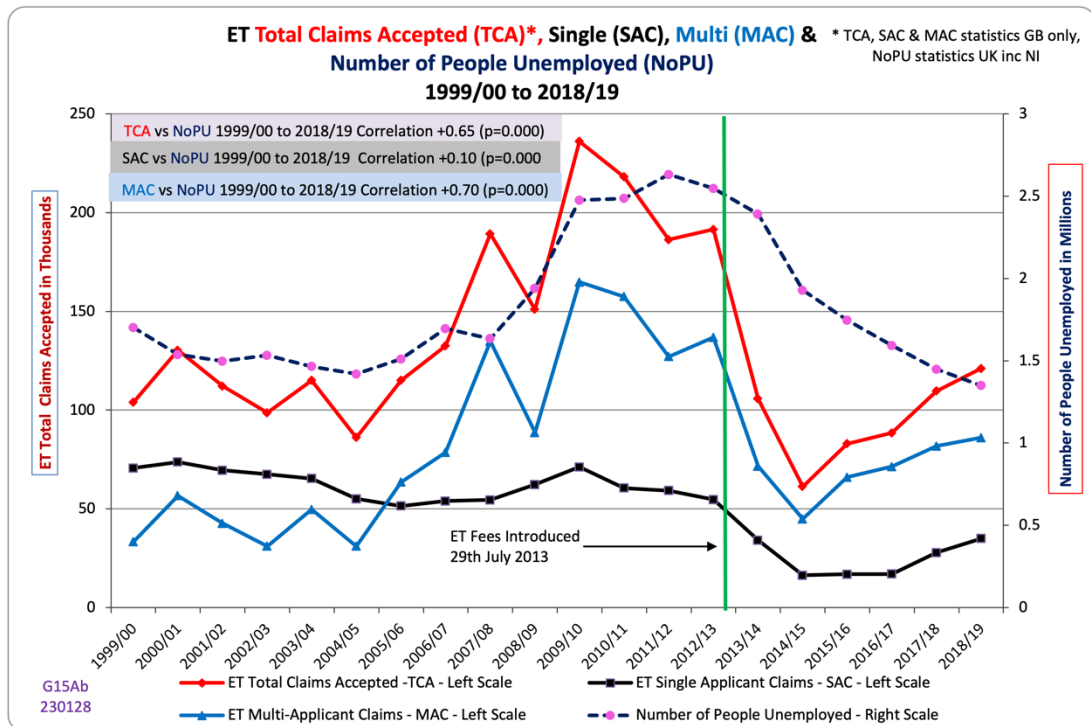
Figure 5.6



As can be seen in Figure 5.6, the TCA and GDP year-on-year growth percentage statistics for the period 1999/00 to 2018/19 appear to have a negative relationship. In other words, the TCA tends to rise as the GDP year-on-year percentage falls, particularly in 2009/10. This relationship is reflected in the negative correlation of 0.58 ($p=0.000$) between the TCA and GDP year-on-year percentage. Interestingly the associated MAC correlation is also a negative 0.56 ($p=0.000$), whereas the SAC correlation, whilst also negative, is lower, at 0.22 ($p=0.000$). There seems to be a negative

relationship between the ET TCA and the GDP year-on-year growth percentage, in the 2000s.

Figure 5.7



The correlation between the TCA and number of people unemployed for the period 1999/00 and 2018/19, as shown in Figure 5.7, is a positive correlation of 0.65 (p=0.000) and the associated MAC correlation is a positive 0.70 (p=0.000). Yet again, the SAC correlation, whilst positive, is lower, at 0.10 (p=0.000) compared to the TCA and MAC correlations. There seems to be a positive relationship between the ET TCA and the number of people unemployed percentage in the 2000s.

It could be said that these correlations, negative for the TCA/GDP relationship and positive for the TCA/Unemployed relationship do appear to support Schulze-Marmeling’s (2013) observations that there seems to be a relationship between the Economic Cycle and ET claims in the 2000s, driven by an increase in the complexity and amount of labour law (Schulze-Marmeling, 2013, p.153). However, it is, perhaps, worth noting that Latreille and Saundry (2015) implied that the relationship between Economic Cycle and ET claims in the 2000s was coincidental. By investigating MACs in detail,

particularly in light of the apparent differences in correlations shown by SACs and MACs to GDP and Unemployed, this thesis will, in Chapter 7, resolve this apparent relationship conundrum and add evidence to support that Latreille and Saundry (2015) were largely correct.

Table 5.1

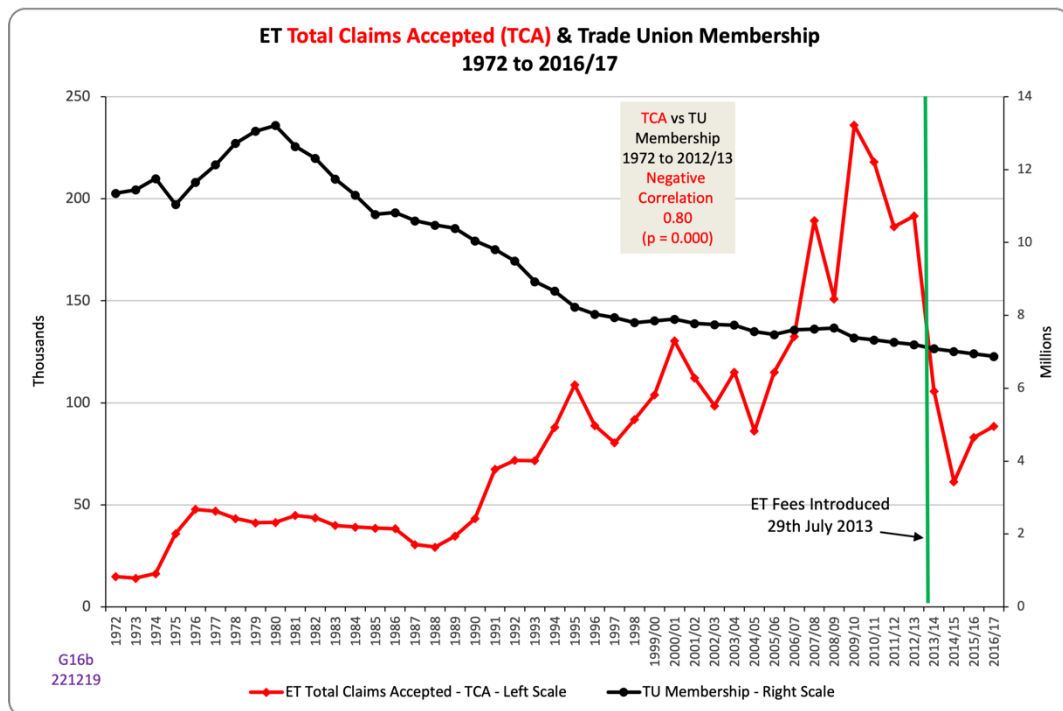
**Correlations between TCA, SAC, and MAC and
1) Year-on-Year GDP Growth %age
2) Number of People Unemployed**

1) Correlations between Year-on-Year Growth %age and				
		Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi- Applicant Claims (MACs)
	Period	A	B	C
1	Intentionally blank			
2	1972 to 2018/19	-0.25 (p=0.000) (Figure 5.4)		
3	Intentionally blank			
4	1999/00 to 2018/19	-0.58 (p=0.000) (Figure 5.6)	-0.22 (p=0.000) (Figure 5.6)	-0.56 (p=0.000) (Figure 5.6)
2) Correlations between Number of People Unemployed (NoPU) and				
		Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi- Applicant Claims (MACs)
		A	B	C
5	Intentionally blank			
6	1972 to 2018/19	0.05 (p=0.000) (Figure 5.5)		
7	Intentionally blank			
8	1999/00 to 2018/19	0.65 (p=0.000) (Figure 5.7)	0.10 (p=0.000) (Figure 5.7)	0.70 (p=0.000) (Figure 5.7)
Annual data for TCA shown in Chapter 3, Table 3.7, Employment Tribunal, Total Claims Accepted (TCA) by Year, 1972 to 2018/19 Annual data for SACs and MACs shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19 Annual Data for Year-on-Year GDP Growth %age shown in Appendix 7, Table A7.8, Gross Domestic Product Year-on-Year Growth Percentage (UK) 1972 to 2018/19 Annual Data for Number of People Unemployed shown in Appendix 7, Table A7.6, Number of People Unemployed (UK) (aged 16 and over) 1972 to 2018/19 Correlation and p-value calculations for Figures 5.4, 5.5, 5.6 and 5.7 shown in Appendix 6, Tables A6.16, A6.17, A6.18 and A6.19 respectively.				

5.2.3 Decline in Trade Union Membership

The literature review noted that another potential explanation for the increase in tribunal applications was the decline in trade union power (Shackleton, 2002; Renton, 2012). This explanation has, again, superficial appeal as can be seen in Figure 5.4, below, which plots the annual TCA against the annual trade union membership figures. Figure 5.8 is based on the TCA data shown in Chapter 3, Table 3.7 and the trade union membership data shown in Appendix 7, Table A7.1.

Figure 5.8



As can be seen in Figure 5.8, the TCA and trade union membership statistics have a negative correlation between 1972 and 2012/13 of 0.80 ($p=0.000$)⁵¹, confirming that as trade union membership declines the TCA rises. However, whatever relationship there is between the TCA and trade union membership, it does not adequately explain the rise in the TCA from 2000/01, as by then

⁵¹ Correlation and p-value calculations for Figure 5.8 shown in Appendix 6, Table A6.20.

the decline in the trade union membership had largely ceased, yet the increase in the TCA was just getting going.

5.2.4 Increase in Juridification

Of course, the simplest explanation for the increase in the TCA from 1972 is the increase in employment rights. The 'explosion' in employment rights (Dickens, 2000, p.69) in Great Britain has been through a process of more laws which rely on the victim complaining and thus juridification. However, as noted in the literature review, a more nuanced view would be that juridification has allowed trade unions to pursue collective rights (Colling, 2012) by 'contending the law' as part of tension around the negotiation of the optimal level beneficial constraints between business and labour (Streeck, 1997; Wright 2004). From a trade union point of view in some circumstances, such as equal pay, the increasing individualisation and juridification could be viewed as an opportunity to exploit and a route to clarify and flesh out parts of the employment contract.

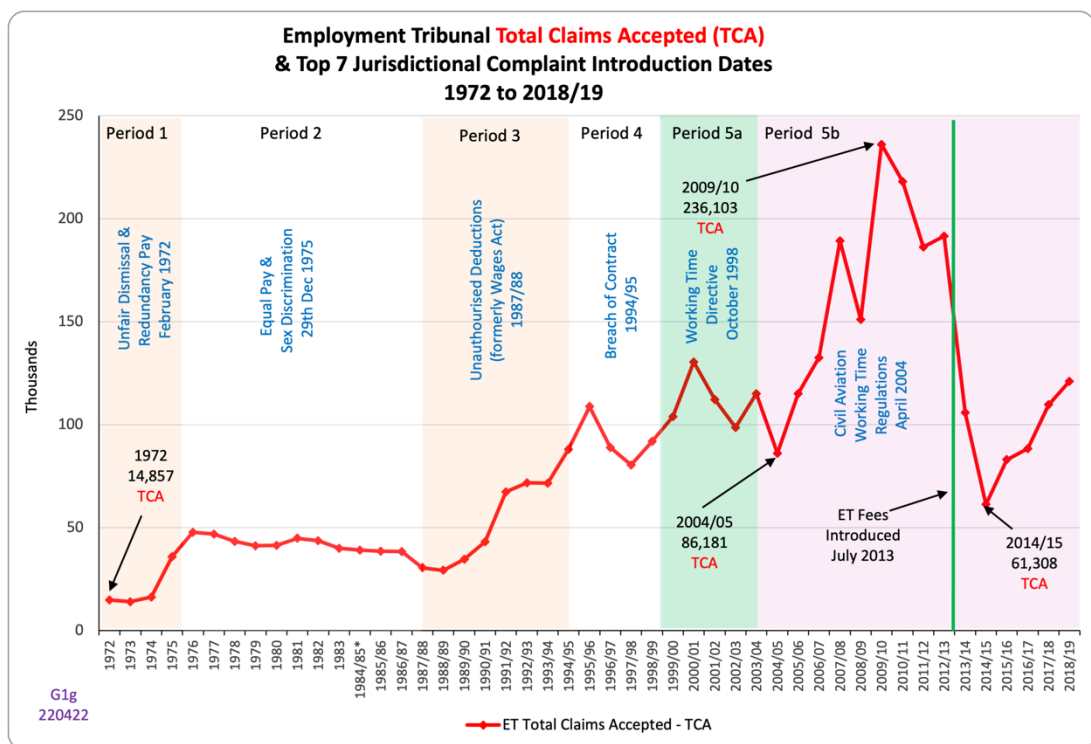
As identified in the literature review, the very scale of this juridification leads Shackleton (2002) to make the case that the very unpredictability and uncertainty of the law contributes to the 'continuing high levels of tribunal claims' because the level of change is hard for small employers in particular to keep up with (Shackleton, 2002, p.60). This seems to agree with the arguments put forward by Kitching (2006) and Jordan et al., (BIS, 2003), whereby constraints were viewed as particularly burdensome by smaller employers.

The increase in juridification has been incremental over time. Whilst the increase in 'juridification' is undoubtedly a very real long-term phenomenon, it does not adequately explain the sharp increase in the TCA between 2006/07 and 2009/10.

In the literature review it was noted that by 2004, according to the Department for Constitutional Affairs (DCA), ETs were responsible for 'nearly 80 jurisdictions' (DCA, 2004, p.44). However, as shown in Chapter 2, Table 2.3, just 7 jurisdictions, Unfair Dismissal, Unauthorised Deductions (formerly

Wages Act), Working Time Directive, Breach of Contract, Equal Pay, Sex Discrimination and Redundancy Pay accounted for 3,174,552 or 86% of the 3,696,889 jurisdictional complaints filed between 1998/99 and 2012/13. Given that these 7 jurisdictional complaints account for such a high proportion of the jurisdictional complaints filed it would, perhaps, be instructive to look at when they were introduced and compare the changes in the annual TCA following the introduction of the jurisdictional complaints. This is done in Figure 5.9, below:

Figure 5.9



Each of the 7 jurisdictional complaints is first shown in the period it was introduced. So, in period 1, Unfair Dismissal and Redundancy Pay are shown together as they were both ‘introduced’⁵² on the day that ETs began processing Unfair Dismissal jurisdictional claims, which was 28th February 1972 (*Employment Gazette*, June 1974, p.503). Period 2 shows Equal Pay and Sex

⁵² Under the *Redundancy Payments Act 1965*, Industrial Tribunals were already responsible for determining entitlement to a redundancy payment (MacMillan, 1999, p.34).

Discrimination together as, again, both were introduced on the same day, 29th December 1975 (*Employment Gazette*, May 1977, p.457). The periods are incremental as Unfair Dismissal and Redundancy Pay both remain in effect when Equal Pay and Sex Discrimination are introduced. Period 3 shows the Unauthorised Deduction jurisdiction, which was formerly known as the Wages Act when it was introduced in the 1987/88 ET year (*Employment Gazette*, May 1989, p.258). Period 4 shows the Breach of Contract jurisdiction which was introduced in the 1994/95 ET year (*Labour Market Trends*, July 1996, p.306). Period 5 is broken into two parts, 5a and 5b, as the Working Time Directive is introduced in stages. In Period 5a, the Working Time Directive, although introduced in October 1998 (Wallington, 2015, p.1,260), does not apply to the airline industry until the introduction of the Civil Aviation Working Time Regulations (CAWTR) in April 2004 (Wallington, 2015, p.1,478) and this is shown as Period 5b⁵³.

Figure 5.9 shows that the TCA rises in Period 1, following the introduction of Unfair Dismissal and Redundancy Pay jurisdictional complaints, rises again in Period 3, following the introduction of Unauthorised Deductions and rises sharply in Period 5b, following the introduction of Civil Aviation Working Time Regulations. Superficially, the introduction of the Working Time Directive to the airline industry via the Civil Aviation Working Time Regulations in April 2004 almost exactly mirrors the rise in the TCA from 2004/05 and potentially explains the sharp increase.

So, if the growth in the TCA between 2006/07 and 2009/10 is not adequately explained by the growth in the number of people in employment or the decline

⁵³ When the Working Time Directive (WTD) was introduced in October 1998, via the Working Time Regulations, responsibility for enforcement was split between the Health and Safety Executive (HSE), the civil courts and the Employment Tribunal. The HSE has responsibility for ensuring compliance with the regulations regarding rest periods and the 48-hour working week. The HSE's powers of enforcement are identical to those possessed by its Inspectors under the Health and Safety at Work Act. The civil courts are responsible for adjudicating breach of contract of employment disputes, such as disagreement over the 48-hour working week limit opt out clause. The ET is responsible for rest periods and holiday pay breaches and enforcement is by submitting a claim to an ET alleging that the employer has failed to comply with the relevant provisions of the WTD (Emir, 2014, p.222). In this thesis all reference to WTD claims refers only to claims submitted to an ET.

in trade union membership what is responsible for the increase? Is the economic cycle or is it the increase in juridification, as in the introduction of the Working Time Directive to the airline industry? Once again it should be noted that the above analysis around the introduction of the Working Time Directive is based on the underlying assumption that each claim in the TCA statistic equates to an individual. This assumption is challenged in detail in Chapter 6.

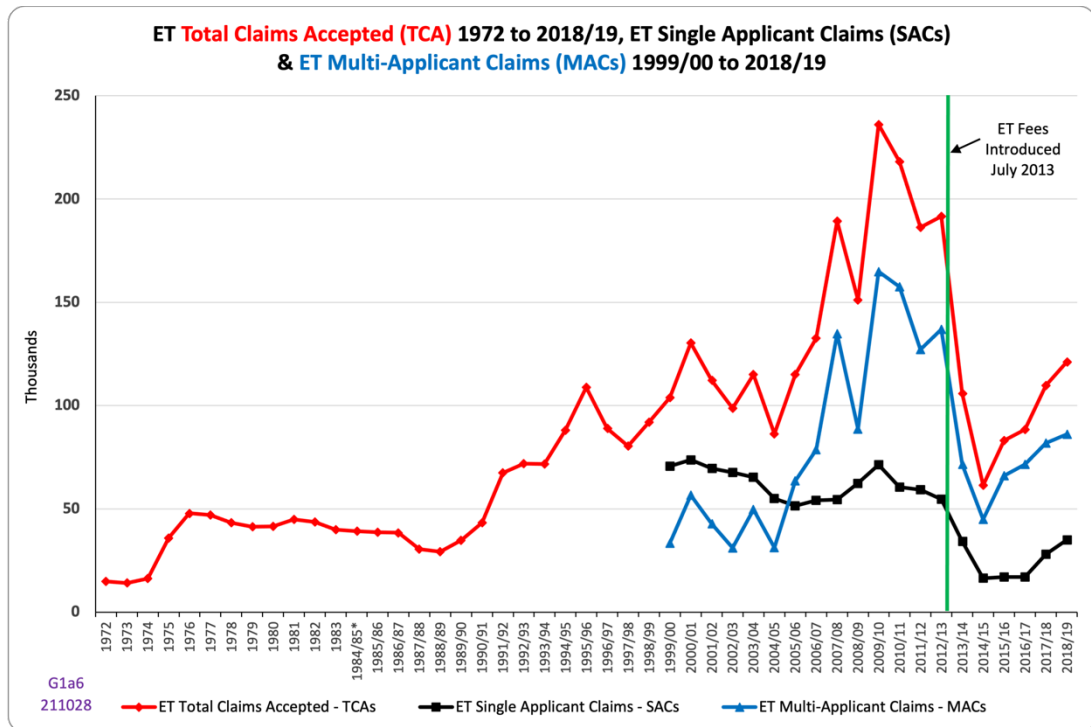
So far in this section the discussion has focused on the TCA. However, the TCA is an agglomeration of two subsets, SACs and MACs and it is to these that the discussion now turns.

5.3 How has the type of claim changed? Single Applicant Claims (SACs) v Multi-Applicant Claims (MACs)

In the literature review it was noted that the literature either focused on the TCA level (Corby, 2015; Kirk, 2018) or the individual claim level (Busby and McDermont, 2010) rather than the SAC and MAC intermediate level. This section begins the analysis of how the two types of claims are different, how their relationship has changed over time and how this has changed the TCA. Understanding this 'missing' intermediate level is important because it will fill in what appears to be a significant gap in our knowledge of ETs.

The statistical breakdown between SACs and MACs is only available from 1999/00 (Lord and Redfern, 2014, p.15) and this information is shown in Figure 5.10, below, which is based on the data in Chapter 3, Table 3.8. Figure 5.10 shows that from 2005/06 MACs (blue line) became the largest part of the TCA compared to SACs. This fact alone highlights that a greater understanding of MACs is an important subject for investigation because they play a key part in understanding disputes within the workplace. Unpicking the agglomerated data is important to give a clearer understanding of the nature of workplace conflict within Great Britain. This chapter will now move on to investigate MACs further, in order to give the reader a clearer understanding of the nature of conflict within the workplace.

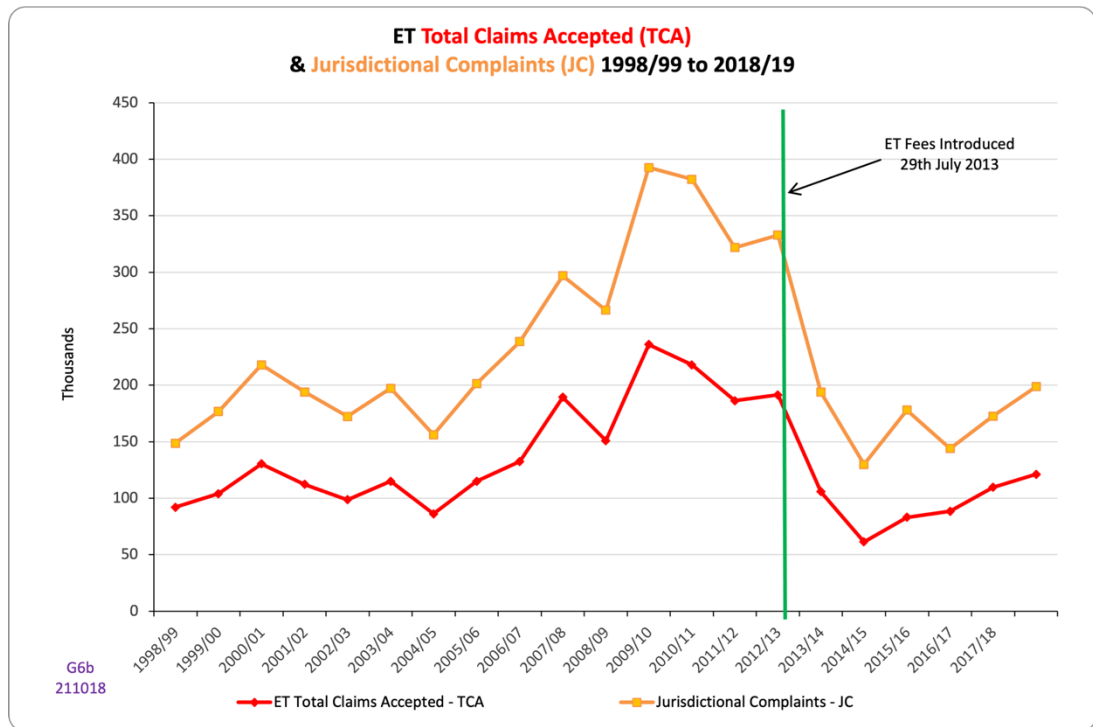
Figure 5.10



5.3.1 Understanding workplace conflict that passes through the Employment Tribunal

Employment disputes are often multi-jurisdictional and this can be seen by reviewing the nature of the claims brought before the ET. Each claim accepted by the ET may contain just one jurisdictional complaint or several jurisdictional complaints, for example a claim can be made perfectly legitimately containing both the Equal Pay and Sex Discrimination jurisdictions. This means that there will always be more jurisdictional complaints than claims and therefore the total jurisdictional complaints will always be higher than the TCA. This can be seen in Figure 5.11, below, which is based on the data in Chapter 3, Table 3.8, above.

Figure 5.11



The jurisdictional complaints (orange) line is higher than the TCA (red) line but follows a similar pattern. This is not surprising as jurisdictional complaints are an indirect function of the TCA. The annual average number of jurisdictional complaints per claim ranges from a low of 1.569 (296,920/189,303) in 2007/08 to a high of 2.145 (178,079/83,081) in 2015/16, although for 15 of the 21 years between 1998/99 to 2018/19 the annual average of jurisdictional complaints per claim is in the range 1.60 to 1.79. The annual average jurisdictional complaints per claim from 1998/9 to 2018/19 are shown in Table 5.2, below:

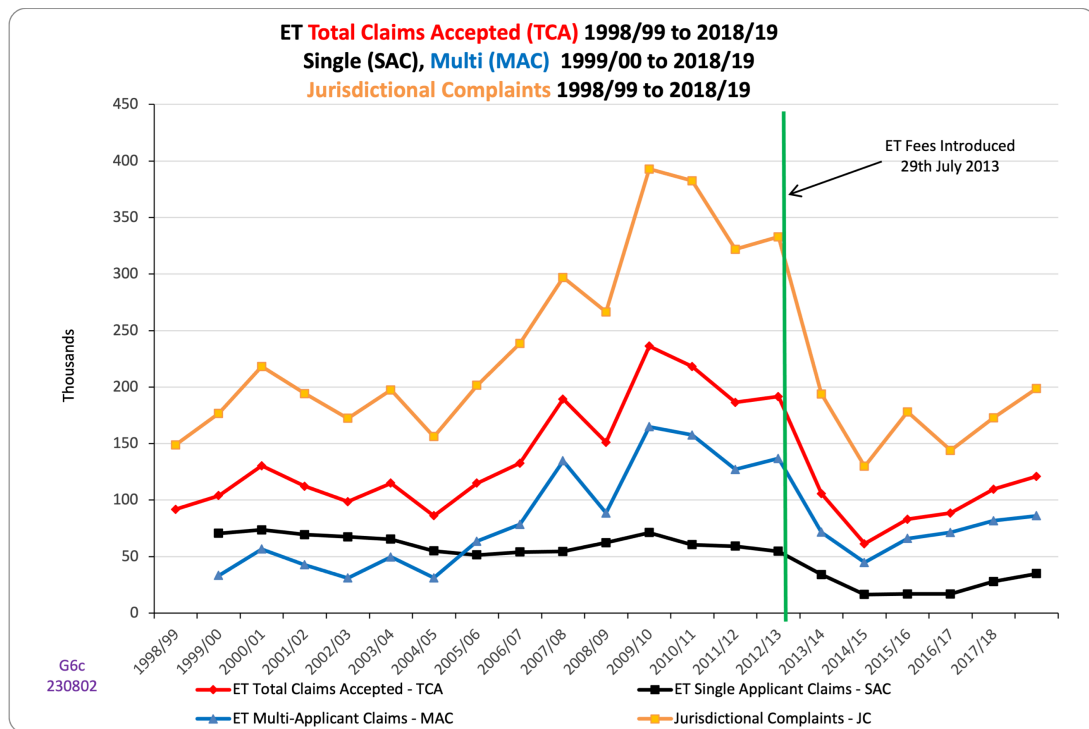
Table 5.2

**Annual Average Jurisdictional Complaints per Claim
1998/99 to 2018/19**

Year	Total Claims Accepted (TCA)	Jurisdictional Complaints (JC)	Average JC per Claim
	A	B	C=B/A
1998/99	91,913	148,771	1.62
1999/00	103,935	176,749	1.70
2000/01	130,408	218,101	1.67
2001/02	112,227	194,120	1.73
2002/03	98,617	172,322	1.75
2003/04	115,042	197,365	1.72
2004/05	86,181	156,081	1.81
2005/06	115,039	201,514	1.75
2006/07	132,577	238,546	1.80
2007/08	189,303	296,920	1.57
2008/09	151,028	266,542	1.76
2009/10	236,103	392,777	1.66
2010/11	218,096	382,386	1.75
2011/12	186,331	321,836	1.73
2012/13	191,541	332,859	1.74
2013/14	105,803	193,968	1.83
2014/15	61,308	129,966	2.12
2015/16	83,031	178,079	2.14
2016/17	88,476	143,946	1.63
2017/18	109,698	172,731	1.57
2018/19	121,075	198,715	1.64
√220426			
Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19			

The jurisdictional complaints information in Table 5.2 is provided by the Ministry of Justice (MoJ), and its predecessors and is not split by SAC and MAC, so any analysis of the jurisdictional complaints relationship to SACs or MACs will have to be done by comparing the SAC and MAC data against the TCA and jurisdictional complaints data (see Figure 5.12, below):

Figure 5.12



As can be seen the MAC (blue) line closely mirrors the rise and fall of the TCA (red) line and the jurisdictional complaints (orange) line while the SAC (black) line shows a slight decline over the period. It can also be seen that from 2005/06 MACs account for two-thirds of the TCA, so whatever is causing the rise and fall in MACs over this period is largely responsible for the concurrent rise and fall in the TCA, which highlights that there is a clear need to understand more about the under researched MACs.

It should be noted that the volume of SACs during this period shows a very gentle decline until the introduction of ET Fees in July 2013, suggesting that there is very little annual change over the period 1999/00 to 2012/13 in the volume and type of disputes that generate SACs. The same cannot be said for the types of disputes that generate MACs. The number of MAC claims filed in 2009/10 was 164,823, which represents a 5-fold increase compared to the 33,000 MAC claims filed in 1999/00. This is apparently a profound change and potentially represents a major change in the types of workplace conflict that the TCA primarily represents. It should, perhaps, again be noted that this observation regarding what types of workplace conflict the TCA represents is based on the underlying assumption that each claim in the TCA statistic

equates to an individual (see, for example, Saundry and Dix, 2014; Corby, 2015). This assumption is challenged in detail in Chapter 6.

The annual SAC and MAC figures and associated percentages are shown in Table 5.3, below:

Table 5.3

Breakdown of Total Claims Accepted (TCA) into Single Applicant Claims (SAC) and Multi-Applicant Claims (MAC) by number and %age 1999/00 to 2018/19

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	SAC as %age of TCA	Multi-Applicant Claims (MACs)	MAC as %age of TCA
	A	B	C=B/A	D	E=D/A
1999/00	103,935	70,600	68%	33,300	32%
2000/01	130,408	73,726	57%	56,682	43%
2001/02	112,227	69,553	62%	42,674	38%
2002/03	98,617	67,527	68%	31,090	32%
2003/04	115,042	65,364	57%	49,678	43%
2004/05	86,181	55,055	64%	31,126	36%
2005/06	115,039	51,496	45%	63,543	55%
2006/07	132,577	54,100	41%	78,600	59%
2007/08	189,303	54,500	29%	134,800	71%
2008/09	151,028	62,370	41%	88,658	59%
2009/10	236,103	71,280	30%	164,823	70%
2010/11	218,096	60,591	28%	157,505	72%
2011/12	186,331	59,247	32%	127,084	68%
2012/13	191,541	54,704	29%	136,837	71%
2013/14	105,803	34,219	32%	71,584	68%
2014/15	61,308	16,420	27%	44,888	73%
2015/16	83,031	16,935	20%	66,096	80%
2016/17	88,476	17,005	19%	71,471	81%
2017/18	109,698	27,916	25%	81,782	75%
2018/19	121,075	34,974	29%	86,101	71%
√210825					
Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19					

This section has extended our understanding of the previously ignored intermediate level, the SACs and MACs and highlighted how the relationship between SACs and MACs, has changed over time and how this has changed the TCA. Understanding this ‘missing’ intermediate level is important because it will contribute to our understanding of ETs and in particular MACs. From the above it is evident that MACs play a significant role in ET data, albeit a very different one to SACs.

5.3.2 Which Jurisdictional Complaints are associated with Multi-Applicant Claims (MACs)?

The previous section highlights that the relationship between SACs, MACs and the TCA has changed. The TCA was primarily a reflection of SACs but is now primarily a reflection of MACs. This change also signifies a change in the nature of workplace conflict that the ET and TCA potentially represent. The next section is an exploration of the ET jurisdictional complaints in an attempt to tease out which jurisdictional complaints are driving the rise of MACs and ultimately what these MACs tell us about the nature of the employment disputes before ETs, which the literature review highlighted as a significant gap in our knowledge of ETs (Hand J., 2010; Deakin et al., 2015; Saundry and Dix, 2014).

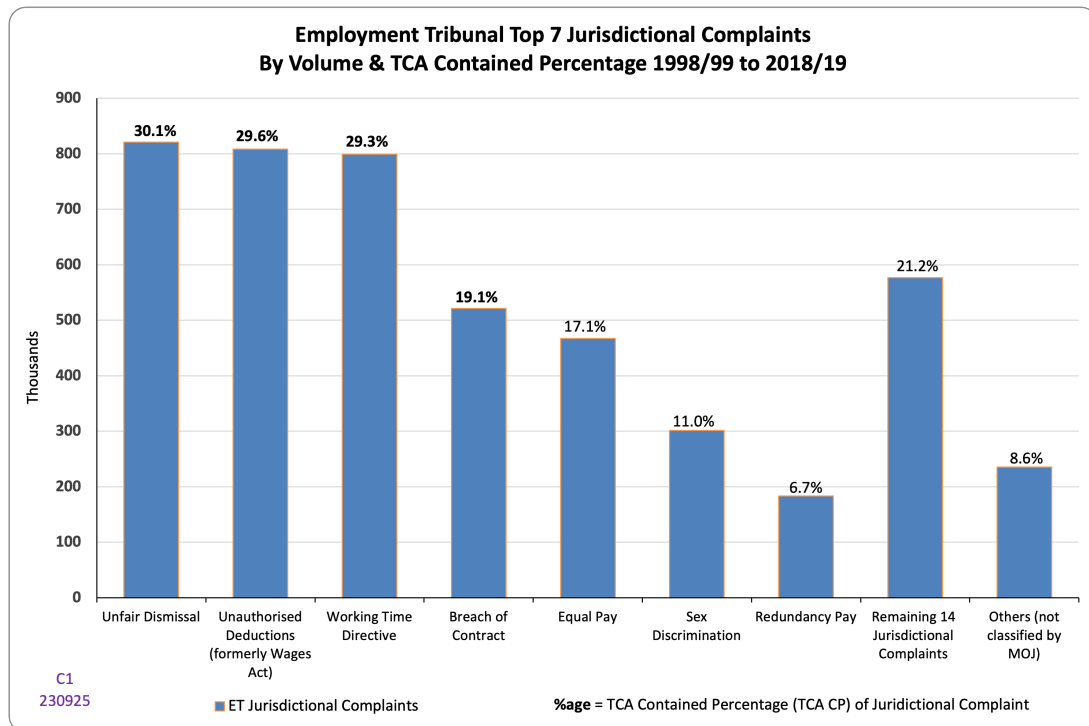
As outlined in the literature review, although the TCA and jurisdictional complaints are closely correlated there is a frustrating disconnect between them (Dix et al., 2009). The problem is that an ET Claim can be made up of more than one jurisdictional complaint. Because of this, in terms of these findings, it is only possible to say with certainty what percentage of the annual TCA contained a particular jurisdictional complaint. For example, 24.29% of the 236,103 TCA in 2009/10, contained an Unfair Dismissal jurisdictional complaint ($57,350/236,103$)⁵⁴. Any TCA analysis beyond a single jurisdictional complaint is difficult, because the jurisdictional complaints overlap in unknown proportions and therefore the presentation of data beyond a single jurisdictional complaint, potentially, presents a misleading version of the nature of workplace conflict being presented at ETs.

However, using the percentage of the TCA *contained* relationship does open the possibility of using the jurisdictional complaint breakdown in a meaningful way. What follows is an attempt to tentatively identify the relationship between the TCA, jurisdictional complaints, SACs and MACs.

⁵⁴ As shown in Appendix 6, Table A6.9b, Jurisdictional Complaint as %age of Total Claims Accepted (TCA) containing that JC 2005/06 to 2011/12.

The top 7 jurisdictional complaints by volume between 1998/99 to 2018/19 and the TCA contained percentage the volume represents are shown in Figure 5.13, below. The figure is based on the data in Appendix 6, Table A6.11a.

Figure 5.13



The jurisdictional complaint information shown above in Figure 5.13 is ranked by number from highest to lowest number of jurisdictional complaint claims from 1998/99 to 2018/19, with Unfair Dismissal ranked number 1, with 821,194 claims over the period, enabling the statement to be made that 30.11% (821,194/2,727,732) of TCA claims over the period contained an Unfair Dismissal jurisdictional complaint.

The larger the percentage of TCA containing a jurisdictional complaint then the jurisdictional complaints potential for impact on the TCA is (by definition) greater. The 30.11% of the TCA containing an Unfair Dismissal jurisdictional complaint will have more impact on the TCA than the 6.72% (183,374/2,727,732) of the TCA containing a Redundancy Pay jurisdictional complaint. Beyond the seven top ranked jurisdictional complaints listed in Appendix 6, Table A6.11a, the number of claims per jurisdiction drops away, for example, the next ranked jurisdictional complaint, Disability Discrimination,

has 113,140 jurisdictional complaints representing 4.15% (113,140/2,727,732) of the TCA and is unlikely to greatly impact the TCA. Disability Discrimination and the other 13 remaining jurisdictional complaints that make up the 21 jurisdictions for which the MoJ publishes separate data, as noted in Chapter 3, Section 3.7, Table 3.9, above, are shown as 'Remaining 14 Jurisdictional Complaints' in Figure 5.13. The summary jurisdictional complaint 'Others' is shown in Figure 5.13 but similarly excluded from subsequent analysis despite ranking 7th overall in Appendix 6, Table A6.11a, because it is already a summary of the many other jurisdictional complaints for which the MoJ does not individually release data, again as noted in Chapter 3, Section 3.7, above.

For clarity, the annual number of claims and the TCA contained percentage of the seven main jurisdictional complaints, Unfair Dismissal, Unauthorised Deductions, Working Time Directive, Breach of Contract, Equal Pay, Sex Discrimination and Redundancy Pay are shown below in Figures 5.14, Jurisdictional Complaints and 5.15, TCA Contained Percentage respectively. The annual data for Figures 5.14 and 5.15 is shown in Appendix 6, Tables 6.6a to 6.6c and Tables A6.9a to A6.9c respectively.

Figure 5.14

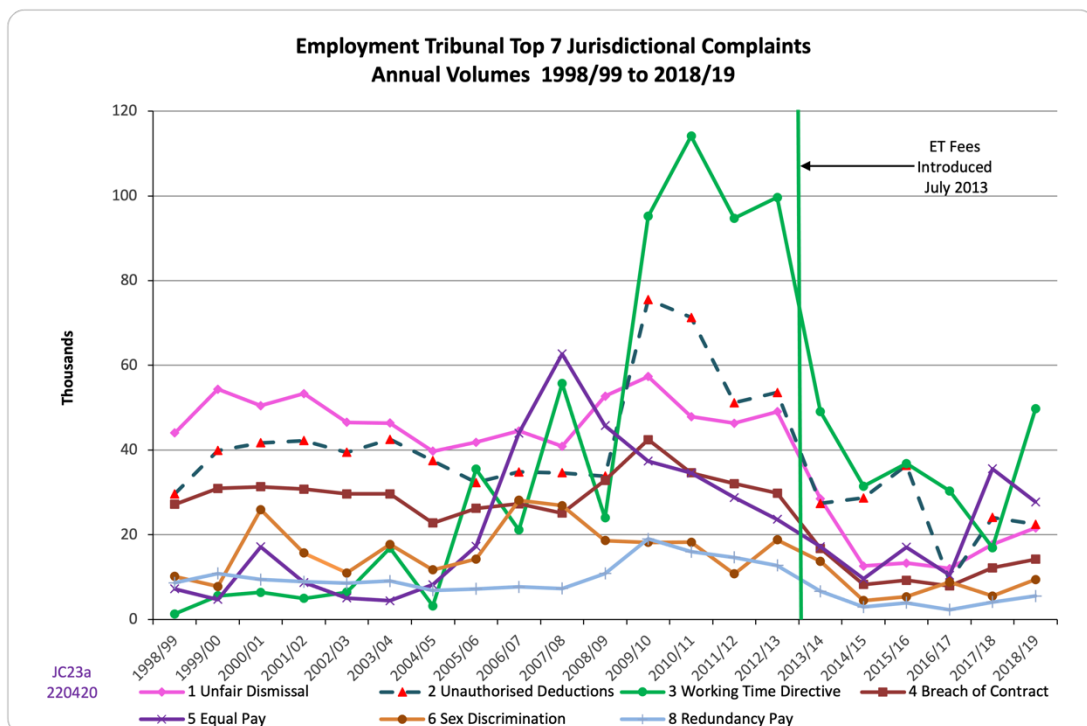
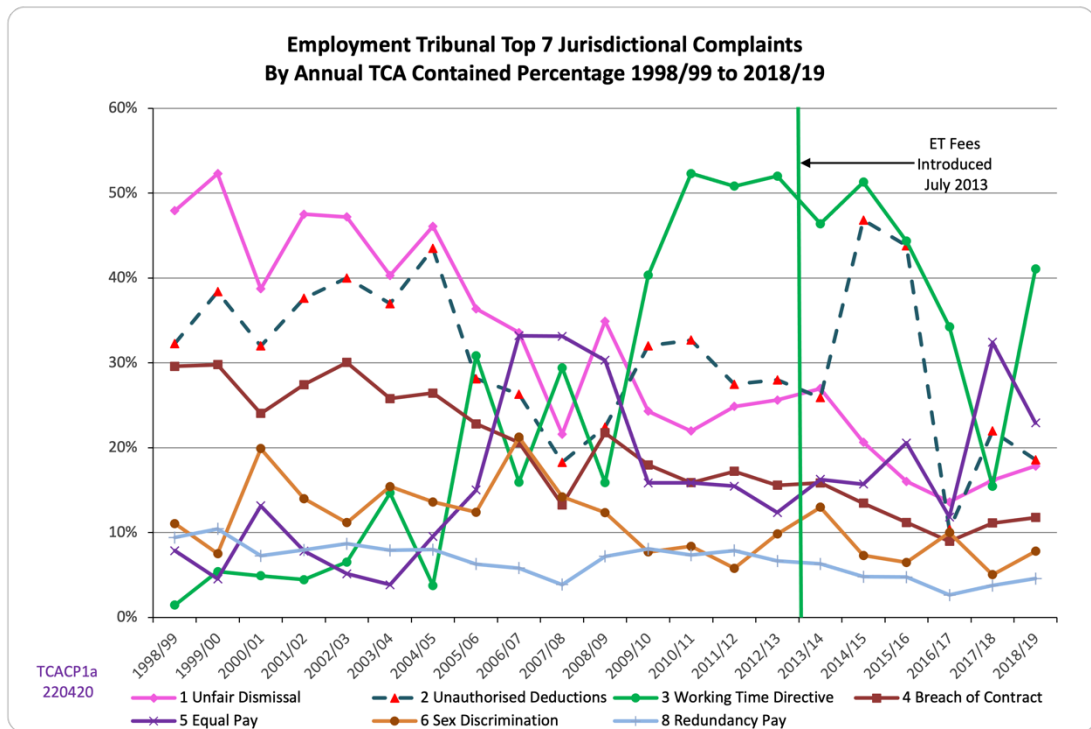


Figure 5.15



These two Figures show how the composition of the claims has changed over time. For example, in Figure 5.14, the number of Unfair Dismissal claims (pink line) is consistently between the 40,000 and 60,000 lines until the introduction of ET Fees in 2013/14, yet in Figure 5.15, the Unfair Dismissal TCA contained percentage (pink line) steadily declines from over 52% in 1999/00 to 25.6% in 2012/13, just prior to the introduction of ET Fees. This shows that it is not the number of Unfair Dismissal claims that has changed but the jurisdictional composition of the TCA and suggests that perhaps there may be merit in the argument that increased juridification is a cause of the increase in conflict in the workplace, as argued by Dickens (2000, p.69) and Deakin and Morris (2005) in Heery (2011).

This thesis will now proceed to consider the notion of juridification in more detail. Having demonstrated that the way data are used can change our understanding of the nature of workplace conflict presented to the ETs, the thesis now moves on to tease out the relationship between the TCA/SAC/MAC and the individual jurisdictional complaints over the period from 1998/99 to 2018/19. This important understanding of the intermediate level will then highlight the underlying causes of the growth in the TCA and offer a more

nuanced understanding of juridification as a main driver of the increase in workplace conflict. The focus will be on the seven main jurisdictional complaints⁵⁵.

Each of the seven jurisdictional complaints claims data will be compared against the TCA claims data for the period 1998/99 to 2018/19 and the SAC and MAC claims data for the period 1999/00 to 2018/19, and the resulting correlation will be calculated. A graph and associated correlation will be shown for each jurisdictional complaint and following the last graph, Figure 5.22, a table containing the correlation data for all seven jurisdictional complaints is presented for comparison purposes.

The value of this approach is that the intermediate level relationship between SACs and MACs and the different types of jurisdictions that they may represent is apparent, possibly for the first time. This focus on the intermediate level contrasts with the current literature, which as noted in the literature review, focuses on either the individual SAC level (Busby and McDermont, 2010), or the TCA level (Corby, 2015).

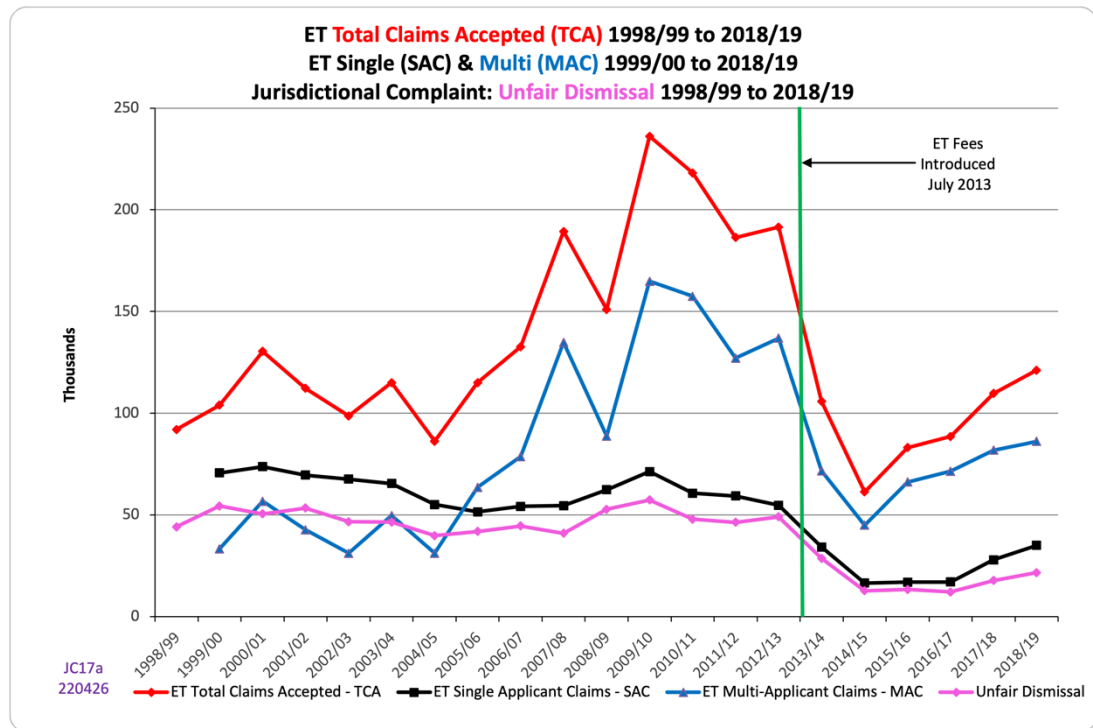
The correlations produce three jurisdictional complaint relationship outcomes, firstly a relationship to SACs, secondly, a relationship to MACs, and, finally, an inconclusive relationship with both SACs and MACs. The term inconclusive is used for the purposes of this thesis to highlight that the jurisdictional complaint relationship is not clearly definitive to either SACs or MACs. The jurisdictional complaints that demonstrate a relationship to SACs are presented first, followed by the jurisdictional complaints that demonstrate a relationship to MACs and lastly the jurisdictional complaints that have an inconclusive relationship with both SACs and MACs. Understanding this 'missing' intermediate level is crucial because it will fill in what appears to be a significant gap in our knowledge of ETs and the nature of the claims brought.

⁵⁵ The same information as shown for the seven jurisdictional complaints is also shown for all 22 jurisdictional complaints in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19 and in Appendix 6, Figures A6.1 to A6.22.

5.3.2.1 Unfair Dismissal

Figure 5.16, below, shows the TCA, SAC and MAC information as before but now includes the Unfair Dismissal jurisdictional complaint information.

Figure 5.16

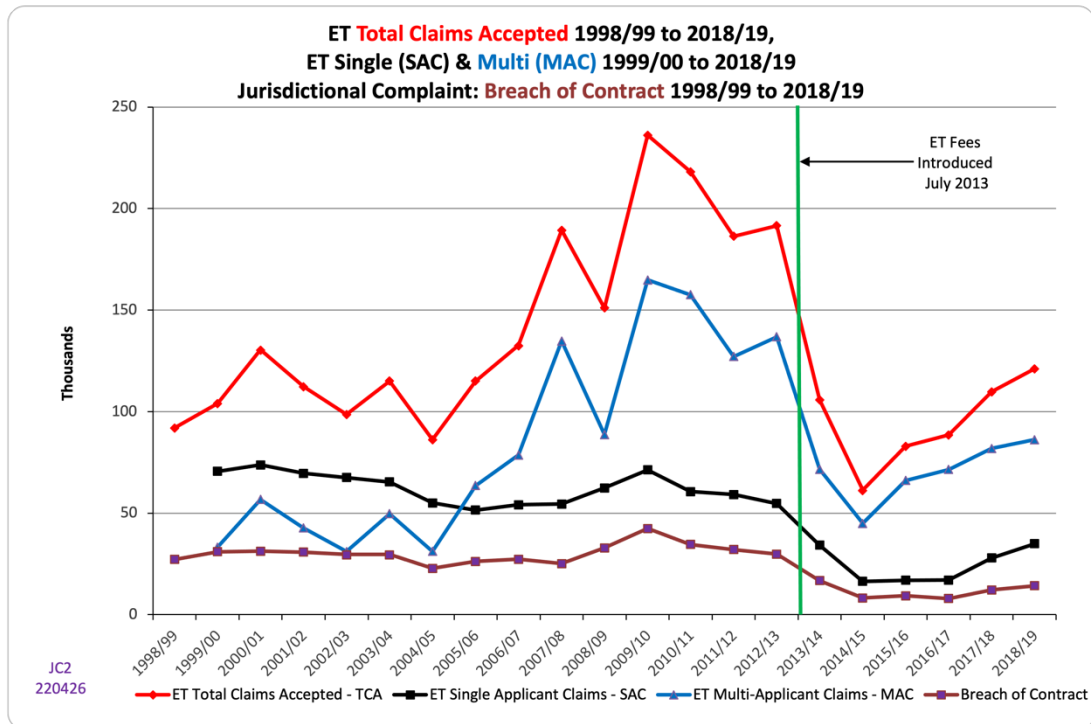


The first point to note is that the Unfair Dismissal line and the SAC line follow very similar trajectories, while the TCA and MAC lines do not appear to be closely related to the Unfair Dismissal line, indicating that Unfair Dismissal jurisdictional complaints are primarily brought to the ET by individuals as SACs. This is borne out by a correlation for the period 1999/00 to 2018/19 of 0.97 ($p=0.000$) between the Unfair Dismissal jurisdictional complaint and SACs compared to a correlation of 0.22 ($p=0.000$) between the Unfair Dismissal jurisdictional complaint and MACs which are both shown in Table 5.4, below. This relationship between Unfair Dismissal and SACs helps improve our knowledge of the previously ignored intermediate level relationship between SACs, MACs and the Jurisdictional Complaints.

5.3.2.2 Breach of Contract

If we look at Breach of Contract, we see similar trends, as Figure 5.17, below, shows. The TCA, SAC and MAC information is as shown as before, but the Figure now includes the Breach of Contract jurisdictional complaint information.

Figure 5.17

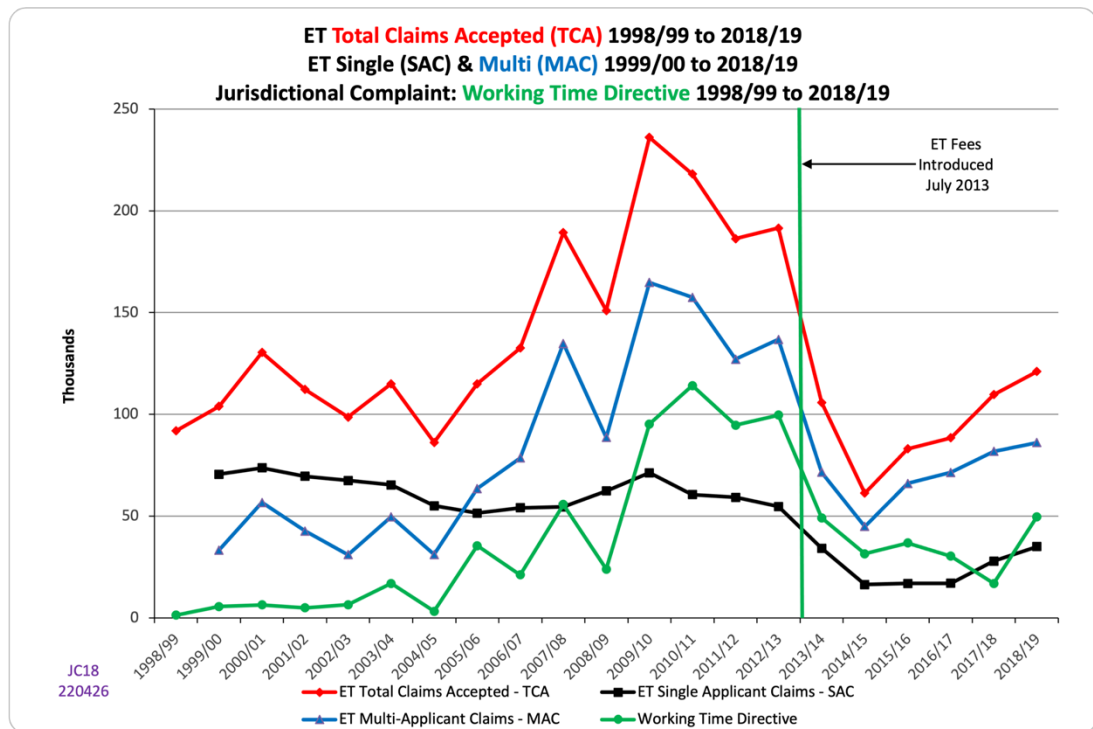


Visually the Breach of Contract line also follows the SAC line and the correlations in Table 5.4, below, support this with a correlation for the period 1999/00 to 2018/19 of 0.94 (p=0.000) between the Breach of Contract jurisdictional complaint and SACs compared to a correlation of 0.37 (p=0.000) between the Breach of Contract jurisdictional complaint and MACs. From this, it would seem that Breach of Contract jurisdictional complaints are primarily brought to the ET by individuals as SACs, again expanding our knowledge of the previously ignored intermediate level relationship between SACs, MACs and the Jurisdictional Complaints.

5.3.2.3 Working Time Directive

However, the Working Time Directive jurisdictional complaint shows a different relationship to the Unfair Dismissal and Breach of Contract jurisdictional complaints with the TCA, SAC and MAC information as is shown in Figure 5.18, below:

Figure 5.18



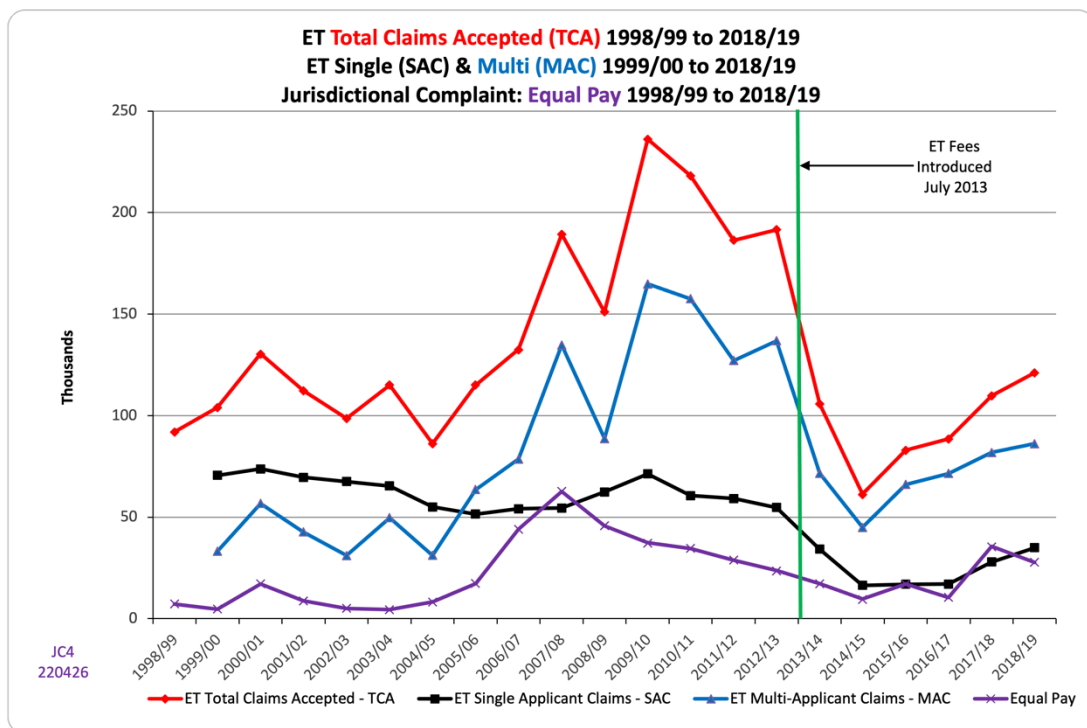
In contrast to Unfair Dismissal and Breach of Contract jurisdictional complaint lines seen above, the Working Time Directive line, the TCA line and the MAC line follow very similar trajectories, and this borne out by the correlations for the period 1999/00 to 2018/19 of 0.01 ($p=0.232$) between the Working Time Directive jurisdictional complaint and SACs, a correlation of 0.91 ($p=0.000$) between the Working Time Directive jurisdictional complaint and MACs and a correlation of 0.80 ($p=0.000$) between the TCA and the Working Time Directive jurisdictional complaint, all of which are shown in Table 5.4, below. This finding suggests that MACs and the TCA both have a strong relationship with the Working Time Directive jurisdictional complaint. From this, it would seem that Working Time Directive jurisdictional complaints, which are one of the most common claims brought, with a TCA contained percentage of over 50% in the

three years from 2009/10, are primarily brought to the ET by individuals in 'conjunction' with other individuals as MACs, again enhancing our knowledge of the previously ignored intermediate level relationship between SACs, MACs and the Jurisdictional Complaints. This more detailed understanding of the intermediate level indicates that there are important differences in the development of increased juridification, which mean there needs to be a nuanced discussion in this respect.

5.3.2.4 Equal Pay

The Equal Pay jurisdictional complaint shows similar trends to the Working Time Directive jurisdictional complaint as Figure 5.19, below, shows:

Figure 5.19



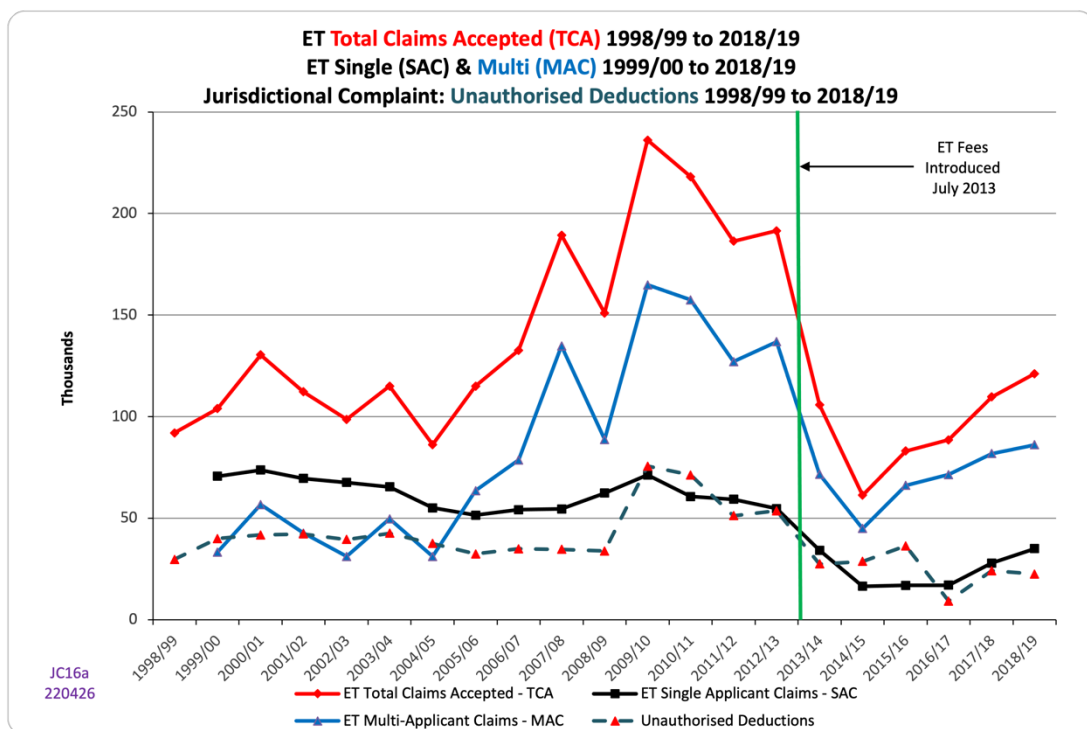
Visually the Equal Pay line appears to have aspects of the TCA, MAC and the SAC lines. However, this is not borne out by the correlations for the period 1999/00 to 2018/19. There is a correlation of 0.06 ($p=0.000$) between the Equal Pay jurisdictional complaint and SACs compared to a correlation of 0.72 ($p=0.000$) between the Equal Pay jurisdictional complaint and MACs both of which are shown in Table 5.4, below. From this, it would seem that Equal Pay jurisdictional complaints are more likely to be brought to the ET by individuals

in 'conjunction' with other individuals as MACs, again furthering our knowledge of the previously ignored intermediate level relationship between SACs, MACs and the Jurisdictional Complaints.

5.3.2.5 Unauthorised Deductions

Unlike the previous four jurisdictional complaints, the Unauthorised Deductions jurisdictional complaint shows similarities to the TCA, SAC and MAC lines and this can be seen in Figure 5.20, below:

Figure 5.20

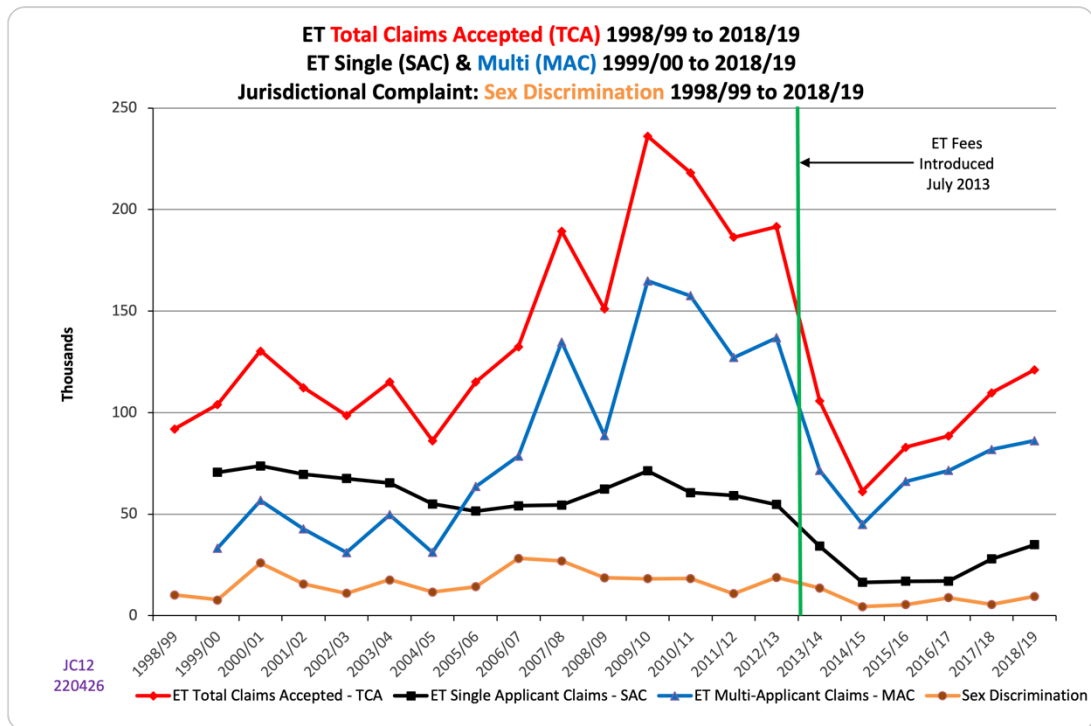


The first point to note is that the Unauthorised Deductions line visually has aspects of the TCA, SAC and MAC lines indicating that this jurisdictional complaint has an inconclusive relationship with both SACs and MACs and this is shown by the correlations for the period 1999/00 to 2018/19 of 0.63 (p=0.002) between the Unauthorised Deductions jurisdictional complaint and SACs compared to a correlation of 0.58 (p=0.000) between the Unauthorised Deductions jurisdictional complaint and MACs. The Unauthorised Deductions jurisdictional complaint is equally associated with SACs and MACs. Both correlations are shown in Table 5.4, below.

5.3.2.6 Sex Discrimination

Unlike the Unauthorised Deductions jurisdictional complaint, the Sex Discrimination jurisdictional complaint does not really show any distinct similarities to the TCA, SAC and MAC lines as Figure 5.21, below, shows:

Figure 5.21

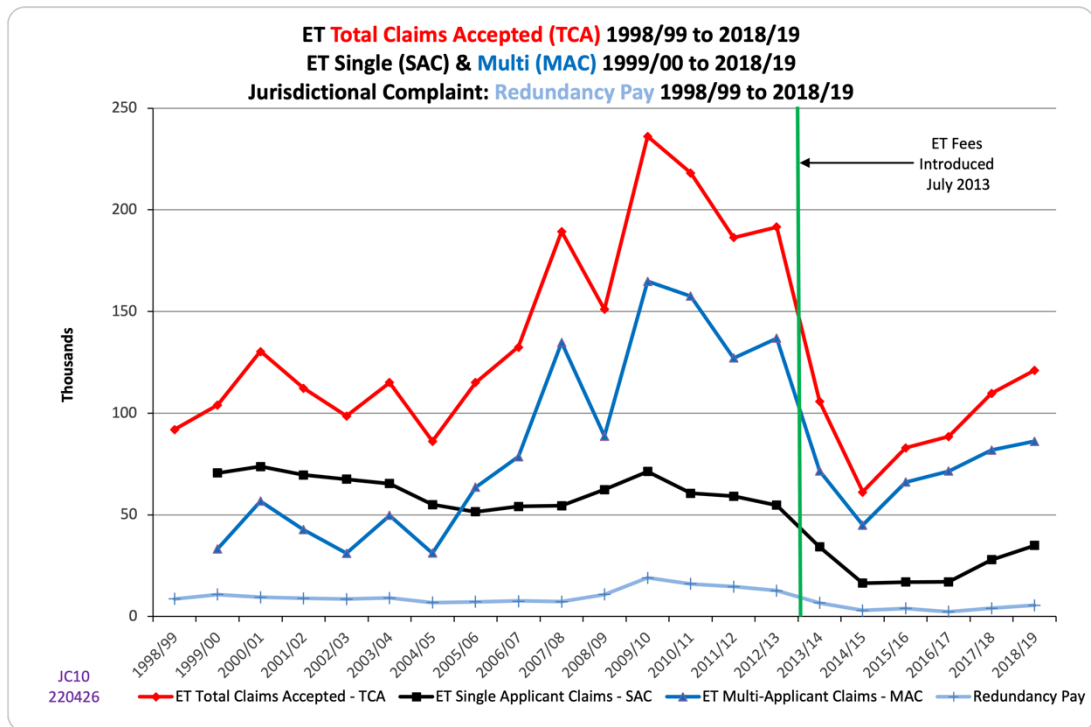


The relationship is inconclusive and this is borne out by a correlation for the period 1999/00 to 2018/19 of 0.58 (p=0.000) between the Sex Discrimination jurisdictional complaint and SACs compared to a correlation of 0.37 (p=0.000) between the Sex Discrimination jurisdictional complaint and MACs which are both shown in Table 5.4, below.

5.3.2.7 Redundancy Pay

Figure 5.22, below, shows the TCA, SAC and MAC information as before but now includes the Redundancy Pay jurisdictional complaint information.

Figure 5.22



The first point to note is that the Redundancy Pay line visually appears to follow the SAC line rather than the MAC line, however, the correlations for the period 1999/00 to 2018/19, shown in Table 5.4, below, of 0.74 ($p=0.000$) between the Redundancy Pay jurisdictional complaint and SACs compared to a correlation of 0.63 ($p=0.000$) between the Redundancy Pay jurisdictional complaint and MACs would indicate an inconclusive relationship as the Redundancy Pay jurisdictional complaint is equally associated with SACs and MACs.

5.3.2.8 Summary of Data on Jurisdictional Complaints

The jurisdictional correlation analysis is summarised in Table 5.4, below:

Table 5.4

Jurisdictional Complaint Correlations with TCA, SAC and MAC

Jurisdictional Complaint	ET Fee Type	1999/00 to 2012/13			1999/00 to 2018/19				
		Correlations between JC and			Relationship SAC/MAC	Correlations between JC and			Relationship SAC/MAC
		TCA	SAC	MAC		TCA	SAC	MAC	
Unfair Dismissal (Figure 5.16)	B	0.27 (p=0.000)	0.77 (p=0.000)	0.15 (p=0.013)	SAC	0.58 (p=0.000)	0.97 (p=0.000)	0.22 (p=0.000)	SAC
Breach of Contract (Figure 5.17)	A	0.63 (p=0.000)	0.61 (p=0.000)	0.52 (p=0.001)	Inconclusive	0.70 (p=0.000)	0.94 (p=0.000)	0.37 (p=0.000)	SAC
Working Time Directive (Figure 5.18)	A	0.92 (p=0.000)	-0.26 (p=0.106)	0.94 (p=0.000)	MAC	0.80 (p=0.000)	0.01 (p=0.232)	0.91 (p=0.000)	MAC
Equal Pay (Figure 5.19)	B	0.68 (p=0.000)	-0.39 (p=0.000)	0.72 (p=0.000)	MAC	0.65 (p=0.000)	0.06 (p=0.000)	0.72 (p=0.000)	MAC
Unauthorised deductions (Figure 5.20)	A	0.77 (p=0.000)	0.28 (p=0.000)	0.71 (p=0.003)	MAC	0.76 (p=0.000)	0.63 (p=0.002)	0.58 (p=0.000)	Inconclusive
Sex Discrimination (Figure 5.21)	B	0.32 (p=0.000)	-0.16 (p=0.000)	0.34 (p=0.000)	Inconclusive	0.55 (p=0.000)	0.58 (p=0.000)	0.37 (p=0.000)	Inconclusive
Redundancy Pay (Figure 5.22)	A	0.80 (p=0.000)	0.31 (p=0.000)	0.73 (p=0.000)	MAC	0.85 (p=0.000)	0.74 (p=0.000)	0.63 (p=0.000)	Inconclusive

√230126

Based on data in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19
 All JC correlations are shown in Appendix 6, Table A6.8, Jurisdictional Complaint Correlations between Jurisdictional Complaints, TCA, SACs and MACs
 Correlation and p-value calculations for all JCs shown in Appendix 6, Tables A6.26a to A6.26v

In order, to create meaning from the above data, two sets of correlations are given in Table 5.4, 1999/00 to 2012/13, to cover the period up to the introduction of ET Fees and 1999/00 to 2018/19 to cover the full period including the introduction of ET Fees. The 'split' data have been provided to isolate the apparent effects of the introduction of ET Fees in July 2013 on the jurisdictional complaints under examination, as this intervention will have had a very clear and separate impact on the public presentation of conflict in the workplace. As can be seen in Figure 5.14 above, all 7 jurisdictional complaints fell following the introduction of ET Fees, with the Working Time Directive jurisdictional complaint, for example, falling from 99,627 in 2012/13 to 31,451 in 2014/15⁵⁶.

⁵⁶ As shown in Appendix 6, Table A6.6c, Jurisdictional Complaint (JC) Breakdown 2012/13 to 2018/19.

Of the seven jurisdictional complaints reviewed, only Unfair Dismissal is associated with SACs in both periods. Breach of Contract is inconclusive in the 1999/00 to 2012/13 period but associated with SACs over the longer 1999/00 to 2018/19 period.

Of the remaining five jurisdictional complaints, Sex Discrimination is inconclusive in both periods, Unauthorised Deductions is associated with MACs in the 1999/00 to 2012/13 period but inconclusive in the 1999/00 to 2018/19 period as is Redundancy Pay.

The last two, Equal Pay and Working Time Directive are both associated with MACs in both periods and equally interestingly both have negative SAC correlations in the period 1999/00 to 2012/13 and no correlation with SACs in the 1999/00 to 2018/19 period.

The relationship between the Equal Pay jurisdiction and MACs is perhaps not a surprise. The literature review identified a large literature on Equal Pay which covered the relationship between the Equal Pay jurisdictional complaint and MACs containing 1,000s of claims and the associated long drawn-out ET legal cases, such as *Enderby v Frenchay Health Authority & Another*⁵⁷ and *Preston & Others v Wolverhampton Healthcare Trust & Others* involving the Employment Tribunal, Employment Appeal Tribunal, the Court of Appeal, the House of Lords/Supreme Court and finally the European Court of Justice, as noted by Heery (1998), Colling (2006), Deakin and Morris (2009) among others.

The strong relationship between Working Time Directive and MACs is perhaps more of a surprise. The literature does not cover this relationship in much detail (Saundry et al., 2014; Deakin et al., 2015). The Working Time Directive jurisdictional complaint was first introduced in October 1998 and between 1998/99 and 2018/19, 799,060 claims were filed containing the Working Time Directive jurisdictional complaint, nearly twice the 467,321 Equal Pay claims

⁵⁷ See Appendix 14, Table A14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references, for details of these two cases and 30 other examples of Equal Pay MAC Cases.

filed in the same period. As can be seen in Figure 5.15 above, in 4 out of 5 years between 2010/11 and 2014/15, more than 50% of the TCA contained a Working Time Directive jurisdictional complaint⁵⁸. Whatever is driving the growth in Working Time Directive claims is driving the growth in the TCA and this nuance is further analysed in Chapter 6.

This section has highlighted the different drivers of the SACs and MACs. The analysis has shown, firstly, that the Unfair Dismissal and Breach of Contract jurisdictional complaints are associated with SACs and, secondly, that the Working Time Directive and Equal Pay jurisdictional complaints are strongly associated with MACs. This analysis begins to show that, rather than all claims being of a uniform nature, for example, see Corby (2015), the intermediate level relationship between SACs, MACs and the Jurisdictional Complaints is much more nuanced than previously acknowledged and this leads to a growing understanding of what is/was driving the increase in the TCA. These differences suggest that whilst an increase in legislation may have some impact on ETs, the impact is not uniform and thus a more detailed understanding of the nature of MACs would help us explore and explain existing arguments in the literature linked to juridification further. This missing part of the story is very important because as identified in the literature review, academic debate and government policy decisions have been, potentially, relying on partial analysis of the available data.

Having, tentatively, established which jurisdictional complaints are associated with SACs and which with MACs, the next section will examine what is known about the workplace conflict that manifests as MACs.

5.3.3 What is known about the workplace conflict that manifests as Multi-Applicant Claims (MACs)?

Although MACs are discussed in the literature review, it was noted, in Chapter 2, that the discussion was effectively a by-product of a focus on equal pay (Deakin et al., 2015; Conley and Page, 2018; Dickens, 2000; Dix et al., 2008).

⁵⁸ As shown in Appendix 6, Tables A6.9b and A6.9c, Jurisdictional Complaint as %age of Total Claims Accepted (TCA) containing that JC, 2005/06 to 2011/12 and 2012/13 to 2018/19

Although the previous section has identified the Equal Pay jurisdictional complaint as being associated with MACs, it should be noted that the Equal Pay jurisdictional complaint is only the 5th ranked jurisdictional complaint in Figure 5.13 above, with a TCA contained percentage of 17.13% (467,321/2,727,732) for the period 1998/99 to 2018/19. This compares with the 3rd ranked Working Time Directive jurisdictional complaint which has also been identified as a MAC jurisdictional complaint with a TCA contained percentage of 29.29% (799,060/2,727,732) for the same period, yet as noted in Chapter 2, the Working Time Directive jurisdictional complaint is not widely covered in the literature. The growth is acknowledged, but not much more. (Saundry and Dix, 2014). The previous section has already highlighted that there is more to MACs than the literature acknowledges.

The next section is a detailed attempt to glean further information about the current state of MACs using the ET Decision Index and what that says about workplace conflict. This is a useful step because, as has been demonstrated so far, it has been necessary to use proxy measures, such as the TCA contained percentage, to try to tease out the relationship between the individual jurisdictional complaints and the TCA, SACs and MACs. This has been necessary because of the, previously noted, disconnect in the data between the TCA, SACs, MACs and the jurisdictional complaints.

The working definition of MACs within this thesis is broad. A MAC could consist of two individuals or many thousands of individuals. Although the MoJ and its predecessors have provided the split between SACs and MACs from 1999/00, the number of MAC cases has only been provided from 2007/08, enabling the average number of claims per MAC to be calculated as shown in column E of Table 5.5, below:

Table 5.5

**Breakdown of ET Total Claims Accepted (TCA) by Year
1999/00 to 2018/19**

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Actual number of Multi-Applicant Cases	Average number of Claims per Multi-Applicant Case	Total Number of Cases
	A	B	C	D	E	F=B+D
1999/00	103,935	70,600	33,300			
2000/01	130,408	73,726	56,682			
2001/02	112,227	69,553	42,674			
2002/03	98,617	67,527	31,090			
2003/04	115,042	65,364	49,678			
2004/05	86,181	55,055	31,126			
2005/06	115,039	51,496	63,543			
2006/07	132,577	54,100	78,600			
2007/08	189,303	54,500	134,800	6,582	20.48	61,082
2008/09	151,028	62,370	88,658	7,356	12.05	69,726
2009/10	236,103	71,280	164,823	7,339	22.46	78,619
2010/11	218,096	60,591	157,505	5,956	26.44	66,547
2011/12	186,331	59,247	127,084	5,662	22.45	64,909
2012/13	191,541	54,704	136,837	6,278	21.80	60,982
2013/14	105,803	34,219	71,584	3,126	22.90	37,345
2014/15	61,308	16,420	44,888	1,921	23.37	18,341
2015/16	83,031	16,935	66,096	1,295	51.04	18,230
2016/17	88,476	17,005	71,471	1,101	66.45	18,106
2017/18	109,698	27,916	81,782	2,016	40.57	29,932
2018/19	121,075	34,974	86,101	2,592	33.22	37,566
						√210709
Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19						

As can be seen the average number of claims per MAC, shown in column E in Table 5.5, above, ranges from a low of 12.05 in 2008/09 to a high of 66.45 in 2016/17.

While this is interesting information it is not particularly useful as the average number of claims obscures the range of the number of claims per MAC. Are they made up of mostly a few claims per MAC or a few MACs with a large number of claims? From this data, it is impossible to tell. However, using the ET Decision Index MAC analysis it is possible to extract of the actual MAC claims range breakdown and this is done in the next section.

5.3.4 Employment Tribunal Decision Index Multi-Applicant Claims (MAC) analysis

So far throughout the thesis it has been noted that there is a disconnect between the TCA, SACs, MACs and jurisdictional complaints. This is why the previous section used correlation to try to resolve it. However, there is one point in the ET Claims Process when the disconnect is fully resolved and that is at the claim outcome/disposal point when the ET Decision is published. As shown in Chapter 3, Section 3.4.3, the ET Decision Index provides a wealth of information about the case including the number of claims the case relates to, enabling it to be identified as a SAC or MAC, plus exactly which jurisdictional complaints are associated with the claims allowing the jurisdictional complaints to be tied to a SAC or MAC.

Using the ET Decision Data enables the extraction of the actual claims range breakdown of the MACs in the database and this is done for the 1,382 MACs in ET Decision Index sample and is shown in Table 5.6, below.

Table 5.6

**ET Decision Index MAC Claims Range
1st Feb 2017 to 5th Feb 2019**

MAC Claims Range	Total	
	No.	%
2 to 5	941	68%
6 to 10	140	10%
11 to 20	114	8%
21 to 50	74	5%
51 to 100	34	2%
101+	23	2%
Unknown	53	4%
<i>Total</i>	<i>1,379</i>	<i>99%</i>

The first observation is that 1,081 MACs, representing 78% of the 1,379⁵⁹ analysable MACs in the sample, are in the range of 2 to 10 claims.

⁵⁹ Three MACs did not have the claims range information.

Furthermore 1,269 MACs, representing 91% of the 1,379 analysable MACs in the sample, are in the range 2 to 50 claims (above the black line in Table 5.6). Only 57 MACs, or 4% of the 1,379 analysable MACs in the sample, contain over 50 claims.

The discussion around range and the finding that 91% (1,269/1,379) of the MACs in the sample contain less than 50 claims highlights that MACs are more complex than previously realised. The database reveals that only 2% (23/1,379) contain more than 100 claims per case, which is a small percentage given that, as previously noted, MACs are responsible for the growth in the TCA. This hints that a small number of MACs may have comprised a very large number of claims.

The MACs in the database can be further split between two types of MACs, Type 1 MACs, which are more obvious MACs, and then Type 2 MACs, which in the data may present as a SAC, but is actually a MAC (SACaMAC). These two Types are being analysed separately because in the process of identifying the SACaMACs it was immediately obvious that they tend to have a different 'Time Spread' profile to the more obvious MACs because SACaMACs have been in the ET System awaiting resolution for up 19 years. This again further develops our previously limited understanding of MACs and shows that they are not uniform.

On reviewing the Type 1 MAC data, it is noticeable that there is a large subset of MACs that are related to Employers entering Administration and Liquidation. In order to tease out/isolate the effects of this large sub-group, the Type 1 MACs will be split in to Type 1a MACs, and Type 1b, MACs associated with Administration and Liquidation (MAC A/L).

The first stage of the analysis is to show how the 1,382 MACs are made up, and this is done in Table 5.7, below:

Table 5.7

ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
MAC Make Up Information

Claim Type	MAC		MAC Administration/ Liquidation (MAC A/L)		SACs that are actually MACs (SACaMAC)		Total	
	No.	%	No.	%	No.	%	No.	%
Type No:	1a		1b		2		1a+1b+2	
	Percentage ⇒ ^a							
No. of MACs (Cases)	755	54.6%	273	19.8%	354	25.6%	1,382	100%
No. of Claims in MACs	8,427	56.2%	4,032	26.9%	2,540	16.9%	14,999	100%
Average No. of Claims per MAC	11.16	-	14.77	-	7.18	-	10.85	-
No. of Individuals in MACs	7,809	54.2%	4,207	29.2%	2,402	16.7%	14,418	100%
Average No. of Individuals per MAC	10.34	-	15.41	-	6.78	-	10.43	-
Average No. of claims per individual	1.08	-	0.96	-	1.06	-	1.04	-

^a Percentage ⇒ percentage calculated across columns

The first point to note is that the three MAC Types have different profiles. The MAC Type 1a has a broadly similar percentage of the total No. of MACs (Cases), 54.6%, No. of Claims in MACs, 56.2% and No. of Individuals in MACs, 54.2%, whereas MACs Type 1b A/L represents 19.8% of the No. of MACs (Cases), 26.9% of the claims and 29.2% of the Individuals involved and the SACaMACs have the reverse relationship, 25.6% of the No. of MACs (Cases), 16.9% of the Claims and 16.7% of the Individuals. The cause of this variance appears to be that Type 1b A/L has more claims per MAC while SACaMACs have fewer claims per MAC. This again highlights that MACs are not uniform.

A second point of interest is the difference between *claims* and *individuals*. As has been previously noted, the ET records the annual TCA, but not the associated number of individuals making the claims. As can be seen in Table

5.7, above, the number of claims and the number of individuals associated with the claims, although similar, is not the same. This is certainly something that has never been noted or discussed in the literature before. There is an underlying assumption that claims and individuals are one and the same (Saundry and Dix, 2014; Corby, 2015) and this analysis shows that this is not the situation. This is an important observation as any discussion about how the rising volume of ET claims relates to increased workplace conflict needs to acknowledge that a rise in ET claims is not necessarily a rise in individual employment disputes, it may just be that more than one claim, or indeed many claims, have been generated by the *same* individual for the *same* employment dispute. This important observation is investigated further in Chapter 6.

5.3.4.1 Examination of Multi-Applicant Claims (MACs) relationship to Workplace Conflict as represented by Jurisdictional Codes

The following analysis is based upon jurisdictional code/s (JCd) that is/are associated with the ET Claim⁶⁰ as shown in the ET Decision Index. The purpose of this analysis is to examine how MACs and jurisdictions interact and further highlight that not all MACs are the same. This is only possible because this is the first point in the ET data stream where specific ET claims, be they SACs or MACs, can be matched to jurisdictions.

The first point to note is that there are 42 jurisdiction codes in the dataset which is more than the 21 jurisdictional complaints plus 'Other' referred to up to this point and shown in Chapter 3, Section 3.7, Table 3.9. This is because the jurisdiction codes information provided in the ET Decision Index is broader than the annual ET TCA and ET claims jurisdictional complaints outcome/disposal (JCOD) information provided by the MoJ and its

⁶⁰ There are slight differences in the description of the jurisdiction codes compared to the description of the jurisdictional complaints. An example would be the jurisdiction code 'Unlawful deduction from wages' used in Table 5.8. In the annual ET TCA and ET claims jurisdictional complaint outcome/disposal information provided by the MoJ and its predecessor organisations, this jurisdictional complaint is referred to as 'Unauthorised Deduction from wages'. It is the same jurisdiction code/jurisdictional complaint yet confusingly the nomenclature is slightly different.

predecessor organisations. The jurisdiction codes that are usually consolidated under 'Other' are listed separately, highlighted in grey and also shown in consolidated form as 'Other' at the foot of Table 5.8, below.

In the previous section it was noted that a more meaningful way to look at the jurisdictional complaints was to calculate the percentage of the TCA that contained a jurisdictional complaint. The concept of 'contained percentage' was introduced. This concept can be applied to the 1,382 MACs and their associated 3,125 jurisdiction codes (complaints) to produce a MAC 'contained percentage', as in the percentage of MACs in the dataset that 'contained' that jurisdiction code. For example, 365 MACs 'contained' an Unfair Dismissal claim out of a dataset with 1,382 MACs giving a MAC contained percentage (MACCP) of 26.4% ($365/1,382$). The MAC 'contained' percentage' (MACCP) is shown for all the 42 jurisdiction codes in Table 5.8, below:

Table 5.8

**ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019 Jurisdiction Codes by number and as %age
of MACs that CONTAINED that Jurisdiction Code (MACCP)**

MAC & Type No:	MAC		MAC A/L		SACaMAC		MAC Total	
	1a		1b		2		1a+1b+2	
	Percentage ⇒^a							
No. of MACs	755	55%	273	20%	354	26%	1,382	100%
No. of Jurisdictional Codes	1,708		711		706		3,125	
Average JCd per MAC	2.26		2.60		1.99		2.26	
Jurisdictional Code	No.	MAC CP%	No.	MAC CP%	No.	MAC CP%	No.	MAC CP%
	Percentage ⇓^b							
Age Discrimination	20	2.7%	1	0.4%	12	3.4%	33	2.4%
Agency Workers ^c	10	1.3%	0	0.0%	1	0.3%	11	0.8%
Breach of Contract	245	32.5%	122	44.7%	62	17.5%	429	31.0%
Contract of Employment ^c	11	1.5%	3	1.1%	0	0.0%	14	1.0%
Disability Discrimination	27	3.6%	2	0.7%	18	5.0%	47	3.4%
Equal Pay Act	151	20.0%	0	0.0%	206	58.2%	357	25.8%
Fixed Term Regulations ^c	2	0.3%	0	0.0%	0	0.0%	2	0.1%
Flexible Working ^c	3	0.4%	0	0.0%	1	0.3%	4	0.3%
Health & Safety ^c	6	0.8%	0	0.0%	0	0.0%	6	0.4%
Improvement Notice ^c	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Interim Relief ^c	5	0.7%	1	0.4%	0	0.0%	6	0.4%
Jurisdictional Points ^c	7	0.9%	1	0.4%	0	0.0%	8	0.6%
Maternity & Pregnancy Rights ^c	8	1.1%	3	1.1%	2	0.6%	13	0.9%
National Minimum Wage	13	1.7%	1	0.4%	2	0.6%	16	1.1%
Notice Appeal ^c	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Part-Time Workers	28	3.7%	2	0.7%	22	6.2%	52	3.8%
Pensions ^c	0	0.0%	0	0.0%	1	0.3%	1	0.1%
Practice & Procedure ^c	0	0.0%	0	0.0%	1	0.3%	1	0.1%
Protective Award ^c	19	2.5%	102	37.4%	25	7.0%	146	10.6%
Public Interest Disclosure	30	4.0%	3	1.1%	4	1.1%	37	2.7%
Race Discrimination	34	4.5%	1	0.4%	9	2.5%	44	3.2%
Redundancy – failure to inform and consult	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Redundancy Pay	107	14.2%	127	46.5%	39	11.0%	273	19.8%
Religion or belief discrimination	7	0.9%	0	0.0%	6	1.7%	13	0.9%
Remuneration ^c	3	0.4%	0	0.0%	0	0.0%	3	0.2%
Right to be Accompanied ^c	3	0.4%	0	0.0%	1	0.3%	4	0.3%
Rights on Insolvency ^c	0	0.0%	1	0.4%	0	0.0%	1	0.1%
Sex Discrimination	122	16.2%	2	0.7%	52	14.7%	176	12.7%
Sexual Orientation Discrimination	5	0.7%	0	0.0%	2	0.6%	7	0.5%
Suffer a detriment/unfair dismissal - pregnancy	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Time Limits ^c	5	0.7%	0	0.0%	1	0.3%	6	0.4%
Time Off ^c	18	2.4%	10	3.7%	8	2.3%	36	2.6%
Time to Train ^c	1	0.1%	0	0.0%	0	0.0%	1	0.1%
TU Membership ^c	16	2.1%	0	0.0%	2	0.6%	18	1.3%
TU Rights ^c	14	1.9%	6	2.2%	1	0.3%	21	1.5%
TUPE	18	2.4%	16	5.9%	4	1.1%	38	2.8%
Unlawful deduction from wages	326	43.2%	135	49.5%	110	31.1%	571	41.3%
Unfair dismissal	238	31.5%	80	29.3%	47	13.3%	365	26.4%
Victimisation Discrimination ^c	2	0.3%	0	0.0%	0	0.0%	2	0.1%
Working Time Directive	185	24.5%	77	28.2%	56	15.8%	318	23.0%
Written Pay Statement	7	0.9%	6	2.2%	2	0.6%	15	1.1%
Written statement of reasons for dismissal/T&Cs	12	1.6%	9	3.3%	9	2.5%	30	2.2%
	1,708	226%	711	260%	706	199%	3,125	226%
Other	133	17.6%	127	46.5%	44	12.4%	304	22.0%

^a Percentage ⇒ percentage calculated across columns,

^b Percentage ⇓ percentage calculated down column

^c Jurisdiction Codes highlighted in grey are normally combined as 'Other' in MoJ statistics

As with the earlier analysis of TCA contained percentage shown in Figures 5.13 and 5.15, above, the same seven jurisdiction codes (complaints) form the top 7, although in a slightly different order. The MAC contained percentage for the MAC Total Column, in Table 5.8, above, shows that the highest MACCP, at 41.3%, is for Unlawful deduction from wages, followed by Breach of Contract, Unfair Dismissal, Equal Pay, Working Time Directive, Redundancy Pay and Sex Discrimination – all highlighted in yellow. A comparison of the MAC contained percentage and TCA contained percentage for the respective top 7 jurisdiction codes/jurisdictional complaints is shown in Table 5.9, below.

Table 5.9

Comparison of Top 7 Jurisdictional Complaints for 1998/99 to 2018/19 showing percentage of Total Claims Accepted containing that Jurisdictional Complaint v Top 7 Jurisdiction Codes for 1st Feb 2017 to 5th Feb 2019 Multi-Applicant Claims dataset showing percentage of Multi-Applicant Claims containing that Jurisdiction Code (TCACP v MACCP)

Rank	Type of Jurisdiction Complaint	ET Fee Type	1998/99 to 2018/19	%age of TCA contained that JC	1 st Feb 2017 to 5 th Feb 2019	%age of MACCP contained that JCd	%age Higher/Lower
	Total Claims Accepted		2,727,732				
	MAC Claims from ET Decision Index				1,382		
	MAC						
	Percentage ↓^a						
	Total Jurisdictional Complaints/ Code		4,714,294	172.83%	3,125	226.12%	
	Average Jurisdictional Complaints per claim		1.728		2.261		
1	Unfair dismissal (UD)	B	821,194	30.11%	365	26.4%	Lower
2	Unauthorised/Unlawful Deductions (UaD)	A	808,295	29.63%	571	41.3%	Higher
3	Working Time Directive (WTD)	A	799,060	29.29%	318	23.0%	Lower
4	Breach of Contract (BoC)	A	521,406	19.12%	429	31.0%	Higher
5	Equal Pay (EP)	B	467,321	17.13%	357	25.8%	Higher
6	Sex Discrimination (SD)	B	301,412	11.05%	176	12.7%	Higher
7	Redundancy Pay (RP)	A	183,374	6.72%	273	19.8%	Higher
	Remaining JCs		812,232	29.78%	636	46.0%	Higher
	<i>Total</i>		4,714,294	173.17%	3,125	226%	
^a Percentage ↓ percentage calculated down column							
Annual data shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19							
Annual TCACP percentage data shown in Appendix 6, Tables A6.9a to A6.9c, Jurisdictional Complaint as %age of Total Claims Accepted (TCA) containing that Jurisdictional Complaint, 1998/99 to 2004/05, 2005/06 to 2011/12, 2012/13 to 2018/19							

Although the comparisons shown in Table 5.9 are indicative at best, they are none the less important. The top ranked TCA contained percentage, Unfair Dismissal with a TCA contained percentage of 30.11%, is lower in the MAC contained percentage calculation at 26.4%. This may indicate again that the Unfair Dismissal jurisdictional complaint has a stronger relationship with SACs than MACs, given that the MAC contained percentage is calculated only using MACs, whereas the TCA contained percentage includes SAC and MACs which would dilute the effect of the MACs on the Unfair Dismissal jurisdictional complaint. This is a further indication that the Unfair Dismissal claims are mostly brought to the ET by individuals as SACs.

The second ranked TCA contained percentage, Unauthorised/Unlawful Deductions, has a TCA contained percentage of 29.63%, whereas the MAC contained percentage Unauthorised/Unlawful Deductions has a percentage of 41.3%. This may indicate that the Unauthorised/Unlawful Deductions jurisdictional complaint has a stronger relationship with MACs than SACs. This is an indication that Unauthorised/Unlawful Deductions claims are primarily brought to the ET by individuals in 'conjunction' with other individuals as MACs.

The third ranked TCA contained percentage, Working Time Directive, has a TCA contained percentage of 29.29%, whereas the Working Time Directive MAC contained percentage is 23%. Although this is contrary to the earlier findings, particularly as it would/should be expected that the Working Time Directive jurisdictional complaint MAC contained percentage would be HIGHER without the moderating influence of SACs, the now lower percentage of 23% may be a more accurate reflection of the true relationship between MACs and the Working Time Directive jurisdictional complaint. This anomaly is fully resolved in Chapter 6. Suffice to say that this contrary finding is an indication that the volume of claims in the Working Time Directive jurisdictional complaint is not what it seems.

The fourth ranked TCA contained percentage, Breach of Contract, has a TCA contained percentage of 19.12%, whereas the Breach of Contract MAC contained percentage is 31%. This may indicate that the Breach of Contract

jurisdictional complaint has a stronger relationship with MACs than SACs. This is an indication that Breach of Contract claims are brought to the ET by individuals in 'conjunction' with other individuals as MACs.

The fifth ranked TCA contained percentage, Equal Pay, has a TCA contained percentage of 17.13%, whereas the Equal Pay MAC contained percentage is 25.8%. This may indicate that the Equal Pay jurisdictional complaint has a stronger relationship with MACs than SACs. This is an indication that Equal Pay claims are primarily brought to the ET by individuals in 'conjunction' with other individuals as MACs.

The sixth ranked TCA contained percentage, Sex Discrimination, has a TCA contained percentage of 11.05%, whereas the Sex Discrimination MAC contained percentage is 12.7%. This may indicate that the Sex Discrimination jurisdictional complaint has the same relationship with MACs and SACs.

The seventh ranked TCA contained percentage, Redundancy Pay, has a percentage of 6.72%, whereas the Redundancy Pay MAC contained percentage is 19.8%. This would appear to indicate that the Redundancy Pay jurisdictional complaint has a stronger relationship with MACs than SACs.

The Unfair Dismissal jurisdictional complaint shows a lower MAC contained percentage than TCA contained percentage, whereas five of the remaining jurisdictional complaints, Unauthorised Deductions, Breach of Contract, Equal Pay, Sex Discrimination and Redundancy Pay all show a higher MAC contained percentage than TCA contained percentage. This is potentially an important finding regarding these six jurisdictional complaints, in that it highlights that MACs have a different relationship to jurisdictional complaints than SACs, which are missing from the MAC contained percentage analysis but included in the TCA contained percentage analysis. The last jurisdictional complaint, Working Time Directive, exhibits a lower MAC contained percentage than expected, which might be a potential indicator that there is something unusual about the Working Time Directive jurisdictional complaint.

Having compared the TCA contained percentage and the MAC contained percentages it would also be interesting to compare the results of the TCA

contained percentage vs MAC contained percentage against the Table 5.4 correlations from 1999/00 to 2012/13 and 1999/00 to 2018/19 to highlight any similarities and differences, which will help identify consistent relationships across different analyses, between the Top 7 jurisdictions codes/complaints, highlighted in Table 5.9, and SACs and MACs, and in so doing, develop our understanding of the intermediate level interactions between the TCA and its component parts, the SACs and MACs and the jurisdictional complaint level. This comparison is done in Table 5.10, below:

Table 5.10

Summary of Jurisdictional Complaint SAC/MAC Correlations in Table 5.4 with Jurisdictional Complaint Comparisons in Table 5.9

<u>Jurisdictional Complaint</u>	<u>Table 5.4 Jurisdictional Complaint Correlations</u>		<u>Table 5.9 TCACP v MACCP</u>
	<u>1999/00 to 2012/13</u>	<u>1999/00 to 2018/19</u>	<u>Various Years</u>
	<u>A</u>	<u>B</u>	<u>C</u>
<u>Breach of Contract</u>	Inconclusive	SAC	<u>MAC</u>
<u>Equal Pay</u>	<u>MAC</u>	<u>MAC</u>	<u>MAC</u>
<u>Redundancy Pay</u>	<u>MAC</u>	Inconclusive	<u>MAC</u>
<u>Sex Discrimination</u>	Inconclusive	Inconclusive	Inconclusive
<u>Unauthorised Deductions</u>	<u>MAC</u>	Inconclusive	<u>MAC</u>
<u>Unfair Dismissal</u>	SAC	SAC	SAC
<u>Working Time Directive</u>	<u>MAC</u>	<u>MAC</u>	? <u>MAC</u>

It is noteworthy, that Equal Pay is associated with MACs in all three columns, Unfair Dismissal is associated with SACs in all three columns and Sex Discrimination is inconclusive in all three. As already noted, Working Time Directive is an anomaly in the TCA contained percentage v MAC contained percentage comparison, but if it turns out that Working Time Directive is associated with MACs then 4 jurisdictions out of the Seven have consistent associations in both analyses.

Having compared the TCA contained percentage and the MAC contained percentages it would also be useful to examine how the total MAC contained

percentage is composed by looking at the MAC Type 1a, 1b, and 2 data for the same seven jurisdiction codes plus the Protective Award jurisdiction code. Protective Award has been added because during the process of analysing the data it became clear that in relation to the Type 1b MAC A/L the subset Protective Award was important. The purpose of this comparison is to again highlight that not all MACs are the same. The analysis is shown in Table 5.11, below:

Table 5.11

**ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
Top 8 Jurisdiction Codes (JCd) by number and as %age of MAC that
CONTAINED that Jurisdiction Code (MACCP)**

Rank	MAC & Type No:	MAC		MAC A/L		SACaMAC		MAC Total	
		1a		1b		2		1a+1b+2	
		Percentage ⇒^a							
	No. of MACs	755	55%	273	20%	354	26%	1,382	100%
	No. of Jurisdiction Codes	1,708		711		706		3,125	
	Average JCd per MAC	2.26		2.60		1.99		2.26	
	Jurisdiction Code	No.	MAC CP %	No.	MAC CP %	No.	MAC CP %	No.	MAC CP %
		Percentage ↓^b							
1	Unlawful deduction from wages (UaD)	326	43.2%	135	49.5%	110	31.1%	571	41.3%
2	Breach of Contract (BoC)	245	32.5%	122	44.7%	62	17.5%	429	31.0%
3	Unfair dismissal (UD)	238	31.5%	80	29.3%	47	13.3%	365	26.4%
4	Equal Pay Act (EP)	151	20.0%	0	0.0%	206	58.2%	357	25.8%
5	Working Time Directive (WTD)	185	24.5%	77	28.2%	56	15.8%	318	23.0%
6	Redundancy Pay (RP)	107	14.2%	127	46.5%	39	11.0%	273	19.8%
7	Sex Discrimination (SD)	122	16.2%	2	0.7%	52	14.7%	176	12.7%
8	Protective Award (PA)	19	2.5%	102	37.4%	25	7.0%	146	10.6%
	Remaining Jurisdiction Codes	315	41.7%	66	24.2%	109	30.8%	490	35.5%
	<i>Total</i>	<i>1,708</i>	<i>226%</i>	<i>711</i>	<i>260%</i>	<i>706</i>	<i>199%</i>	<i>3,125</i>	<i>226%</i>
^a Percentage ⇒ percentage calculated across columns									
^b Percentage ↓ percentage calculated down column									

As can be seen in Table 5.11, the different MAC Types have different relationships with the 8 jurisdiction codes, confirming the fact that that not all MACs are the same. For example, the Breach of Contract jurisdiction codes MAC Total (1a+1b+2) shows a MAC contained percentage of 31% whereas

the MAC Types that make up the 31% show a wide variation. MAC Type 1a shows a Breach of Contract jurisdiction codes MAC contained percentage of 32.5%, MAC A/L Type 1b, a MAC contained percentage of 44.7% and SACaMAC Type 2, a MAC contained percentage of 17.5%. It is also noteworthy that the average number of jurisdiction codes per MAC is 2.26 in MAC Type 1a, 2.60 in MAC A/L Type 1b and 1.99 in SACaMAC Type 2.

From the above it can be seen that the three types of MAC in this analysis each have a different relationship with the eight jurisdiction codes, highlighting that workplace conflict as represented by MACs is multifaceted. The thesis will now consider why these differences may occur.

5.3.4.2 'Time Spread'

Having identified that MACs are multifaceted, this thesis will now move on to examining these different facets, beginning with 'Time Spread'. This exploration will help the reader understand the breadth of types of MAC.

The first point to note is that the three MAC Types are different and not just in the most obvious ways as outlined earlier, in the Claim Types section, above. It turns out that each of the MAC types in Table 5.11, above, have different time spread profiles which may affect the jurisdiction code MAC contained percentages. The 'time spread' is important because the analysis of the ET Decision Index is based on the output data of the ET System. To elaborate, the TCA is the record of inputs/claims into the ET System in annual chunks between April 1st and March 31st in any given year. The ET Decision Index is the output data that emerges when claims are finally concluded, which could be many years after they were submitted to the ET. The 'time spread' is the time between the year of filing and the subsequent claim appearing in the ET Decision Index. As can be seen in Table 5.12, below, the different MAC types in the ET Decision Index have very different 'time spread' profiles:

Table 5.12

**ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
'Time Spread'**

MAC & Type No:	MAC		MAC A/L		SACaMAC		MAC Total		
	1a		1b		2		1a+1b+2		
	Percentage ⇒ ^a								
No. of MACs	755	55%	273	20%	354	26%	1,382	100%	
'Time Spread'/Filed between:	No.	%	No.	%	No.	%	No.	%	
	Percentage ↓ ^b								
2000 to 2014	160	21.2%	6	2.2%	226	63.8%	392	28.4%	
2015 to 2018	595	78.8%	267	97.8%	128	36.2%	990	71.6%	
<i>Total</i>	<i>755</i>	<i>100%</i>	<i>273</i>	<i>100%</i>	<i>354</i>	<i>100%</i>	<i>1,382</i>	<i>100%</i>	
^a Percentage ⇒ percentage calculated across columns									
^b Percentage ↓ percentage calculated down column									

MAC Type 1a has 160 MAC Cases, or 21.2%, out of 755 MAC Type 1a Cases in the sample that are filed in the time period 2000 to 2014, MAC A/L Type 1b has just 6, or 2.2.%, out of 273 Cases that are filed in the time period 2000 to 2014 whereas SACaMAC Type 2 has 226 Cases, or 63.8%, out of 354 Claim Cases filed in the time period 2000 to 2014. The MAC Total shows that 392, or 28.4%, of MAC Claim Cases are filed in the period 2000 to 2014.

The difference in 'time spread' between the MAC Types is down to the underlying differences between the Types. Type 1a is made up of what could be called 'standard' MACs, consisting of 2 or more individuals against a common respondent [employer] and 78.8% of these in the current ET Decision data index were filed between 2015 to 2018 and have been processed relatively quickly by the ET. Looking back at Table 5.11 it can be seen that MAC Type 1a Cases have a MAC contained percentage range from a high of 43.2% in the Unlawful Deduction jurisdiction code, down to a low 2.5% in the Protective Award jurisdiction code.

Type 1b, MAC A/L Cases, although similar to Type 1a, are associated with respondents [employers] that have either entered Administration or Liquidation. This is an immediate problem for the employees of the respondent/employer, giving a degree of urgency as evidenced by the 97.8% of ET Decision Index entries of this Type in the 'time spread' 2015 to 2018.

Again, looking back at Table 5.11 it can be seen that MAC A/L Type 1b Cases have a MAC contained percentage of over 49.5% in the Unlawful Deduction jurisdiction code, 44.7% in the Breach of Contract jurisdiction code, 46.5% in the Redundancy Pay jurisdiction code and 37.4% in the Protective Award jurisdiction code. These percentages are noticeably different to the other two types. This is, perhaps, to be expected for this MAC Type, as these MACs are brought to the ET only because the claimant's employer has entered administration, so requiring this administrative step to secure/prove the MAC claimant's entitlement to Redundancy Pay (Wallington, 2015, pp.643-645). This will be examined in Chapter 6.

Type 2 SACaMAC show a different 'time spread'. 63.8% of the Claim Cases of this Type originate in the time-period 2000 to 2014. Looking back at Table 5.11 it can be seen that SACaMAC Type 2 Cases have a MAC contained percentage of over 58.2% in the Equal Pay jurisdiction code, which is much higher than the other two types. This is probably because it appears that these cases are hold overs from the Equal Pay MACs that began in the 2000s and have taken many years to resolve.

What this section shows is that the MACs in the ET Decision Index dataset are not uniform in nature, which is an important finding/conclusion because it indicates that workplace conflict is far more nuanced than has previously been recognised. The next section further expands on this finding by examining the Respondents/Employers who have had MACs brought against them, another area where information has until now been hard to come by.

5.3.4.3 Who are the Respondent/Employers involved in Multi-Applicant Claims (MACs)?

The Employment Tribunal Decision Index provides the name of the respondent/employer who the claims have been made against. This is important new information, because for the first time exactly which employers have been involved in ET claims is revealed in a way which enables a thorough analysis, so adding new knowledge to our understanding of workplace conflict. Viewing all 25,656 webpages in the current dataset would enable a fantastic quantitative analysis of the respondent/employers and how they split between

SACs and MACs and provide a rich level of detail on exactly who is involved in workplace conflict. However, such a level of analysis is beyond the scope of this thesis, so just the 1,382 respondent/employers associated with the identified MACs in the dataset will be analysed.

The respondent/employers in the MAC spreadsheet have been allocated between, Public Sector, Other Non-Company and Private Sector and this is shown in Table 5.13, below:

Table 5.13

**ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
Split by Public, Other Non-Company and Private Sector**

MAC & Type No:	MAC		MAC A/L		SACaMAC		MAC Total	
	1a		1b		2		1a+1b+2	
	Percentage ⇒^a							
No. of MACs	755	55%	273	20%	354	26%	1,382	100%
	No.	%	No.	%	No.	%	No.	%
	Percentage ↓^b							
Public Sector	248	32.9%	0	0.0%	232	65.5%	480	35.0%
Other Non-Company	79	10.5%	0	0.0%	7	2.0%	86	6.3%
Private Sector	427	56.6%	264	100%	115	32.5%	806	58.7%
<i>Total</i>	<i>754^c</i>	<i>100%</i>	<i>264^c</i>	<i>100%</i>	<i>354</i>	<i>100%</i>	<i>1,372^c</i>	<i>100%</i>
^a Percentage ⇒ percentage calculated across columns ^b Percentage ↓ percentage calculated down column ^c The SIC Code count is slightly lower than the No. of MACs because some Companies have more than one MAC filed against them so have only been included in the SIC Code count once.								

As can be seen, 480 MACs representing 35% of the total MACs in the spreadsheet sample are in the Public Sector, 86 representing 6.3%, are in Other Non-Company and 806 representing 58.7% of the MACs in the spreadsheet are in the Private Sector. On this evidence it would seem that MACs are more common in the Private Sector. However, this is only an analysis of the MACs in the ET Decision Index dataset and does not take into account the number of claims or individuals represented by the MACs. This comparison is done in Table 5.14, below:

Table 5.14

**ET Decision Index MAC and MAC Equivalent entries by
Claims and Individuals
1st Feb 2017 to 5th Feb 2019**

Row No.	MAC	Actual MACs or MAC Equivalents		Claims		Individuals	
		No:	Average Claims per MAC	No:	%age	No:	%age
1		A	B=C/A	C	D	E	F
2	Public Sector	483	11.2	5,429	36.2%	4,960	34.4%
3	Other Non-Company	85	4.1	348	2.3%	350	2.4%
4	Private Sector	808	11.4	9,214	61.5%	9,090	63.1%
5							
6	<i>Total</i>	<i>1,376</i>	<i>10.9</i>	<i>14,991</i>	<i>100%</i>	<i>14,400</i>	<i>99.9%</i>
^a Percentage ↓ percentage calculated down column							

In Table 5.14, it can be seen that the Public Sector accounts for 36.2% of Claims and 34.4% of Individuals, the Non-Company accounts for 2.3% of claims and 2.4% of individuals and the Private Sector accounts for 61.5% of claims and 63.1% of individuals. These percentages are not much different to the MAC percentages as shown above in Table 5.13. However, when the MAC, Claims and Individual percentages are compared in Table 5.15, below, with the ONS 2019 Public/Private Sector Employment percentages a different picture emerges.

Table 5.15

**Comparison of ET Decision Index MAC entries by
Claims and Individuals 1st Feb 2017 to 5th Feb 2019 with ONS 2019
Public and Private Sector Employment**

MAC & Type No:	MAC Total		Claims %age	Individuals %age	ONS 2019 Public/Private Sector Employment %age
	1a+1b+2				
	1,382	100%	100%	100%	100%
	No.	%			
Public Sector	480	35.0%	36.2%	34.4%	16.5%
Other Non-Company	86	6.3%	2.3%	2.4%	-
Private Sector	806	58.7%	61.5%	63.1%	83.5%
<i>Total</i>	<i>1,372^c</i>	<i>100%</i>	<i>100%</i>	<i>99.9%</i>	<i>100%</i>
Source: Office for National Statistics, 2021a, A01: Summary of labour market statistics: Tab 4					

Table 5.15 shows that the Public Sector ONS 2019 Employment percentage is 16.5% compared to Public Sector percentages of 35%, 36.2% and 34.4% for MACs, Claims and Individuals respectively, showing that although the Public Sector only employs 16.5% of employees, it has generated 35% of the MACs in the dataset under analysis compared to the Private Sector which, while employing 83.5% of employees, has generated 65% of the MACs. This finding is, perhaps, more significant than it first appears, because in Table 5.14, column B, the average number of claims per MAC, shows that the Public and Private Sector are very similar, at 11.2 and 11.4 respectively. So, if the Public Sector has generated 35% of the MACs in the dataset, then it is not the result of a few large-scale MACs, as was historically noted in the literature review regarding Equal Pay, particularly in regard to the Local Authority Single Spine Agreement (see Chapter 2, Section, 2.7.1.5), but a larger number of smaller scale MACs.

Table 5.14, above, also shows that 14,400 individuals (column E, row 6) filed 14,991 claims (column C, row 6). This is evidence that the number of individuals filing claims and the number of claims filed are NOT the same. There are more claims than individuals. This is potentially an important finding, because as previously noted, if the number of claims and the number of claimants were/are found to be different, then the TCA might not be an accurate reflection of employment disputes per se. Chapter 6 further investigates this phenomenon.

This analysis provides a level of detail that has previously been missing in ET statistical analysis. Unlike the Workplace Employment Relations Survey (WERS) or the Survey of Employment Tribunal Applications (SETA) it is based on original published ET Decision data and not subsequent survey data (Hand D., 2018, p.557).

The make-up of the Public Sector and Other Non-Company categories are shown in Table 5.16, below:

Table 5.16

ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
Public Sector Type and Other Non-Company Types

MAC & Type No:	MAC		MAC A/L		SACaMAC		MAC Total	
	1a		1b		2		1a+1b+2	
	Percentage ⇒ ^a							
No. of MACs	755	55%	273	20%	354	26%	1,382	100%
	No.	%	No.	%	No.	%	No.	%
	Percentage ↓ ^b							
Public Sector Type								
Education	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Fire	25	3.3%	0	0.0%	19	5.4%	44	3.2%
Government	16	2.1%	0	0.0%	5	1.4%	21	1.5%
Higher Education	8	1.0%	0	0.0%	0	0.0%	8	0.6%
Local Authorities	155	20.6%	0	0.0%	153	43.2%	308	22.5%
NHS	38	5.0%	0	0.0%	54	15.2%	92	6.7%
Police	6	0.8%	0	0.0%	1	0.3%	7	0.5%
<i>Sub-Total</i>	<i>248</i>	<i>32.9%</i>	<i>0</i>	<i>0.0%</i>	<i>232</i>	<i>65.5%</i>	<i>480</i>	<i>35.0%</i>
Other Non-Company								
Charity	1	0.1%	0	0.0%	1	0.3%	2	0.2%
Mutual	9	1.2%	0	0.0%	1	0.3%	10	0.7%
Not a Company	69	9.2%	0	0.0%	5	1.4%	74	5.4%
<i>Sub-Total</i>	<i>79</i>	<i>10.5%</i>	<i>0</i>	<i>0.0%</i>	<i>7</i>	<i>2.0%</i>	<i>86</i>	<i>6.3%</i>
Private Sector	427	56.6%	264	100%	115	32.5%	806	58.7%
<i>Total</i>	<i>754^c</i>	<i>100%</i>	<i>264^c</i>	<i>100%</i>	<i>354</i>	<i>100%</i>	<i>1,372^c</i>	<i>100%</i>
^a Percentage ⇒ percentage calculated across columns ^b Percentage ↓ percentage calculated down column ^c The SIC Code count is slightly lower than the No. of MACs because some Companies have more than one MAC filed against them so have only been included in the SIC Code count once.								

The Local Authority, at 308, and NHS sub-categories, at 92, together make-up 400 of the 480 MACs in the Public Sector Category representing 29.2% of 1,372 MACs in the table⁶¹. Perhaps, more importantly, this equates to 83% (400/480) of the 480 identified Public Sector MACs in the sample.

Having collected the individual SIC Codes for each respondent/employer, the SIC Codes were aggregated into the Companies House SIC Sections A to U as per the Companies House document 'Nature of Business: Standard

⁶¹ There are 74 'not a company' respondents representing 5.4% of the 1,372 MACs in the table. These are respondents/employers where the claim is made against either a named person or a business that is not registered at Companies House.

Industrial Classification codes (SIC)' (Companies House, 2021) and the results of the analysis are shown in Table 5.17, below.

Table 5.17

**ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
Private Sector by Companies House SIC Code Sections**

MAC & Type No:		MAC		MAC A/L		SACaMAC		MAC Total	
		1a		1b		2		1a+1b+2	
		Percentage ⇒^a							
No. of MACs		755	55%	273	20%	354	26%	1,382	100%
		No.	%	No.	%	No.	%	No.	%
		Percentage ↓^b							
Public Sector Type		248	32.9%	0	0.0%	232	65.5%	480	35.0%
Other Non-Company		79	10.5%	0	0.0%	7	2.0%	86	6.3%
Private Sector									
Companies House SIC Sections									
A	Agriculture, Forestry & Fishing	0	0.0%	3	1.1%	1	0.3%	4	0.3%
B	Mining & Quarrying	2	0.2%	1	0.4%	4	1.1%	7	0.5%
C	Manufacturing	31	4.1%	52	19.7%	16	4.5%	99	7.2%
D	Electricity, gas, steam and A/C Supply	5	0.7%	0	0.0%	2	0.5%	7	0.5%
E	Water supply, sewerage, waste management etc	4	0.5%	2	0.8%	1	0.3%	7	0.5%
F	Construction	31	4.1%	28	10.6%	11	3.1%	70	5.1%
G	Wholesale & retail trade; repair of motor vehicles	38	5.0%	30	11.4%	12	3.4%	80	5.8%
H	Transportation and Storage	49	6.5%	11	4.2%	7	2.0%	67	4.9%
I	Accommodation and food service activities	28	3.7%	18	6.8%	10	2.8%	56	4.1%
J	Information and Communication	15	2.0%	5	1.9%	1	0.3%	21	1.5%
K	Financial & insurance activities	5	0.7%	8	3.0%	4	1.1%	17	1.2%
L	Real Estate Activities	9	1.2%	0	0.0%	1	0.3%	10	0.7%
M	Professional, scientific & technical activities	23	3.0%	20	7.6%	6	1.7%	49	3.5%
N	Administrative & support service activities	67	8.9%	34	12.9%	19	5.4%	120	8.8%
O	Public administration & defence etc	5	0.7%	0	0.0%	2	0.5%	7	0.5%
P	Education	20	2.7%	14	5.3%	1	0.3%	35	2.6%
Q	Human health & social work activities	23	3.1%	18	6.8%	7	2.0%	48	3.5%
R	Arts, entertainment & recreation	7	0.9%	5	1.9%	4	1.1%	16	1.2%
S	Other service activities	10	1.3%	6	2.3%	2	0.6%	18	1.3%
T	Activities of households as employers	0	0.0%	1	0.4%	0	0.0%	1	0.0%
U	Activities of extraterritorial organisations & bodies	4	0.5%	2	0.8%	1	0.3%	7	0.5%
	No SIC Code Supplied	3	0.4%	5	1.9%	1	0.3%	9	0.7%
	No SIC Code Found	48	6.4%	1	0.4%	2	0.6%	51	3.7%
	<i>Sub Total</i>	<i>427</i>	<i>56.6%</i>	<i>264</i>	<i>100%</i>	<i>115</i>	<i>32.5%</i>	<i>806</i>	<i>58.7%</i>
	<i>Total</i>	<i>754^c</i>	<i>100%</i>	<i>264^c</i>	<i>100%</i>	<i>354</i>	<i>100%</i>	<i>1,372^c</i>	<i>100%</i>
^a Percentage ⇒ percentage calculated across columns ^b Percentage ↓ percentage calculated down column ^c The SIC Code count is slightly lower than the No. of MACs because some Companies have more than one MAC filed against them so have only been included in the SIC Code count once.									

The Companies House SIC Sections is made up of 806 entries which represents 58.7% of the 1,372 MAC total in the spreadsheet sample. There are five section percentages, highlighted in yellow, each representing 5% or above of the 1,372 MAC spreadsheet sample, with Section N, Administrative & support service activities, at 8.8% being the highest and eight section percentages, highlighted in pale orange, each representing 1% or less of the 1,372 MAC spreadsheet sample, with Section T, Activities of households as employers, at 0.0% being the lowest. In MAC Type 1a and SACaMACs the MACs are spread out across the sections but in the MAC Type 1b, MAC A/L, it is noticeable that there are four section percentages above 10%, Section C, Manufacturing at 19.7%, Section F, Construction at 10.6%, Section G, Wholesale & retail trade at 11.4% and Section N, Administrative & support service activities at 12.9%. These are highlighted in black and account for 54.6% of the MAC A/Ls. The question is why are these MAC A/L SIC Sections different from the other MAC Types? Given that the MAC A/L type represents the failure of the employer, the answer may be in the particular economics of the sections in the period under analysis, which was 2015 to 2018, during which 97.8% of MAC A/Ls were filed which as was shown in Table 5.12 above.

To put some context on the number of Private Sector MACs per SIC Section, a comparison has been done between the Private Sector MACs and the ONS 2017 GB Private Sector estimated employment levels by SIC Code (ONS, 2021). It should be noted that the data provided by the ONS are not complete and for this reason the only possible comparison is between the Private Sector MACs and the GB Private Sector estimated employment levels and even here in two of the SIC Sections, Section K, Financial & insurance activities and Section N, Administrative & support service activities, no split between Public and Private Sectors is made available. Notwithstanding these issues the comparison has merit and is shown in Table 5.18, below:

Table 5.18

**Comparison of ET Decision Index Private Sector MAC Claim entries
1st Feb 2017 to 5th Feb 2019 against 2017 Private Sector Employment
by Companies House SIC Code Sections**

MAC & Type No:		MAC Total		GB Employment Full & Part- Time by Companies House SIC Sections as a %age of Private Sector Employment 2017 ^a	MAC %age lower/higher than %age Private Sector Employment 2017	
		1a+1b+2				
		No.	%			
Number of Private Sector MACs		806	100%			
Companies House SIC Sections				%	Diff	
A	Agriculture, Forestry & Fishing	4	0.5%	1.2%	0.7%	Lower
B	Mining & Quarrying	7	0.9%	0.2%	0.7%	Higher
C	Manufacturing	99	12.3%	5.3%	7.0%	Higher
D	Electricity, gas, steam and A/C Supply	7	0.9%	0.0%	0.9%	Higher
E	Water supply, sewerage, waste management etc	7	0.9%	1.0%	0.1%	Lower
F	Construction	70	8.7%	8.8%	0.1%	Lower
G	Wholesale & retail trade; repair of motor vehicles	80	10.0%	28.1%	18.1%	Lower
H	Transportation and Storage	67	8.3%	8.2%	0.1%	Higher
I	Accommodation and food service activities	56	7.0%	13.7%	6.7%	Lower
J	Information and Communication	21	2.6%	5.4%	2.8%	Lower
K	Financial & insurance activities	17	2.1%	0.0%	Anomaly	
L	Real Estate Activities	10	1.2%	3.0%	1.8%	Lower
M	Professional, scientific & technical activities	49	6.1%	4.1%	2.0%	Higher
N	Administrative & support service activities	120	14.9%	0.0%	Anomaly	
O	Public administration & defence etc	7	0.9%	0.1%	0.8%	Higher
P	Education	35	4.3%	7.2%	2.9%	Lower
Q	Human health & social work activities	48	6.0%	13.3%	7.3%	Lower
R	Arts, entertainment & recreation	16	2.0%	0.5%	1.5%	Higher
S	Other service activities	18	2.2%	0.0%	2.2%	Higher
T	Activities of households as employers	1	0.1%	0.0%	0.1%	Higher
U	Activities of extraterritorial organisations & bodies	7	0.9%	0.0%	0.9%	Higher
	No SIC Code Supplied	9	1.1%			
	No SIC Code Found	51	6.3%			
	<i>Total</i>	<i>806</i>	<i>100%</i>	<i>100%</i>		

^a For data and calculation of percentage of Private Sector Employment, see Appendix 15, Table A15.1, GB Employment (thousands) 2017 by Companies House SIC Code
^b The SIC Code count is slightly lower than the No. of MACs because some Companies have more than one MAC filed against them so have only been included in the SIC Code count once.

The comparison shows that in 9 of the SIC Sections, the MAC percentage is lower than the ONS estimated Private Sector employment percentages and in 9 of the SIC Sections the MAC percentage is higher. In most of the SIC

Sections the difference, either lower or higher, is marginal, indicating that the percentage of MACs in the SIC Sections is broadly in line with the percentage of the private sector workforce in that SIC Section. However, in four of the SIC Sections the difference is 6.7% or greater and these are highlighted in Dark Green for the three SIC Sections, where the MAC percentage is lower than the ONS estimated Private Sector employment percentages and Red for the one SIC Section where the MAC percentage is higher than the ONS estimated Private Sector employment percentages.

In the case of SIC Section G, Wholesale & retail trade; repair of motor vehicle, where the MAC percentage is lower than the ONS estimated Private Sector employment percentages by 18.1%, the difference maybe a result of how the Redundancy Pay and associated Protective Awards jurisdictions apply in practice⁶², rather than lower unionisation. The nature of this SIC is such that multiple 'Establishments', [retail stores], employing fewer than 20 employees, within a larger business are the norm and this, in and of itself, may lead to a lower MAC percentage, 10.0%, against the ONS estimated Private Sector employment percentage of 28.1%, because 'Establishments' employing less than 20 employees are not entitled to Protective Awards, in the event of business failure, leading to the MAC percentage being 18.1% lower.

⁶² How the Redundancy Pay and associated Protective Awards Jurisdictions work in practice can be seen in the ET MAC claim, 1306072/2014, filed against Phones 4U (P4U) which went into Administration in September 2014 (gov.uk, 2020). On 19th September 2014, 623 employees were made redundant from the P4U Head Office and 1,683 employees were made redundant from P4U retail stores, including 21 from the Merry Hill Shopping Centre store. In April 2016 the ET determined that P4U had not complied with the requirement to notify the Secretary of State about the redundancies. However, this finding only applied to the 623 employees from Head Office and the 21 employees from the Merry Hill Shopping Centre store because the requirement to pre-notify the relevant Secretary of State, which is currently Business, Energy & Industrial Strategy, about the redundancies prior to actual redundancy, only applies to an *Establishment* that employs 20 or more staff. Each retail store is classed as a *separate Establishment* and if less than 20 employees are made redundant at each *separate Establishment* then there is no requirement to pre-notify the Secretary of State. The consequence of this is that the 623 Head Office employees and the 21 Merry Hill Shopping Centre store staff qualified for a Protective Award, whereas the remaining 1,662 retail employees did not.

The P4U example, perhaps, partly explains why in Table 5.18 SIC Section G, Wholesale & retail trade; repair of motor vehicle, the MAC percentage is lower than the ONS estimated Private Sector employment percentages by 18.1%.

The same reasoning may apply to both Section I, Accommodation and food service activities and Section Q, Human health & social work activities, where the nature of these SIC's is such that multiple 'Establishments', employing fewer than 20 employees, within a larger business are, potentially, the norm and this may lead to a MAC percentage, that is lower than the ONS estimated Private Sector employment percentages by 6.7% and 7.3% respectively, as 'Establishments' employing less than 20 people are not entitled to a Protective Award, in the event of business failure.

Looking at SIC Section C, Manufacturing, the MAC percentage is higher than the ONS estimated Private Sector employment percentage by 7.0% and this could be explained by a higher workforce concentration on fewer sites/establishments, i.e. few if any retail stores, which would avoid the multiple 'Establishment' Protective Award issue identified above (see footnote 62, above), as 'Establishments' employing more than 20 people are entitled to a Protective Award, in the event of business failure, possibly leading to an overstatement of the MAC percentage as noted, rather than higher unionisation, although this may also be a factor.

The brief discussion around these four outlier SIC Sections, highlights that this is an area for more research.

The Company Status of the respondent/employers is effectively a split between Active, Inactive and Not Found⁶³ and the details are shown in Table 5.19, below:

⁶³ There is a subset of respondent/employers where the company name was not found in the Companies House register. This is either because the ET has incorrectly recorded the respondent/employer's details or possibly because the claimant supplied the ET with incorrect respondent/employer details. These inaccuracies make it very difficult to trace them.

Table 5.19

ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
Private Sector by Companies House Company Status

MAC & Type No:	MAC		MAC A/L		SACaMAC		MAC Total	
	1a		1b		2		1a+1b+2	
	Percentage ⇒ ^a							
No. of MACs	755	55%	273	20%	354	26%	1,382	100%
	No.	%	No.	%	No.	%	No.	%
	Percentage ↓ ^b							
Public Sector Type	248	32.9%	0	0.0%	232	65.5%	480	35.0%
Other Non-Company	79	10.5%	0	0.0%	7	2.0%	86	6.3%
Private Sector								
Company Status @ April 2019								
Active	376	49.9%	1	0.4%	57	16.1%	434	31.4%
Active – petition to strike off	0	0.0%	20	7.3%	7	2.0%	27	1.9%
Dissolved	1	0.1%	99	36.3%	11	3.1%	111	8.0%
Liquidation	1	0.1%	109	8.2%	29	8.2%	139	10.1%
In Administration	0	0.0%	38	13.9%	8	2.3%	46	3.3%
Voluntary Administration	0	0.0%	5	1.8%	1	0.3%	6	0.4%
Dormant	1	0.1%	0	0.0%	0	0.0%	1	0.1%
Not Found	48	6.4%	1	0.4%	2	0.6%	51	3.7%
Sub Total	427	56.6%	273	100%	115	32.5%	815	58.7%
Total	754	100%	273	100%	354	100%	1,381	100%
^a Percentage ⇒ percentage calculated across columns ^b Percentage ↓ percentage calculated down column								

Inactive 23.8%

Table 5.19 again shows that the Public Sector, Other Non-Company and Private Sector represent 35%, 6.3% and 58.7% of MACs in the spreadsheet sample. Breaking the 58.7% represented by Private Sector MACs down by Status as Active, Inactive and Not Found gives 31.4%, 23.8% and 3.7% respectively. This outcome shows that nearly 23.8% of MACs in the spreadsheet sample are brought against respondent/employers who are in the process of bankruptcy. Perhaps more importantly this equates to 43% (330/764) of the 764 identified Companies in the sample. The claims that this represents have almost certainly been brought against the respondent/employer, as a result of a failure by the employer to comply with the relevant statutory provisions, such as the requirement to notify the relevant Secretary of State about planned redundancies in any ‘Establishment’ that employs 20 or more staff (see footnote 62, above). Therefore, the conclusion is that almost 43% of the Private Sector Company MAC claims in the

spreadsheet sample have been caused by action or inaction by the employer, which reflects the important role played by modern day ETs in ensuring employment rights are adhered to, even beyond the end of the employment contract.

Turning to the Companies House information regarding Company Accounts type brings the analysis to the size of the respondent/employer. The breakdown of Private Sector MACs by Company Accounts Type is shown in Table 5.20, below:

Table 5.20

**ET Decision Index MAC Claims Type 1a, 1b and 2 entries
1st Feb 2017 to 5th Feb 2019
Private Sector by Companies House Company Accounts Type**

MAC & Type No:		MAC		MAC A/L		SACaMAC		MAC Total	
		1a		1b		2		1a+1b+2	
Percentage ⇒ ^a									
No. of MACs		755	55%	273	20%	354	26%	1,382	100%
		No.	%	No.	%	No.	%	No.	%
Percentage ⇓ ^b									
Public Sector Type		248	32.9%	0	0.0%	232	65.5%	480	34.8%
Other Non-Company		79	10.5%	0	0.0%	7	2.0%	86	6.2%
Private Sector									
Company Accounts Type									
Group	G	29	3.9%	20	7.3%	9	2.5%	58	4.2%
Full	F	221	29.3%	54	19.8%	51	14.4%	326	23.6%
Medium	Me	0	0.0%	6	2.2%	2	0.6%	8	0.6%
Small	S	19	2.5%	12	4.4%	3	0.9%	34	2.5%
Micro	Mi	24	3.2%	15	5.5%	7	2.0%	46	3.3%
Total Exempt Full	TEF	51	6.8%	39	14.3%	19	5.4%	109	7.9%
Total Exempt Small	TES	2	0.3%	72	26.4%	10	2.8%	84	6.1%
Audited Abridged	AA	1	0.1%	0	0.0%	0	0.0%	1	0.1%
No Accounts	NA	10	1.3%	38	13.9%	7	2.0%	55	4.0%
Unaudited	U	0	0.0%	4	1.5%	1	0.3%	5	0.4%
Unaudited Abridged	UA	9	1.2%	0	0.0%	0	0.0%	9	0.7%
Audit Exempt	AE	2	0.3%	0	0.0%	2	0.6%	4	0.3%
Audit Exempt Subsidiary	AE S	3	0.4%	0	0.0%	0	0.0%	3	0.2%
Dormant	D	8	1.1%	12	4.4%	2	0.6%	22	1.6%
Not Found	NF	48	6.4%	1	0.4%	2	0.6%	51	3.7%
<i>Sub Total</i>		<i>427</i>	<i>56.6%</i>	<i>273</i>	<i>100%</i>	<i>115</i>	<i>32.5%</i>	<i>815</i>	<i>59.0%</i>
<i>Total</i>		<i>754</i>	<i>100%</i>	<i>273</i>	<i>100%</i>	<i>354</i>	<i>100%</i>	<i>1,381</i>	<i>100%</i>
^a Percentage ⇒ percentage calculated across columns ^b Percentage ⇓ percentage calculated down column									

Small, Medium & Micro 27.7%

Table 5.20 again shows that the Public Sector, Other Non-Company and Private Sector represent 35%, 6.3% and 58.7% of MACs in the spreadsheet

sample. Breaking the 58.7% represented by Private Sector MACs down by Company Accounts Type yields a potentially interesting outcome, as it shows that 27.7% of MACs in the spreadsheet sample are against respondent/employers in the Small/Medium/Micro size range. Perhaps more importantly this equates to 50.1% (379/757) of the 757 identified Companies in the sample. Again, this adds new knowledge to our understanding of workplace conflict.

Another way to make the comparison would be by actual number of claims filed. This is done in Table 5.21, below:

Table 5.21

**ET Decision Index MAC and MAC Equivalent entries by
Claims and Individuals
1st Feb 2017 to 5th Feb 2019**

MAC	Actual MACs or MAC Equivalents		Claims		Individuals	
	No:	Average Claims per MAC	No:	%age	No:	%age
Percentage ↓^a						
Public Sector						
Education	0	0	0	0.0%	0	0.0%
Fire	45	8.2	367	2.5%	365	2.5%
Government	20	8.6	171	1.1%	168	1.1%
Higher Education	8	6.3	50	0.3%	50	0.4%
Local Authorities	309	10.6	3,273	21.8%	2,813	19.5%
NHS	94	16.4	1,540	10.3%	1,539	10.7%
Police	7	4.0	28	0.2%	25	0.2%
<i>Sub-Total</i>	<i>483</i>	<i>35.0%</i>	<i>5,429</i>	<i>36.2%</i>	<i>4,960</i>	<i>34.4%</i>
Other Non-Company						
Charity	1	2.0	2	0.0%	2	0.0%
Mutual	10	15.8	158	1.1%	158	1.1%
Not a Company	74	2.5	188	1.3%	190	1.3%
<i>Sub-Total</i>	<i>85</i>	<i>6.3%</i>	<i>348</i>	<i>2.3%</i>	<i>350</i>	<i>2.4%</i>
Company Accounts Type						
Group	55	14.6	805	5.4%	803	5.6%
Full	323	16.8	5,431	36.2%	5,275	36.6%
Medium	8	32.8	262	1.8%	262	1.8%
Small	34	5.0	170	1.1%	169	1.2%
Micro	47	3.1	146	1.0%	139	1.0%
Total Exempt Full	107	5.1	545	3.6%	549	3.8%
Total Exempt Small	83	4.4	369	2.5%	441	3.0%
Audited Abridged	1	0.0	0	0.0%	0	0.0%
No Accounts	55	15.7	864	5.8%	876	6.1%
Unaudited Abridged	14	2.6	37	0.3%	35	0.2%
Audit Exempt	7	4.1	29	0.2%	29	0.2%
Dormant	23	8.7	200	1.3%	197	1.4%
Not Found	51	7.0	356	2.4%	315	2.2%
<i>Sub Total</i>	<i>808</i>	<i>58.7%</i>	<i>9,214</i>	<i>61.5%</i>	<i>9,090</i>	<i>63.1%</i>
Total	1,376	10.9	14,991	100%	14,400	99.9%

^a Percentage ↓ percentage calculated down column

Table 5.21 shows that the Public Sector, Other Non-Company and Private Sector represent 36.2%, 2.3% and 61.5% of *Claims* in the spreadsheet sample, compared to 35%, 6.3% and 58.7% of MACs.

Breaking the 61.5% represented by Private Sector *Claims* down by Accounts Type in Table 5.21 shows that Small/Medium/Micro employers represent 17.6% of the claims in the sample compared to 27.7% of MACs as shown in Table 5.20, above. While this may not be surprising, it does reveal that different size employers have different MAC profiles, highlighting again that MACs are not uniform in nature.

This section has used the ET Decision Index data to look at the workplace conflicts that manifest as MACs. Three discrete types of MACs were identified, each of which has clear points of difference, such as ‘time spread’, employer entering administration/liquidation and jurisdiction code make up, showing that MACs are not uniform in nature. It was also shown that although MACs vary in size range, only 2% of the sample comprised more than 101 claims.

It was also noted that 400 of the 480 Public Sector MACs were in the Local Authority and NHS sub-categories. In the Private Sector perhaps the most important finding was that 49.7% of the 764 identified companies in the sample were in the process of administration/liquidation, illustrating that some workplace conflict is employer generated and therefore a ‘burden on the employee’ as opposed to all workplace conflict being a ‘burden on the employer’ thus calling into question the arguments outlined in the literature review (*BBC*, 2011; Raab, 2011; BIS, 2012).

In the process of looking at the MAC types, it was shown that there is a difference between the number of individuals filing claims and number of claims filed. There are more claims than individuals. This phenomenon is further investigated in Chapter 6.

The analysis of the MACs in the ET Decision Index has examined the composition of the individual MACs to build up the bigger story presented above. The next section will compare both claims and claim outcome/disposals as represented by the annual statistics to try to further

tease out both the relationship and the differences between jurisdictional complaints, SACs and MACs.

5.4 Claims and Outcome/Disposal Statistics – What can a percentage delayed comparison tell us about the changing jurisdictional composition of claims?

This section looks at how the claims accepted and claims outcome/disposal statistics can be used to examine the relationship between the TCA, SACs, MACs and jurisdictional complaints. This analysis is being attempted to fill the gap in our understanding identified in the literature review about the intermediate level interactions between the TCA and its component parts, the SACs and MACs, and how each relates to the jurisdictional complaints.

This analysis will use the percentage delayed difference between the individual jurisdictional complaint claims and the same jurisdictional complaint's output/disposal statistics in order to develop a novel measure of how a particular jurisdictional complaint might be associated with either SACs or MACs. In short, as was noted in the literature review, there is a suggestion that ETs have over time moved from dealing with individual disputes that revolve around 'contended facts' as represented by Dennison and Corby's 'adversarial mirror' (Dennison and Corby, 2005), to dealing with norm-generating 'contended law' as represented by the change in the value of the disputes being brought to the ET from a few £thousands, to many £hundreds of thousands and in some cases £1millions as illustrated by MacMillan (1999). This analysis is an attempt to tease out the changes and enhance our understanding of this under researched area.

5.4.1 Jurisdictional Complaint claim and Jurisdictional Complaint outcome/disposal comparison analysis - Percentage Delayed

It would seem reasonable to assume that ET claim outputs follow ET claim inputs. Once a claim has been accepted by the ET, and recorded as such, it must be processed to outcome/disposal. What follows is an examination of the ET total claims outcome/disposals (TCOD) to glean further information about

MACs and their effect on the ET System. This will be achieved by analysing the delay between the filing of an ET Claim and its eventual outcome/disposal. When the delay was examined by jurisdiction it was found that the length of delay varied by jurisdiction. By comparing the delay across jurisdictions, it could be possible to identify a relationship between the length of delay and SAC/MACs which could yield a valuable insight into the potential change from ET claims being mostly about 'contended facts' to being mostly about norm-generating 'contended law'.

The problem outlined earlier regarding the lack of information on the exact relationship between SACs, MACs and jurisdictional complaints still applies. Two further points should be noted, however. Firstly, ALL the outcome/disposal statistics lag behind the TCA statistics. Some complicated SAC or MAC claims can take years to be resolved, going through the ET, the Employment Appeal Tribunal, the Court of Appeal, the Supreme Court and finally the European Court of Justice.

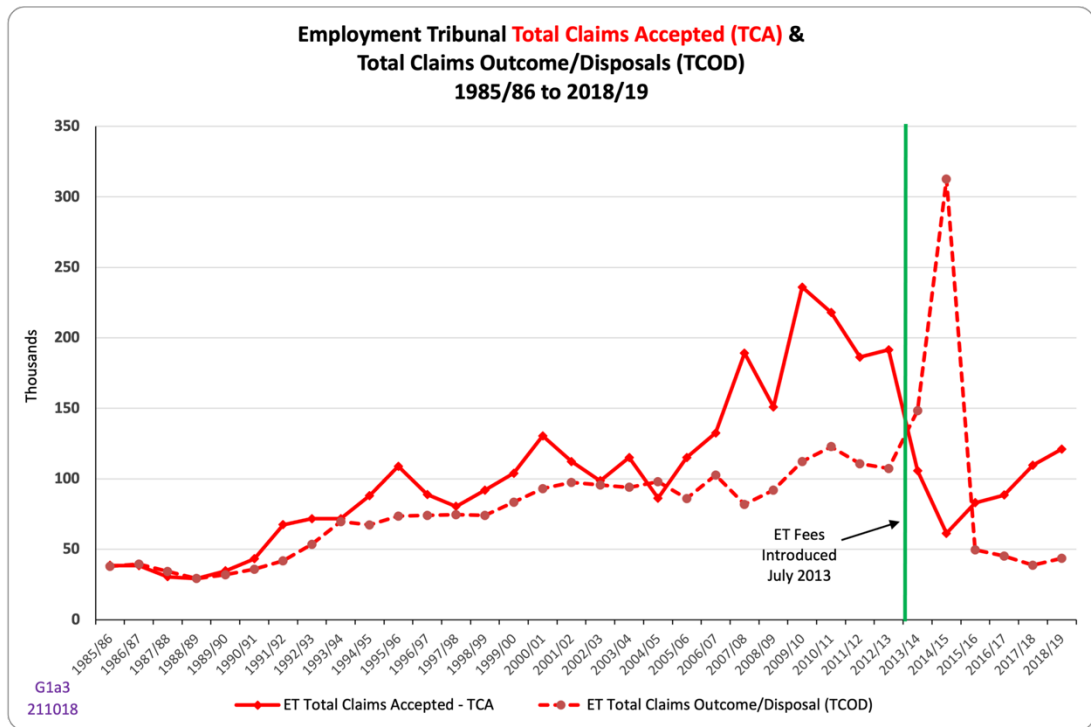
Secondly the actual outcome/disposal of the claim is a continuum made up of 10 different types of outcome/disposal, ranging from complete success to complete failure with various degrees of success or failure in between. This continuum will be examined in Chapter 7⁶⁴.

The total claim output/disposals from 1985/86 to 2018/19 are shown in Figure 5.23, below, along with the familiar TCA for the same period. The data for Figure 5.23 is shown in Appendix 2, Table A2.1 for the TCA and Table A2.5 for the total claim output/disposals⁶⁵.

⁶⁴ More detail on outcome/disposals is provided in Appendix 2, Terminology, Section A2.4, Claims Outcome/Disposals.

⁶⁵ The only outcome/disposal statistics prior to 1985/86 when the total claim output/disposals and the then current individual jurisdictional complaint outcome/disposal statistics are made available are Unfair Dismissal (UD), made available from 1972 (*Employment Gazette*, June 1974, p.504), Equal Pay (EP), made available from 1976 (*Employment Gazette*, May 1977, p.458), Sex Discrimination (SD), made available from 1976 (*Employment Gazette*, May 1977, p.460) and Race Discrimination (RD), made available from 1981 (*Employment Gazette*, December 1984, p.544). For a full list of Jurisdictional Complaint Outcome/Disposal statistics sources, see Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19.

Figure 5.23



The first point to note is that the total claims outcome/disposals line is almost always below the TCA line, apart from the years 2013/14 and 2014/15, showing that outcome/disposals lag behind claim filings. This is to be expected, because, as noted above, ALL the outcome/disposal statistics lag behind the TCA statistics, it is just a question of how much of a lag there is.

The jurisdictional complaints output/disposals are available from 2000/01 and the SAC output/disposals and MAC output/disposals from 2009/10. Each of these is compared against their claim accepted equivalent in Figures 5.24 to 5.26, below. The data for these figures is shown in Appendix 2, Table A2.2 for the SACs, MACs and jurisdictional complaints and Table A2.6 for SACs, MACs and jurisdictional complaints output/disposals.

Figure 5.24

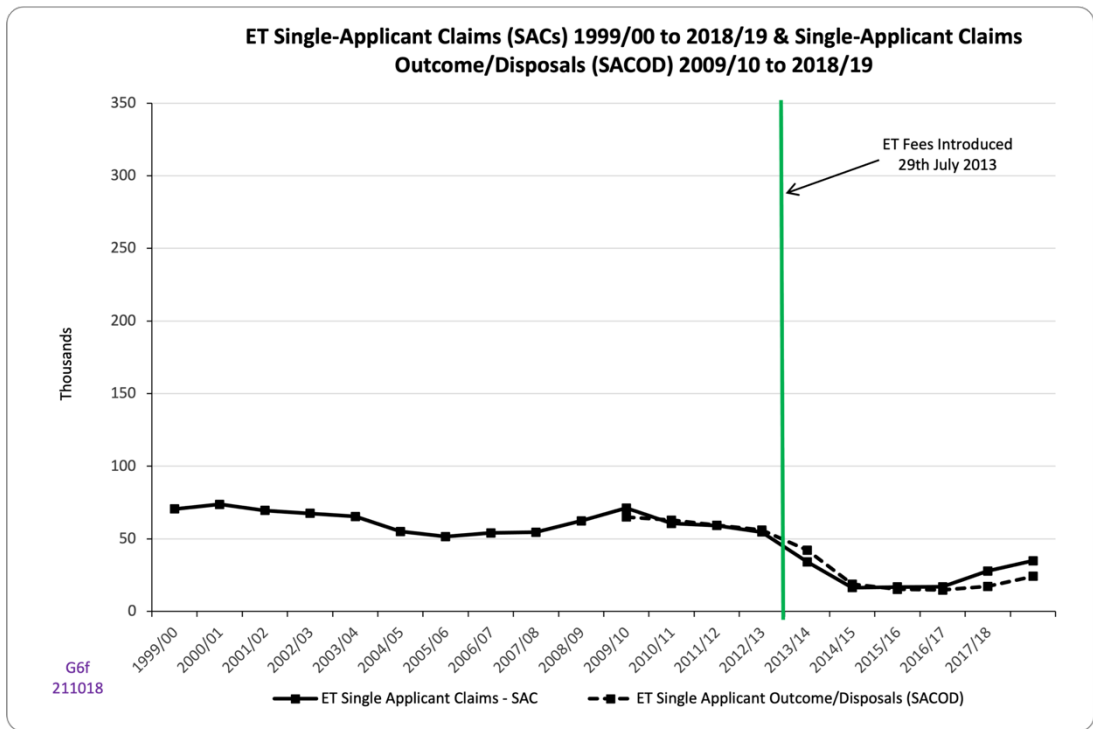


Figure 5.25

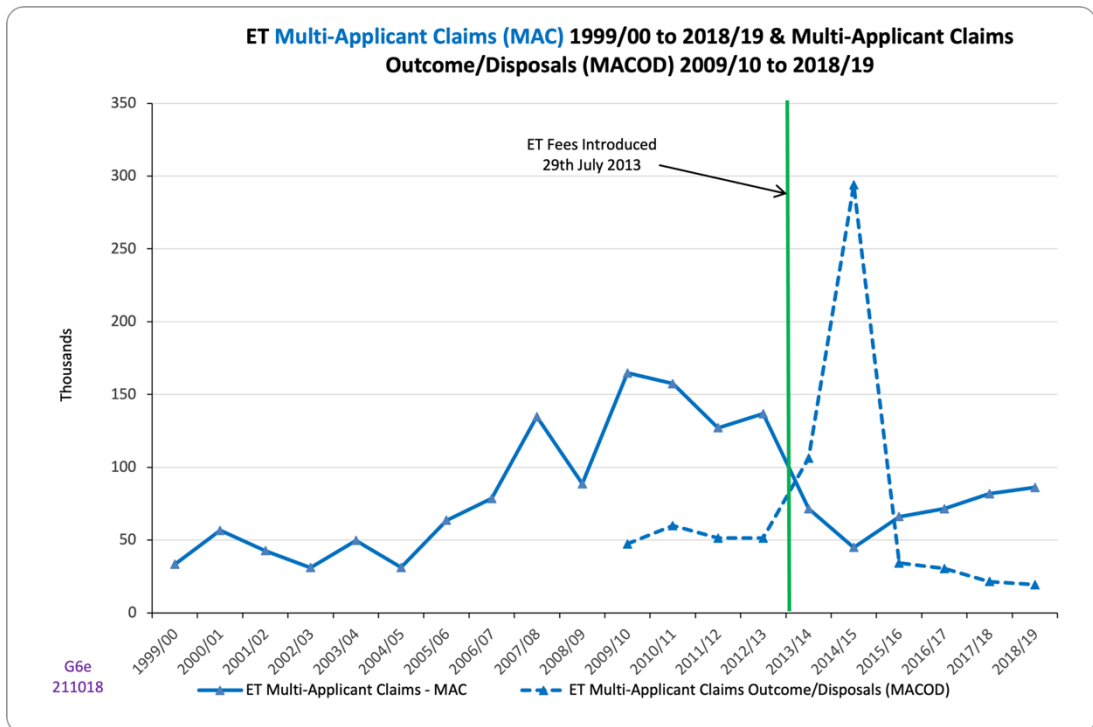
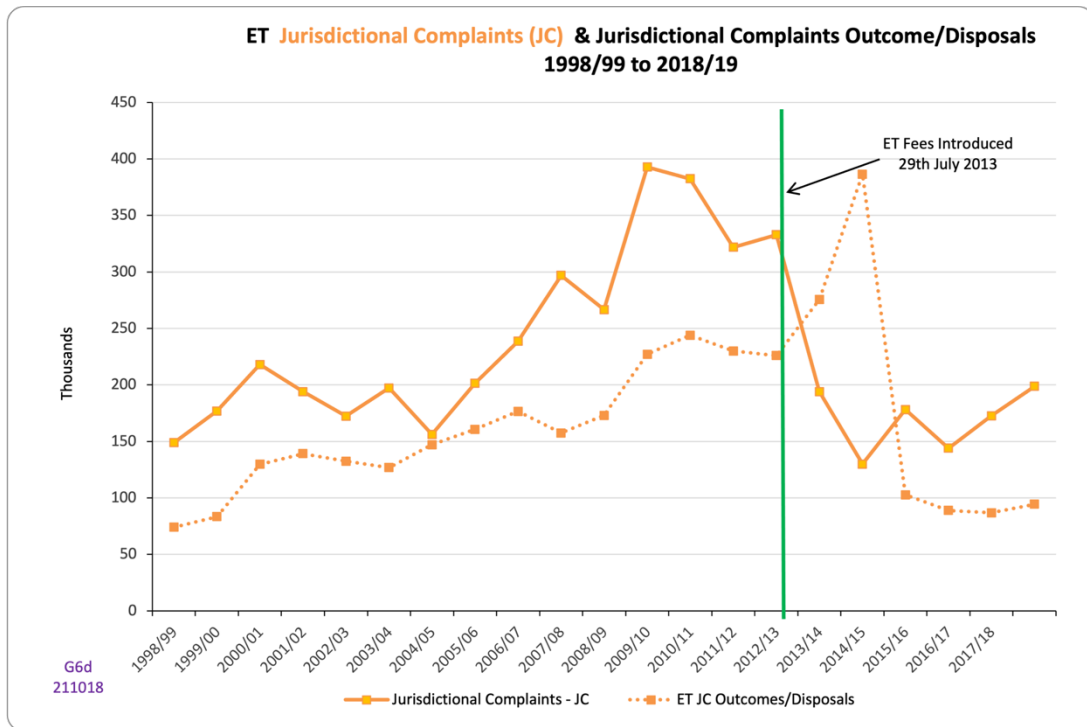


Figure 5.26



What is noticeable is that in Figure 5.24, the SAC Output/Disposals line closely follows the SACs line whereas in Figures 5.25 and 5.26, the MAC output/disposals and jurisdictional complaints output/disposals lines do not follow their respective MAC and jurisdictional complaint lines. Both reflect the same outcome/disposal peaks in the years 2013/14 and 2014/15 as the total claims output/disposals in Figure 5.23, again highlighting that there is, potentially, something unusual about MACs which needs looking at to truly understand the nature and resolution of the workplace conflict that comes through ETs.

It was noted earlier that there was a time lag following the acceptance of a claim by the ET and the outcome/disposal of the claim. Is the time lag between the filing of a claim and its outcome/disposal a viable indicator of ‘contended facts’ vs ‘contended law’ as discussed in the literature review? The facts of an Unfair Dismissal claim may be complex, but the ET can and will make the decision on the facts before it. The decision can then only be referred to the Employment Appeal Tribunal on a ‘question of law’ (Courts and Tribunal Judiciary, 2022, p.3). Findings of fact cannot generally be challenged. ‘The Employment Tribunal must be shown to have made an error of law’ (Courts

and Tribunal Judiciary, 2022, p.3). If, however, the claim is a ‘contended law’ claim, such as an Equal Pay MAC with complicated ‘questions of law’ at stake which require adjudication from a superior judicial body, then the ET decision can and will be referred to the Employment Appeal Tribunal and on to the Court of Appeal, Supreme Court and the European Court of Justice. If SACs are made up of jurisdictional complaints with ‘contended facts’, then they should/would be processed quicker than more ‘contended law’ issue MACs. As can be seen in Table 5.22, below, in the 4 years between 2009/10 and 2012/13, only an average of 3.1% of the annual ET cases (not claims) outcome/disposals⁶⁶ were referred to the Employment Appeal Tribunal.

Table 5.22

**Annual Number of Employment Tribunal Cases
Appealed to Employment Appeal Tribunal
2009/10 to 2012/13**

Year	Total Claims Accepted (TCA)	Annual Employment Tribunal Cases	Annual Employment Appeal Tribunal CASE Appeals Received	
			CASES	%age of Annual ET Cases
	A	B	C	D=C/B
2009/10	236,103	78,619	1,963	2.5%
2010/11	218,096	66,547	2,048	3.1%
2011/12	186,331	64,909	2,172	3.4%
2012/13	191,541	60,982	2,296	3.8%
Total	832,071	271,057	8,479	3.1%
√220426				
Sources: For Employment Tribunal, see Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19 For Employment Appeal Tribunal, Ministry of Justice, 2013a, Tab E.13				

If these Employment Appeal Tribunal Appeal cases were mostly MACs, then this would represent a much larger number of claims, as each MAC can contain thousands of claims, which would support the contention that MACs

⁶⁶ Each SAC is a case. Each MAC may contain many claims but is still only one case. For an explanation of specific terminology used in this thesis please see Appendix 2, ET Terminology.

tend to be norm-generating 'contended law' claims requiring adjudication from the ultimate judicial body and so MACs and the associated jurisdictional complaints could take longer to process. Logically this must be true. Even if all the EAT Appeal cases were SACs, because each SAC is a case the impact of an Appeal on each jurisdictional complaint percentage delayed should be minimal whereas if the Appeal Cases were MACs with thousands of claims the impact of an Appeal on each jurisdictional complaint percentage delayed would/should be major.

What follows is a novel attempt to test if this 'relationship' has merit using the seven jurisdictional complaints with the largest percentage of TCA containing that jurisdictional complaint as ranked above in Figure 5.13, Unfair Dismissal, Unauthorised Deductions, Working Time Directive, Breach of Contract, Equal Pay, Sex Discrimination and Redundancy Pay. The information on these jurisdictional complaints outcome/disposals is shown in Appendix 13, Tables A13.1 to A13.9.

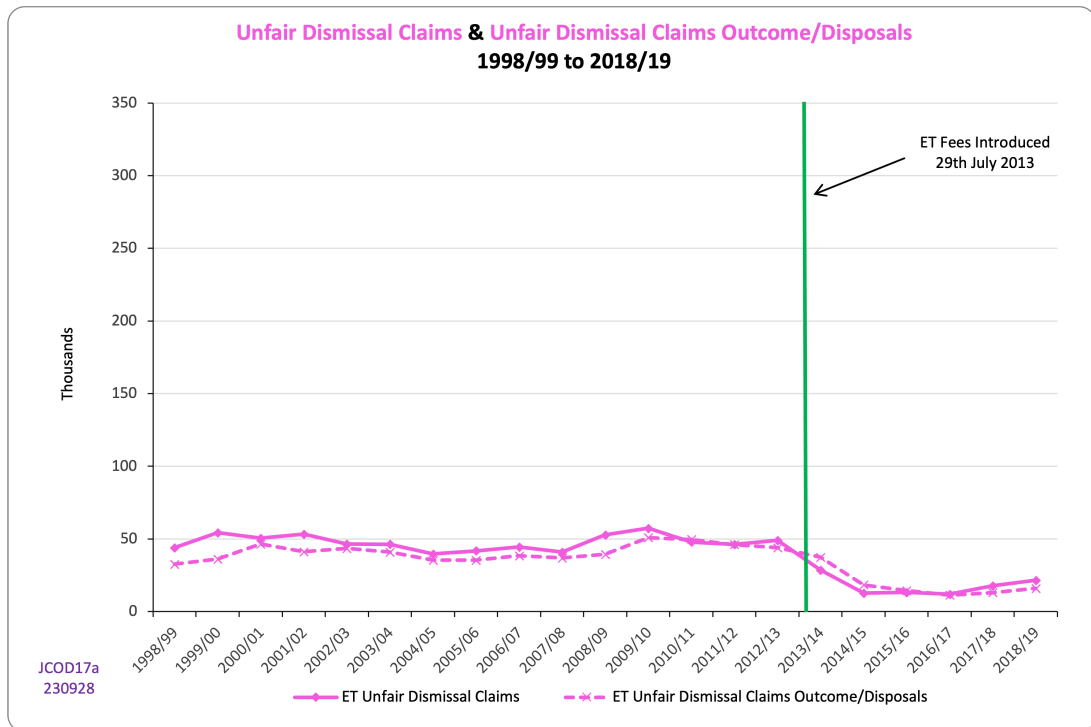
In each of the following seven jurisdictional complaint comparisons it should be noted that there would, of course, have been outstanding claims from *before* 1998/99 but processed in the period, and some claims accepted in the period processed *after* 2018/19, so the difference and percentage figures computed are not absolutely definitive but are indicative of the delay.

The jurisdictional complaints that demonstrate a relationship to SACs are presented first, followed by the jurisdictional complaints that demonstrate a relationship to MACs and lastly the jurisdictional complaints that have an inconclusive relationship with both SACs and MACs.

5.4.1.1 Unfair Dismissal claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.27, below, shows the Unfair Dismissal jurisdictional complaint and Unfair Dismissal outcome/disposals, both from 1998/99 to 2018/19.

Figure 5.27

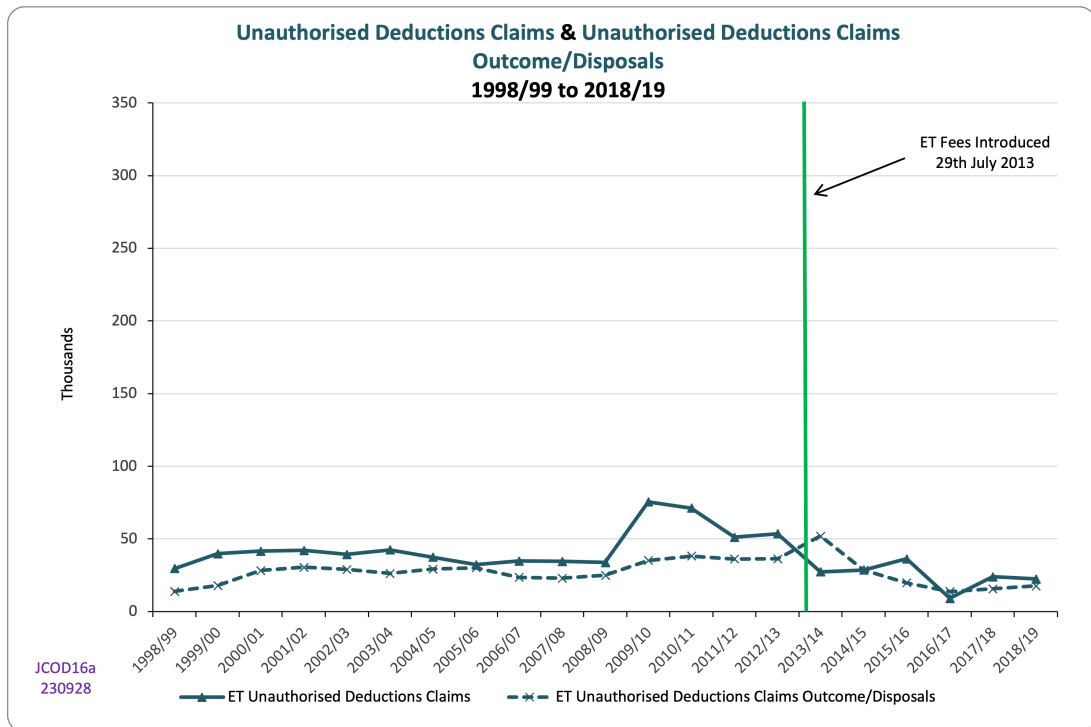


The Unfair Dismissal jurisdictional complaint and Unfair Dismissal outcome/disposals lines follow each other quite closely, indicating that Unfair Dismissal claims are processed to conclusion reasonably quickly and this is supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 821,194 Unfair Dismissal claims were accepted by the ET and 728,166 were processed to outcome/disposal, a difference of 92,018, which represented 11.33% (92,018/821,194) of the Unfair Dismissal claims accepted.

5.4.1.2 Unauthorised Deductions claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.28, below, shows the Unauthorised Deductions jurisdictional complaint and Unauthorised Deductions outcome/disposals, both from 1998/99 to 2018/19.

Figure 5.28

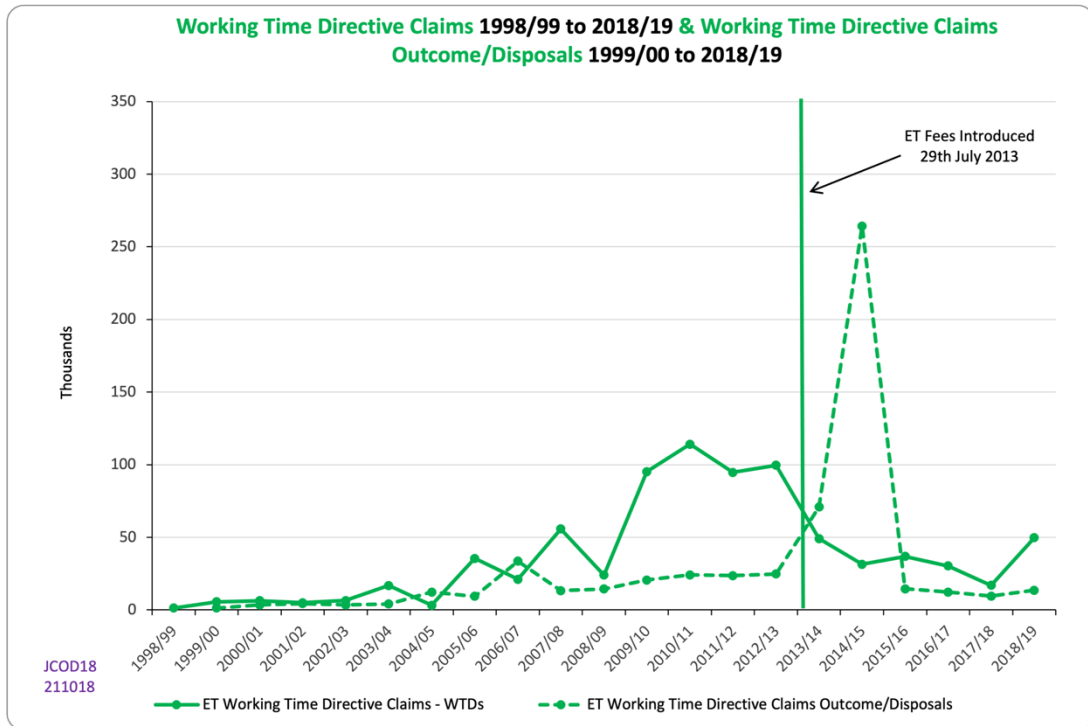


The Unauthorised Deductions jurisdictional complaint and Unauthorised Deductions jurisdictional complaint outcome/disposals lines follow each other quite closely until 2009/10 when the jurisdictional complaint outcome/disposals line significantly lags behind the jurisdictional complaint line. What is perhaps more noticeable is that apart from 2013/14 the jurisdictional complaint outcome/disposals line is always below the jurisdictional complaint line indicating that Unauthorised Deduction claims are processed to conclusion more slowly than claims are accepted and this is supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 808,295 Unauthorised Deductions claims were accepted by the ET and 570,728 were processed to outcome/disposal, a difference of 237,567, which represented 29.39% ($237,567/808,295$) of the Unauthorised Deduction claims accepted.

5.4.1.3 Working Time Directive claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.29, below, shows the Working Time Directive jurisdictional complaint from 1998/99 to 2018/19 and the corresponding Working Time Directive outcome/disposals, from 1999/00 to 2018/19.

Figure 5.29



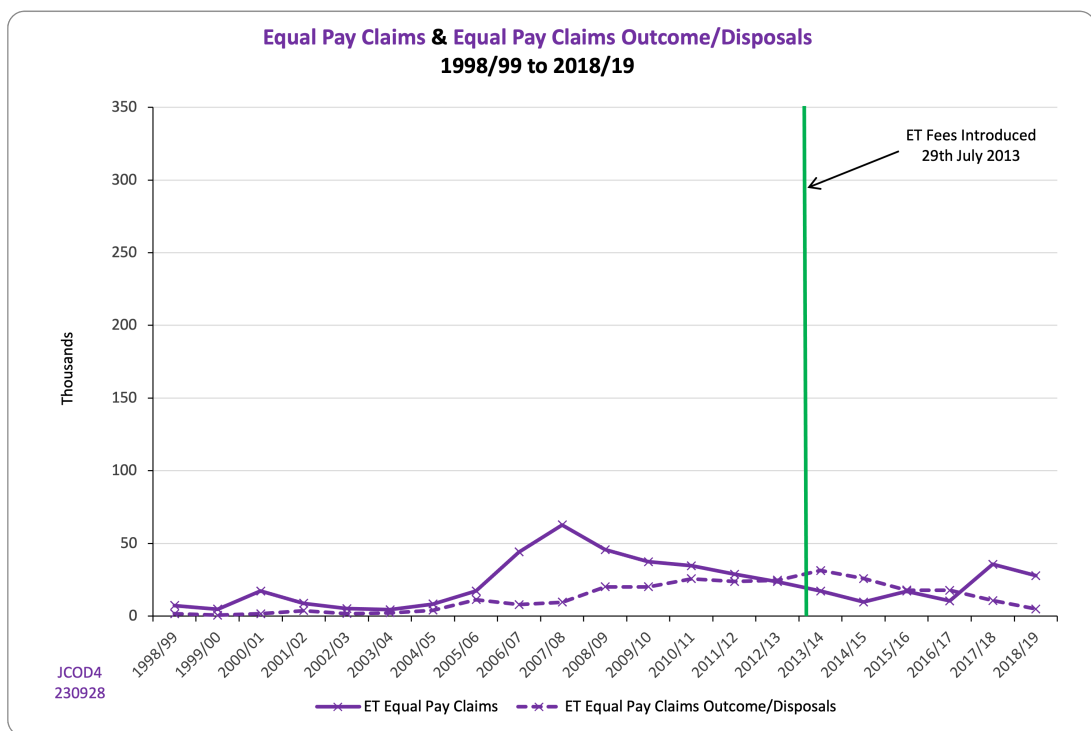
The Working Time Directive jurisdictional complaint and jurisdictional complaint outcome/disposals lines initially follow each other quite closely but then the jurisdictional complaint line climbs leaving the jurisdictional complaint outcome/disposals line behind until 2014/15 when there is a very large number of Working Time Directive outcome/disposals. What is also noticeable is that apart from 2013/14 and 2014/15 the jurisdictional complaint outcome/disposals line is always below the jurisdictional complaint line indicating that Working Time Directive claims are processed to conclusion more slowly than claims are accepted and this is supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 799,060 Working Time Directive claims were accepted by the ET and 577,782 were processed to outcome/disposal, a difference of 221,278, which represented

27.69% (221,278/799,060) of the Working Time Directive claims accepted. As 1998/99 was the first year of the Working Time Directive jurisdictional complaint there would have been no outstanding Working Time Directive claims prior to 1998/99, because the legislation only came into effect in October 1998. However, some claims would have been accepted in the period under review and processed *after* 2018/19, so the difference and percentage figures used are still not absolutely definitive but are indicative of the delay.

5.4.1.4 Equal Pay claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.30, below, shows the Equal Pay jurisdictional complaint and Equal Pay outcome/disposals, both from 1998/99 to 2018/19.

Figure 5.30



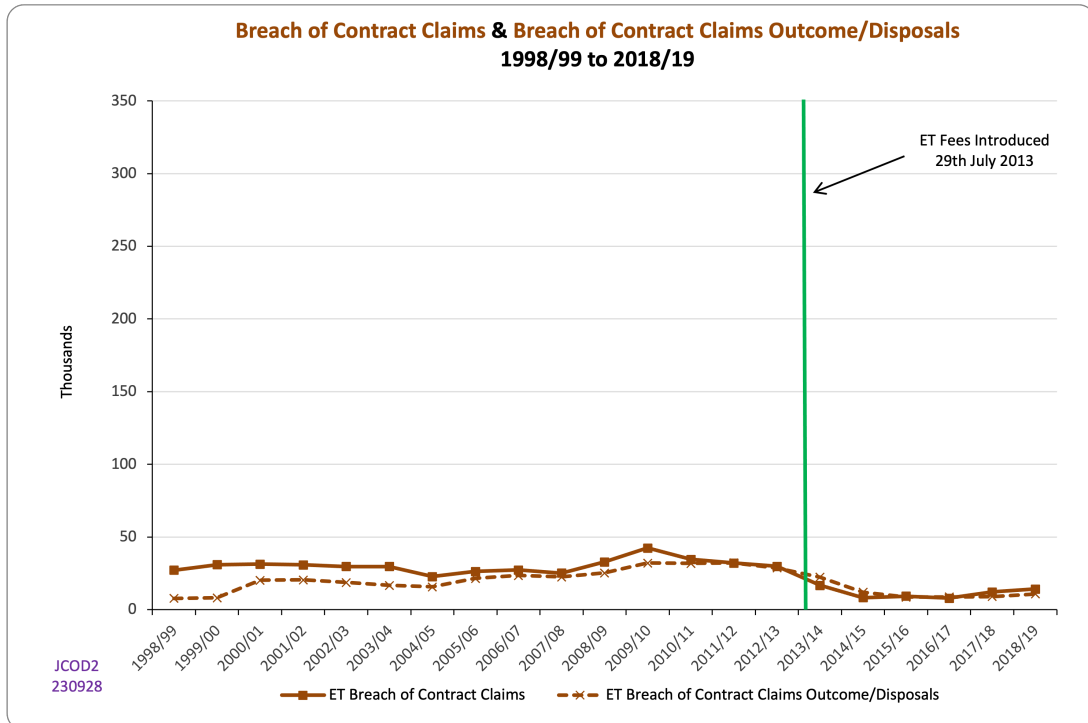
The Equal Pay jurisdictional complaint and jurisdictional complaint outcome/disposals lines initially follow each other quite closely until 2005/06 but then the jurisdictional complaint line climbs leaving the jurisdictional complaint outcome/disposals line behind until 2012/13. What is also noticeable is that apart from 2013/14, 2014/15 and 2016/17 the jurisdictional complaint outcome/disposals line is always below the jurisdictional complaint

line indicating that Equal Pay claims are processed to conclusion more slowly than claims are accepted and this is supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 467,321 Equal Pay claims were accepted by the ET and 266,581 were processed to outcome/disposal, a difference of 200,740, which represented 42.96% (200,740/467,321) of the Equal Pay claims accepted. It was noted in the literature review (Hepple et al., 2000) that Equal Pay MACs take a long time to be resolved due to the complex legal issues in dispute (see Appendix 14, Table A14.1, for 32 example Equal Pay MAC Cases and associated references) and the 42.96% percentage delay appears to support this.

5.4.1.5 Breach of Contract claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.31, below, shows the Breach of Contract jurisdictional complaint and Breach of Contract outcome/disposals, both from 1998/99 to 2018/19.

Figure 5.31



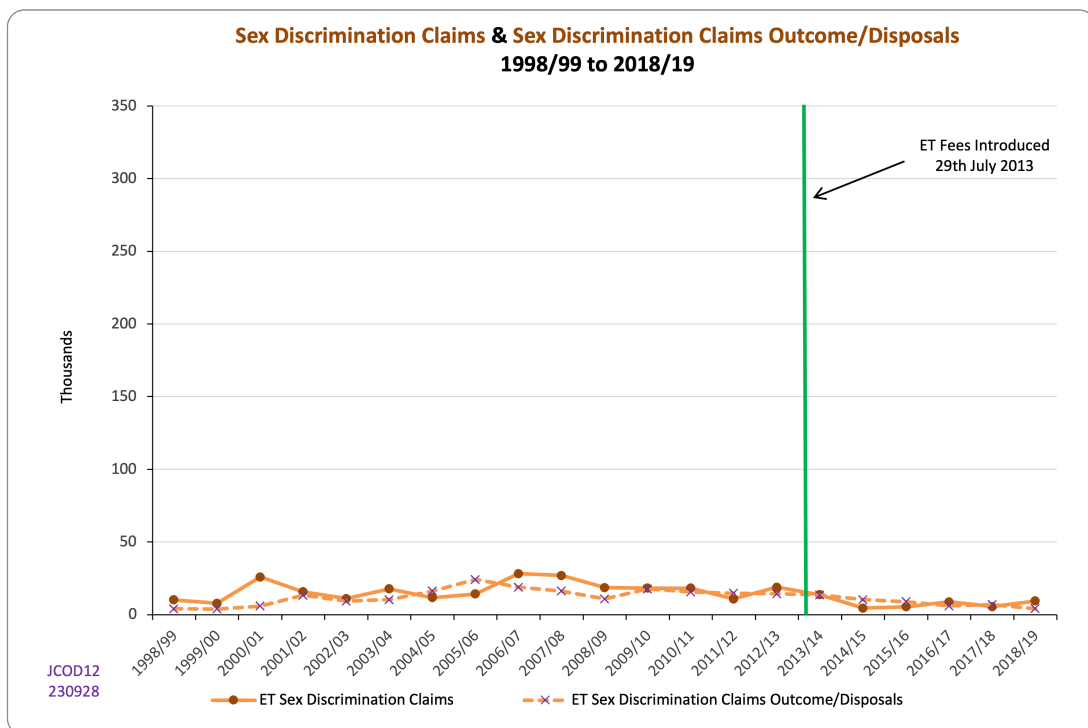
The Breach of Contract jurisdictional complaint and jurisdictional complaint outcome/disposals lines follow each other quite closely indicating that Breach of Contract claims are processed to conclusion reasonably quickly although

this is not entirely supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 521,406 Breach of Contract claims were accepted by the ET and 396,654 were processed to outcome/disposal, a difference of 124,752, which represented 23.93% (124,752/521,406) of the Breach of Contract claims accepted.

5.4.1.6 Sex Discrimination claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.32, below, shows the Sex Discrimination jurisdictional complaint and Sex Discrimination outcome/disposals, both from 1998/99 to 2018/19.

Figure 5.32

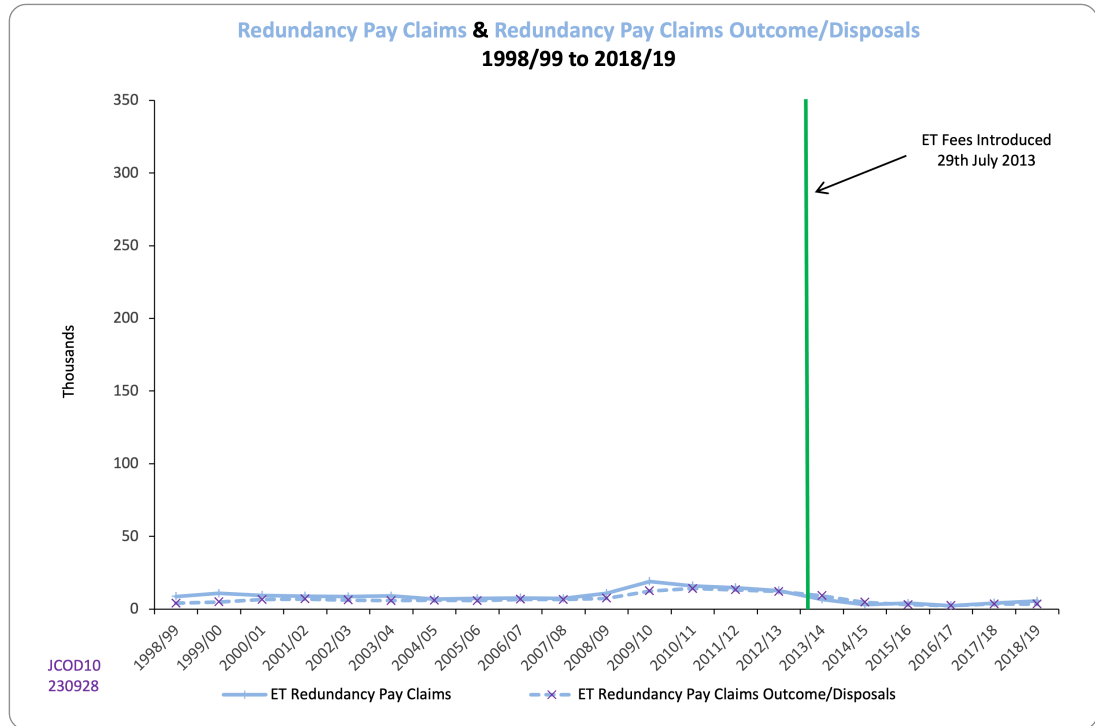


The Sex Discrimination jurisdictional complaint and jurisdictional complaint outcome/disposals lines follow each other quite closely indicating that Sex Discrimination claims are processed to conclusion reasonably quickly, although this is not entirely supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 301,412 Sex Discrimination claims were accepted by the ET and 244,541 were processed to outcome/disposal, a difference of 56,871, which represented 18.87% (56,871/301,412) of the Sex Discrimination claims accepted.

5.4.1.7 Redundancy Pay claim and outcome/disposal comparison analysis – Percentage Delayed

Figure 5.33, below, shows the Redundancy Pay jurisdictional complaint and Redundancy Pay outcome/disposals, both from 1998/99 to 2018/19.

Figure 5.33



The Redundancy Pay jurisdictional complaint and jurisdictional complaint outcome/disposals lines follow each other quite closely indicating that Redundancy Pay claims are processed to conclusion reasonably quickly, although this is not entirely supported by the data in Table 5.23, below, which shows in the period 1998/99 to 2018/19, 183,374 Redundancy Pay claims were accepted by the ET and 144,215 were processed to outcome/disposal, a difference of 39,159, which represented 21.35% (39,159/183,374) of the Redundancy Pay claims accepted.

5.4.1.8 Summary of Jurisdictional Complaint claim and Jurisdictional Complaint outcome/disposal comparison analysis – Percentage Delayed

The foregoing analysis is summarised in Table 5.23, below:

Table 5.23

Top 7 Jurisdictional Complaints for 1998/99 to 2018/19 Claims Accepted vs Claims Outcome/Disposals

Rank	Type of Jurisdictional Complaint	ET Fee Type	1998/99 to 2018/19					Relationship SAC/MAC	Contended Facts/ Contended Law
			Total Claims Accepted	Claims Outcome/ Disposed	Difference	%age 'delayed'			
			A	B	C	D=C/A			
	Total Claims Accepted		2,727,732	2,089,353	638,379	23.40%			
	Total Jurisdictional Complaints		4,714,294	3,461,142	1,253,152	26.58%			
	Average Jurisdictional Complaints per claim		1.728						
1	Unfair dismissal (Figure 5.27)	B	821,194	728,166	93,028	11.33%	SAC	Facts	
2	Unauthorised deductions (Figure 5.28)	A	808,295	570,728	237,567	29.39%	MAC	Law	
3	Working Time Directive (Figure 5.29)	A	799,060	577,782	221,278	27.69%	MAC	Law	
5	Equal Pay (Figure 5.30)	B	467,321	266,581	200,740	42.96%	MAC	Law	
4	Breach of Contract (Figure 5.31)	A	521,406	396,654	124,752	23.93%	Inconclusive		
6	Sex Discrimination (Figure 5.32)	B	301,412	244,541	56,871	18.87%	Inconclusive		
7	Redundancy Pay (Figure 5.33)	A	183,374	144,215	39,159	21.35%	Inconclusive		
	15 Remaining Jurisdictional Complaints		812,232	532,475	279,757	34.44%			
	Total		4,714,294	3,461,142	1,253,152	26.58%			
/210707									
Annual claims accepted data shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19 Annual claims outcome/disposals data shown in Appendix 2, Table A2.5, Employment Tribunal Total Claims Outcome/Disposals (TCOD) by Year 1985/86 to 2018/19 and in Appendix 13, Tables A13.1 to A13.9, Employment Tribunal Claims Outcome/Disposal Data Series									

The foregoing 'percentage delayed' analysis appears to yield the following set of delimiters:

- Jurisdictional complaints with under 15% of claims accepted 'delayed/outstanding' are more likely to be associated with SACs.
- Jurisdictional complaints with over 25% of claims accepted 'delayed/outstanding' are more likely to be associated with MACs.
- Jurisdictional complaints with between 15% and 24% of claims accepted 'delayed/outstanding' are more likely to be inconclusive.

This analysis indicates that Unfair Dismissal is more likely to be associated with SACs, as the difference between Unfair Dismissal claims accepted and Unfair Dismissal jurisdictional complaint outcome/disposals over the period is 11.33%, indicating that Unfair Dismissal claims are processed quicker than the other jurisdictional complaints. This, perhaps, highlights that where claims are 'contended fact' based there is a tendency to dispose of these more quickly through a reasonableness test (Emir, 2012, p.420), than where they appear to be 'contended law' based, which requires legal clarification/adjudication.

Working Time Directive seems more likely to be associated with MACs as the number of Working Time Directive claims accepted was 27.69% more than the Working Time Directive outcome/disposals number. This level 'delayed/outstanding' could be made up of SACs and MACs, but while SACs in this jurisdictional complaint can be legally complex and take years to be resolved, the high percentage of 'delayed/outstanding' in this jurisdictional complaint hints that far more claims than SACs are involved, pointing to the MAC Working Time Directive claims as the main driver of the high 'delayed/outstanding' percentage. This would potentially indicate that the employment disputes brought to the ET under the Working Time Directive jurisdictional complaint revolves around 'contended law'.

Equal Pay seems even more likely to be associated with MACs as the number of Equal Pay claims accepted was 42.96% more than the Equal Pay outcome/disposals number. This level 'delayed/outstanding' could be made up of SACs and MACs, but while SACs in this jurisdictional complaint can be legally complex and take years to be resolved, the high percentage of 'delayed/outstanding' in this jurisdictional complaint hints that far more claims than SACs are involved, pointing to the MAC Equal Pay claims as the main

driver of the high 'delayed/outstanding' percentage (see Appendix 14, Table A14.1, for 32 example Equal Pay MAC Cases and associated references). Again this, perhaps, highlights that where cases revolve around 'contended law' there is a tendency to take longer to process to outcome/disposal than where they appear to be about 'contended facts'.

The 'percentage delayed' calculation of 29.39% indicates that the Unauthorised Deductions jurisdictional complaint is likely to be associated with MACs. This is possible as in Table 5.4, the Unauthorised Deductions jurisdictional complaint was associated with MACs in the pre-ET Fee period from 1999/00 to 2012/13 and was shown as inconclusive in the period 1999/00 to 2018/19. Based on the current analysis, the Unauthorised Deductions jurisdictional complaint would potentially indicate that the employment disputes brought to the ET under the Unauthorised Deductions jurisdictional complaint are 'contended law' based.

Of the remaining jurisdictional complaints, Breach of Contract, Sex Discrimination and Redundancy Pay appear to be inconclusive.

This section has demonstrated that there is a potential relationship between the jurisdictional complaint 'percentage delayed' statistic and the jurisdictional complaint's relationship with either SAC or MAC. The higher the 'percentage delayed' statistic, the more a jurisdictional complaint is likely to be a MAC jurisdictional complaint associated with 'contended law'. This analysis has highlighted that there needs to be a greater appreciation of the jurisdictional composition of ET claims and the substantive difference between SACs and MACs, in order to understand what ET claims data tells us about conflict in the workplace. This section has also begun to further our understanding of the how the rise of large-scale norm-generating 'contended law' MACs, as pursued by the trade unions and no-win, no-fee lawyers, is concentrated in two particular jurisdictions, Equal Pay and Working Time Directive, which has changed the make-up of the TCA, from being mostly made up of 'contended fact' SACs to being mostly made up 'contended law' MACs, which, by establishing case law and precedent, a familiar process in the legal profession,

(Masood and Lineberger, 2020), demonstrates institutional isomorphism (Corby and Latreille, 2012) as discussed in the literature review.

Beyond institutional isomorphism, this section has also begun to further our understanding of the how the rise of large-scale 'contended law' MACs, is also, perhaps, a manifestation of the tension around the optimal 'capitalist' level of employment law beneficial constraints (Streeck, 1997; Wright, 2004), where the ET is the forum where the actual level of 'beneficial constraints' is 'negotiated' via 'contended law' MACs, which are a form of collective workplace conflict, pursued by trade unions or no-win, no-fee lawyers. This is an aspect of ETs, that has not previously been discussed and by analysing MACs, this thesis is developing a new understanding of contemporary collective workplace conflict in Great Britain.

5.5 Conclusion

This chapter has looked at what the ET claim data/statistics tells us about workplace conflict in Great Britain. It has, firstly, examined how the volume of tribunal claims has changed over time, secondly, looked at how the type of claim has changed from SACs to MACs and thirdly, looked at how the jurisdictional composition of claims has changed.

In the process of examining the changes in the volume, type and jurisdictions of the ET claims since 1972 it has become clear that, firstly, the number of claims received by the ET has increased, particularly from 2004/05 on, secondly, the make-up of the TCA has changed from mostly SACs to mostly MACs, and lastly, the jurisdictions presented to the ET have changed from mostly 'contended fact' based, to mostly 'contended law' based.

This chapter has discussed several of the commonly cited causes for the growth in the TCA, as discussed in the literature review, such as the decline in trade union membership (Shackleton, 2002, p.45; Renton, 2012, p.138), the increase in the number of statutory rights (Dickens, 2000, p.69) and the interaction of the economic cycle with the rise and fall in the TCA (Sanders, 2009; Schulze-Marmeling, 2013) along with the possible consequences of the 8 million increase in the number of people in employment between 1972 and

2018/19. It was shown that neither the decline in trade union membership nor the growth in the number of people in employment were directly responsible, as both were long-term trends, whereas the sharp growth in the TCA was in the short period between 2006/07 and 2009/10. With regard to the interaction of the economic cycle and the rise and fall of the TCA, the analysis in this chapter has shown that the evidence is, as yet, inconclusive and is further discussed in Chapter 7. The examination of the last cited cause, the increase in the number of statutory rights (Dickens, 2000, p.69), or juridification (Deakin and Morris, 2005, in Heery 2011) has begun to show that the change in make-up of the TCA, from being mostly made up of 'contended fact' SACs to being mostly made up norm-generating 'contended law' MACs is related to juridification, but perhaps not as previously understood, in that it is not only new jurisdictions that are responsible for the growth in 'contended law' MACs, but also the complexity of the legislation itself, as illustrated by the finding that the long-standing Equal Pay jurisdiction is associated with MACs. The examination of the last cited cause, the increase in the number of statutory rights has also highlighted an obvious coincidence between the beginning of the sharp increase in the TCA in 2004/05 and the sharp rise in Working Time Directive claims following introduction of the Civil Aviation Working Time Regulations in April 2004. This coincidence has largely been overlooked by the academic literature and policy makers, as noted in the literature review (Hand J., 2010; Lord, 2014) and is thoroughly investigated in the next chapter.

This chapter has also carefully revealed much more about MACs, partly by showing in various novel analyses of the ET statistics that the Working Time Directive and Equal Pay jurisdictions are consistently associated with MACs and partly by undertaking a detailed analysis of the MACs contained in the ET Decision Index. MACs have been found to be multifaceted, for example, coming in a range of sizes, with 78% of the MACs in the sample in the range 2-10 claims and only 2% of the sample with more than 100 claims. Perhaps the most surprising finding was that 43% (330/764) of the Private Sector Company MACs in the sample related to employers entering Administration. Hardly an example of the 'burden on business' identified within the literature

review (BBC, 2011; Raab, 2011; BIS, 2012), but more an example of the 'burden on the employee'.

The ET Decision Index analysis also found a difference between *claims* and *individuals*. As has been previously noted, the ET records the annual number TCA but not the number of individuals making the claims. This is certainly something that has never been noted or discussed in the literature before as noted in the literature review (Saundry and Dix, 2014; Corby, 2015). This an important observation as any discussion about how the rising volume of ET claims relates to increased workplace conflict needs to acknowledge that a rise in ET claims is not necessarily a rise in individual employment disputes, it may just be that more claims have been generated by the *same* individuals for the *same* employment dispute.

So having examined what the ET claims data tells us about workplace conflict in Great Britain, it is now time take the analysis further by examining what factors lie behind the changes in ET claims and this is done in the next chapter.

Chapter 6

***What factors lie behind the observed changes
in Employment Tribunal claims?***

6.1 Introduction

The previous chapter examined what the Employment Tribunal (ET) data tells us about employment disputes in Great Britain. In particular it looked at how the volume of ET claims has changed over time and examined the rise of multi-applicant claims (MACs), which have been relatively underexplored previously compared to single applicant claims (SACs). The chapter showed that the growth of MACs has changed the jurisdictional composition of claims from primarily Unfair Dismissal claims to primarily Working Time Directive claims.

This chapter builds on these previous discussions around the nature of the changes by examining what factors lie behind the changes in ET claims. This review of driving factors is important because it will address the purported growth in vexatious claims and associated business burden which is seemingly exacerbated by the noted increase in ET claims (*BBC*, 2011; Raab, 2011; BIS, 2012). The total claims accepted (TCA) is not a 'fixed' statistic which makes longitudinal comparison difficult. As was highlighted in the literature review, and illustrated in Chapter 4, what counts and when it counts as a claim has changed over the period from 1972 (Hand D., 2018), so to fully answer the question 'What do Employment Tribunal claims tell us about workplace conflict?', it is necessary to examine the major changes that have impacted on the TCA, and this chapter looks at four types of 'changes' that have been identified:

1. Change Type 1: Internal ET Administrative Procedural Changes (ET Administrative), which were identified in Chapter 4. The annual TCA has been increased or reduced as an unintended *administrative* consequence of the ET system itself, for example, by changing the *administrative* definition of what counts as a claim (Hand D., 2018). Change Type 1 needs to be considered when making longitudinal comparisons across the data series, as it is questionable whether some of these changes are in fact reflections of new workplace conflict, although this is acknowledged to be a problem as it is often not clear in the data that a Change Type 1 is in effect.

2. Change Type 2: Government Mandated Design/Policy Procedural Changes, which were identified in Chapter 4. The annual TCA has been affected by government mandated *design/policy* procedural changes to the ET claim process, usually with the goal of reducing and preventing potential ET claims becoming actual ET claims. These include changes to the Unfair Dismissal Qualifying Period and the introduction of ET Fees. Change Type 2 needs to be considered when making longitudinal comparisons across the data series, as what gets counted as an actual ET claim is not a static phenomenon, as noted in the literature review (Hand D., 2018).
3. Change Type 3: Change from 'Contended Facts' to 'Contended Law', which was outlined in the literature review and reflects a change in what the ET is being asked to adjudicate on from 'contended facts' to 'contended law'. The increase in large-scale MACs associated with the Working Time Directive and Equal Pay jurisdictional complaints represents an increase in employment disputes about the law, whereas the Unfair Dismissal jurisdictional complaint represents employment disputes about 'contended facts'. Change Type 3 needs to be considered when making longitudinal comparisons across the data series because 'contended law' MACs have different drivers to 'contended facts' Unfair Dismissal claims. Change Type 3 also includes the court mandated procedural changes identified in Chapter 4.
4. Change Type 4: The annual TCA or total claim outcome/disposal statistics are found to have *reliability and construct validity* issues compromising longitudinal comparison across the data series, as noted in the literature review (Hand D., 2018).

6.2 Change Type 1: Administrative 'Ghost Claims'

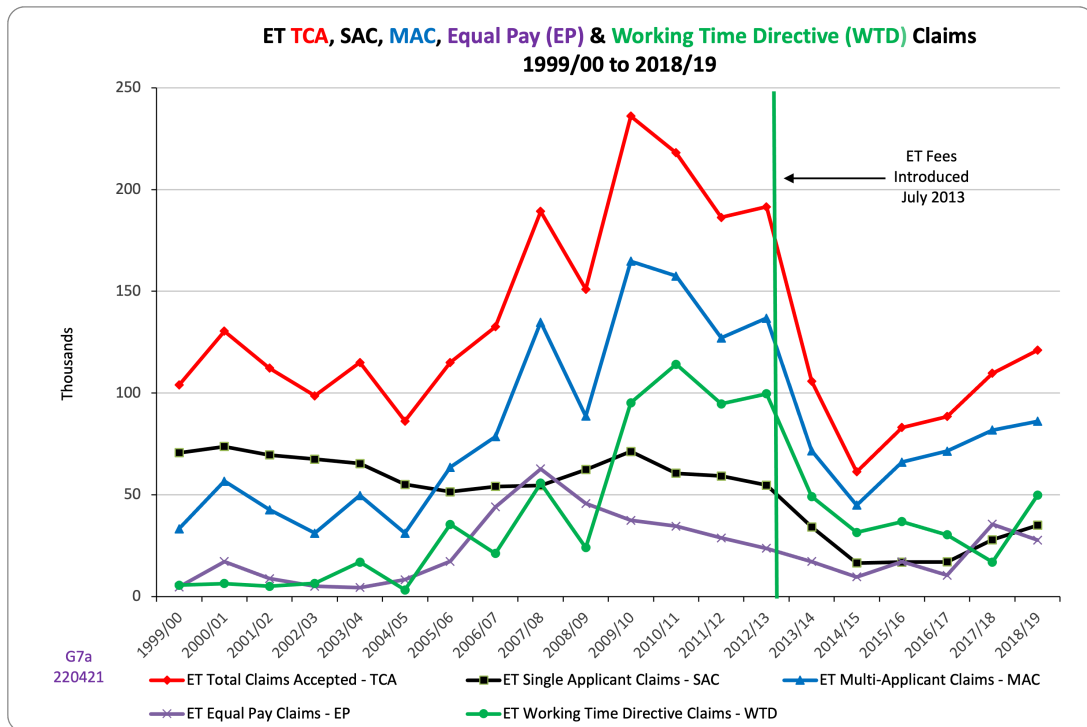
As part of the discussion in Chapter 5, it was highlighted that from 2005/06 onwards the number of MACs filed had overtaken the number of SACs filed, making MACs the largest proportion of the TCA statistic. It was also highlighted that the driver of the growth in MACs was mainly related to the growth in Working Time Directive jurisdiction claims. This growth in Working Time Directive claims was illustrated by showing, in Figure 5.15, above, that

for 4 out of 5 years between 2010/11 to 2014/15 over 50% of the TCA contained a Working Time Directive claim.

The following analysis will show that the growth is from a most unexpected source, the ET itself. By the end of this section, it will be clear that the number of claims filed with the ET and the number of individuals associated with the claims are NOT the same and that the reason that the Working Time Directive jurisdictional complaint accounted for 52.32% of the TCA in 2010/11 was likely the result of an administrative quirk generating administrative 'ghost claims' on a large scale. This finding requires a careful reconsideration of the degree to which ET data can be used as a proxy for workplace conflict.

To highlight the scale of growth in the number of Working Time Directive claims it was shown in Chapter 5, Figure 5.13, above, that in the period 1998/99 to 2018/19, 17.1% of the TCA contained an Equal Pay jurisdictional complaint (467,321 Equal Pay/2,727,732 TCA), well short of the 29.30% which the Working Time Directive jurisdictional complaint accounted for (799,060 Working Time Directive/2,727,732 TCA), which the correlations in Chapter 5, Table 5.4 above, showed was also correlated to MACs. This is illustrated in Figure 6.1, below, which shows both the Equal Pay and Working Time Directive jurisdictional complaints alongside the familiar TCA, SAC and MAC lines to show context. Figure 6.1 is based on the data shown in Appendix 6, Tables A6.6a to A6.6c.

Figure 6.1



As Figure 6.1 shows, the Equal Pay jurisdictional complaints (purple line) peaked in 2007/08 at 62,700 with 33.12%⁶⁷ (62,700 Equal Pay/189,303 TCA) of the TCA containing an Equal Pay jurisdictional complaint. This coincided with a rise in the Working Time Directive jurisdictional complaint (green horizontal line) to 55,700 with 29.42% (55,700 Working Time Directive /189,303 TCA) of the TCA containing a Working Time Directive jurisdictional complaint. The Equal Pay jurisdictional complaint falls away from its 2007/08 peak, while the Working Time Directive jurisdictional complaint, after a decline in 2008/09, sharply increases, reaching a peak in 2010/11 at 114,104. This means that out of a TCA of 218,096 in 2010/11, 52.32% of the claims contained a Working Time Directive jurisdictional complaint claim (114,104 Working Time Directive/218,096 TCA). It is also noticeable that from 2005/06

⁶⁷ For the annual TCA contained percentages of each jurisdictional complaint from 1998/99 to 2018/19, see Appendix 6, Tables A6.9a, A6.9b and A6.9c, Jurisdictional Complaint as %age of Total Claims Accepted (TCA) containing that JC 1998/99 to 2004/05, 2005/06 to 2011/12, 2012/13 to 2018/19.

to 2012/13 the MAC (blue line) and TCA (red line) lines mirror the rise in Working Time Directive jurisdictional complaints.

The percentage of the TCA containing the Equal Pay and Working Time Directive jurisdictional complaints are shown below, in Table 6.1, columns E and G respectively.

Table 6.1

TCA, SAC, MAC, EP and WTD showing % of TCA containing that Jurisdictional Complaint Calculations 1999/00 to 2018/19

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Equal Pay	EP %age of TCA	Working Time Directive	WTD %age of TCA
	A	B	C	D	E=D/A	F	G=F/A
1999/00	103,935	70,600	33,300	4,712	4.53%	5,595	5.38%
2000/01	130,408	73,726	56,682	17,153	13.15%	6,389	4.90%
2001/02	112,227	69,553	42,674	8,762	7.81%	4,980	4.44%
2002/03	98,617	67,527	31,090	5,053	5.12%	6,436	6.53%
2003/04	115,042	65,364	49,678	4,412	3.84%	16,869	14.66%
2004/05	86,181	55,055	31,126	8,229	9.55%	3,223	3.74%
2005/06	115,039	51,496	63,543	17,268	15.01%	35,474	30.84%
2006/07	132,577	54,100	78,600	44,013	33.20%	21,127	15.94%
2007/08	189,303	54,500	134,800	62,700	33.12%	55,700	29.42%
2008/09	151,028	62,370	88,658	45,748	30.29%	23,976	15.88%
2009/10	236,103	71,280	164,823	37,385	15.83%	95,198	40.32%
2010/11	218,096	60,591	157,505	34,584	15.86%	114,104	52.32%
2011/12	186,331	59,247	127,084	28,801	15.46%	94,697	50.82%
2012/13	191,541	54,704	136,837	23,638	12.34%	99,627	52.01%
2013/14	105,803	34,219	71,584	17,202	16.26%	49,087	46.39%
2014/15	61,308	16,420	44,888	9,621	15.69%	31,451	51.30%
2015/16	83,031	16,935	66,096	17,063	20.55%	36,813	44.34%
2016/17	88,476	17,005	71,471	10,467	11.83%	30,313	34.26%
2017/18	109,698	27,916	81,782	35,558	32.41%	16,950	15.45%
2018/19	121,075	34,974	86,101	27,730	22.90%	49,725	41.07%
							√210707
Annual data shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19							
Annual TCA CP percentage data shown in Appendix 6, Tables A6.9a to A6.9c, Jurisdictional Complaint as %age of Total Claims Accepted (TCA) containing that JC 1998/99 to 2004/05, 2005/06 to 2011/12, 2012/13 to 2018/19							

Given the relationship illustrated above, between the Working Time Directive jurisdiction and both MACs and the TCA and the high percentage of the TCA containing the Working Time Directive jurisdictional complaint over the period 2005/06 to 2016/17, the key to understanding the growth in MACs, their relationship, if at all, to workplace conflict and the TCA lies in understanding

what is causing this growth in Working Time Directive jurisdictional complaints and it is to that the analysis now turns.

6.2.1 Working Time Directive

The destruction of case [claim] records by the MoJ prior to 2010, as noted in Chapter 3, has made this section of the research problematic. Some important case records such as *British Airways PLC v Ms S Williams & Others* have been preserved by third parties, in this case bailii.org (2021), but most case records have been systematically destroyed by the MoJ⁶⁸. This means that the evidence base has been recreated from the remaining preserved fragments found after an exhaustive search.

Upon the introduction of the Working Time Directive, on 1st October 1998, some sectors, such as Civil Aviation were excluded (Wallington, 2015, p.1,260). This was addressed regarding Civil Aviation with the implementation in 2004 of the *Civil Aviation (Working Time) Regulations 2004*, which came into effect on 13th April 2004 (Wallington, 2015, p.1,477).

Figure 6.2, below, shows the TCA, MACs and Working Time Directive from 1999/00 to 2018/19 and Figure 6.3, below, shows the Working Time Directive annual TCA contained percentage.

⁶⁸ The administrative act of removing the hard copy records.

Figure 6.2

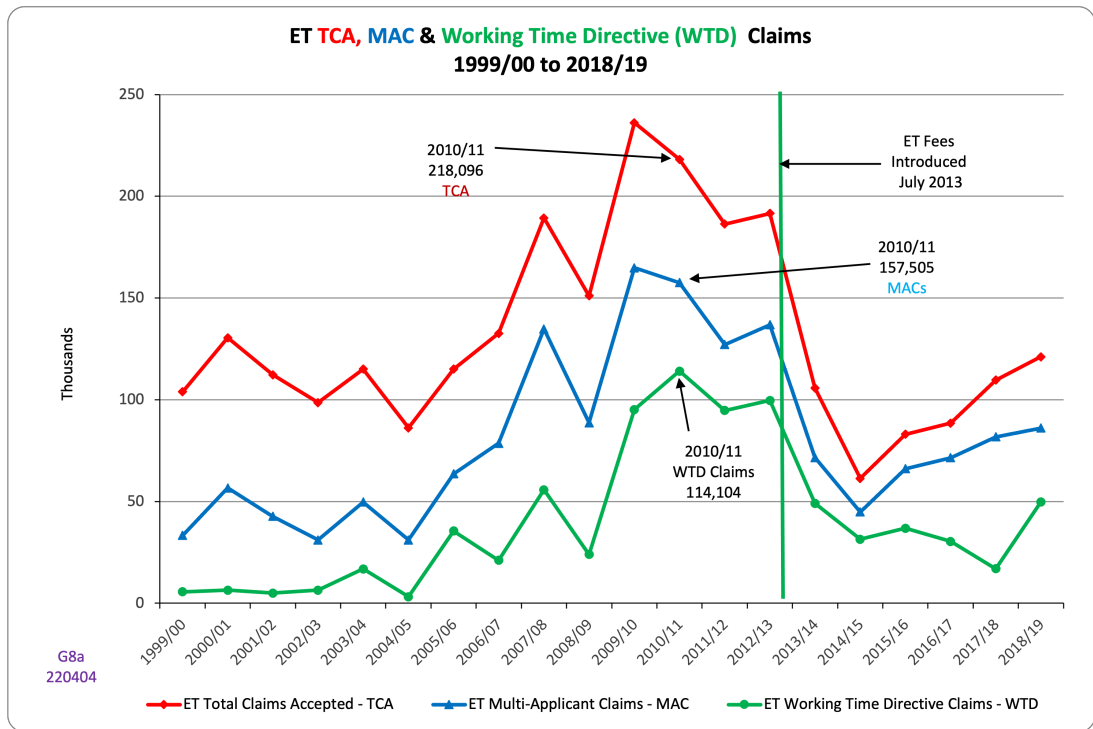
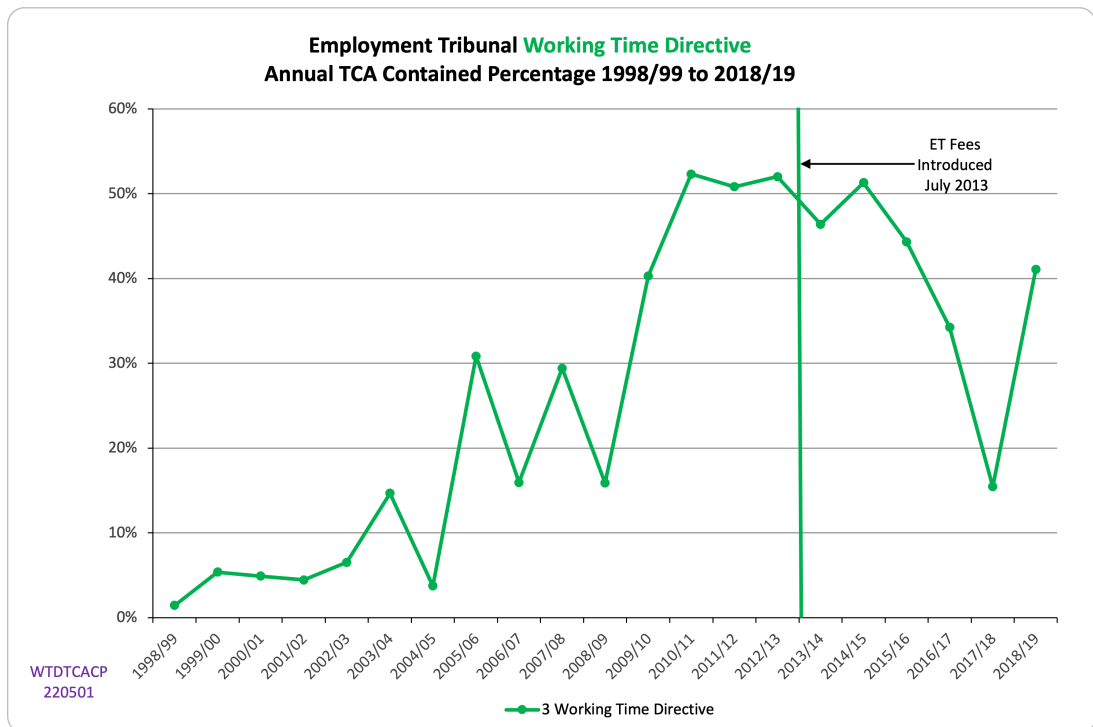


Figure 6.3



Between 1998/99 to 2004/05 the Working Time Directive TCA contained percentage line in Figure 6.3 is relatively flat, with around 5% of the TCA containing the Working Time Directive jurisdictional complaint. There follows

an uptick in 2003/04 to 14.66% of the TCA containing a Working Time Directive jurisdictional complaint. However, around the time the *Civil Aviation (Working Time) Regulations 2004* were introduced in April 2004, the Working Time Directive TCA contained percentage line in Figure 6.3 begins to steadily increase, reaching 52.32% of the TCA containing the Working Time Directive jurisdictional complaint in 2010/11. It should not be a surprise that a new statutory employment right leads to claims being made to an ET. What is perhaps surprising is the scale of the increase. One conclusion could be that there was an unrecognised pre-existing level of workplace conflict over working time that now manifested itself in a new wave of Working Time Directive claims. However, as will be seen, this is not the full explanation. As previously noted in Chapter 2, there is not a great deal of information in the literature about this jurisdiction. The growth is acknowledged but not much more. Lord (2014), for example, notes that there are Working Time Directive claims in various sectors including the airline industry that are filed as MACs (Lord, 2014, p.112), although no further details are given.

Following the introduction of the *Civil Aviation (Working Time) Regulations 2004* (CAWTR 2004) Balpa, the airline pilots Union, used the new Working Time Directive statutory right to assert that British Airways' (BA) calculation of Balpa members' holiday pay was in contravention of CAWTR 2004. BA disagreed, so Balpa began a MAC on behalf of approximately 2,750 BA pilots (baillii.org, 2021).

The case, known as *British Airways PLC v Ms S Williams & Others*, was decided in favour of the pilots by the ET in May 2007. However, BA appealed to the Employment Appeal Tribunal (February 2008), which also found in favour of the pilots. BA successfully appealed to the Court of Appeal (April 2009), following which Balpa, on behalf of the pilots, appealed to the Supreme Court (March 2010) who referred the case to the European Court of Justice (ECJ) (October 2012). In 2012, the ECJ decided the case in favour of the pilots (Balpa, 2016). *British Airways PLC v Ms S Williams & Others* took over 5 years to resolve. It was a MAC in the Working Time Directive jurisdictional complaint that involved 2,750 pilots.

British Airways PLC v Ms S Williams & Others is important in its own right as an example of the contended law argument developed in the literature review (MacMillan, 1999, Corby and Latreille, 2012) with the continued appeals bearing evidence of the exploration of the boundaries of a new constraint within the employment relationship to find the optimal level of beneficial constraint (Streeck, 1997; Wright, 2004). It is also important because it leaves an audit trail in the MoJ paperwork that enables the detection of administrative 'ghost' claims.

In *Employment Tribunal and EAT Statistics (GB) 1 April 2007 to 31 March 2008*, published by the Employment Tribunal Service, which covers the period when *British Airways PLC v Ms S Williams & Others* was first filed with the ET, there is a footnote to the Apr 07 to Mar 08 Working Time Directive jurisdictional complaint data:

'The figure for 2007/8 includes 10,000 claims from airline employees that have been resubmitted a number of times' (Employment Tribunal Service, 2008, p.2, footnote 3).

There is no explanation of what this means.

The following year, in *Employment Tribunal and EAT Statistics (GB) 1 April 2008 to 31 March 2009*, published now by the Tribunals Service (2009), the same information is repeated several times but still with no explanation of what it means.

More explanation is given in the *Employment Tribunal and EAT Statistics 2009-10 (GB) 1 April 2009 to 31 March 2010*, with the acknowledgement that:

'Of the 392,800 jurisdictional claims received in 2009-10, just under a quarter, (95,200) were Working Time Directive (largely multiple airline industry cases that are resubmitted every three months), and 75,500 were unauthorised deductions (Wages Act)' (Tribunals Service, 2010, p.3).

The Tribunals Statistics Quarterly (including Employment Tribunals and EAT) April to June 2013, expands further:

‘There is a large group of multiple Working Time Directive claims that have fuelled the rise in multiple claims in recent years. This is mainly due to the fact that the claims have to be resubmitted every quarter. These are *legitimate duplicates* [italics added] and have to be registered with new case [claim] numbers when they are resubmitted’ (MoJ, 2013, p.8).

The use of the term *legitimate duplicates* is interesting because for the first time it highlights that ‘resubmitted’ might actually be registered in the TCA statistics as the *submission of new claims to the ET*.

Another part of the puzzle is supplied in the *Tribunals and Gender Recognition Certificate Statistics Quarterly October to December 2014*, where under the outcome/disposals section the following information is imparted:

‘Multiple claims accounted for almost all (98%) of Employment tribunals disposals and the number of single claims was down 57% on October to December 2013.... The 261,211 multiple claims disposed of in October to December 2014 actually related to 1,077 multiple claim cases, but 243,501 were in one multiple airlines case. This gives an average of 242.5 claims per case, although in reality there were a large number of smaller multiple cases and one very large case relating to the Working Time Directive’ (MoJ, 2015, p.12).

We can now see that one Working Time Directive related MAC accounted for 243,501 claims. To put this in perspective, the 243,501 claims in this one Working Time Directive MAC is higher than the highest ever level of the annual TCA count, which reached 236,103 in 2009/10. This is an indication that all the claims in this MAC could not have been filed in a single ET year.

So, this raises the question: does this figure represent a genuine large employment dispute or is there some other ‘administrative’ reason for the size of this MAC? The MoJ audit trail points to an administrative reason based on ‘resubmission’ and this is examined in the next section.

6.2.2 Working Time Directive 'Resubmissions' due to 'Time Limits'

Given that the Working Time Directive jurisdictional complaint is largely responsible for the growth in MACs and hence the growth in the TCA it is important to isolate, if possible, what drove the increase in Working Time Directive jurisdictional complaint claims. As noted in the previous section the MoJ audit trail hints at 'resubmission' as being the cause. In this section the underlying cause of resubmission is identified as the three-month time limit for filing a claim following a 'loss'.

In 1972, when the Unfair Dismissal jurisdiction was added to the ET's remit, ET claims for Unfair Dismissal had to be filed no more than 4 weeks from the date of dismissal. In 1974, the time limit was changed to three months from the date of dismissal (Dickens, 1985, p.13) where it has remained (HMCTS, 2020, p.7). As more statutory employment rights have been added to the ET's remit, the three-month time limit for filing has generally been applied to the new jurisdictions and this was the case with the *Working Time Regulations 1998* and the *Civil Aviation (Working Time) Regulations 2004* (Wallington, 2015, p.1,279 and p.1,482).

However, as noted above, in the Unfair Dismissal jurisdiction, the ET claim must be submitted three months less one day from the date of dismissal (Wallington, 2015, p.620), which by definition means that there is no ongoing employment relationship with employer. The consequence of this is that only one claim needs to be filed.

The *Working Time Regulations 1998* and the *Civil Aviation (Working Time) Regulations 2004* have subtly different wording:

'Claims must be submitted three months less one day from the date on which it is alleged that the exercise of the right should have been permitted' (Wallington, 2015, p.1,279 and p.1,482).

The types of employment dispute that arise under the Working Time Directive jurisdiction can be of an ongoing nature. It is possible that an employee making a Working Time Directive claim will still be employed by the employer even though there is a legal dispute between them. For example, if it is alleged that

Holiday Pay calculation should include regular allowance payments, as in *British Airways PLC v Ms S Williams & Others*, then until the claim is settled, the alleged underpayment will continue. This ongoing nature of an alleged breach would be particularly evident where there was a negotiation of an ongoing constraint on a relationship to identify what Wright (2004) would identify as the optimal level. The losses will be ongoing and to protect those ongoing losses in accordance with the wording of *The Working Time Regulations 1998* and the *Civil Aviation (Working Time) Regulations 2004*, a new claim needs to be filed every three months.

British Airways PLC v Ms S Williams & Others highlights that an ongoing relationship with an employer is likely to be the case in a Union sponsored MAC, where, as noted in the literature review, the facts of the claim are largely accepted by both employees and employers, the claims revolve around contended interpretations of the law. When Balpa organised the MAC on behalf of the 2,750 BA pilots, contending that the calculation of their holiday pay was in contravention of the CAWTR 2004 (baillii.org, 2021), the pilots continued working under the existing arrangements that the employer contended were correct and continued doing so while the legal process was worked through to a conclusion.

The consequence of this is that if there are 10,000 people in the Union sponsored MAC, then 10,000 new claims will need to be filed every three months. A further complicating factor is that, as noted above with regards to *British Airways PLC v Ms S Williams & Others*, which took over 5 years to resolve, contended law MACs are often legally and factually complex and can take up to 10 years or more to be decided as the claims had to pass through the ET, the Employment Appeal Tribunal, the Court of Appeal, the Supreme Court and the ECJ (see Appendix 14, Table A14.1 for 32 Equal Pay examples).

If a Working Time Directive claim is first filed in 2006/07 and takes 10 years to resolve, then to protect themselves against the 'ongoing losses' while the claim is ongoing, the claimant must file another new claim every three months, which over 10 years would generate a further 39 administrative 'ghost

claims⁶⁹, over and above the original claim, each with its own claim number (MoJ, 2013, p.8). The consequence of this is that if the claimant was part of a MAC containing 10,000 individuals, then over 10 years this would generate 390,000 administrative 'ghost claims', as shown in Table 6.2, below. The TCA would of course show an increase over the 10-year period of 400,000 claims, made up of the 10,000 'original claims' and 390,000 administrative 'ghost claims'. In this example there are 10,000 individuals each with 1 original claim and 39 'administrative ghost claims'.

⁶⁹ The term administrative 'ghost claim' is preferred instead of 'legitimate duplicate', because administrative 'ghost claim' better explains what has actually happened, whereas the term 'legitimate duplicate' is an oxymoron. If it is a legitimate claim, it cannot be a duplicate and if it is a duplicate, it cannot be legitimate. The term duplicate in ET terms refers to a genuine claim that has accidentally been issued with two (or more) claim numbers. It has literally been duplicated and when found will be removed from the system. For an example, see Claim 1300712/2017 (gov.uk, 2020).

Table 6.2

Employment Tribunal Multi-Applicant Claim ‘Ghost Claim’ Calculator

Year Count	Year	Qtr.	Original Claims	Refiled ‘Ghost Claims’	Cumulative ‘Ghost Claims’	‘Ghost Claims’ Calc Factor	Annualised ‘Ghost Claims’
1	2006/07	1	10,000				30,000
		2		10,000	10,000	1	
		3		10,000	20,000	2	
		4		10,000	30,000	3	
2	2007/08	1		10,000	40,000	4	40,000
		2		10,000	50,000	5	
		3		10,000	60,000	6	
		4		10,000	70,000	7	
3	2008/09	1		10,000	80,000	8	40,000
		2		10,000	90,000	9	
		3		10,000	100,000	10	
		4		10,000	110,000	11	
4	2009/10	1		10,000	120,000	12	40,000
		2		10,000	130,000	13	
		3		10,000	140,000	14	
		4		10,000	150,000	15	
5	2010/11	1		10,000	160,000	16	40,000
		2		10,000	170,000	17	
		3		10,000	180,000	18	
		4		10,000	190,000	19	
6	2011/12	1		10,000	200,000	20	40,000
		2		10,000	210,000	21	
		3		10,000	220,000	22	
		4		10,000	230,000	23	
7	2012/13	1		10,000	240,000	24	40,000
		2		10,000	250,000	25	
		3		10,000	260,000	26	
		4		10,000	270,000	27	
8	2013/14	1		10,000	280,000	28	40,000
		2		10,000	290,000	29	
		3		10,000	300,000	30	
		4		10,000	310,000	31	
9	2014/15	1		10,000	320,000	32	40,000
		2		10,000	330,000	33	
		3		10,000	340,000	34	
		4		10,000	350,000	35	
10	2015/16	1		10,000	360,000	36	40,000
		2		10,000	370,000	37	
		3		10,000	380,000	38	
		4		10,000	390,000	39	

The Balpa case, *British Airways PLC v Ms S Williams & Others*, which Balpa sponsored on behalf of the 2,750 airline pilots, first came before an ET in May 2007. The claims were issued in Q1 of 2006/07 (bailii.org, 2021, para.17). The case was finally determined by the ECJ in Q4 of 2012/13, taking a total of 28

quarters. This would have generated an extra 27 quarters of administrative 'ghost claims', so $27 \times 2,750$ gives 74,250 administrative 'ghosts' on top of the 2,750 original claims, making 77,000 claims in all. This is not large enough on its own to explain the growth in the Working Time Directive jurisdictional complaint but is a start towards explaining the increase in Working Time Directive claims.

In this period, Unite the Union were involved with two Working Time Directive MACs, one for 14,000 cabin crew and one for 9,000 ground staff. In a brief telephone conversation, the Unite Civil Aviation National Officer noted that when the cases were settled there was a problem matching multiple (ghost) claim numbers with claimants (Author's notes).

If the 14,000 Cabin Crew MAC ran for 17 quarters, then the number of claims generated would be $14,000 + 16 \times 14,000$ making 238,000 claims filed with the ET, which is very close to the MAC containing 243,501 claims as detailed above. This is admittedly retro fitting the MAC claim to the known outcome/disposal data, but the author is comfortable with it as a realistic estimate based on the evidence available given the lack of the actual case [claim] records.

From the foregoing, it would seem that the number of claims filed with the ET and the number of individuals associated with the claims are NOT the same and that the reason that the Working Time Directive jurisdictional complaint accounted for 52.32% of the TCA in 2010/11 was likely the result of an administrative quirk generating 'ghost claims' on a large scale. The ETs were effectively generating claims themselves as the nuances of a new piece of legislation were worked through.

If it is the case that the ET was effectively generating large numbers of Working Time Directive claims, then removing the Working Time Directive claims from the TCA and MAC statistics would perhaps be closer to the underlying volume of claims than the published data. This is an important point because much has been made of the rise in the TCA over this period and this research points to the TCA being 'overstated' as a result of the administrative 'ghost claim' generation. This finding also adds credence to the arguments outlined in the

literature review that increased juridification has increased the level of claims coming to the ET (Dickens, 2000, p.69; Burgess et al., 2012, p.7; Corby, 2015, p.163), but not necessarily for reasons outlined in the literature review linked to increased bases for workplace conflict, but rather due to administrative quirks.

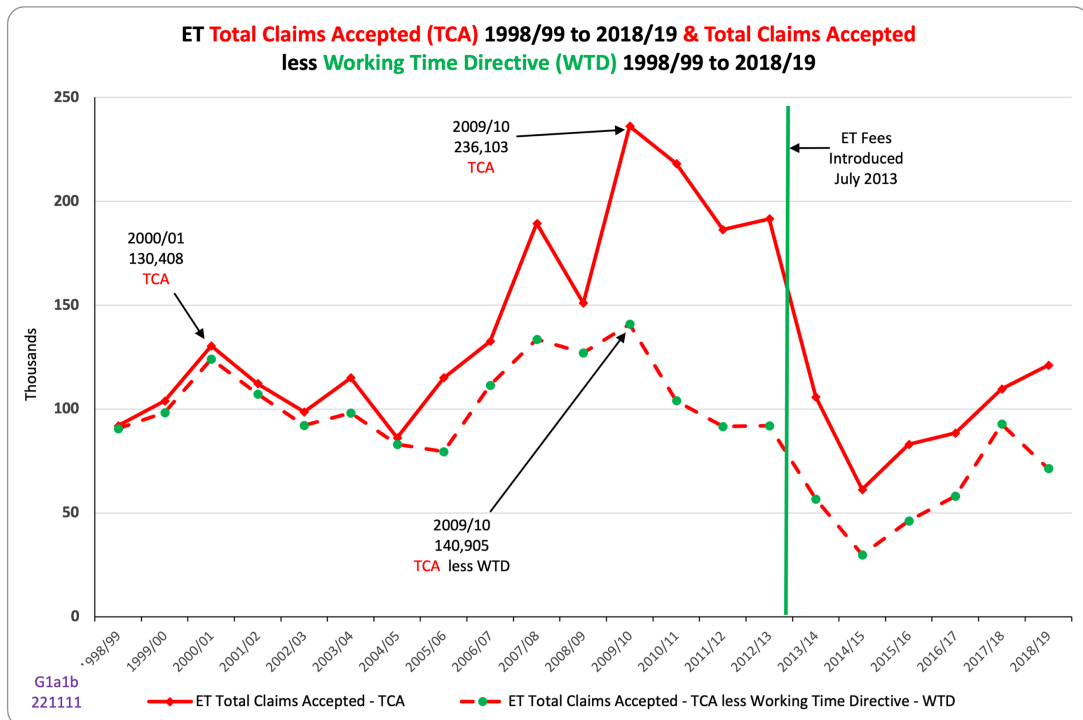
The Working Time Directive jurisdictional complaint came into being in 1998/99 and the 'adjusted' levels of the TCA and MAC are calculated in Table 6.3, below, and is displayed in Figures 6.4 and 6.5.

Table 6.3

**TCA, SAC, MAC, WTD and TCA and MAC both less WTD
1998/99 to 2018/19**

Year	MoJ Statistics (Unadjusted)			Adjusted		
	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Working Time Directive	TCA Less WTD	MAC Less WTD
	A	B	C	D	E=A-D	F=C-D
1998/99	91,913			1,326	90,587	n/a
1999/00	103,935	70,600	33,300	5,595	98,340	27,705
2000/01	130,408	73,726	56,682	6,389	124,019	50,293
2001/02	112,227	69,553	42,674	4,980	107,247	37,694
2002/03	98,617	67,527	31,090	6,436	92,181	24,654
2003/04	115,042	65,364	49,678	16,869	98,173	32,809
2004/05	86,181	55,055	31,126	3,223	82,958	27,903
2005/06	115,039	51,496	63,543	35,474	79,565	28,069
2006/07	132,577	54,100	78,600	21,127	111,450	57,473
2007/08	189,303	54,500	134,800	55,700	133,603	79,100
2008/09	151,028	62,370	88,658	23,976	127,052	64,682
2009/10	236,103	71,280	164,823	95,198	140,905	69,625
2010/11	218,096	60,591	157,505	114,104	103,992	43,401
2011/12	186,331	59,247	127,084	94,697	91,634	32,387
2012/13	191,541	54,704	136,837	99,627	91,914	37,210
2013/14	105,803	34,219	71,584	49,087	56,716	22,497
2014/15	61,308	16,420	44,888	31,451	29,857	13,437
2015/16	83,031	16,935	66,096	36,813	46,218	29,283
2016/17	88,476	17,005	71,471	30,313	58,163	41,158
2017/18	109,698	27,916	81,782	16,950	92,748	64,832
2018/19	121,075	34,974	86,101	49,725	71,350	36,376
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Annual data shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19						

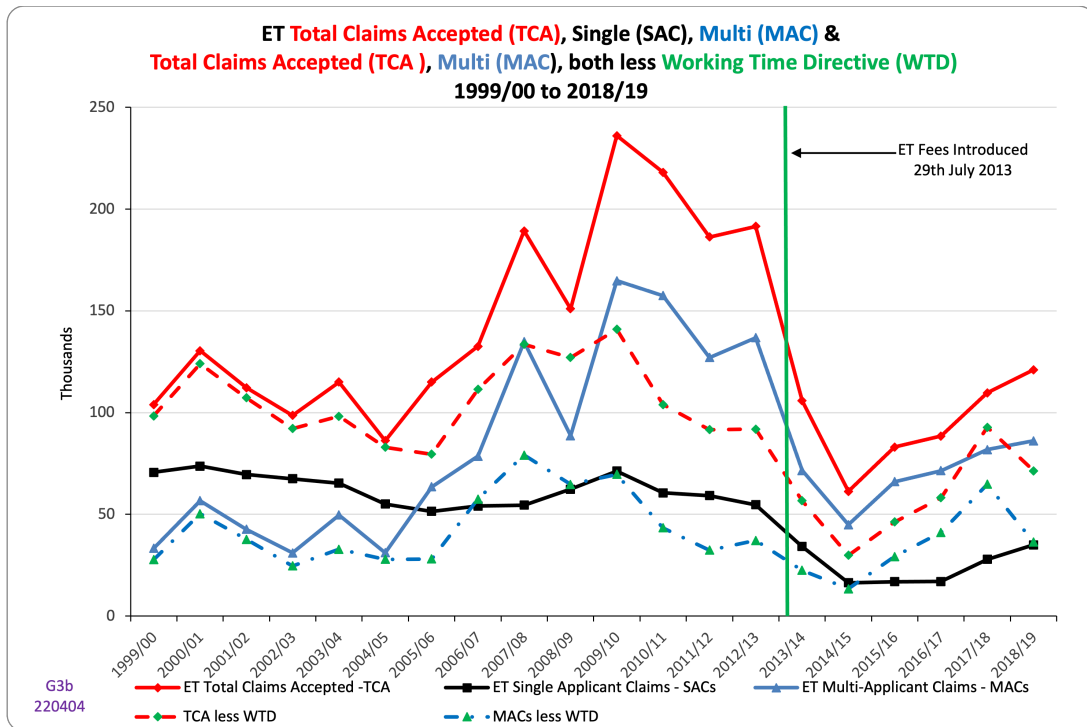
Figure 6.4



The effect of removing the Working Time Directive jurisdictional complaint from the TCA reduces the peak of the TCA from 236,103 in 2009/10 to 140,905, which is only 8% (140,905/130,408) higher than the previous peak in 2000/01, of 130,408. This illustrates the TCA 'inflation' that administrative 'ghost claims' are probably responsible for.

Removing the Working Time Directive jurisdictional complaint from the number of MAC claims is a slightly more questionable idea, as the Working Time Directive jurisdictional complaint cannot be definitively tied to just MACs. However, given the correlation of 0.94 (p=0.000) and 0.91 (p=0.000), noted in Chapter 5, Table 5.4, above, between the Working Time Directive jurisdictional complaint and MACs for the periods 1999/00 to 2012/13 and 1999/00 to 2018/19 respectively, it does not seem unreasonable to look at MACs less the Working Time Directive and this is shown in Figure 6.5, below.

Figure 6.5



As can be seen in Figure 6.5, the ‘adjusted’ MAC line and the original SAC line are no longer far apart. Again, it illustrates the MAC ‘inflation’ that administrative ‘ghost claims’ are probably responsible for.

The administrative ‘ghost claim’ issue has not been found in any other jurisdictional complaints, even in the Equal Pay jurisdictional complaint which demonstrates similar ongoing monetary losses. There is no mention in the literature surrounding the Equal Pay jurisdictional complaint, of claims having to be ‘resubmitted’. The Equal Pay jurisdictional complaint three-month time limit is written in slightly less prescriptive language (Wallington, 2015, p.996) compared to the Working Time Directive jurisdictional complaint and it would seem that the ET has accepted that an Equal Pay claim can be resolved in its entirety at the point of disposal. However, this is probably a question for further research.

6.2.3 Ghosts Busted?

In order to confirm that the mechanism that appeared to drive the Working Time Directive jurisdictional complaint administrative ‘ghost claim’ generation was correct, a specialist employment solicitor was interviewed. The solicitor

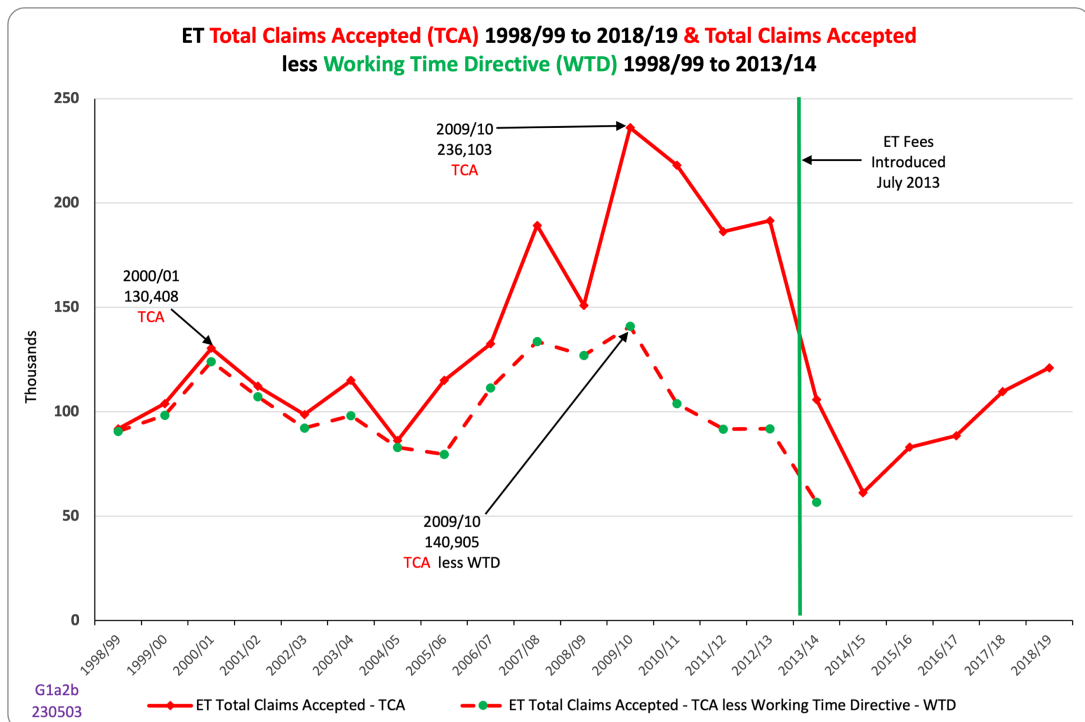
confirmed that the mechanism was as outlined above, but also indicated that it was no longer happening. The situation,

‘changed with the issuing of the [ET] Presidential Direction regarding [Working Time Directive] Holiday Pay which allowed for the amendment of the original claim to include the losses accrued up to the date of the ET decision’ (Interview).

The ET Presidential Direction referred to is Direction of the President 117 and 117a issued on 11th December 2014 and clarified on 27th March 2015 (Courts and Tribunal Judiciary, 2020). Copies of both these documents are in Appendix 12. Corresponding Presidential Directions were issued in Scotland.

The effect of this Presidential Direction is to remove the need for claimants to file Working Time Directive claims every three months to protect their ongoing losses. Figure 6.6, below, shows the removal of the Working Time Directive jurisdictional complaint from the TCA but only until 2013/14, the last full year of administrative ‘ghost claims’.

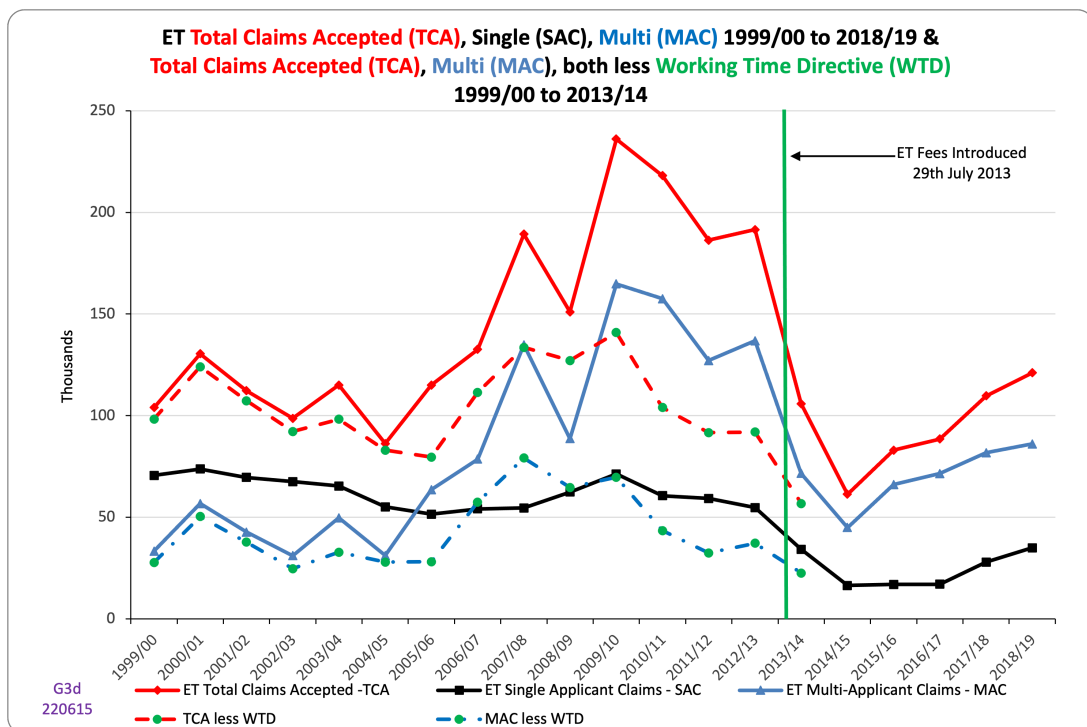
Figure 6.6



As can be seen the 'adjusted line' ends at almost the exact level where the actual TCA line picks up the following year. This outcome appears to confirm that the Working Time Directive jurisdictional complaint generated mostly administrative 'ghost claims'.

Figure 6.7, below, shows the removal of the Working Time Directive jurisdictional complaint from both the TCA and MACs but only until 2013/14.

Figure 6.7



The 'adjusted' MAC line terminates below the point where the actual MAC line picks up the following year. The variability of the MAC line is much lower when the Working Time Directive jurisdictional complaint is excluded. The administrative 'ghost claims' have generated a false picture of a sharp increase in MAC claims leading to a sharp increase in the TCA. This sharp increase has been fuel to the arguments that underpin the 'burden on business' narrative (BBC, 2011; Raab, 2011; BIS 2012), whereas this analysis appears to show that the reality in the 13 years before the introduction of the ET Fees was probably a period of gentle increase in MACs, with some linkage to the growth in legislation and hence the TCA, followed by a gentle decline in both, as workplaces negotiated their understanding of the constraint they

faced, but also whilst the courts negotiated what approach constituted optimal benefit (as per Wright, 2004).

The Presidential Direction regarding Working Time Directive Holiday Pay had a wider implication, as the employment solicitor explained:

‘The Presidential Direction also had the effect of stopping the necessity for filing ‘new’ claims for other types [jurisdictions] of claim which incurred ongoing losses. At the [ET claim] Case management meeting the Tribunal chairman would ask if there were any amendments and it would be stated at that time that the total ‘losses’ would be determined at the time of the ET Decision. The Tribunal Chairman could approve this, as under the Rules of Procedure the Tribunal has inherent powers to do this using the [Working Time Directive Presidential] Holiday Pay Direction as guidance’ (Interview).

On the basis of this information, it is clear that the Presidential Direction effectively ended the generation of administrative ‘ghost claims’ in all jurisdictional complaints whether SACs or MACs. From 2014/15 the generation of administrative ‘ghost claims’ ceased.

This section has examined the filing of Working Time Directive claims and by following the MoJ’s audit trail, highlighted that the number of claims filed and the number of individuals filing them are NOT the same. It has been shown that the growth in the TCA from 2005/06 onwards has been largely driven by Working Time Directive ‘ghost claims’ generated by the administrative procedures of the ET itself, which required the filing of new claims to ‘protect’ ongoing losses. It has also been shown that the generation of administrative ‘ghost claims’ ceased in 2014/15 with the issuing of the Presidential Order allowing ‘ongoing’ losses to be resolved at the time of the ET Decision. This finding gives some credence to the argument that juridification in the form of new legislation (Dickens, 2000; Deakin and Morris, 2005, in Heery, 2011) and union strategy (Dickens, 2000; Heery, 2011) have been drivers of growth in workplace conflict which comes to ETs, but perhaps not in a way previously revealed within the literature.

This section has shown that the ET's own internal administration and subsequent administrative procedural changes has a direct effect on the number of claims recorded in the annual TCA. The ET's interpretation of the wording of the three-month time limit clause in the Working Time Directive jurisdictional complaint led directly to the generation of large numbers of administrative 'ghost claims', and the subsequent ET President's administrative procedural change reduced the number of claims recorded in the annual TCA. This is an example an internal ET administrative procedural change, beyond the government and court mandated procedural changes discussed in Chapter 4, and this highlights the 'administrative data' caveat raised by Hand D., (2018) regarding operational definitional changes making longitudinal comparison difficult.

It should be acknowledged that there are two parts to this procedural change in terms of how it develops our understanding.

- Firstly, there is the internal ET administrative aspect, beyond government mandate, which has generated the 'ghost claims', which is part of the procedural mechanism for managing the beneficial constraints (Streeck, 1997) within which the employment relationship operates.
- Secondly, there is the contended law aspect. The Working Time Directive MAC claims initially filed by the trade unions, following the introduction of the *Civil Aviation (Working Time) Regulations 2004* and underlying the generation of the 'ghost claims', represents the 'contended law' negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004).

The next section takes the notion of drivers one step further and looks at one other example of a Type 1 TCA Change generated by the internal administrative procedures of the ET – Redundancy Pay.

6.2.4 Change Type 1: Administrative Claims – Redundancy Pay

In the previous chapter it was noted in the ET Decision Index analysis that out of 764 identified Companies in the spreadsheet sample of MACs, 330 were in

the process of bankruptcy. This represents 43% of the Identified Companies in the sample.

In the case of an employer going into administration and thence being unable to pay statutory redundancy pay, the former employees of the company have to file claims with the ET to establish their entitlement. If successful at the ET, then the Secretary of State⁷⁰ will pay the employee out of the National Insurance Fund (Wallington, 2015, pp.643-645). These claims do not necessarily reflect employment disputes but rather are 'administrative' in that the ET is used as a means of establishing a liability on behalf of the claimant and providing payment of redundancy pay from the State.

It is perhaps worth noting that by definition if an employer has entered Administration, then it is rare that only one employee is entitled to statutory redundancy pay, in which case the claims are likely to be a MAC and this is reflected in the correlations shown in Chapter 5, Table 5.4, above, for the Redundancy Pay jurisdictional complaint with SACs of 0.31 ($p=0.000$) compared to 0.73 ($p=0.000$) for MACs for the period 1999/00 to 2012/13.

Following the introduction of ET Fees in July 2013, the relationship between the Redundancy Pay jurisdictional complaint, SACs and MACs changes. The correlations shown in Chapter 5, Table 5.4, above, for the Redundancy Pay jurisdictional complaint for the period 1999/00 to 2018/19 show that the Redundancy Pay jurisdictional complaint now has correlation with SACs of 0.74 ($p=0.000$) and MACs of 0.63 ($p=0.000$). This change from a jurisdictional complaint associated with MACs to an inconclusive relationship could be related to the inclusion of the Redundancy Pay jurisdictional complaint in the ET Fee regime (HMCTS, 2015), despite an application to the ET being an administrative requirement to prove entitlement following a business failure.

⁷⁰ Currently the Secretary of State for Business, Energy & Industrial Strategy.

The average number of Redundancy Pay jurisdictional complaint claims in the years 2007/08 to 2012/13, was 13,431, compared to 3,067, for the years 2014/15 to 2016/17, following the introduction of ET Fees.

This section has highlighted the existence of administrative claims of which the Redundancy Pay and Working Time Directive jurisdictional complaints are examples, although for different reasons, Redundancy Pay being a pre-existing administrative claim from 1972 and Working Time Directive administrative 'ghost claims' resulting from a particular administrative interpretation by the ET of *The Working Time Regulations 1998* and the *Civil Aviation (Working Time) Regulations 2004*, introduced in 1998 and 2004 respectively. It also highlights that changes in the ET claims process, resulting from the ET's internal administrative procedural changes, can have profound consequences for number of claims that are recorded as ET claims in the TCA.

It has been briefly noted that the Redundancy Pay jurisdictional complaint was affected by the introduction of ET Fees in 2013 and it is to the larger consequences of ET Fees and the associated Change Type 2: Government Mandated Design/Policy procedural changes introduced by the Coalition Government on the TCA, SACs and MACs that attention now turns.

6.3 Change Type 2: Government Mandated Design/Policy Procedural Changes

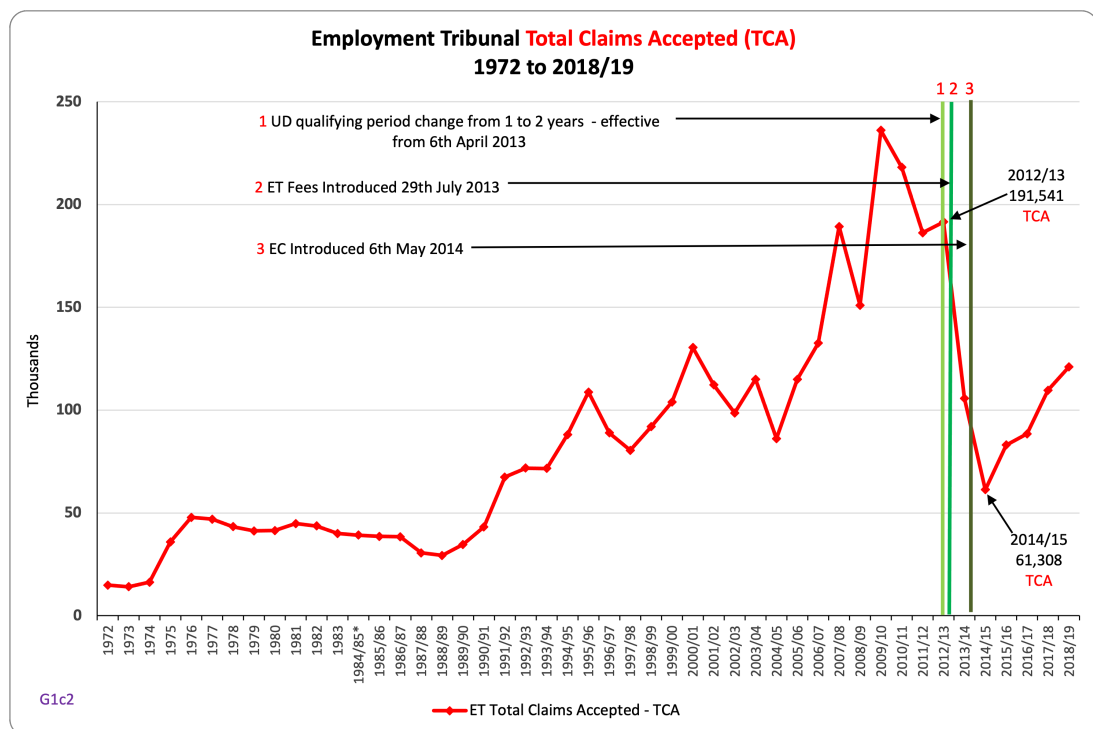
This section looks at the changes in the TCA, SACs and MACs statistics following the government mandated procedural changes introduced by the Coalition Government in 2013 and 2014. The timing of these procedural changes coincides with the ending of the Working Time Directive jurisdictional complaint administrative 'ghost claims' issue following the Presidential Order discussed above. The intertwining of these events results in a finding that the sharp fall in the TCA, and MAC statistics following the introduction of ET Fees is not simply a consequence of the ET Fees but primarily the result of the unwinding of the administrative 'ghost claim' issue and the introduction of new ET 'Rules of Procedure' in parallel with the introduction of ET Fees.

As noted in the literature review and Chapter 4, the Coalition Government that came into office in May 2010 introduced several procedural changes to the process of filing an ET Claim in the period from 6th April 2013 to 6th May 2014. During this short time frame 3 government mandated procedural changes were made, each of which would have affected the TCA:

- 6th April 2013, The Unfair Dismissal qualifying period changed from 1 to 2 years.
- 29th July 2013, ET Fees were introduced.
- 6th May 2014, Acas Early Conciliation was introduced.

The three government mandated procedural changes are shown in Figure 6.8, below:

Figure 6.8



Following the three government mandated procedural changes the TCA drops sharply. The fall between 2012/13, the last full year before the procedural changes were introduced and 2014/15, the first full year after the procedural changes, is consistent at around 70% across the TCA, SACs and MACs, as shown in Table 6.4, below:

Table 6.4

**TCA, SAC and MAC Pre and Post Coalition Government
2013/14 ET Process Changes**

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi- Applicant Claims (MACs)
	A	B	C
2012/13	191,541	54,704	136,837
2014/15	61,308	16,420	44,888
Volume Drop	130,233	38,284	91,949
%age Drop	68%	70%	67%
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Annual data shown in Appendix 6, Table A6.6c, Jurisdictional Complaint (JC) Breakdown 2012/13 to 2018/19			

In light of the timing of the Presidential Direction and the effect it had on the TCA and MAC statistics over this period, noted above, it is perhaps worth repeating the ‘Working Time Directive adjustment’ from above, in Section 6.2.3, on the TCA and MAC and recalculating the before and after effects of the three government mandated ET filing process changes introduced in 2013/14, both with the Working Time Directive jurisdictional complaint included, and with the Working Time Directive jurisdictional complaint removed. This would potentially reveal if the decrease in the TCA over this period was due to the Working Time Directive jurisdictional complaint administrative ‘ghost claim’ issue unwinding itself. The comparison is shown in Table 6.5, below:

Table 6.5

**TCA, SAC, MAC, WTD and TCA and MAC both less WTD
Pre and Post Coalition Government 2013/14 ET Process Changes**

TCA, SAC, MAC, WTD & TCA & MAC both less WTD						
	Unadjusted			Adjusted		
Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Working Time Directive	TCA Less WTD	MAC Less WTD
	A	B	C	D	E=A-D	F=C-D
2012/13	191,541	54,704	136,837	99,627	91,914	37,210
2014/15	61,308	16,420	44,888	31,451	29,857	13,437
Volume Drop	130,233	38,284	91,949		62,057	23,773
%age Drop	68%	70%	67%		67%	64%
√210707						
Annual data shown in Appendix 6, Table A6.6c, Jurisdictional Complaint (JC) Breakdown 2012/13 to 2018/19						

In volume terms the effect of the ‘adjustment’ is dramatic. The 2012/13 Pre ‘adjustment’ TCA of 191,541 (column A), showed a decline of 130,233 claims to 61,308 in 2014/15, whereas the post ‘adjustment’ TCA (column E) declined by 62,057 for the same period. The 2012/13 Pre ‘adjustment’ MAC (column C) of 136,837, showed a decline of 91,949 claims to 44,888 in 2014/15, whereas the post ‘adjustment’ MAC (column F) declined by 23,773 for the same period.

It would seem reasonable to conclude that the fall in the TCA and MACs following the introduction of ET Fees is partly a coincidence brought about by the timing of the Presidential Order ending the Working Time Directive jurisdictional complaint administrative ‘ghost claims’.

The consequence of this ‘adjustment’ is that the three procedural changes introduced in 2013/14 appear to affect SACs rather than MACs and as previously stated a significant proportion of the claims at ETs were/are MACs. Removing the Working Time Directive jurisdictional complaint from the TCAs and MACs is bound to ‘prove’ that SACs were primarily affected. To look at it another way, the interventions put forward by the Coalition Government certainly impacted the claims that have been traditionally written about in the literature, SACs, but do not address the “ignored” MACs which make up the significant proportion of the TCA. These MACs are instead impacted by the

ETs internal administrative changes. However, the very real existence of the administrative ‘ghost claim’ phenomenon justifies this ‘adjustment’ and the result is probably closer to the reality than the unadjusted statistics. The following analysis examines if this conclusion can be supported.

6.3.1 Unfair Dismissal Qualifying Period – 6th April 2013

The 6th April 2013 change in the Unfair Dismissal qualifying period from 1 to 2 years can, by definition, only have affected the Unfair Dismissal jurisdictional complaint. The effect of this change on the number of Unfair Dismissal claims is hard to quantify, but it obviously affects when an Unfair Dismissal claim can be recognised and accepted by the ET and hence enter the TCA. This change would have largely applied to SACs, as the Unfair Dismissal jurisdictional complaint showed a high and increasing correlation with SACs during the period in question as shown in Chapter 5, Table 5.4, above.

6.3.2 Employment Tribunal Fees – 29th July 2013

ET Fees were introduced on 29th July 2013 and the Fee levels were set for single claims as shown in Table 6.6 and for multiple claims as per Table 6.7, below:

Table 6.6

ET Issue and Hearing Fees Single Claims		
	Type A	Type B
Issue Fee	£160	£250
Hearing Fee	£230	£950
Total Fee	£390	£1200
<i>√210707</i>		
Source: HMCTS – <i>Employment tribunal fees for individuals</i> (Ref: T435, 2015)		

Type A claims were those which could be expeditiously dealt with by the ET without much difficulty and were expected to take less than two hours to conclude a hearing. All other claims were defined as Type B. All jurisdictional complaint data tables in this thesis, such as Chapter 5, Table 5.4, above, have a column showing the associated ET Fee Type. A full list of the jurisdictional classifications and associated ET Fee Type is shown in Appendix 8. This

change in the ET Claim Process is shown, as Employment Tribunal Claim Process Summary #6, in Chapter 4, Figures 4.6a&b, above.

Table 6.7

ET Issue and Hearing Fees Multiple Claims			
	Number of Claimants		
	2-10	11-200	200+
Type A Claim			
Issue Fee	£320	£640	£960
Hearing Fee	£460	£920	£1380
Total Fee	£780	£1560	£2340
Type B Claim			
Issue Fee	£500	£1000	£1500
Hearing Fee	£1900	£3800	£5700
Total Fee	£2400	£4800	£7200
<i>√210707</i>			
Source: HMCTS – <i>Employment tribunal fees for groups and multiples</i> (Ref: T436, 2017)			

The fee model introduced for multiples was arguably the opposite of the individual fees, in that the multiple fees were almost negligible whereas the individual fees were onerous. If a Type A claim was filed on behalf of 200 claimants, then the fee per claimant would have been $£2,340/200 = £11.70$ compared to £390 for an individual Type A Claim. For a Type B Claim, filed with 200 claimants, the fee would have been $£7,200/200 = £36.00$ compared to the £1,200 per individual Type B Claim. All fees are an increased hurdle and £7,200 is a not insignificant amount of money, but when set against the other expenses and potential benefits associated with bringing a large or very large MAC to the ET then the £7,200 does not seem such a hurdle. It is also worth noting that the £7,200 fee applied to all MACs with 200 or more claims, i.e., if a MAC was made up of 1,000 claims, then the fee was still £7,200.

As with the Unfair Dismissal qualifying period change above, ET Fees would have largely applied to SACs rather than MACs.

6.3.3 Acas Early Conciliation – 6th May 2014

In May 2014, the pre-existing Acas Voluntary Pre-Claim Conciliation became mandatory and was renamed Acas Early Conciliation. All applications to the

ET now had to be referred to Acas and conciliation between employee(s) and employer attempted, although either the claimant (employee) or the respondent (employer) could decline to take part. The window for Acas Early Conciliation was four weeks, with possible extension to six weeks if a successful outcome was thought possible. If, at the conclusion of the Acas Early Conciliation time window, there was no resolution then Acas issued a unique reference number (URN) to the claimant enabling them to file a claim with the ET. Acas Early Conciliation applies to all claims, both SACs and MACs. This change in the ET Claim Process is shown as Employment Tribunal Claim Process Summary #7, in Chapter 4, Figures 4.7a&b, above.

In 2015 Acas received:

‘nearly 90,000 individual [SAC] notifications and 2,400 group [MAC] notifications. Counting all individual potential claimants separately, Acas has received over 100,000 employee notifications in 2015/16’ (Acas, 2016, p.37, footnote 6).

However, the same footnote confirms that:

‘Throughout the individual dispute resolution section, Early Conciliation group [MAC] notifications are each counted as ‘1’ case’ (Acas, 2016, p.37, footnote 6).

Acas are processing and recording the 10,000 claims contained in the 2,400 Early Conciliation ‘group’ MAC claims as 2,400 cases and adding them to the 90,000 SAC Early Conciliation claims, making 92,400 Early Conciliation claims. The consequence of this is that all visibility of SACs and MACs is lost. The Final Status of Early Conciliation Notifications to Acas for the calendar year 2015 are shown in Table 6.8, below:

Table 6.8

Early Conciliation Notifications Jan to Dec 2015		
Final Status of Early Conciliation Notifications	Volume	%age
COT 3 Settlement	14,759	16%
Did Not Progress to Tribunal Claim	59,375	65%
Dispute Progressed to Tribunal Claim	17,708	19%
Total	91,842	
		√210707
Source: Acas, 2016, p.40		

It should be noted that the final status information in Table 6.8 is for the calendar year 2015 whereas the SAC/MAC 'notification' information from the same report is provided for the period 2015/16. This timing mismatch and the lack of clarity between SACs and MACs makes it difficult to assess the effects of Acas Early Conciliation on the SACs and MACs.

Despite this, it still reasonable to conclude that the primary effects of the three changes to the ET filing process in 2013/14 were primarily on SACs.

- The Unfair Dismissal qualifying change applied largely to SACs, as the Unfair Dismissal jurisdictional complaint showed a high and increasing correlation with SACs during the period in question as shown in Chapter 5, Table 5.4, above.
- The ET Fees were disproportionately biased against SACs compared to MACs when the potential costs per claim are compared.
- While it is difficult to tease out the potential effects of Acas Early Conciliation on SACs and MACs, one observation that can be made is the difference in notification numbers between SACs and MACs. In 2015/16 'nearly 90,000' individual/SAC Acas Early Conciliation notifications were received compared to 10,000 group/MAC notifications. Since all potential ET claims have to go through Early Conciliation then 10,000 group/MAC notifications is itself a low number compared to the MAC numbers before the 2013/14 changes. Nothing about Acas Early Conciliation itself would indicate that it would reduce MAC notifications.

If it is concluded that the 2013/14 ET changes affected SACs more than MACs, why have MAC numbers reduced post ET Fees beyond the unwinding of the administrative 'ghost claim' issue? As noted above, in Table 6.5, the unadjusted number of MAC claims reduced by 67%, from 136,837 to 44,888 and the adjusted MAC reduced by 64% from 37,210 to 13,437.

The chapter will move on now to consider what might explain the fall in MACs.

6.4 Change Type 2: 'Rule 9' – Introduction of new ET Rules of Procedure, 29th July 2013

In December 2017, the Tweet shown below as Figure 6.9, was posted on Twitter (Twitter, 2017). The Tweet by Stefan Cross highlights that solicitors Leigh Day are filing 10,000 individual cases [claims] rather than filing them as a MAC and suggests an unexpected and unacknowledged consequence of ET Fees.

Figure 6.9



In 1972 the way ETs handled ET claims was set out in *The Industrial Tribunals (Industrial Relations, etc.) Regulations 1972* (<http://www.legislation.gov.uk>,

[2020d](#)). The 1972 regulations made no special provision for the filing of MACs. The regulations have been updated 8 times in the years since 1972. The changes are detailed in Table 6.9, below:

Table 6.9

**Reference to submitting MACs to IT/ET
in IT/ET Regulations**

Year	MAC Reference	Regulation	Government
1972	No	<i>The Industrial Tribunals (Industrial Relations, etc.) Regulations 1972</i>	Conservative
1974	No	<i>The Industrial Tribunals (Labour Relations) Regulations 1974</i>	Labour
1980	No	<i>The Industrial Tribunals (Rules of Procedure) Regulations 1980</i>	Conservative
1985	No	<i>The Industrial Tribunals (Rules of Procedure) Regulations 1985</i>	Conservative
1993	No	<i>The Industrial Tribunal (Constitution and Rules of Procedure) Regulations 1993</i>	Conservative
2001	Yes	<i>The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2001</i>	Labour
MAC Reference: Two or more originating applications may be presented in a single document by applicants who claim relief in respect of or arising out of the same set of facts (Schedule 1, Section 1, Paragraph 2).			
2004	Yes	<i>The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004</i>	Labour
MAC Reference: Two or more claimants may present their claims in the same document if their claims arise out of the same set of facts (Schedule 1, Section 1, Paragraph 7).			
2013	Yes	<i>The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013</i>	Conservative/ Liberal Democrat Coalition
MAC Reference: Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 6 (Schedule 1, Section 9, Paragraph 1).			
2015	Yes	<i>The Employment Tribunal Rules of Procedure 2013 (amended Feb 2015)</i>	Conservative/ Liberal Democrat Coalition
MAC Reference: Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 6 (Schedule 1, Section 9, Paragraph 1).			
✓			
Sources: 1972, 1974, 1980, 1985, 1993, 2001, 2004, 2013, http://www.legislation.gov.uk , 2020, d, e, f, g, h, j, k & l 2015, HMCTS, 2015a			

It is only after five changes to the Regulations by subsequent governments that reference is made to filing MACs. In 2001 the Rules of Procedure say in reference to MACs:

‘Two or more originating applications may be presented in a single document by applicants who claim relief in respect of or arising out of the same set of facts. (Schedule 1, Section 1, Paragraph 2) (legislation.gov.uk, 2020j).

It is now clear that the filing of a MAC can be done on a single form ‘in respect of or arising out of the same set of facts’. But exactly what the ‘same set of facts’ means is not explicit.

In 2013, new Rules of Procedure were brought into effect on the same day as ET Fees were introduced. With regard to filing a MAC, the Rules of Procedure now stated:

‘Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. *Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 6 [italics added]* (Schedule 1, Section 9, Paragraph 1) (legislation.gov.uk, 2020l).

For the first time the Rules of Procedure have introduced a consequence for wrongly including a claim on the same form. This became known as ‘Rule 9’ and is a significant change. Although an amended Rules of Procedure was brought in in 2015 (HMCTS, 2015a) as can be seen in Table 6.9, above, the treatment of MACs was, and is, exactly the same.

Perhaps the best way to illustrate these changes is to use as a hypothetical example a MAC case and show how the outcome of the MAC case varied as the Rules of Procedure changed over time. The events leading to the hypothetical MAC case originally all take place in 2007 and so come under *The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004 (Rules of Procedure 2004)* ([legislation.gov.uk, 2020k](https://www.legislation.gov.uk/ukdsi/2004/01/13/1303101000000001.pdf)). Mr and Mrs Jay,

Mrs Gee and Mr Dee all worked at the same employer, XYZ Widgets Ltd, and had done so for at least 2 years. In early 2007. Mr Jay, Mrs Gee and Mr Dee were all employed as Management Executives and Directors by XYZ Widgets Ltd. Mrs Jay was employed as a Project Manager. In February 2007 there was a management disagreement between Mr Jay, Mrs Gee, Mr Dee and XYZ's Managing Director, which resulted in the separate dismissals over a period of weeks of Mr Jay, Mrs Gee and Mr Dee. Mrs Jay who was married to Mr Jay was dismissed several weeks later for 'unrelated reasons' but in reality, for literally being 'related' to Mr Jay.

Scenario 1: All four, now former XYZ employees, individually filed claims with the ET for Unfair Dismissal. Subsequently, the four asked the ET if the claims could be 'amalgamated' and heard together as the circumstances for all four claims were similar, although not the 'same'. The ET agreed that the claims of Mr Jay, Mrs Gee and Mr Dee were similar enough to be dealt with together, so creating a MAC, whereas Mrs Jay's claim was much more straightforward, and the ET thought that merging it with the other three would unnecessarily delay Mrs Jay's claim. In this example the four claims were submitted separately and three were merged to create a MAC and one carried on as a SAC.

Scenario 2: A different scenario would have been for all four Unfair Dismissal claims to have been submitted on the 'same document' as the Rules of Procedure 2004 allowed. In this scenario the ET would have reviewed the claims and could have allowed them to either proceed together or split Mrs Jay off as a SAC and allowed the other three to continue as a MAC. In 2007 this approach would have been perfectly acceptable to the ET.

In July 2013 the Rules of Procedure were updated by *The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (Rules of Procedure 2013)* (legislation.gov.uk, 2020I) to reflect the introduction of ET Fees.

Scenario 3: In this scenario the circumstances are exactly the same, as Scenario 1, apart from the application of the new Rules of Procedure. The individuals each file a separate claim for Unfair Dismissal. Following the

introduction of ET Fees, an Unfair Dismissal claim would be classified as a Type B claim entailing the payment of 4 X the £250 Issue Fee with submission of the ET1 claim forms. If the case proceeded to a hearing a further 4 x £950 Hearing Fee would be required making a total ET Fee payment of £4,800. Mr Jay, Mrs Gee and Mr Dee's claims are merged and treated as a MAC and Mrs Jay's claim proceeds as a SAC.

Scenario 4: The four individuals file the four Unfair Dismissal claims on one document. As a MAC, this will require payment of 1 X Issue Fee of £500 and if the case proceeded to a hearing, then a further 1 x £1,900 Hearing Fee would be required making a total ET Fee payment of £2,400. However, following the introduction of Rules of Procedure 2013, this scenario produces a very different outcome. The Rules of Procedure 2013 say:

‘Two or more claimants may make their claims on the same claim form if their claims are based on the same set of facts. *Where two or more claimants wrongly include claims on the same claim form, this shall be treated as an irregularity falling under rule 6 [italics added]* (Schedule 1, Section 9, Paragraph 1) (legislation.gov.uk, 2020l).

The ET finds that Mrs Jay's claim is not based on the 'same set of facts' as Mr Jay, Mrs Gee and Mr Dee. The surprising consequence is that, not only is Mrs Jay's Claim rejected, so are the other three. On top of this, the strict time-limit requirement that an Unfair Dismissal claim must be filed within 3 months of the date of dismissal means that the four claims cannot be reissued. The claims time-limit window has closed.

It is immediately obvious from Scenarios 3 and 4 that the four individuals would be £2,400 better off if they filed the claims as a MAC. There was now a clear financial incentive to file claims as a MAC. In a large MAC Claim the incentive was very great indeed. Filing a MAC containing 1,000 Type B claims cost £7,200 in total compared to £1,200,000 if all filed separately. The Government was aware of this and covered it in Rules of Procedure 2013, Paragraph 11:

‘(1) The Tribunal shall reject a claim if it is not accompanied by a Tribunal Fee’.

(2) ...

(3)...

(4) If a claim, or part of it, is rejected, the form shall be returned to the claimant with a notice of rejection explaining why it has been rejected' (Schedule 1, Section 11) (legislation.gov.uk, 2020l).

As a consequence of the introduction of ET Fees, the ET now examined MAC claim submissions closely to ensure that they were 'genuine' MACs not 'wrongly included' (legislation.gov.uk, 2020l). As might be expected the matter was litigated over. In June 2017, the Employment Appeal Tribunal confirmed what is described in Scenario 4 in *Farmah & Ors v Birmingham City Council* (UKEAT/0286/JOJ) (gov.uk, 2020). The submission of multiple claims on the same form must relate to the 'same set of facts'. This has been reaffirmed by the Court of Appeal in *Ms S Brierley and Others v Asda Stores Limited [2019] EWCA Civ 8* (bailii.org, 2020), albeit with slightly more discretion for the ET Judge in evaluating 'the same set of facts'.

Prior to 2013 the mixing and matching of vaguely related claims was common:

'In equal pay claims, it has always been customary to issue multiple claims using one claim form. Usually, these claim forms have been presented on behalf of many claimants carrying out different jobs, and in the case of claimants rated as equivalent with their comparators, in different grades and naming their comparators at different grades. As more and more claimants join in ongoing equal pay claims, fresh claim forms are then issued with more claimants on them. These claim forms can sometimes include the 'piggyback' claims brought by men which are contingent upon the success of the female claimants' (Romney, 2017).

The wording of the Rules of Procedure 2013, combined with the introduction of ET Fees, made the filing of MACs a much more precarious procedure as confirmed by the June 2017 *Farmah* case. As a leading 'no-win, no-fee' lawyer explained in September 2019:

'I would never do it [now] because it's just too dangerous from a professional negligence stance. There are certain jurisdictions where it's not an issue, Unlawful deduction from wages claims were regularly done by MACs, particularly if it was a single [employment] dispute [such as the] long running Pilots Airlines Unlawful Deduction from wages claims, Working Time claims, lots and lots of Working Time claims, Protective Award claims, both TUPE and Redundancy, lots of those, Equal Pay claims should be capable of being done on MAC [but] it's very dangerous to do it now, multiple discrimination claims would have been possible, probably not going to do it now' (Interview).

Following the introduction of the ET Fees in July 2013, Unison had been attempting to have them ruled unlawful and in July 2017, just one month after *Farmah*, the Supreme Court ruled that ET Fees were unlawful (Supreme Court, 2017). However, the ending of ET Fees did not change the precarious situation with regard to the filing of MACs. The Tweet by Stefan Cross was posted in December 2017, five months after the Supreme Court's ET Fee judgment and specifically points out that as a result of *Farmah*, the legal firm Leigh Day are filing 10,000 individual cases [claims] rather than a multiple (Twitter, 2020). The 2017 legal clarification of the phrase 'the same set of facts' although triggered by the introduction of Rules of Procedure 2013 to administer the ET Fees was unaffected by the subsequent removal of ET Fees. It had acquired a legal life of its own and continues to impact MACs.

The leading 'no-win, no-fee' lawyer explained that the 10,000 Leigh Day claims are Equal Pay claims against Asda, which Leigh Day have been/are running on a 'no-win, no-fee' basis. Following the rise of the 'Rule 9' issue Leigh Day were in an invidious situation. Having filed a MAC they were aware that Asda's lawyers could attack the MAC and potentially have all the claims dismissed if one claim was 'polluted', i.e., 'wrongly included' (legislation.gov.uk, 2020). The leading 'no-win, no-fee' lawyer then explained:

'The only way to be safe in those circumstances was to use an individual claim form for every single claimant, so Leigh Day end up reissuing all 10,000 Asda Cases [claims], all of them all over again on

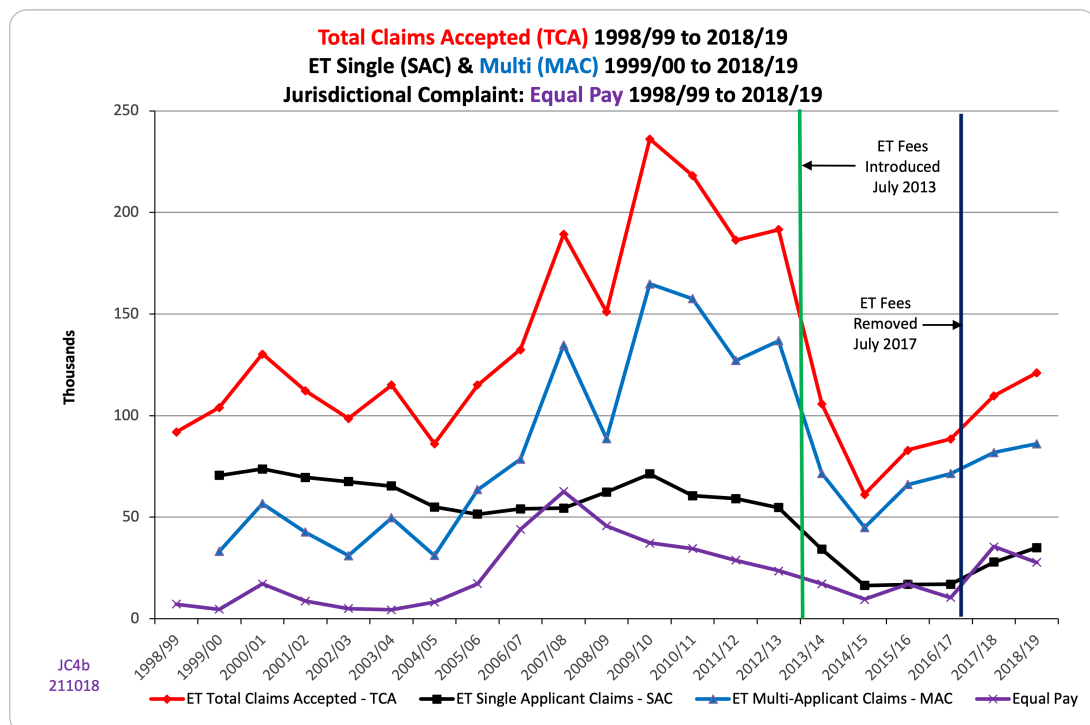
individual forms because you couldn't, as a claimant lawyer, you can't wait because they can raise these issues at the end, if it's a jurisdiction issue they can raise it at any point during the litigation. We had a case where these jurisdictional issues were taken 12 years after the claims had started after having had judgment in the cases. So, you just can't take the risk' (Interview).

Even post ET Fees 'Rule 9' had an impact. As the leading 'no-win, no-fee' lawyer explained:

'This is an enormous amount of work for the claimants doing this. The cost of just producing that much paper, that much copying, filing, Leigh Day would not have wanted to do this' (Interview).

It is possible to see evidence of this rule change in the statistics. Figure 6.10, below, shows the TCA, SAC and MAC, Equal Pay jurisdictional complaint and ET Fee start information as before but now also shows the end of ET Fees.

Figure 6.10



In light of the previous discussion regarding 'Rule 9' and Leigh Day, it is perhaps interesting to note, that the number of Equal Pay claims filed in

2017/18 after the end of ET Fees is 35,558, more than three times the 10,467 filed in 2016/17.

This section has shown that the reductions in the TCA, and MAC statistics following the procedural changes introduced by the Coalition Government in 2013 and 2014 were likely caused by unintended administrative Change Type 1 changes, the unwinding of the administrative 'ghost claim' issue and the Change Type 2, 'Rule 9' side effect of the Rules of Procedure introduced by the Coalition Government with the ET Fees. This section has also shown that the Type 2 Design/Policy procedural changes introduced by the Coalition Government in 2013/14, The Unfair Dismissal qualifying period change, the introduction of ET Fees and Acas Early Conciliation, were probably responsible for the reductions in the SAC statistics following the introduction of the ET Fees. These findings have expanded our understanding, because as noted in the literature review, only the fall in the TCA following the 2013/14 Coalition Government's Type 2 procedural changes, is noted in the literature (Kirk, 2018; Adams and Prassl, 2017). These findings also show that understanding this 'missing' SAC and MAC intermediate level is important because fills in what appears to be a significant gap in our knowledge of ETs, highlighting how using the TCA as a proxy for workplace conflict is potentially unsustainable and throwing into doubt the vexatious claims/burden on business argument for the increase in the TCA used to justify ET Fees.

The next section examines how the claims being brought to the ET for adjudication have changed over time from being largely about 'contended facts' to being largely about 'contended law'.

6.5 Change Type 3: From Contended Facts to Contended Law

In the literature review it was suggested that ETs have, over time, moved from dealing with individual employment disputes that revolve around 'contended facts' as represented by Dennison and Corby's 'adversarial mirror' (Dennison and Corby, 2005), to dealing with norm-generating 'contended law' as represented by the large-scale Equal Pay MACs, partly driven by isomorphism (Corby and Latreille, 2012). Chapter 5 developed this suggestion by examining the percentage delayed difference between the individual jurisdictional

complaint claims and the same jurisdictional complaints output/disposal statistics, for the period 1998/99 to 2018/19, in an attempt to identify a relationship between the length of delay and SAC/MACs which could yield a valuable insight into the potential change from ET claims being mostly about 'contended facts' to being mostly about 'contended law'.

As a reminder, the percentage delay figure was calculated by adding up the number of claims filed in a jurisdiction between 1998/99 and 2018/19 and subtracting the number of claims disposed of in the same jurisdiction. This calculation yielded a figure for claims outstanding, i.e., filed but not yet disposed. Dividing the outstanding claims by the number of claims filed in the period 1998/99 to 2018/19 gives the percentage delayed (see Chapter 5, Section 5.4, for more details).

6.5.1 Unfair Dismissal

This subsection will now consider if there is something about the Unfair Dismissal jurisdictional complaint that might support the finding that Unfair Dismissal claims are processed quickly, compared to the other six jurisdictional complaints analysed. The Unfair Dismissal jurisdictional complaint is based on the right 'not to be unfairly dismissed' (Amir, 2014, p.401). The facts of an Unfair Dismissal claim may be complex, but the ET can and will make the decision based on the facts before it. The decision can then only be referred to the Employment Appeal Tribunal on a 'question of law' (Courts and Tribunal Judiciary, 2022, p.3). ET decisions cannot generally be challenged, as 'The Employment Tribunal must be shown to have made an error of law' (Courts and Tribunal Judiciary, 2022, p.3).

However, in practice, the right 'not to be unfairly dismissed' comes with two caveats. Firstly, if the employer acted reasonably then the dismissal is not unfair and it is for the ET to decide what is reasonable, as outlined by the Court of Appeal in 1981⁷¹ (Brodtkorb, 2010). Secondly, Employment Tribunals are

⁷¹ *British Leyland UK Ltd v Swift* [1981] IRLR 91, CA

not bound by their own precedents or those of other ETs, as outlined in 1984 by the Employment Appeal Tribunal⁷² (Carby-Hall, 1986).

The implication of the first caveat is that when a claim for Unfair Dismissal arrives at the ET, it can and will make a decision on the 'contended facts' before it. If the tribunal decides that the employer acted reasonably, then the dismissal will be found fair i.e., decided in favour of the employer. The implication of the second caveat from is that a different tribunal could decide in similar circumstances that the decision to dismiss was unreasonable and uphold the claim for unfair dismissal. Both outcome/decisions are equally valid based on the actual 'contended facts' of the claim and as there is unlikely to be any 'contended law' at stake, the decision cannot be referred to the Employment Appeal Tribunal (Courts and Tribunal Judiciary, 2022, p.3).

If the ET decides Unfair Dismissal jurisdictional complaints on the basis of the 'contended facts' before it, with little prospect of appeal to a superior court, then the finding, shown in Chapter 5, Table 5.23, above, that the Unfair Dismissal percentage delay between claim submission and claim outcome/disposal is 11.33% is supported.

The relationship between the Unfair Dismissal jurisdictional complaint, SACs and 'contended facts', noted above, supports Dennison and Corby's 'adversarial mirror' (Dennison and Corby, 2005) as it was noted in the literature review that Dennison and Corby, relied on SETA 2003 for their 'adversarial mirror' data source, meaning their findings could only relate to SACs as MACs were excluded from SETA 2003 (Buscha et al., 2012, p.14).

6.5.2 Equal Pay

In contrast to the Unfair Dismissal jurisdiction 11.33% percentage delayed, the Equal Pay jurisdiction has a 42.96% percentage delayed, as shown in Chapter 5, Table 5.23, above. Of the 467,321 claims filed in the period, 1998/99 to 2018/19, 200,740 are still outstanding. To put this in perspective, this is almost

⁷² *Anandarajah v Lord Chancellor's Department* [1984] IRLR 131, EAT

equates to the total number of Equal Pay Jurisdiction claims filed, 204,664, in the nine years between 2010/11 and 2018/19, as shown in Appendix 6, Tables A6.6b&c. While the scale of the delay in the Equal Pay jurisdiction is, perhaps, higher than might have been expected, the reasons for the higher Equal Pay jurisdiction percentage delayed compared to the Unfair Dismissal jurisdiction lies in the difference between ‘contended facts’ and ‘contended law’.

As was noted above in relation to the Unfair Dismissal jurisdictional complaint, ET decisions can only be referred to the Employment Appeal Tribunal on a ‘question of law’ (Courts and Tribunal Judiciary, 2022, p.3). In these circumstances the ET acts as the first step in a process of legal clarification that potentially involves appeals to all the superior courts in the British judicial system as outlined in Table 6.10, below.

Table 6.10

**The structure of the court system
as it relates to employment law**

Ranking of Superiority	Court	Direction of Precedence
1	European Court of Justice	Precedent
	↑	↓
2	House of Lords/Supreme Court ^a	Precedent
	↑	↓
3	Court of Appeal	Precedent
	↑	↓
4	Employment Appeal Tribunal	Precedent
	↑	↓
5	Employment Tribunal	No Precedent
^a In October 2009 the Supreme Court replaced the House of Lords (The Supreme Court, 2023) Source: Taylor and Emir, 2019, p.37		

The literature review highlighted that the large-scale MACs in the Equal Pay jurisdiction are largely about contended law. The 32 leading Equal Pay MACs discussed in the Equal Pay literature by among others, Szyszczak (1985), Rowbottom, (2007), Deakin and Morris, (2009) and Hayes (2014)⁷³ are shown in Appendix 14, Table A14.1, where it can be seen that 27 of the 32 MACs listed are only resolved on appeal to superior courts. The legal complexity of these Equal Pay MACs potentially results from the fact that they are largely about norm-generating ‘contended law’. The facts of the large scale Equal Pay MACs are largely accepted by both employers and employees as represented by the trade unions or no-win, no-fee lawyers, the matters at issue revolve around a contended interpretation of the law, resulting in the establishment of new case law and precedent, which is a time-consuming process (Hepple et al., 2000; Taylor and Emir, 2019) and potentially explains the Equal Pay jurisdiction’s 42.96% percentage delay noted in Chapter 5, Table 5.23, above.

It should also be noted that, in the Equal Pay jurisdiction which was introduced on 29th December 1975 (*Employment Gazette*, May 1977, p.457), the trade unions and the no-win, no-fee lawyers are contending an *existing* jurisdiction in new ways (Masood and Lineberger, 2020), an example of both, isomorphism (Corby and Latreille, 2012) and the negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004).

6.5.3 Working Time Directive

In the percentage delayed comparison, shown in Chapter 5, Table 5.23, the Working Time Directive delayed percentage was 27.69% (221,278/799,060). Unfortunately, in light of the Change Type 1, Administrative ‘Ghost Claims’ issue discussed earlier in this Chapter, and the associated increase in the number of claims filed in this jurisdiction as a result, the percentage delay

⁷³ The full list of references in the 32 leading Equal Pay MACs in Appendix 14, Table A14.1 are: Bach (2010), Branney (1999), Christie (2005), Colling (2006, 2010), Conley (2014), Conley et al, (2018), Davies and Freedland (1993), Deakin et al. (2015), Deakin and Morris (2009), Guillaume (2015), Hayes (2014), Heery (1998), Heery and Conley (2007), Jefferson (1985), McLaughlin (2014), Oliver et al. (2014), Rowbottom (2007), Szyszczak (1985), Thornley (2006).

figure of 27.69% for this jurisdiction is not as robust as the other six jurisdictions in Chapter 5, Table 5.23. The calculation is further complicated by the introduction of 'Rule 9' in 2013/14 and the ending of the Administrative 'Ghost Claims' issue in 2014, both of which reduced the number of Working Time Directive claims filed. However, the evidence presented above to illustrate Change Type 1, shows that the high level of 'administrative ghost claims' was a direct result of the time taken to resolve a number of the large-scale Working Time Directive MACs which revolved around 'contended law'.

For example, as was detailed earlier, Balpa, the airline pilots Union, used the new Working Time Directive statutory right to argue that British Airways' (BA) calculation of Balpa members' holiday pay was in contravention of CAWTR 2004. BA disagreed, so Balpa began a MAC on behalf of approximately 2,750 BA pilots (bailii.org, 2021). The MAC, known as *British Airways PLC v Ms S Williams & Others*, was effectively about norm-generating 'contended law' as were other MACs highlighted above.

6.5.4 Other Jurisdictions, Contended Facts or Contended Law?

Where do the other Jurisdictions fit? This is more difficult to answer on the evidence found so far. Although the Unauthorised Deductions jurisdiction has a delayed percentage of 29.39% (237,567/808,295), shown in Chapter 5, Table 5.23, above, which could indicate an association with MACs, neither the literature nor the publicly available documentation provides any definitive evidence to assign an association. The remaining jurisdictions, Breach of Contract, Sex Discrimination and Redundancy Pay with percentage delayed of 23.93% (124,752/521,406), 18.87% (56,871/301,412) and 21.35% (39,159/183,374) respectively, all shown in Chapter 5, Table 5.23, above, have been tentatively marked as inconclusive as regards an association with either SACs or MACs or 'contended facts' and 'contended law'. It is likely that all three jurisdictions have elements of both 'contended facts' and 'contended law'.

This section has brought Change Type 3 into focus and highlighted how the claims being brought to the ET for adjudication have changed over time from being largely about 'contended facts' to being largely about 'contended law'. It

has been shown that the increase in large-scale MACs associated with the Working Time Directive and Equal Pay jurisdictional complaints represents an increase in employment disputes about the law, whereas the Unfair Dismissal jurisdictional complaint represents employment disputes about 'contended facts'. Change Type 3 needs to be considered when making longitudinal comparisons across the data series because norm-generating 'contended law' MACs have different drivers to 'contended facts' Unfair Dismissal claims and, perhaps, are isomorphism exemplified with tribunals increasingly undertaking work intended for the wider court system (Corby and Latreille, 2012) and represent the negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004).

Beyond isomorphism, the rise of Change Type 3 'contended law' MACs as pursued by Balpa, the airline pilots union in *British Airways PLC v Ms S Williams & Others*, is an illustration of collective workplace conflict beyond strike action which Acas recently noted was 'not easy to measure' (Acas, 2023), meaning that the literature on collective workplace conflict beyond strike action was limited with no systemic understanding of collective workplace conflict that manifests elsewhere. In analysing MACs, this thesis is providing material for a taxonomy of contemporary collective workplace conflict in Great Britain.

So far in this chapter the discussion has assumed that the data analysed has been accurately reported by the MoJ and its predecessors. The next section looks at this assumption and examines if the data are indeed accurate.

6.6 Change Type 4: Do Total Claims Accepted (TCA) match Total Claim Outcome/Disposals (TCOD)?

There is a fundamental question of whether ET statistics are accurate and it would not seem unreasonable to assume that they are, given that government policies, such as the introduction of ET Fees, are based on these statistics. However, as Hand D., (2018) noted, 'administrative data may neither be complete nor error free' (Hand D., 2018, p.562) and one of the contributions of this thesis is to demonstrate that the ET claims statistics, which are administrative data, are 'neither complete, nor error free' and, indeed,

potentially contain fundamental flaws. The following section will show an unexplained gap between the number of claims filed and the number of outcome/disposals reported along with a hitherto unreported method of claim outcome/disposal.

The analysis that follows is effectively an 'audit' of ET inputs, outputs and 'work in progress' as represented by 'total claims accepted' (TCA), 'total claim outcome/disposals' (TCOD) and 'total claims delayed/outstanding' statistics as published by the MoJ and its predecessors. The earlier identification of Changes Type 1 and 2, Administrative and Design/Policy has no impact on the 'audit' because both are claims counted in the TCA as outlined above. The analysis is made on the logical assumption that inputs = outputs + work in progress, so that:

$$\text{TCA} = \text{total claims outcome/disposals} + \text{total claims delayed/outstanding}$$

In Chapter 5, Section 5.4, above, an attempt was made to tease out the relationship between jurisdictional complaints, SACs and MACs using the time lag between acceptance of a claim by the ET and the outcome/disposal of the claim. For this analysis to be meaningful requires the data it is based on to be meaningful.

One concern is the number of claims 'delayed'/outstanding. In Chapter 5, Table 5.23, above, the TCA is shown as 2,727,732 for the 21 years between 1998/99 and 2018/19. The total claims outcome/disposals for the same time period are shown as 2,089,353, a difference of 638,379 claims 'delayed/outstanding' representing 23.40% ($2,089,353/2,727,732$) of the TCA for the period. The average annual number of claims accepted by the ET in the same 21 years, is 129,892 ($2,727,732/21$), therefore the 638,379 claims 'delayed'/outstanding equates to 4.92 years of the average annual TCA ($638,379/129,892$). Given that ETs were designed to provide swift justice, as per Donovan (1968), these numbers would appear to indicate that this is not being delivered, seeming to confirm earlier arguments within the literature review of ETs no longer achieving the aims they were set up for (Colling, 2010, p.337; Corby and Latreille, 2012, p.397).

However, this is not the full story. To put some context on what appears to be an average 5-year delay requires a comparison of the TCA and total claims outcome/disposals from 1972 and this is done in Tables 6.11, 6.12 and 6.13, below.

Table 6.11, below, shows the TCA and total claims outcome/disposals for the years 1985/86 to 2018/19. The total claims outcome/disposals data for this period are 'known' and based on published statistics, apart from 1996/97 which is acknowledged to be missing (*Hansard*, 2003). The total claims outcome/disposals number for 1996/97 in Table 6.11, below, is a mean average of the years either side of the missing year.

Table 6.12, below, is 'estimated'. The jurisdictional complaint outcome/disposal data for Unfair Dismissal are known from 1972, the Equal Pay and Sex Discrimination jurisdictional complaint outcome/disposal data are known from 1976 and the Race Discrimination data from 1981. By adding these four jurisdictional complaint outcome/disposals together for each year from 1972 gives an estimated total claim outcome/disposal (eTCOD) for the years 1972 to 1984/85. The other jurisdictional complaint outcome/disposals in this period are not consistently published.

Table 6.11

Employment Tribunal
Total Claims Accepted (TCA) and Total Claims Outcome/Disposals (TCOD) by Year 1985/86 to 2018/19

Year	Total Claims Accepted (TCA)	Total Claims Outcome/Disposals (TCOD)	Difference	%age 'delayed'/outstanding	Cumulative
	A	B	C=A-B	D=C/A	E
1985/86	38,593	37,910	683	1.77%	683
1986/87	38,385	39,404	(1,019)	-2.65%	(336)
1987/88	30,543	34,233	(3,690)	-12.08%	(4,026)
1988/89	29,304	29,317	(13)	-0.04%	(4,039)
1989/90	34,697	31,913	2,784	8.02%	(1,255)
1990/91	43,243	35,826	7,417	17.15%	6,162
1991/92	67,448	41,768	25,680	38.07%	31,842
1992/93	71,821	53,445	18,376	25.59%	50,218
1993/94	71,661	69,612	2,049	2.86%	52,267
1994/95	88,061	67,325	20,736	23.55%	73,003
1995/96	108,827	73,472	35,355	32.49%	108,358
1996/97 ^a	88,910	74,043	14,867	16.72%	123,225
1997/98	80,435	74,614	5,821	7.24%	129,046
1998/99	91,913	74,006	17,907	19.48%	146,953
1999/00	103,935	83,409	20,526	19.75%	167,479
2000/01	130,408	92,938	37,470	28.73%	204,949
2001/02	112,227	97,386	14,841	13.22%	219,790
2002/03	98,617	95,554	3,063	3.11%	222,853
2003/04	115,042	93,973	21,069	18.31%	243,922
2004/05	86,181	97,966	(11,785)	-13.67%	232,137
2005/06	115,039	86,083	28,956	25.17%	261,093
2006/07	132,577	102,597	29,980	22.61%	291,073
2007/08	189,303	81,857	107,446	56.76%	398,519
2008/09	151,028	92,018	59,010	39.07%	457,529
2009/10	236,103	112,364	123,739	52.41%	581,268
2010/11	218,096	122,792	95,304	43.70%	676,572
2011/12	186,331	110,769	75,562	40.55%	752,134
2012/13	191,541	107,420	84,121	43.92%	836,255
2013/14	105,803	148,387	(42,584)	-40.25%	793,671
2014/15	61,308	312,773	(251,465)	-410.17%	542,206
2015/16	83,031	49,529	33,502	40.35%	575,708
2016/17	88,476	45,177	43,299	48.94%	619,007
2017/18	109,698	38,761	70,937	64.67%	689,944
2018/19	121,075	43,594	77,481	63.99%	767,425
Total	3,519,660	2,752,235	767,425	21.80%	767,425

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Sources:

For TCA, see Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19
 For Total Claims Outcome/Disposals, see Chapter 3, Table 3.3, Data Sources for Employment Tribunal Total Claim Outcome/Disposal (TCOD) Statistics 1985/86 to 2018/19

^a 1996/97 Annual Disposals Statistics not available – see *Hansard*, 30 October 2003. Total Claims Outcome/Disposals figure for 1996/97 is a mean average of 1995/96 & 1997/98

Table 6.12

**Employment Tribunal
Total Claims Accepted (TCA) and Estimated Total Claims
Outcome/Disposals (eTCOD) by Year 1972 to 1984/85**

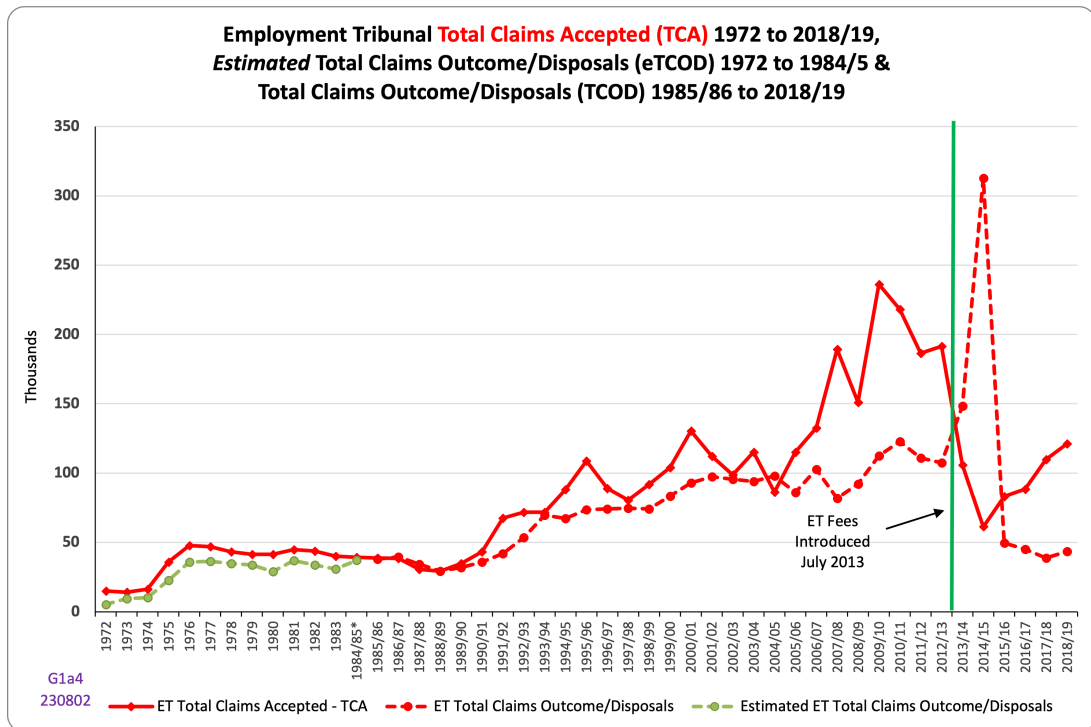
Year	Total Claims Accepted (TCA)	Estimated Total Claims Outcome/Disposals (eTCOD) ^a	Difference	%age 'delayed'/outstanding	Cumulative
	A	B	C=A-B	D=C/A	E
1972	14,857	5,197	9,660	65.02%	9,660
1973	14,062	9,350	4,712	33.51%	14,372
1974	16,320	10,109	6,211	38.06%	20,583
1975	35,897	22,632	13,265	36.95%	33,848
1976	47,804	35,686	12,118	25.35%	45,966
1977	46,961	36,369	10,592	22.55%	56,558
1978	43,321	34,694	8,627	19.91%	65,185
1979	41,244	33,826	7,418	17.99%	72,603
1980	41,424	28,896	12,528	30.24%	85,131
1981	44,852	36,939	7,913	17.64%	93,044
1982	43,660	33,571	10,089	23.11%	103,133
1983	39,959	30,686	9,273	23.21%	112,406
1984/85 ^b	39,191	37,062	2,129	5.43%	114,535
Total	469,552	355,017	114,535	24.39%	114,535

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Sources:
For TCA, see Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19
^a Total Claims Outcome/Disposals estimated by summing Unfair Dismissal (from 1972), Equal Pay & Sex Discrimination (from 1976) & Race Discrimination (from 1981) Outcome/Disposals. For Sources, see Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19
^b Total Claims Outcome/Disposals for 1984/85 is 15 months data

The information shown in Tables 6.11 and 6.12, above, is shown in Figure 6.11, below:

Figure 6.11



As can be seen in Figure 6.11, above, the estimated total claims outcome/disposals from 1972 to 1984/85 and actual total claims outcome/disposals from 1985/86 lines never cross the TCA line apart from the by now familiar years of 2013/14 and 2014/15, when a large number of Working Time Directive claims were disposed of. Even taking the Working Time Directive disposals into account it is reasonably clear that the estimated and actual total claims outcome/disposals over the period from 1972 are lower than the equivalent TCA and this is supported by Tables 6.11 and 6.12, above, which show that in almost every year the cumulative ‘delayed’/outstanding claims number is steadily increasing (column E) meaning that the processing of ET claims is apparently taking longer and longer. Table 6.13, below, summarises the position from 1972 to 2016/17.

Table 6.13

**Total Employment Tribunal
Total Claims Accepted (TCA) and *Estimated* Total Claims
Outcome/Disposals (eTCOD) by Year 1972 to 1984/85 and Total Claims
Outcome/Disposals (TCOD) by Year 1985/86 to 2016/17**

Year	Total Claims Accepted (TCA)	Estimated & Total Claims Outcome/Disposals (eTCOD & TCOD)	Difference	%age 'delayed'/outstanding	Cumulative
	A	B	C=A-B	D=C/A	E
1972 to 1984/5	469,552	355,017	114,535	24.39%	114,535
1985/86 to 2016/17	3,288,887	2,669,880	619,007	18.82%	733,542
Total	3,758,439	3,024,897	733,542	19.52%	733,542

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The TCA for 1972 to 2016/17 is 3,758,439, the total claims outcome/disposals is 3,024,900 giving a 'delayed'/outstanding figure of 733,539 representing 19.52% (733,539/3,758,439) of the TCA from 1972. However, this turns out to be another example of problems identified with regard to the clarity of the ET statistics.

On 8th June 2017, the MoJ published the *Tribunals and Gender Recognition Statistics Quarterly, January to March 2017 (provisional)*. On page 7. we are told:

‘The total caseload outstanding for Employment Tribunals at the end of March 2017 was 272,032, the majority (96%) relating to multiple claims’ (MoJ, 2017, p.7).

The figure of 272,032 'delayed'/outstanding is 461,507 less than the 733,539 calculated above. The 461,507 appear to have 'disappeared'.

In the *Tribunal and Gender Recognition Certificate Statistics Quarterly January to March 2015* we are told that:

'during October to December 2014, there was a review of all Employment Tribunal cases and around 10% of existing cases were closed and removed from the outstanding caseload' (MoJ, 2015a, p.18).

It is not clear exactly what this means. It appears to imply that the 'closed cases' were simply removed from the outstanding caseload. Why this would be the situation is unknown, but this might explain how some of the claims 'disappeared'. There could indeed be an unreported and previously unknown method of claim outcome/disposal beyond the total claim outcome/disposal statistics reported in the ET statistics regularly published by the MoJ and its predecessors. Although this is the only entry in the ET paperwork that acknowledges this phenomenon, it may be a previously unreported regular feature. If that is the case then the link between inputs – total claims accepted (TCA), and outputs – total claims outcome/disposals (TCOD), is broken. If the 461,507 'disappeared' claims were removed in this way, it would represent 12.28% of the TCA between 1972 and 2016/17 ($461,507/3,758,439$) and prompt concern that the TCA is overstated by an average of 12.28% over the period for this reason alone. It should also be noted that the removal process could have been included in total claim outcome/disposal statistics as reported by the MoJ which would mean that the number of disappeared is not 461,507 but 733,539, meaning that the TCA was overstated by 19.52% over the period ($733,539/3,758,439$).

This audit of inputs – claims and outputs – outcome disposals has revealed that at least 461,507 claims have disappeared. It has identified a potential explanation in the 'closure and removal' of cases which may, or may not, fully explain the 461,507 'disappeared' claims. If this is not the explanation then there is a serious unexplained issue here, because the concern that the TCA is overstated by an average of 12.28% over the period is still valid. Any analysis of the inputs of claims to ET System is undermined by a potential overstatement of annual claims or potential understatement of outcome/disposals in the published data.

The literature review noted that there was a lack of consistent and readily available ET claims data and statistics (Burgess et al., (DTI, 2001); Hand J., 2010; Lord, 2014). However, the foregoing has highlighted that the problems with ET claims data and statistics potentially go much further than the employment relations literature acknowledges. This again makes using the TCA as a proxy for workplace conflict potentially unsustainable, as it is now possible that the TCA is not even recording the claims accepted and disposed of in a reliable and valid manner, which throws further doubt on the vexatious claims/burden on business argument for the increase in the TCA used to justify ET Fees. It is possible that one of the reasons for the changes in ET claims is just simply unreliable data recording. This, perhaps, should not be a surprise, because, as was noted in the literature review, the ET claims data and statistics are what Hand D., (2018) described as 'administrative data', which comes with several caveats, the second of which relating to the diligence and accuracy with which the data are collected, is particularly relevant here.

This section has carefully shown that it cannot be assumed that total claim outcome/disposals numbers processed by the ET follows the number of total claims accepted (TCA). The next section looks at further issues regarding Data Integrity.

6.7 Change Type 4: Data Integrity

The above discussion illustrates that the 'robustness' of the ET data is an issue as confirmed in the MoJ response to a Freedom of Information request submitted to the MoJ in connection with this research. As part of the response the MoJ informed the author that the ET Database 'only holds robust data from 1 April 2014' (see Appendix 10d, p.2). It is interesting to note that this is the same ET data year, 2014/15, as the 'case removal' described above. Perhaps one of the purposes of 'case removal' task is to improve the 'robustness' of the remaining data although, as noted above, it would undermine the reliability of the previously published statistics.

However, notwithstanding the foregoing, the ET statistics themselves have issues of credibility. Any 'administrative data' series collected over a 47-year period, 1972 to 2018/19, will occasionally have credibility issues, as noted by

Hand D., (2018). However, the ET TCA and the ET total claim outcome/disposal statistics seem to have had more than the occasional credibility issue (Scott (1990), as quoted in Bryman 2012, p.544). The most obvious example being the complete loss of any outcome/disposal statistics for the year 1996/97 (*Hansard*, 2003).

The first issue with the data is quite simply the lack of data. Employment Tribunals (ETs) began dealing with the Unfair Dismissal jurisdiction in March 1972 (*Employment Gazette*, June 1974, p.503) and the data on the annual TCA and outcome/disposals is firstly, only intermittently published and secondly, beset with 'computer problems'. The outcome/disposal data are only regularly published from 1985/86 and the annual TCA statistics are only regularly published from 1998/99.

The collection and publication of ET statistics appears to have become more formalised over time, particularly from 1999/2000 with the publication of the Employment Tribunal Service Annual Report and Accounts. However, the regular publication of the ET statistics comes with more and more caveats about the timeliness and accuracy of the data. An example of this are the caveats regarding data quality and limitations that regularly accompanies the release of the *Quarterly Statistics for the Tribunals Service*, a newsletter first published by the MoJ on 30th September 2010 and quarterly thereafter. The Tribunal information in the newsletter related to the period 1st April 2010 to 30th June 2010. The newsletter is published in a continuous sequence that still continues, although there have been several changes of name. Contained in the newsletter is a brief discussion of the various Tribunals that the Tribunals Service are responsible for including a discussion of the latest quarterly ET statistics data.

In the September 2010 edition covering the period 1st April 2010 to 30th June 2010, the newsletter notes that a new system went into pilot in Nottingham in November 2009 and Leicester in May 2010, but highlights that although most data relating to Nottingham and Leicester are available there are data issues (MoJ, 2010, p.11). By the end of the year however, as noted in the Explanatory Notes in *Employment Tribunals and EAT Statistics for 2010-11*, the pilot was

subsequently abandoned with the loss of some data for Nottingham and Leicester (MoJ, 2011, p.15). Almost every subsequent edition of the quarterly newsletter has a series of caveats regarding 'Data Quality and Limitations'.

As noted above the greatest example of reliability and construct validity issues is the complete loss of any outcome/disposal statistics for the year 1996/97. This is reported in *Hansard* as being 'Due to changes in the Employment Tribunals Service computerised records in 1996' (*Hansard*, 2003). For such a serious data issue this is an interestingly phrased answer. In 1999, an article in *Labour Market Trends* reveals that 'unfortunately, because of changes to the tribunal case-handling systems in 1996, comparable information for 1996/97 is not available' (*Labour Market Trends*, 1999, p.494). This affects all the regularly published claims *outcome/disposal* statistics. They are simply non-existent for 1996/97.

From the examples given above, it is reasonably clear that ET statistics have an ongoing reliability and construct validity issue. This is a problem because, as noted above in the June 2017 *Guide to Tribunals and Gender Recognition Certificate Statistics Quarterly*, reference is made to the main users of the MoJ *Tribunals and Gender Recognition Certificate Statistics* being Ministers and officials in central government responsible for developing policy with regards to tribunals' (MoJ, 2017a, p.26). If the ET claims data have ongoing reliability and construct validity issues, then government policy is based on, potentially, incomplete data and analysis.

This is a serious issue because as the House of Commons Public Accounts Committee has noted:

'Poor quality data in government leads to failings in services provided, poor decision-making and an inability to understand how best to improve' (House of Commons Committee of Public Accounts, 2019, p.3).

The poor data quality issue goes further than government, however. In the June 2017 *Guide to Tribunals and Gender Recognition Certificate Statistics Quarterly* reference is made to other users of the MoJ *Tribunals and Gender*

Recognition Certificate Statistics being 'lawyers and academics' (MoJ, 2017a, p.26). If the ET claims data have ongoing reliability and construct validity issues, then academic debate is based on, potentially, incomplete data and analysis.

In the literature review it was noted that Hand D., (2018), raised several caveats regarding 'administrative data' from a statistical perspective and the findings presented in this chapter highlight the relevance of the three statistical caveats outlined in the literature review to the ET data under review. The ET data are, indeed, the 'data exhaust' from the ET management system, collected for operational purposes, and have been found to be neither 'complete or error free' and have been found to be subject to 'long-term definitional changes', all of which has made longitudinal comparison difficult. In short, by comparison with Hand D.'s statistical caveats, the ET data is deficient.

The literature has engaged with the Change Type 2 changes to the ET TCA, where the volume of ET claims has been affected by government mandated design/policy procedural changes. For example, Ewing and Hendy (2012) discuss the Coalition Government's Unfair Dismissal Changes and Hepple (2013) discusses employment law under the Coalition Government. These authors deal with the various aspects of the Coalition Government's policies which lead to Change Type 2 changes, but without questioning the ET statistics in any way. The research is focused on specific aspects of the Employment Tribunals, not on the empirical issues of the supporting data involving either Change Type 1 or Change Type 4 issues. The literature has not really engaged with Change Type 1 changes to the ET TCA, where the TCA has been increased or reduced by the ET's own internal administrative process changes. It was noted above that the administrative 'ghost claim' issue had led to an increase in the TCA as an unintended consequence of the ET's own internal administrative procedures. In 2016 Heery noted that:

'In classic fashion, the operation of the system of employment law has been designated by policy makers as an IR problem - an 'excessive' number of cases [claims] are believed to impose a burden on both

employers and the public purse – and researchers have explored the conditions that give rise to [workplace] conflict and assessed different options for reform' (Heery, 2016, p.57).

However, given the administrative 'ghost claims' issue the policy makers were acting on incorrect data and the researchers were searching for the 'ghostly' ephemera of workplace conflict. The only serious questioning in the literature of the ET statistics is generic, by Hand D., (2018), who is discussing 'administrative data' and its associated caveats in general, from a statistical perspective.

Because of the Change Type 1, 2, 3 and 4 issues, highlighted above, the ET TCA statistics should not be regarded as hard objective data. They are at best a not very accurate measure of ET claims filed and should be used as a proxy for workplace conflict with caution.

The consequence of discovering the existence of administrative 'ghost claims', government mandated design/policy changes and the noted data integrity issues in the ET claims statistics (Hand D., 2018) means that the previous studies outlined in the literature review and based on previous understandings of the ET claims statistics may need to be reviewed (see, for example, Corby, 2015; Renton 2012), in line with the administrative data caveats outlined by Hand D., (2018).

There is also a question about when the ET statistics recognise a claim as a SAC or MAC. Is it at application or are they adjusted as more information becomes available? This is answered in the *Tribunals Statistics Quarterly (including Employment Tribunals and EAT) October to December 2013*, where under data quality and limitations we are told:

'Figures may vary from previously published figures for a number of reasons including:

- revision to the administrative system, including claims being entered onto the system outside of the month they were lodged.
- submission or re-submission of large numbers of multiple claims.

- multiple claims disbanding and being re-submitted as single claims or vice versa.
- claims being re-submitted with a different jurisdictional breakdown and
- Additional information received from the tribunals that had not been entered onto the ICT system at the time of extraction (MoJ, 2014, p.26).

These caveats are consistently repeated in every subsequent quarterly newsletter. This information highlights that not only is the reliability and construct validity of the ET TCA and outcome/disposal statistics an issue but so is the breakdown of the ET TCA and outcome/disposal statistics into their component parts.

For example, the ET data do not comply with a single characteristic of the Audit Commission's requirement for improvement of data quality (Audit Commission, 2007), as detailed in the literature review, Chapter 2, Table 2.2 (p.30).

- They are not accurate for all the reasons noted earlier.
- They are not valid because of inconsistencies between periods.
- They are not reliable as the data are not stable and consistent over time.
- They are not timely as there are examples where the data are published or amended long after the time periods referred to.
- They are not relevant because during the administrative 'ghost claim' era the data captured was unable to accurately reflect what was happening (although the MoJ clearly knew this at the time (Booth, 2021)).
- They are not complete because there are numerous examples of data issues.

Yet despite the failure to comply with the Audit Commission's key data characteristics, the ET statistics are the only information available regarding the operation of the ET System. However, the combination of Change Types

1, 2, 3 and 4 shows that the ET statistics suffer from reliability and construct validity issues which means they represent, at best, nothing more than the number of claims received and processed in any period and, at worst, they represent nothing at all. They are certainly not reliable or valid enough to serve as a proxy for workplace conflict or demonstrate an increasing 'burden on business'.

6.8 Conclusion

This chapter has been on a wide-ranging quest to identify some of the factors behind the rise and fall in the TCA. The influential factors identified were classified by Change Type 1: Internal ET administrative procedural changes, Change Type 2: Government mandated design/policy procedural changes, Change Type 3: Contended Facts to Contended Law and Change Type 4: Data Integrity.

The Type 1 Internal administrative changes were illustrated by the generation of a host of administrative 'ghost claims' in the Working Time Directive jurisdictional complaint by the ET administrative 3-month time-limit requirement to protect ongoing losses. It was shown how this drove up the number of Working Time Directive jurisdictional complaint claims and hence the TCA. The administrative 'ghost claim' issue was shown to be largely responsible for the inflation in claim numbers in the period prior to the introduction of ET Fees in 2013. The enumeration of this phenomenon has added to our understanding and gives some credence to the argument that juridification in the form of new legislation (Dickens, 2000; Deakin and Morris, 2005, in Heery, 2011) and union strategy (Dickens, 2000; Heery, 2011) have been drivers of growth in workplace conflict which comes to ETs, but perhaps not in a way previously explored within the literature.

The Type 1 administrative changes were further illustrated by the administrative requirement for Redundancy Pay jurisdictional complaint claims to be processed through the ET, to prove the claimant's eligibility to Redundancy pay following the bankruptcy of their employer.

Type 2 design/policy changes were illustrated by examining the effects of the Unfair Dismissal qualifying changes, the introduction of ET Fees along with Acas Early Conciliation by the Coalition Government. It was noted that these three Type 2 changes affected SACs and MACs differently, which raised the question of why both SACs and MACs had fallen following the introduction of the three illustrated Type 2 changes. The answer came from a surprising confluence of Type 1 and Type 2 changes, firstly, the Type 1 internal ET unwinding of the administrative 'ghost claim' issue via the Presidential Order, and, secondly, the Type 2 government mandated introduction of 'Rule 9' regarding what constituted a MAC claim. What makes this finding surprising is that it provides an alternative explanation for the 70% fall in ET claims beyond the Coalition Government's three Type 2 design/policy changes and beyond any explanation posited in the literature, which has assumed that the effects of the Unfair Dismissal qualifying change, the introduction of ET Fees and Acas Early Conciliation are responsible. Again, the enumeration of this phenomenon has added to our understanding, because as noted in the literature review, only the fall in the TCA following the 2013/14 Coalition Government's Type 2 procedural changes is noted in the literature (Kirk, 2018; Adams and Prassl, 2017) rather than the more nuanced factors described above.

Type 3 'contended facts' to 'contended law' changes were illustrated using the percentage delayed statistics from Chapter 5, Table 5.23. It was shown that, while the Unfair Dismissal jurisdiction will almost always be about 'contended facts', other jurisdictions, such as Working Time Directive and Equal Pay are about 'contended law'. The consequence of this change is that over time the ET has become an essential first step in a norm-generating legal process of extending the reach and clarifying the details of employment law involving all levels of the court system and represents the ongoing negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004). The enumeration of this phenomenon has added to our understanding.

Type 4, Data Integrity changes, were illustrated by a careful audit of the input and output statistics from 1972 to 2016/17 which revealed an unexplained difference of 461,507 between claims received and outcome/disposals. This

potentially equates to an annual average ET claims overstatement of 12.28%. It was also demonstrated that there have been ongoing *reliability and construct validity* issues with the ET claims statistics, such as the complete loss of outcome/disposal statistics for the year 1996/97. These findings add to our understanding because, as noted in the literature review, the ET specific literature does not fully engage with the integrity of the ET statistics and the only serious questioning in the literature of the ET statistics is generic, by Hand D., (2018), who, although discussing 'administrative data' and its associated caveats in general, from a statistical perspective, highlights many of the issues found in this thesis.

This chapter has also provided evidence suggesting that ET *claims* and *individuals* are not the same. The literature review highlighted that there was a gap in the literature around 'administrative' claims and raised the possibility that there may be more to administrative claims than the literature acknowledged. This thesis has answered that question.

Secondly, this chapter has for the first time identified the phenomenon of 'Rule 9', which is unacknowledged in the academic employment relations literature.

Thirdly, this chapter has identified what seems to be a new a method of claim disposal, the closure and removal of claims from the outstanding caseload, which was, again, unknown to the academic literature.

So having examined what factors lie behind the changes in Employment Tribunal claims in Great Britain, it is now time take the analysis further by examining what are the implications of the observed changes in tribunal claims and this is done in the next chapter.

Chapter 7

What are the implications of the observed changes in Employment Tribunal claims?

7.1 Introduction

The previous chapter examined what factors lie behind the changes in Employment Tribunal (ET) claims and identified four Change Types. Firstly, it looked at Change Type 1, Internal ET Administrative Procedural Changes and highlighted the phenomenon of 'administrative' ghost claims, secondly, Change Type 2, the effects of government mandated procedural changes, thirdly, Change Type 3, the change from 'Contended Facts' to 'Contended Law' was discussed and lastly, Change Type 4, issues with reliability and construct validity were identified.

This chapter builds on the previous discussion and draws together an analysis of the data so far, by considering the answer to the question: What are the implications of the observed changes in ET claims? This will be done, firstly, by examining whether the volume of employment disputes has increased and what effect, if any, this has had on the burden on business, secondly, by looking at what the ET data tells us about the resolution of employment disputes and, lastly, re-examining what the ET data now tells us about any potential relationship between the economic cycle and ET claims, following the unresolved discussion in Chapter 5.

As demonstrated in the literature review, almost from the time the ETs began hearing Unfair Dismissal claims in February 1972, academic literature and government policy has been concerned with the volume of claims that have been filed with ETs (House of Commons Parliamentary Papers Online, 1986, p.36; Hepple, 2013, p.210). This concern has been articulated in two ways.

Firstly, ET claims are a burden on business which government policy should minimise by making claims more difficult to file through such Change Type 2, government mandated procedural changes as the introduction of ET Fees and increasing the Unfair Dismissal qualifying period, as discussed in Chapter 4. This approach has characterised the focus of Conservative and Conservative/Liberal Democrat Governments and represents the ongoing tension between the optimal level of beneficial constraints for business and optimal level of beneficial constraints for economic performance, as suggested by Wright (2004), with the balance potentially shifting towards business.

Secondly, employment disputes can and should be resolved in the workplace with prompt conflict resolution, preferably close to the source. ET claims therefore should only be submitted as a last resort. This approach characterised the focus of the 1997–2010 Labour Government (DTI, 2001a, p.2).

Each of these two policy strands will be discussed and it will be shown that there is a mismatch between evidence and policy, because policy was implemented and delivered without a full understanding of the data. In particular, the evidence that it was the Working Time Directive multi-applicant claims (MACs) and the associated Change Type 1, administrative ‘ghost claims’, combined with the ‘particularities’ of the Change Type 3, ‘contended law’ Equal Pay MACs, that were really driving the ‘dramatic’ increase in ET claims in the period ending in 2012/13, has been either missed or ignored by policy makers and academic debate.

Both the Equal Pay MACs and the underlying Working Time Directive MACs (beyond the generation of ‘administrative ghost claims’) are examples of Change Type 3, ‘contended law’, which are the result of the ETs being a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory ‘beneficial constraints’ rather than being a Burden on Business.

In the literature review and Chapter 5, it was noted that the evidence of a relationship between the economic cycle and the number of ET claims was, at best, mixed (Brown et al., 1997; Burgess et al., 2001; Schulze-Marmeling, 2013; Latreille and Saundry, 2015) and this chapter will revisit this apparent economic cycle and the number of ET claims relationship conundrum in the light of the findings in the previous chapter.

It has been previously observed (Saundry and Dix, 2014, p.477) that the volume of ET claims increased in the years prior to 2009/10 and this chapter’s analysis will begin with an examination of how the volume of ET claims has increased and what effect, if any, this has had on the burden on business.

7.2 Employment Tribunal Claims as a Burden on Business.

Having outlined the burden on business ‘ideology’ within the literature review (Kaufman, 2010; Trzcinski, 2005) and the Coalition Government’s perception that the growth in ET claims was the result of ‘vexatious’ claims, (BBC, 2011; Raab, 2011; BIS 2012), it is now time to use the results discussed in the previous two chapters to show that not only does the evidence not support the Coalition Government’s conclusions, but provides support for the contention that the ETs, via the mechanism of Change Type 3, ‘contended law’ MACs, are actually being used as a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory ‘beneficial constraints’ rather than being a Burden on Business.

7.2.1 Evidence of Burden on Business

The literature review highlighted that the growth in ET claims in the period 1998/99 to 2012/13 was regarded as a ‘problem’ and portrayed as a burden on business. This section will develop the argument, using the evidence presented in Chapters 5 and 6, that the ‘problem’ was not vexatious claims, but essentially a combination of two factors:

1. The Working Time Directive administrative ‘ghost claims’ generated by the ET System itself – the Change Type 1 described in Chapter 6.
2. The increase in the number of Equal Pay claims in the middle of the period, which combined with the increase in Working Time Directive claims, accounts for almost all of the increase in the MACs over the period from 2004/05.

In Chapter 5, it was noted, that from 2005/06, MACs replaced single applicant claims (SACs) as the largest part of the TCA. This change, although noted in various government documents, such as the Gibbons Review (2007, p.17) and *Resolving workplace disputes: A Consultation* (BIS, 2011), does not feature in the ‘discussions’ around the ‘ideology’ of the burden on business. The focus is on the TCA. Within current policy debates, all ET claims are regarded as being in uniform in nature.

Chapter 6 showed that the growth in claims in the period to 2013, prior to the introduction of ET Fees, were largely a result of Change Type 1, Administrative 'Ghost Claims' and Change Type 3, 'contended law' Equal Pay MACs, and the subsequent post ET Fees collapse in claims was largely as a result of the Change Type 1, Administrative 'Ghost Claims' ending, as a result of the 'Presidential Order', plus the advent of Change Type 2, 'Rule 9', which made the filing of MACs a much more precarious venture.

It was also noted that the Change Type 1, Administrative 'Ghost Claims' changes, led to the situation where the number of claims filed with the ET and the number of individuals filing them were different. An example was given where an individual *could* file 40 claims, 39 of which would be administrative 'ghost claims' as there was no individual directly associated with them in the same way as an Unfair Dismissal claim.

Before looking at the underlying volume of employment disputes when the Change Type 1, Administrative Claims, are taken into account, it would, perhaps, be useful to look at the Equal Pay jurisdictional complaint which, as noted in Chapter 5, Figure 5.13, is the fifth highest jurisdictional complaint by TCA contained percentage (TCA CP) with 17.13% of the 1998/99 to 2018/19 TCA containing an Equal Pay jurisdictional complaint (467,321/2,727,732⁷⁴). It was also shown in Chapter 5, Table 5.4 above, that the Equal Pay jurisdictional complaint was associated with MACs.

As was noted in the literature review, the Equal Pay jurisdictional complaint generated a large body of literature which was primarily focused on the equal pay issue rather than the MAC aspect. The literature suggests (Deakin et al., 2015; Gilbert and Secker 1995; Heery, 1998; McLaughlin, 2014) that the bulk of the Equal Pay MACs discussed were in the public sector against the Local Authorities (LAs) and the NHS⁷⁵. One particular issue, the Single Spine Agreement, generated a considerable literature, covered by, for example,

⁷⁴ See Appendix 6, Table A6.11a, Total Jurisdictional Complaints breakdown for 1998/99 to 2018/19 showing %age of TCA containing that JC.

⁷⁵ For 32 example Equal Pay MAC cases and associated references, see Appendix 14, Table 14.1, Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references.

Deakin et al., (2015), McLaughlin, (2014), Jaffe et al., (2008), Rowbottom (2007) and many others. It was also noted that a particular fusion of factors contributed to the growth in Equal Pay claims and these are:

- The involvement of the European Court of Justice and hence the European Union in the process leading to,
- Increase in time limit on back pay arrears from 2 years to 6 years leading to,
- increase in amount of money at stake for claimants AND employers followed by,
- change in civil litigation financing rules leading to,
- interest of no-win, no-fee lawyers, leading to,
- increase MAC Equal Pay claims.

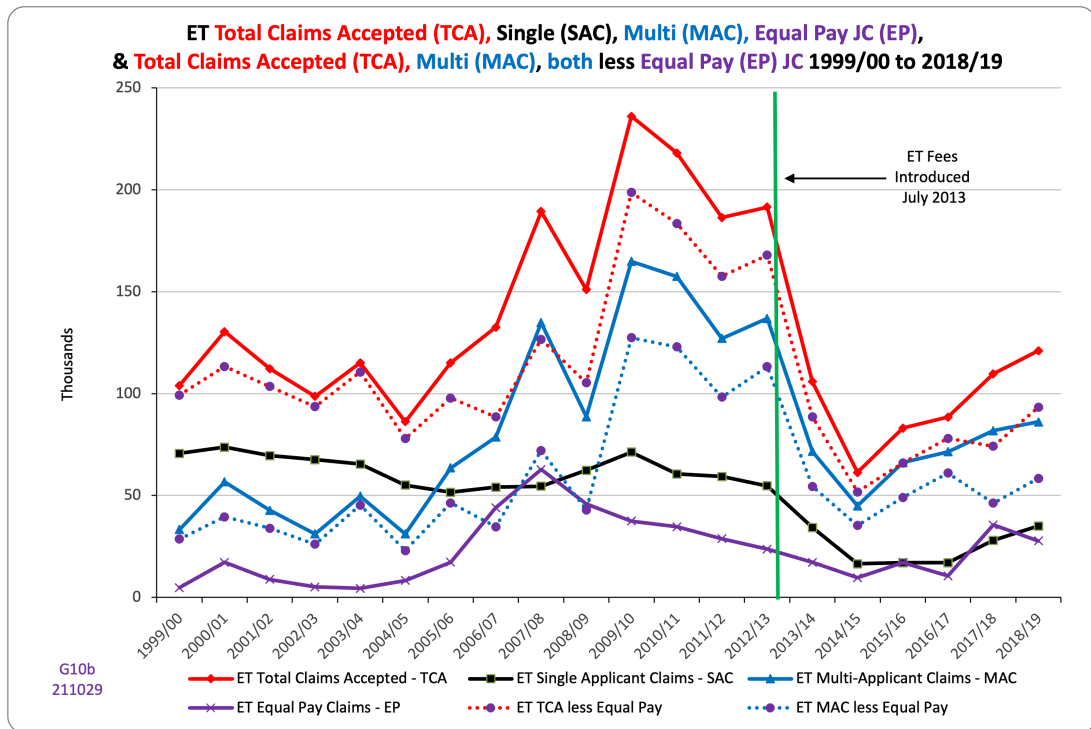
From the foregoing, it would seem that the Equal Pay jurisdictional complaint claims are the result of a particular fusion of circumstances. This set of circumstances confirm the traditionally accepted set of drivers outlined in existing literature, including, trade union strategy and increased legislation. So given that the Equal Pay jurisdictional complaint is associated with MACs, as per Chapter 5, Table 5.4, for both the periods 1999/00 to 2012/13 and 1999/00 to 2018/19, and given the particularities noted above, it does not seem unreasonable to look at the TCA and MACs less Equal Pay and this is shown in Table 7.1 and Figure 7.1, below:

Table 7.1

**TCA, SAC, MAC, EP and TCA and MAC both less EP
1999/00 to 2018/19**

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Equal Pay	TCA less EP	MAC less EP
	A	B	C	D	E=A-D	F=C-D
1999/00	103,935	70,600	33,300	4,712	99,223	28,588
2000/01	130,408	73,726	56,682	17,153	113,255	39,529
2001/02	112,227	69,553	42,674	8,762	103,465	33,912
2002/03	98,617	67,527	31,090	5,053	93,564	26,037
2003/04	115,042	65,364	49,678	4,412	110,630	45,266
2004/05	86,181	55,055	31,126	8,229	77,952	22,897
2005/06	115,039	51,496	63,543	17,268	97,771	46,275
2006/07	132,577	54,100	78,600	44,013	88,564	34,587
2007/08	189,303	54,500	134,800	62,700	126,603	72,100
2008/09	151,028	62,370	88,658	45,748	105,280	42,910
2009/10	236,103	71,280	164,823	37,385	198,718	127,438
2010/11	218,096	60,591	157,505	34,584	183,512	122,921
2011/12	186,331	59,247	127,084	28,801	157,530	98,283
2012/13	191,541	54,704	136,837	23,638	167,903	113,199
2013/14	105,803	34,219	71,584	17,202	88,601	54,382
2014/15	61,308	16,420	44,888	9,621	51,687	35,267
2015/16	83,031	16,935	66,096	17,063	65,968	49,033
2016/17	88,476	17,005	71,471	10,467	78,009	61,004
2017/18	109,698	27,916	81,782	35,558	75,140	46,244
2018/19	121,075	34,974	86,101	27,730	93,345	58,371
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Annual data shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19						

Figure 7.1



The 'adjusted' Equal Pay TCA and MAC lines in Figure 7.1, show that the Equal Pay jurisdictional complaint does have a visible impact. Removing the Equal Pay jurisdictional complaint keeps the 'adjusted' MAC line below the SAC line until 2009/10 apart from 2007/08.

In Chapter 5, the disconnect between the TCA, MACs, SAC and jurisdictional complaints was discussed. It was highlighted that each ET claim can contain more than one jurisdictional complaint, making it difficult to compare jurisdictional complaints over time. To try to deal with this problem the idea of total claims accepted contained percentage (TCA CP) was introduced. As shown in Chapter 5, Figure 5.13, above, the Equal Pay jurisdictional complaint has a TCA contained percentage for the period 1998/99 to 2018/19 of 17.13%.

So far, this thesis has implied that under no circumstances can different jurisdictional complaints TCA contained percentage be added together because if all jurisdictional complaints TCA contained percentages were added together then the TCA total contained percentage would equal 173.17% as shown in Appendix 6, Table A6.11a. However, if the jurisdictional complaints represented largely different and unrelated types of employment

dispute, such as the Equal Pay jurisdictional complaint and the Working Time Directive jurisdictional complaint, then adding the TCA contained percentage together would, potentially, represent a meaningful figure as a combined percentage. The sum of the Equal Pay jurisdictional complaint and Working Time Directive jurisdictional complaint TCA contained percentages is 17.13% + 29.29% = 46.42%, again, as shown in Appendix 6, Table A6.11a. It is accepted that the combined percentage figure computed is not absolutely definitive but is a good indication of the combined TCA contained percentage, as no evidence of overlap between the Equal Pay and Working Time Directive jurisdictions was found in the MAC analysis of the ET Decision Index reported on in Chapter 5. The implication of this combined TCA contained percentage of 46.42%, is that nearly 50% of the TCA over the period 1998/99 to 2018/19 contained either an Equal Pay jurisdictional complaint or a Working Time Directive jurisdictional complaint.

So, to truly illustrate the underlying volume of employment disputes beyond the Equal Pay and Working Time Directive jurisdictional complaints it would be instructive to compare the TCA and MAC statistics with and without the Working Time Directive and Equal Pay jurisdictional complaints and this is shown in Table 7.2 and Figure 7.2, below:

Table 7.2

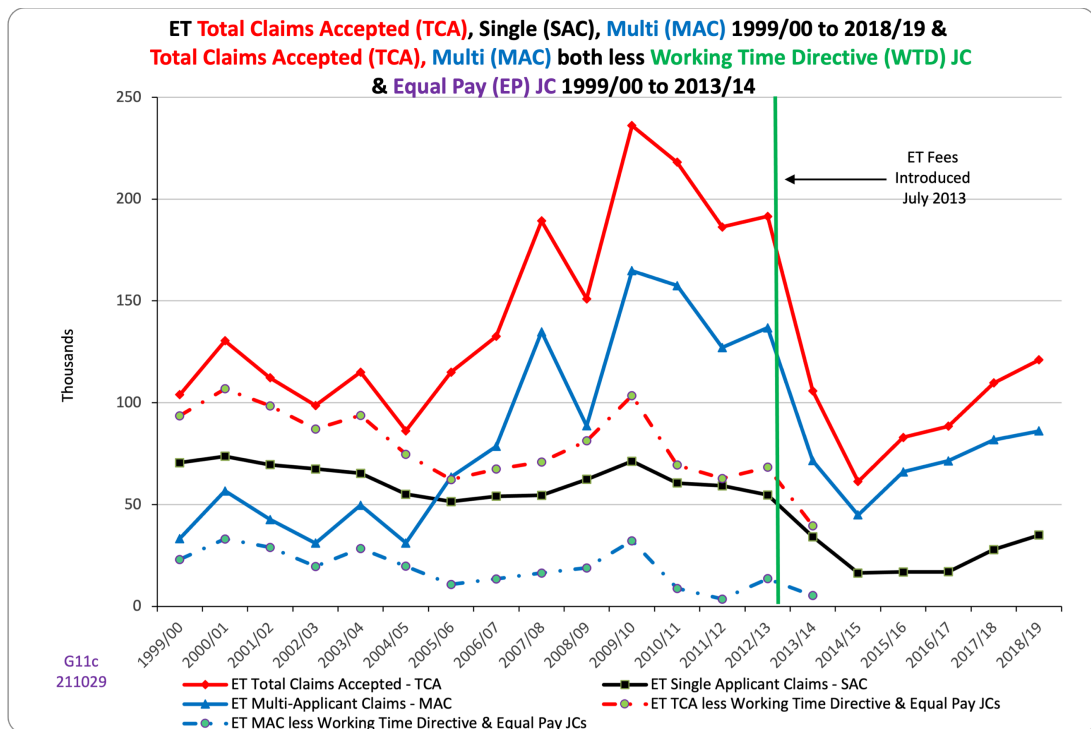
**TCA, SAC, MAC, EP, WTD and TCA and MAC both less EP and WTD
1999/00 to 2018/19**

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Equal Pay	Working Time Directive	TCA less EP and WTD	MAC less EP and WTD
	A	B	C	D	E	F=A-(D+E)	G=C-(D+E)
1999/00	103,935	70,600	33,300	4,712	5,595	93,628	22,993
2000/01	130,408	73,726	56,682	17,153	6,389	106,866	33,140
2001/02	112,227	69,553	42,674	8,762	4,980	98,485	28,932
2002/03	98,617	67,527	31,090	5,053	6,436	87,128	19,601
2003/04	115,042	65,364	49,678	4,412	16,869	93,761	28,397
2004/05	86,181	55,055	31,126	8,229	3,223	74,729	19,674
2005/06	115,039	51,496	63,543	17,268	35,474	62,297	10,801
2006/07	132,577	54,100	78,600	44,013	21,127	67,437	13,460
2007/08	189,303	54,500	134,800	62,700	55,700	70,903	16,400
2008/09	151,028	62,370	88,658	45,748	23,976	81,304	18,934
2009/10	236,103	71,280	164,823	37,385	95,198	103,520	32,240
2010/11	218,096	60,591	157,505	34,584	114,104	69,408	8,817
2011/12	186,331	59,247	127,084	28,801	94,697	62,833	3,586
2012/13	191,541	54,704	136,837	23,638	99,627	68,276	13,572
2013/14	105,803	34,219	71,584	17,202	49,087	39,514	5,295
2014/15	61,308	16,420	44,888	9,621	31,451	20,236	3,816
2015/16	83,031	16,935	66,096	17,063	36,813	29,155	12,220
2016/17	88,476	17,005	71,471	10,467	30,313	47,696	30,691
2017/18	109,698	27,916	81,782	35,558	16,950	57,190	29,274
2018/19	121,075	34,974	86,101	27,730	49,725	43,620	8,646

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Annual data shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19

Figure 7.2



The ‘adjusted’ lines for the TCA and MACs in Figure 7.2 end in 2013/14, the last full year before the Presidential Order ending of the Change Type 1, Administrative ‘Ghost Claims’. It also makes sense to end at this point as it is also the effective start of the Change Type 2, ‘Rule 9’ effect, discussed in Chapter 6, which, by making it more precarious to file a MAC would likely have depressed both Working Time Directive and Equal Pay MAC claims.

The effect of removing the Working Time Directive and Equal Pay jurisdictional complaints from the TCA reduces the peak of the TCA from 236,103 in 2009/10 to 103,520, which is 21% (103,520/130,408) below the previous peak in 2000/01, of 130,408. This illustrates that the underlying volume of ET claims beyond the particularities of the Working Time Directive and Equal Pay jurisdictional complaints is much lower than previously acknowledged and, importantly, is not increasing in the way government policy debates suggested (BBC, 2011; Raab, 2011; BIS, 2012).

The ‘adjusted’ MAC line is now substantially below the original SAC line showing that the underlying volume of MAC ET claims over the period 1999/00 to 2013/14 is relatively low and flat, as in, neither growing nor shrinking much.

It is not too much of an exaggeration to say neither the 'adjusted' MAC line or the SAC line show much change over the period in question. Whatever 'workplace conflict' there is, it is not growing. There is no clear evidence here of a change in the level of 'burden on business'.

What this section has shown is that the Coalition Government's decision to introduce the three, Change Type 2, government mandated procedural changes, in the period from 6th April 2013 to 6th May 2014, discussed in Chapter 6, in response to the rise in 'vexatious' claims increasing the burden on business was not evidence based. Two key factors have been shown to be responsible for the growth in the TCA. Firstly, the ET's own internal procedural requirements, Change Type 1, were 'generating' claims, a point that goes unnoticed despite the MoJ acknowledging in April 2021 (Booth, 2021) that they were aware of the administrative 'ghost claim' issue and, secondly, the Equal Pay jurisdictional complaint ET claims, Change Type 3, 'contended law' were growing due to a fusion of circumstances that were particular to the Equal Pay jurisdictional complaint and generally did not seem to affect the other jurisdictional complaints.

The unfortunate side effect is that, in attempting to deal with 'vexatious' claims and the associated 'burden on business', the Coalition Government misunderstood the drivers of the growth in the TCA and implemented changes to the ET process that had a direct impact on SACs, as noted in Chapter 6.

This section has also provided support for the contention that the ETs, via the mechanism of Change Type 3, 'contended law' MACs, are actually being used as a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory 'beneficial constraints' rather than being a Burden on Business.

The next section will extend the findings regarding Working Time Directive administrative 'ghost claims' and the increase in the number of Equal Pay claims to further examine the relationship between the economic cycle and the number of ET claims following the unresolved discussion in Chapter 5.

7.3 The Economic Cycle and Employment Tribunal Claims

In the literature review it was noted that the evidence of a relationship between the economic cycle and the number of ET claims was, at best, mixed. In Chapter 5, it was also observed that the evidence of a relationship between the economic cycle and the number of ET claims in the period from 1972 to 2018/19 was indeed mixed (Brown et al., 1997; Burgess et al., 2001, Schulze-Marmeling, 2013, Latreille and Saundry, 2015). However, it was also observed that Schulze-Marmeling (2013) found that in the UK there seemed to be a relationship between the economic cycle and ET claims, driven by an increase in the complexity and amount of labour law and this finding appeared to be supported by the data presented in Chapter 5, Figures 5.6 and 5.7, where it was shown that the TCA and MACs both had a negative relationship with the GDP year-on-year growth percentage and a positive relationship with the number of people unemployed. It was also noted that SACs did not have the same relationships as TCA and MACs to GDP and the number of people unemployed. As a reminder the correlations and p-values for GDP year-on-year growth percentage and the number of people unemployed from Chapter 5, Table 5.1, above, are reproduced in Table 7.3, below (rows 3 and 4, columns A, B and C for Figure 5.6 and rows 7 and 8, columns A, B and C for Figure 5.7).

In the previous section, it was observed that 46.42% of the TCA over the period 1998/99 to 2018/19 contained either an Equal Pay jurisdictional complaint or a Working Time Directive jurisdictional complaint.

So, to further examine the relationship between the economic cycle and the number of ET claims it would be instructive to compare the TCA and MAC statistics with and without the Working Time Directive and Equal Pay jurisdictional complaints for the period 1999/00 to 2018/19 and this is shown in Figures 7.3 and 7.4, below, for GDP year-on-year growth percentage and number of people unemployed respectively. The TCA, SAC and MAC data shown in Figures 7.3 and 7.4 are based on the TCA data in Table 7.2, above, and the GDP year-on-year growth percentage data in Figure 7.3 are shown in Appendix 7, Table A7.8. The number of people unemployed data in Figure 7.4

are shown in Appendix 7, Table A7.6. The correlations and p-values for Figures 7.3 and 7.4 are shown in Table 7.3, below.

Figure 7.3

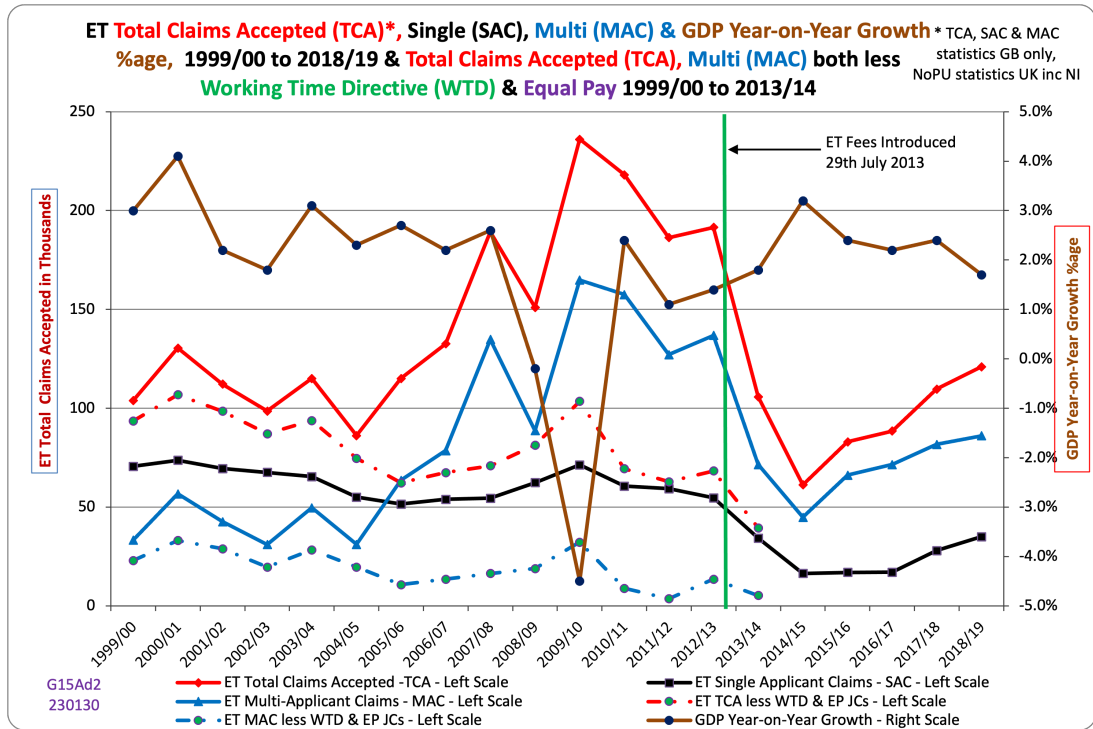
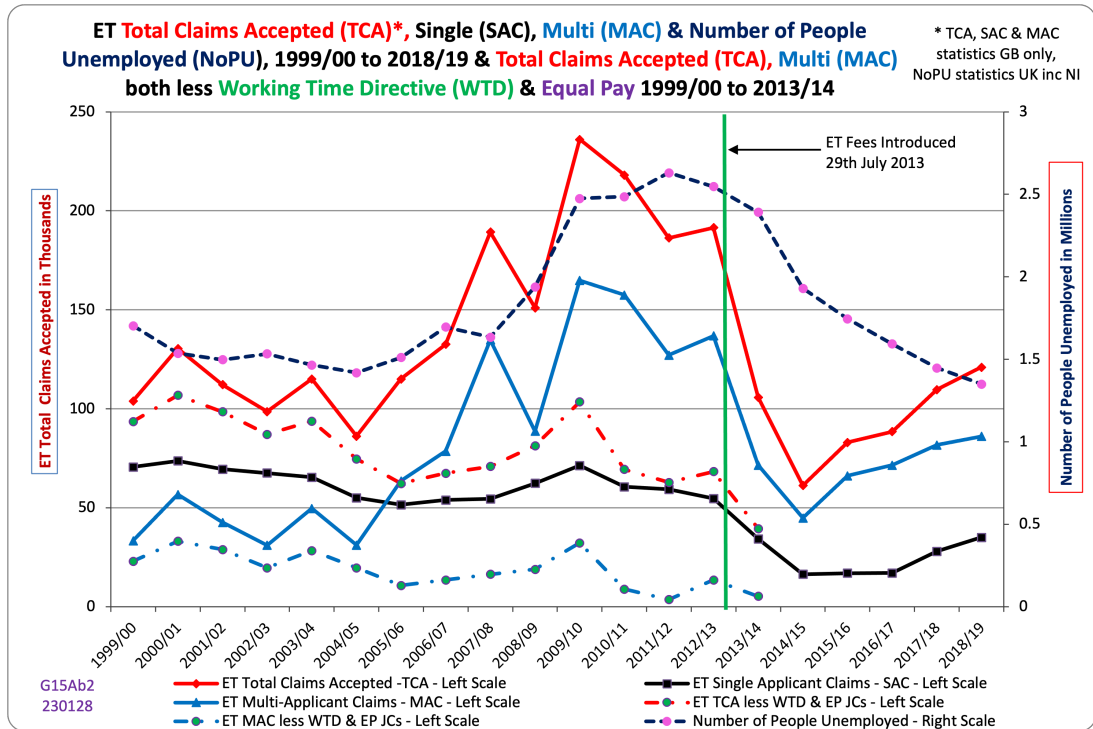


Figure 7.4



As in the previous section, the 'adjusted' lines for the TCA and MACs in Figures 7.3 and 7.4 both end in 2013/14, the last full year before the Presidential Order ending the Change Type 1 Administrative 'Ghost Claims'. It also makes sense to end at this point as it is also the effective start of the Change Type 2 'Rule 9' effect discussed in Chapter 6, which, by making it more precarious to file a MAC would likely have depressed subsequent Working Time Directive and Equal Pay MAC claims.

In order to accommodate the 2013/14 'adjusted' lines for the TCA and MACs, and for completeness, matching correlations have been added to Table 7.3, below, for 1999/00 to 2013/14, in addition to the correlations for 1999/00 to 2018/19 brought forward from Chapter 5, Table 5.1.

As noted in the previous section of this chapter, the removal of the Working Time Directive and Equal Pay jurisdictional complaints from the TCA and MAC data lowers the TCA and MAC lines in Figures 7.3 and 7.4, above. The correlation between the 'adjusted' TCA and MAC and the GDP year-on-year growth percentage for the period 1999/00 to 2013/14, as shown in Table 7.3 below, changes the TCA/GDP correlation from a negative 0.58 ($p=0.000$) (row 3, column A) to negative 0.13 ($p=0.000$) (row 3, column D) and the MAC/GDP correlation changes from a negative 0.54 ($p=0.000$) (row 3, column C) to negative 0.13 ($p=0.000$) (row 3, column E). The TCA/GDP and MAC/GDP correlations, although still negative are both much weaker with the Working Time Directive and Equal Pay jurisdictional complaints excluded from the TCA and MACs. The evidence of a relationship between the economic cycle and the number of ET claims is potentially weakened.

Similarly the correlations between the 'adjusted' TCA and MAC and the number of people unemployed for the period 1999/00 to 2013/14, as shown in Table 7.3, below, changes the TCA/number of people unemployed correlation from a positive 0.72 ($p=0.000$) (row 7, column A) to negative 0.39 ($p=0.000$) (row 7, column D) and the MAC/number of people unemployed correlation changes from a positive 0.78 ($p=0.000$) (row 7, column C) to negative 0.48 ($p=0.000$) (row 7, column E). The TCA/number of people unemployed and MAC/number of people unemployed relationships, have are both changed

from quite strongly positive to negative with the Working Time Directive and Equal Pay jurisdictional complaints excluded from the TCA and MAC. Again, the evidence of a relationship between the economic cycle and the number of ET claims is potentially weakened.

Table 7.3

Correlations between TCA, SAC, MAC, and TCA and MAC both less WTD and EP vs
1) Year-on-Year GDP Growth %age
2) Number of People Unemployed

1) Correlations between Year-on-Year Growth %age and						
	Period	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	TCA less WTD and EP	MAC less WTD and EP
		A	B	C	D	E
1	1972 to 2013/14	-0.24 (p=0.000) (Figure 7.5)			-0.13 (p=0.000) (Figure 7.5)	
2	1972 to 2018/19	-0.25 (p=0.000) (Figure 5.4)				
3	1999/00 to 2013/14	-0.58 (p=0.000) (Figure 5.6)	-0.12 (p=0.000) (Figure 5.6)	-0.54 (p=0.000) (Figure 5.6)	-0.13 (p=0.000) (Figure 7.3)	-0.13 (p=0.000) (Figure 7.3)
4	1999/00 to 2018/19	-0.58 (p=0.000) (Figure 5.6)	-0.22 (p=0.000) (Figure 5.6)	-0.56 (p=0.000) (Figure 5.6)	-0.23 (p=0.000) (Figure 7.3)	-0.14 (p=0.000) (Figure 7.3)
2) Correlations between Number of People Unemployed (NoPU) and						
		Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	TCA less WTD and EP	MAC less WTD and EP
		A	B	C	D	E
5	1972 to 2013/14	0.07 (p=0.000) (Figure 7.6)			0.03 (p=0.000) (Figure 7.6)	
6	1972 to 2018/19	0.05 (p=0.000) (Figure 5.5)				
7	1999/00 to 2013/14	0.72 (p=0.000) (Figure 5.7)	-0.26 (p=0.000) (Figure 5.7)	0.78 (p=0.000) (Figure 5.7)	-0.39 (p=0.000) (Figure 7.4)	-0.48 (p=0.000) (Figure 7.4)
8	1999/00 to 2018/19	0.65 (p=0.000) (Figure 5.7)	0.10 (p=0.000) (Figure 5.7)	0.70 (p=0.000) (Figure 5.7)	-0.08 (p=0.000) (Figure 7.4)	-0.41 (p=0.000) (Figure 7.4)
<p>Annual data for TCA shown in Chapter 3, Table 3.7, Employment Tribunal, Total Claims Accepted (TCA) by Year, 1972 to 2018/19 Annual data for SACs, MACs, Working Time Directive and Equal Pay shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19 Annual Data for Year-on-Year GDP Growth %age shown in Appendix 7, Table A7.8, Gross Domestic Product Year-on-Year Growth Percentage (UK) 1972 to 2018/19 Annual Data for Number of People Unemployed shown in Appendix 7, Table A7.6, Number of People Unemployed (UK) (aged 16 and over) 1972 to 2018/19 Correlation and p-value calculations for Figures 5.4, 5.5, 5.6 and 5.7 shown in Appendix 6, Tables A6.16, A6.17, A6.18 and A6.19 respectively. Correlation and p-value calculations for Figures 7.3, 7.4, 7.5 and 7.6 shown in Appendix 6, Tables A6.22, A6.23, A6.24 and A6.25 respectively.</p>						

In the light of these findings, it would seem appropriate to re-examine both the TCA/GDP and the TCA/number of people unemployed relationships for period from 1972 to 2013/14 and this is done in Figures 7.5 and 7.6, below. In both Figures the TCA less the Working Time Directive and Equal Pay jurisdictional complaints is shown as TCA2. The 'adjusted' correlations associated with the TCA in Figures 7.5 and 7.6 end in 2013/14, the last full year before the Presidential Order ending the Change Type 1 Administrative 'Ghost Claims' which is also the effective start of the Change Type 2 'Rule 9' effect discussed in Chapter 6, which, by making it more precarious to file a MAC would likely have depressed subsequent Working Time Directive and Equal Pay MAC claims.

Figure 7.5

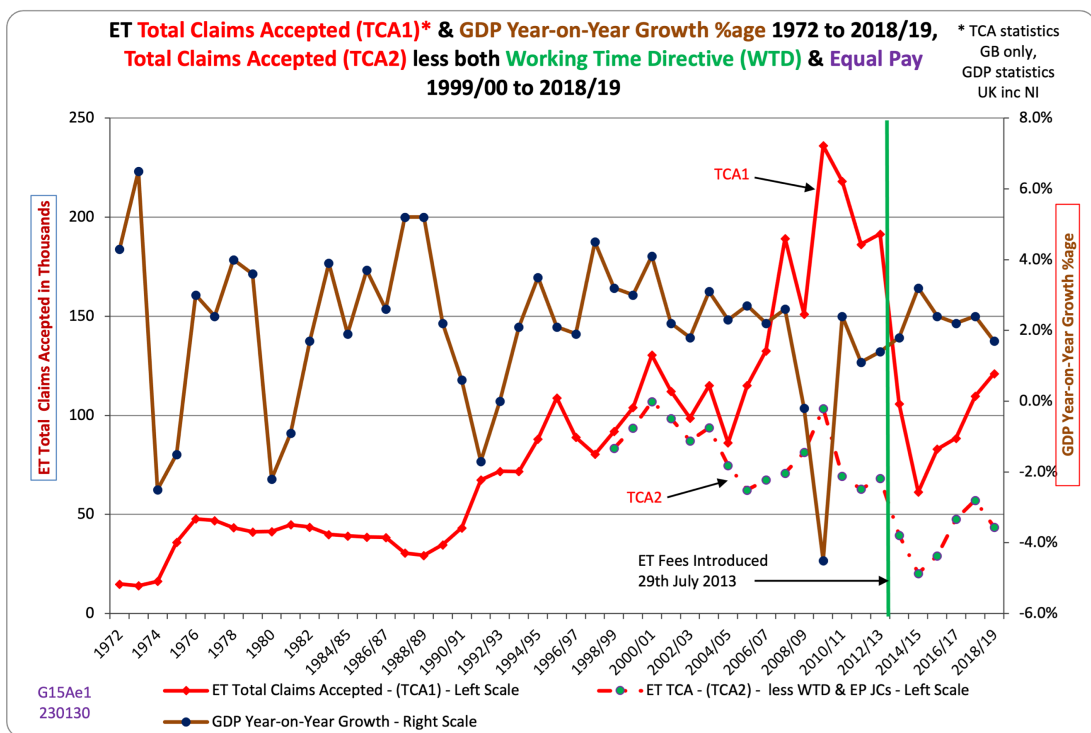
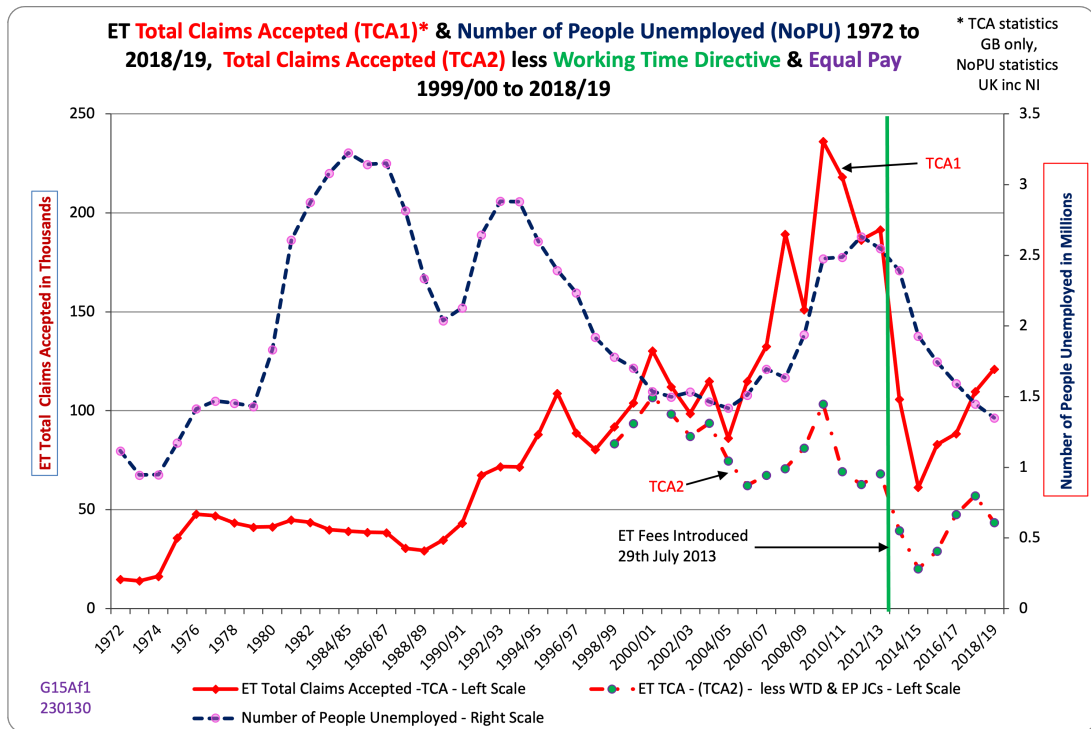


Figure 7.6



As noted in the previous section, the removal of the Working Time Directive and Equal Pay jurisdictional complaints from the TCA and MAC data lowers the TCA and MAC lines in Figures 7.5 and 7.6. The correlation between the ‘adjusted’ TCA and the GDP year-on-year growth percentage for the period 1972 to 2013/14, as shown in Table 7.3 above, changes the TCA/GDP correlation from a negative 0.24 ($p=0.000$) (row 1, column A) to negative 0.13 ($p=0.000$) (row 1, column D). The 1972 to 2013/14, TCA/GDP correlation, although still negative, is weaker with the Working Time Directive and Equal Pay jurisdictional complaints excluded from the TCA.

Similarly, the correlations between the ‘adjusted’ TCA and the number of people unemployed for the period 1972 to 2013/14, as shown in Table 7.3 above, changes the TCA/number of people unemployed correlation from a positive 0.07 ($p=0.000$) (row 5, column A) to positive 0.03 ($p=0.000$) (row 5, column D). Removing the Working Time Directive and Equal Pay jurisdictional complaints from the TCA has made little difference to the correlation, it was very weak before and is slightly weaker now.

Both these correlations, TCA/GDP and TCA/number of people unemployed are weakened following the 'adjustment' for the Working Time Directive and Equal Pay particularities noted above.

What are the consequences that flow from these results? It would seem that the complexity of the labour law as represented by the Working Time Directive Change Type 1 Administrative 'Ghost Claims' and the particularities of the Equal Pay jurisdictional complaints have increased the number of ET Claims as represented by the TCA in the period 1999/00 to 2013/14 in line with the economic cycle, much as Schulze-Marmeling (2013) observed. However, even if the number of actual ET Claims have 'increased', is it correct to attribute the increase to the economic cycle when the findings in this thesis show that the increase in ET claims is probably driven by factors unrelated to the economic cycle? It seems that Latreille and Saundry (2015) were, perhaps, more accurate, when they implied that the relationship between Economic Cycle and Employment Tribunal claims in the 2000s was coincidental.

The evidence presented in this thesis contributes to the debate highlighted in the literature review regarding the possible relationship between the Economic Cycle and the level of ET Claims (Brown et al., 1997; Burgess et al., 2001, Schulze-Marmeling, 2013, Latreille and Saundry, 2015), by showing that, although in the period 1999/00 to 2013/14 there appears to be a relationship, it is not driven by economic factors but rather by the Change Type 1 Administrative 'Ghost Claims' and the change from Contended Facts to Contended Law as represented by the large scale Equal Pay MACs and the Working Time Directive MACs underlying the Change Type 1 Administrative 'Ghost Claims'.

7.4 What does Employment Tribunal data tell us about the resolution of employment disputes?

An earlier section in this chapter examined the volume of employment disputes as portrayed by the ET Claim statistics and concluded that the underlying volume of employment disputes was not the 'burden on business' described within the literature review (BBC, 2011; Raab, 2011; BIS, 2012), but rather a forum for negotiating what Streeck (1997) regards as the societal benefit of

regulatory ‘beneficial constraints’. It did not examine what happened to the ET claims once filed. Similarly, the discussions in Chapter 5 about outcome/disposals focused on the annual total claims outcome/disposal numbers and on annual jurisdictional complaints outcome/disposal numbers and the discussion in Chapter 6 compared the TCA, total claims outcome/disposal numbers and ‘claims delayed/outstanding’ rather than how the claims were actually resolved or disposed of. It is to the analysis of actual outcome/disposal of the claims that attention now turns.

Through a careful and thorough examination of the 10 ET outcome/disposal types⁷⁶, the analysis will show that of the 4,125,974 ET claims processed through the ET to completion in the period 1985/86 to 2018/19, over 90% (3,722,852/4,125,974) of the outcome/disposals were resolved as either successful or ‘likely’ successful for the claimant. This analysis develops the issue identified in the literature around what ‘success’ means in relation to an ET claim. Is it just ‘Successful at Hearing’ (Fredman, 2011) or is it possible that successful means much more than that (Deakin et al., 2015), particularly once the analysis shows how the use of the ET outcome/disposal term/method ‘Struck Out’ has changed over time to become an alternate/interchangeable outcome/disposal term/method to Withdrawn, a change that has consequences for interpreting the ‘success’ of a claim in the ET, and an example of a definitional change made over time, which makes longitudinal comparison difficult (Hand D., 2018). This analysis is an example of how this thesis is developing our understanding by using Hand D.’s (2018) guiding caveats regarding ‘administrative data’ to thoroughly examine the ET claims data which is used widely in academic and policy debate.

The current understanding of the term ‘Struck Out’ can, perhaps, be illustrated by reference to the Survey of Employment Tribunal Applications (SETA) series of 1998, 2003, 2008, 2013 and 2018, all of which appear to include the ET outcome/disposal term/method ‘Struck Out’ under the consolidated heading

⁷⁶ A full explanation of the terminology of ET outcomes/disposals and SETA Outcomes is available in Appendix 2, Section A2.4.

'dismissed/disposed' when showing the Outcome of Tribunal applications⁷⁷. This conforms to the general understanding and definition of 'Struck Out':

'The court has the power to strike out (i.e., dismiss) either party's statement of case (in whole or in part only). A strike out will usually end the claim (or part thereof). There are various grounds on which a party's claim may be struck out' (LexisNexis, 2023).

However, although the SETA series only covers SACs and therefore may not accurately reflect how the ET appears to be using the outcome/disposal term/method 'Struck Out' as an alternative to the outcome/disposal term/method 'Withdrawn' when administratively removing completed MACs from the ET system, the SETA series does provide a useful set of comparison data to illustrate the observed changes.

In the course of compiling the ET outcome/disposal data from the original sources, it became clear that the actual outcome/disposals of various large known MACs, such as the part-time pension cases of the late 90s, did not seem to fit with the references to the 'successful' outcome/disposal of these MACs in the literature.

To clarify, in a 1998 article, *Campaigning for Part-Time Workers*, Heery (1998) makes reference to '60,000' claims being submitted to ETs for either Equal Pay, Sex Discrimination or both (Heery, 1998, p.355). It is acknowledged by the Employment Tribunal Service (Employment Tribunal Service, 2002, p.4)

⁷⁷ The 1998, 2003, 2008, 2013 and 2018 SETA all use the term 'dismissed/disposed' as one of the recorded Outcome of Tribunal applications (DTI, 2004c, p.105; DTI, 2004a, p.141; BIS, 2010a, p.218; BIS, 2014, p.180; BEIS, 2020, p.242). None uses the term 'Struck Out'. However, the 'disposed' part of the SETA term 'dismissed/disposed' almost certainly refers to what is currently known as 'Struck Out', because, in 2006/07 there was a change in ET terminology for several of the outcome/disposal types including 'disposed' (Employment Tribunal Service, 2007, Table 2, Footnotes 1, 2 and 3), although there was no change in the actuality of the outcome/disposal. Pre 2006/07, 'Struck Out' is referred to as 'Disposed of Otherwise'. In the 1998 and 2003 SETA, therefore, the terminology for 'Struck Out' would have been 'Disposed of Otherwise' and this terminology appears to have been carried on into the 2008, 2013 and 2018 SETA. The conflation of ET Outcome Type 6, Struck Out (Disposed of otherwise), and ET Outcome Type 8, Dismissed at preliminary hearing, into SETA Outcome, Dismissed/Disposed is confirmed in the SETA 2003 Technical Report, where in Table 7.1, information on ET Outcome Type 6, Disposed and ET Outcome Type 8, Dismissed, is displayed in two separate columns, (DTI, 2004b, p.23).

that these claims were submitted and were eventually successful, so they should show as successful in the outcome/disposal data. Yet they do not, or at least not as the outcome/disposal type 'Successful at Hearing'. This is borne out by the data in Table 7.4, below, which shows the number and percentage of claims that were 'Successful at Hearing'

Table 7.4

ET All Jurisdictions⁷⁸ Outcome/Disposals and 'Successful at Hearing' Comparison

Jurisdictional Complaint	Outcome/Disposals ^a	'Successful at Hearing'	%
1976 to 2018/19			
Equal Pay	278,545	6,004	2.16%
Sex Discrimination	269,622	11,531	4.28%
1985/86 to 2018/19			
All Jurisdictions (Based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19)	4,124,024	480,737	11.66%
Race Discrimination	84,268	3,490	4.14%
Redundancy Payments	215,525	59,470	27.59%
Unfair Dismissal	1,118,250	114,248	10.22%
1987/88 to 2018/19			
Unauthorised Deductions	664,960	99,416	14.95%
1994/95 to 2018/19			
Breach of Contract	412,643	66,300	16.07%
1999/00 to 2018/19			
Working Time Directive	577,782	46,070	7.97%
<i>√210709</i>			
^a 1996/97 Annual Disposals statistics not available – see <i>Hansard</i> , 30 October 2003. 1996/97 estimated in above figures as the mean average of 1995/96 and 1997/98 Source: Annual Claims Outcome/Disposals data shown in Appendix 13, Tables A13.1 to A13.9, Employment Tribunal Claims Outcome/Disposal Data Series			

⁷⁸ In the three years 2000/01 to 2002/03 the total claims outcome/disposals are also referred to as the Main [lead] Jurisdiction. The total claims outcome/disposals Main [lead] Jurisdiction is the actual number *claims* disposed of. Each claim can be made up of several jurisdictions and as has previously been noted the number of jurisdictional complaints is higher than the number of claims. In this 3-year period, 2000/01 to 2002/03, the total number of jurisdictional complaints outcome/disposals is confusingly known as 'All Jurisdictions'. This 3-year period is the only time both sets of figures are available. Prior to this period only the total claims outcome/disposals lead jurisdictional make up is available and after this period, although the total claims outcome/disposals figure itself is provided, only the jurisdictional complaint outcome/disposal jurisdictional total make up is available. This is acknowledged in Appendix 13, Table A13.1, Total Claim Outcome/Disposal (TCOD) Breakdown - All Jurisdictions 1985/86 to 2018/19, where the outcome/disposal breakdown data from 1985/86 to 2018/19 is shown.

Over the 43 years of the two jurisdictions existence, Equal Pay and Sex Discrimination have a 'Successful at Hearing' percentage of 2.16% and 4.28% respectively and in the case of the Equal Pay jurisdiction this is highlighted by the observation that in the 8 years between 2011/12 and 2018/19 the number of Equal Pay claims that have been 'Successful at Hearing' is zero. In the same time-period, there were 156,704 Equal Pay claims disposed of⁷⁹. This low success rate was noted in relation to 2008/09 and 2009/10 by Fredman (2011). Given that this jurisdictional complaint has generated a large literature as discussed in the literature review⁸⁰, generated a number of well documented MACs and is known to have attracted the attention of no-win, no-fee lawyers (Deakin et al., 2015), who presumably would not be interested in these claims if there was no 'win', this is something of a conundrum.

However, as discussed in the literature review, Deakin et al., (2015) observed the same phenomenon in relation to Equal Pay claim outcome/disposals:

'very few [claims] result in a final judgment in favour of the claimants. In 2009/10 and 2010/11 only 1% of disposals took the form of a judgment in the claimants' favour; the reported success rate before tribunals on 2008/09, 2009/10 [*sic* - actually 2011/12] and 2012/13 was 0 [zero]. A substantial number of claims were settled with the aid of the conciliation and arbitration service ACAS (37% in 2011/12 and 27% in 2012/13). Of those that were withdrawn (43% in 2011/12 and 50% in 2012/13), a substantial proportion are likely to have resulted in a payment of some kind being made to claimants. Official statistical series do not indicate whether withdrawn applications led to a settlement, but it is *likely* [italics added] that many of them did' (Deakin et al., 2015, p.392).

Deakin et al., (2015) are clearly implying that 'successful' means more than 'Successful at Hearing' and this is supported by the outcome findings in the 1998, 2003, 2008, 2013 and 2018 SETA series, which consistently found that

⁷⁹ See Appendix 13, Table A13.3, Equal Pay (EP) Outcome/Disposal Breakdown, 1976 to 2018/19, Page 2.

⁸⁰ See Chapter 2, Section 2.7, for a list of Authors.

in relation to SACs, 50% of 'Withdrawn' claims were privately settled⁸¹. Deakin et al.'s implication is particularly relevant here, because it helps to explain the phenomenon that emerged during the data compilation of the ET total claims outcome/disposal dataset for this thesis. To fully explain the phenomenon, requires a digression into the types of ET claim outcomes/disposals that are possible and this is done in the next section.

7.4.1 Employment Tribunal Claim Outcome/Disposal Types

This section looks at the 10 Claim outcome/disposal types as used by the MoJ in the published ET Claim statistics.

Once a claim is accepted by the ET, it begins a process that will eventually result in it being recorded by the MoJ as an outcome/disposal with one of the 10 formal outcome/disposal types shown below. In 2006/07 there was a change in terminology for several of the outcome/disposal types (Employment Tribunal Service, 2007, Table 2, Footnotes 1, 2 and 3), although there was no change in the actuality of the outcome/disposal. Where this has happened, post 2006/07 outcome/disposal terminology is shown first followed by pre 2006/07 in *italics*. Where reference is made to a Rule Number this refers to *The Employment Tribunals Rules of Procedure 2013 (as subsequently amended up to 17th February 2015)* (HMCTS, 2015a) and are extracts or partial extracts.

At the time this study occurred, in 2020, there were 10 possible ET outcomes/disposals:

1. **Successful at hearing**: Following an ET hearing the claim is decided in favour of the claimant.
2. **Default Judgment**: Judgment was entered against the Respondent [Employer] in default in consequence of their failure to enter a response to the claim in accordance with the prescribed time limits (Cunningham and Reed, 2006, p.228).

⁸¹ See Appendix 13, Table A13.10, Survey of Employment Tribunal Applications (SETA) Outcome Breakdown, 1998 to 2018.

3. **Acas Conciliated Settlement:** A settlement has been agreed between the claimant and the Respondent [Employer] through Acas (Cunningham and Reed, 2006, p.209).
4. **Withdrawn: Rule 51:** Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end (HMCTS, 2015a, p.19).
5. **Dismissed upon Withdrawal: Rule 52:**
Where a claim, or part of it has been withdrawn under Rule 51 [see outcome/disposal type 4 above], the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same complaint) unless –
 - (a) The claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be a legitimate reason for doing so; or
 - (b) The Tribunal believes that to issue such a judgment would not be in the interests of justice (HMCTS, 2015a, p.19).
6. **Struck Out (not at a hearing): Rule 37 [Pre 2006/07: Disposed of Otherwise]:**
At any stage of the proceedings [from the claim being accepted by the ET], either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –
 - (a) that it is scandalous or vexatious or has no reasonable prospect of success;
 - (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
 - (c) for non-compliance with any of these Rules [of Procedure] or with an order of the Tribunal;
 - (d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out) (HMCTS, 2015a, p.16).

7. **Unsuccessful at hearing** [*Pre 2006/07: Dismissed at tribunal hearing (other reasons)*]: Following an ET hearing the claim is decided in favour of the Respondent [Employer].

8. **Dismissed at a preliminary hearing: Rule 53** [*Pre 2006/07: Dismissed at tribunal hearing (out of scope)*]:

A Preliminary Hearing is a hearing at which the Tribunal may do one or more of the following –

(a) ...

(b) ...

(c) consider whether a claim or response, or any part, should be struck out under rule 37 [see outcome/disposal type 6 above];

(d) ...

(e) ... (HMCTS, 2015a, p.19).

9. **Dismissed Rule 27**: If the Employment Judge considers either that the Tribunal has no Jurisdiction to consider the claim, or part of it, has no reasonable prospect of success, the Tribunal shall send a notice to the parties –

(a) setting out the Judge's view and the reasons for it; and

(b) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed (HMCTS, 2015a, p.14).

10. **Case Discontinued**: this records complaints dismissed under rule 40(1) [Tribunal Fees] where a party has not satisfied requirements in respect of paying a tribunal fee or demonstrating a case for remission (MoJ, 2019a, p.27).

Of these outcomes/disposals 7, 8, 9, and 10 are definitely unsuccessful - the claim has failed.

Following on from Deakin et al.'s (2015) observation regarding 'likely' successful, noted above, what can be said about the remaining six outcomes/disposal types? It is argued below that they are either conventionally successful, outcome/disposal types 1 and 2, or using Deakin et al.'s (2015) nomenclature for outcome/disposal types 3, 4, and 5, 'likely' successful. It is also argued that the 'likely' successful nomenclature can be extended to include outcome/disposal types 6, 'Struck Out', which as an outcome/disposal type appears to have become interchangeable with the outcome/disposal type 'Withdrawn' as will be shown in the following analysis. It is acknowledged that this 'Likely' Successful category is an upper bound of what 'Successful' in terms of an ET claim might represent beyond Fredman's (2011) narrow 'success at hearing' interpretation. It is also a useful way of illustrating an area requiring more research and will further show the difference between SACs and MACs.

7.4.2 Claim Outcome/Disposal Analysis, Successful, 'Likely' Successful and Unsuccessful

Outcome/Disposal type 1 - '[Successful at hearing](#)' and outcome/disposal type 2 – '[Default Judgment](#)' are the most obviously successful, but each of the other four outcome/disposal types, 3,4,5 and 6 may mean that the claim has been successful or at least 'likely' successful – the claim may not have reached a Tribunal for a hearing but the claim may have 'succeeded' with a settlement being agreed (Deakin et al., 2015, p.392) – even in the case of number 6, '[Struck Out](#)', which on the face of it sounds unsuccessful. However, it appears that often the term '[Struck Out](#)' may just mean that the claim is removed from the list of live claims. The Employment Tribunal Service Annual Report for 2001/02, for example, refers to the part-time pension cases [claims], identified by Heery (1998), being struck out as they are settled (Employment Tribunal Service, 2002, p.4). As noted above, the current ET Rules of Procedure, *The Employment Tribunals Rules of Procedure 2013 (as subsequently amended up to 17th February 2015)* under paragraph 37, gives five reasons for striking out a claim, four of which are for such things as a 'scandalous or vexatious claim', however, the fifth reason is:

‘that it has not been actively pursued’ (HMCTS, 2015a, p.16).

The 1980 (legislation.gov.uk, 2020f, para. 12.2f), 1985 (legislation.gov.uk, 2020g, para. 12.2f), 1993 (legislation.gov.uk, 2020h, para. 13.2f), 2001 (legislation.gov.uk, 2020j, para. 15.2e), 2004 (legislation.gov.uk, 2020k, para. 18.7d) and 2013 (legislation.gov.uk, 2020l, para. 37.1d) versions of the ET Rules of Procedure all include a similarly worded ‘Strike Out’ clause.

The same applies to the remaining 3 outcome/disposal types, they maybe ‘likely’ successful. In outcome/disposal type 3, Acas Conciliated Settlements, a settlement has been negotiated. It may not be a settlement that gives the claimant everything she/he expects or hopes for, but if it delivered some or even most of what was expected then that is success in some form. Outcome/disposal types 4 and 5, ‘Withdrawn’ and ‘Dismissed upon Withdrawal’, may mean that the claimant has Withdrawn the claim because they have given up or it may be Withdrawn because a settlement has been negotiated and the ET can formally remove it from the list of live claims. As far back as June 1974, the *Employment Gazette*, commenting on the first published ET outcomes/disposals figures for the years 1972 and 1973, observed ‘the likelihood that some ‘successful’ cases [claims] are concealed in the data under the ‘withdrawal heading’ (*Employment Gazette*, 1974, p.504). This point was made again in 2020 by Jane Hannon, DLA Piper’s employment partner, in an article in *The Guardian* in relation to the Equal Pay jurisdictional complaint:

‘it is not clear how many of the [Equal Pay] claims that are withdrawn before hearing – some 61% of cases [claims] – are actually withdrawn in return for a financial settlement’ (Goodley, 2020).

The MoJ Equal Pay outcome/disposal statistics shown in Appendix 13, Table A13.3, Page 2, confirm Goodley’s observation regarding the number of claims Withdrawn and Dismissed upon Withdrawal (a subset of Withdrawn introduced in 2013/14). In the period 2006/07 to 2018/19, Withdrawn reached a high of 81% in 2008/09 and was above 60% in 10 out of the 13 years. In the 3 years it is below 60% it is noticeable that there is a corresponding increase in the percentage of Acas Conciliated Settlements.

Given the foregoing, it is possible to consolidate the six possible ‘successful’ outcomes/disposal types down to four for comparison purposes, as the consolidated outcomes/disposals are in reality just different terms for the same outcome and similarly consolidate the four unsuccessful outcomes into one, as again in reality they are just different terms for the same outcome. The resulting five ‘consolidated’ outcomes are shown in Table 7.5, below.

Table 7.5

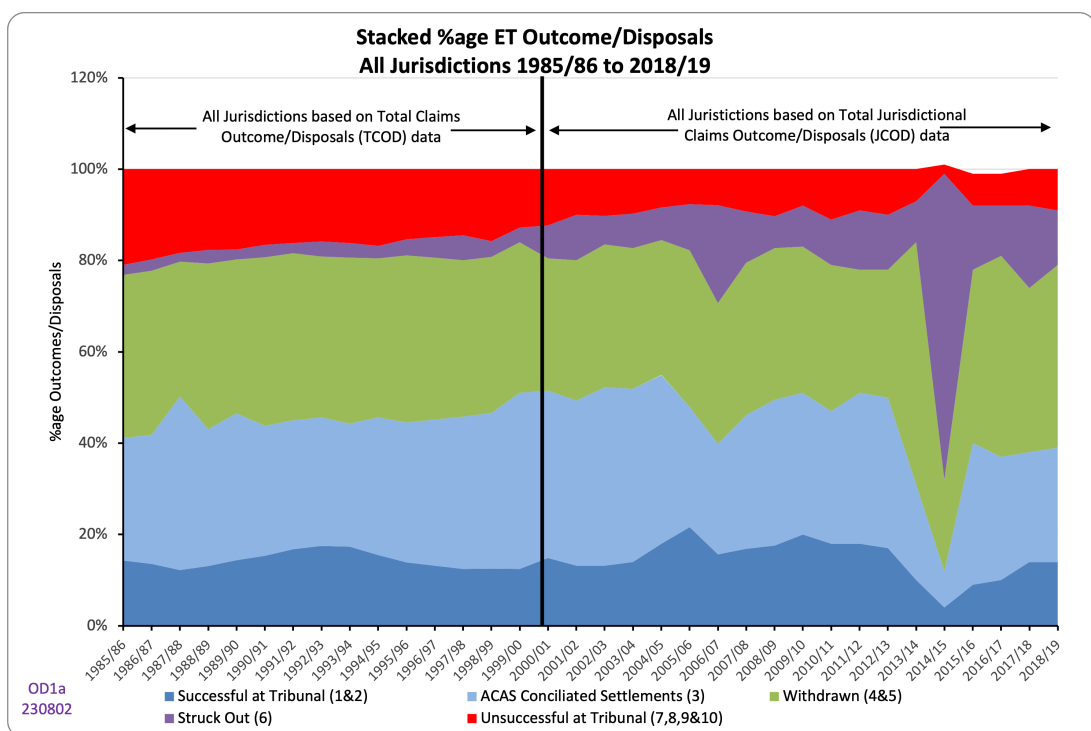
ET Claim Consolidated Outcome/Disposal Types		
Consolidated Outcome/Disposal Type	Includes Outcome/Disposal No:	ET Claim Outcome/Disposal Type
Successful at Tribunal	1	Successful at Hearing
	2	Default Judgement
Acas Conciliated Settlements	3	Acas Conciliated Settlements
Withdrawn	4	Withdrawn
	5	Dismissed upon Withdrawal
Struck Out	6	Struck Out
Unsuccessful at Tribunal	7	Unsuccessful at Hearing
	8	Dismissed at a preliminary hearing
	9	Dismissed Rule 27
	10	Case Discontinued
‘Likely’ Successful (Based on Deakin et al.’s 2015 nomenclature)	3,4,5 & 6	

As the ‘Likely’ Successful outcome/disposal types 3, 4, and 5, along with outcome/disposal type 6, are acknowledged to be an upper bound of what ‘Successful’ in terms of an ET claim might represent, the ‘Likely’ successful outcome/disposal types are shown separately in the following analysis, both as an indication of how the upper boundaries of ‘success’ may have changed over time, but also what ‘success’ might look like across the various jurisdictions. The analysis is not intended to be a definitive representation of ‘Success’ but rather a helpful step to help answer the conundrum posed earlier – why does the actual outcome/disposals of various large known MACs, such as the part-time pension cases of the late 90s (Heery, 1998), not seem to fit

with the references to the ‘successful’ outcome/disposal of these MACs in the literature?

By using the outcome/disposal data from 1985/86 to 2018/19 (based on total claims outcome/disposals 1985/86 to 1999/00 and jurisdictional complaints outcome/disposals 2000/01 to 2018/19) shown in Appendix 13, Table A13.1 for all jurisdictions and, consolidating it as outlined in Table 7.5, above, the stacked graph shown as Figure 7.7, below, is the result:

Figure 7.7



The resulting graph, above, illustrates well that the ‘consolidated’ outcome ‘Unsuccessful at Tribunal’ (red zone) has been declining over time, reaching a low point in 2014/15 of 2% of outcome/disposals. If ‘Unsuccessful at Tribunal’ has been declining over time as a percentage of outcome/disposals, then what has replaced it? The graph shows that it is not ‘Successful at Tribunal’ (dark blue zone), as apart from 2014/15 it has remained relatively steady as a percentage.

What has changed over the period is the growth in the ‘Likely’ Successful, categories (Deakin et al., 2015) and in particular ‘Struck Out’. In the early years of the period, ‘Struck Out’ claims were almost negligible, but in recent years

claims that are 'Struck Out' have grown significantly, peaking in 2014/15, when 67% of the claims outcome/disposals were 'Struck Out', as shown in Appendix 13, Table A13.1, Page 2. What has caused this? In 2014/15 it is administrative 'ghost claims'. In 2014/15, 245,836 Working Time Directive claims were 'Struck Out' (MoJ, 2019), of which '243,501 were in one multiple airlines case' (MoJ, 2015, p.12), which was discussed in Chapter 6, above, in relation to MACs and administrative 'ghost claims' and the difficulty Unite the Union experienced matching multiple (ghost) claim numbers with claimants following settlement.

The graph also highlights the difficulty in interpreting what the outcome/disposal statistics say about success or failure at an ET. What does 'Struck Out' represent? In 2014/15, it almost certainly represents the administrative act of removing the claims from the ET's records, rather than a reflection of vexatious claims. The claims could equally have been recorded as 'Withdrawn' following a negotiated settlement. It would seem that the ET over time, has administratively increasingly used the 'Struck out' outcome/disposal type instead of the 'Withdrawn' outcome/disposal type. 'Withdrawn' and 'Struck Out' appear to have become interchangeable. In the literature review it was noted by Hand D., (2018) regarding 'administrative data' that definitions used may change over time, as operational requirements change, making longitudinal comparison difficult. The apparent interchangeability of 'Withdrawn' and 'Struck Out' are an example of Hand D.'s, (2018) administrative data caveat and only by taking this interchangeability into account can success or failure at an ET be fully interpreted.

Perhaps a more 'interesting' and useful way of looking at outcome/disposals would be to further consolidate the 'Likely' Successful outcomes/disposal types (Deakin et al, 2015), Acas Conciliated Settlements, Withdrawn and Struck Out into a 'Likely' Successful category (Deakin et al., 2015) to allow for the apparent interchangeability of the terms as illustrated above by the reference to The Employment Tribunal Service Annual Report for 2001/02 actually referring to part-time pension cases [claims] being struck out as they are settled (Employment Tribunal Service, 2002, p.4) and the 2014/15 airline

MAC being ‘Struck Out’ following settlement. This reanalysis and reappraisal of ET outcome/disposal types is, therefore, done to highlight Deakin et al.’s (2015) observation that there is ‘likely’ more to ‘successful’ ET claims than is currently understood. This ‘Likely’ Successful (Deakin et al., 2015) consolidation of Outcome/Disposal Types, 3, 4, 5 and 6 is shown in Table 7.6, below, along with the previous five consolidated outcome/disposal types, referred to above. The information is shown in detail in Table 7.6, below, and in summary in Table 7.18, at the end of this section. It is acknowledged that this ‘Likely’ Successful category (Deakin et al., 2015) is an upper bound, but the finding is an important indication of an area requiring more research, nonetheless.

Table 7.6

**ET All Jurisdictions
Consolidated Outcome/Disposal Type Percentages
1985/86 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	590,568	14.32%
Acas Conciliated Settlements	3	1,176,811	28.54%
Withdrawn	4&5	1,356,710	32.90%
Struck Out	6	598,764	14.52%
Unsuccessful at Tribunal	7, 8, 9 &10	403,121	9.77%
Actual Total		4,125,974	100.05%
MoJ Total		4,124,024 ^a	
‘Likely’ Successful ^b	3,4,5 & 6	3,132,284	75.96%
			√230223
Data shown in Appendix 13, Table A13.1, Total Claim Outcome/Disposal (TCOD) Breakdown - All Jurisdictions 1985/86 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19)			
^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 4,125,974 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 4,124,024.			
^b based on Deakin et al.’s 2015 nomenclature			

It is now possible to see that for All Jurisdictions, in the period 1985/86 to 2018/19 the ‘Likely’ Successful outcome/disposal types represented 75.96% of the claims processed by the ET. What the ‘Likely’ Successful group of outcome/disposals highlights, is that the only certain outcome/disposals are

'Successful at Tribunal' and 'Unsuccessful at Tribunal', which have both been declining as an outcome over time as can be seen in Figure 7.7 above. Some claimants in the 'Likely' Successful outcome/disposal types will achieve a settlement that matches what could have been achieved at a Hearing while others will achieve lower settlements. But then, what is the definition of success for an ET claim? Perhaps it is to be 'Likely' Successful, although it is acknowledged that this 'Likely' Successful category (Deakin et al., 2015) is an upper bound. 'Likely' Successful and 'Success at Tribunal' combined, total 90.28% of all outcome/disposals, leaving 9.77% as 'Unsuccessful at Tribunal'. Given that any tribunal claim is contended by the employee and employer and the outcome in law is uncertain, it is possible that most claims, even if 'Unsuccessful at Tribunal', may have had some merit, in which event all that can be said is that the ET Claim did not succeed. 'Unsuccessful at Tribunal' cannot simply be used as a proxy for 'vexatious'. Given that 90.27% of outcome/disposals might be deemed either 'Likely' Successful or 'Successful at Tribunal' the 'burden on business' argument is further undermined.

The next section uses the SETA series to illustrate that SACs have a different outcome/disposal profile to MACs.

7.4.3 Survey of Employment Tribunal Applications (SETA) Outcome Types

As noted earlier in this chapter, the 1998, 2003, 2008, 2013 and 2018 SETA, although only covering SACs, as noted in the literature review, provides a useful set of comparison data to illustrate the observed changes in ET claim outcome/disposals. Analysis of the SETA series will begin to highlight, that with regard to 'administrative data', not only can definitions used change over time, as operational requirements change, making longitudinal comparison difficult (Hand D., 2018), but potentially definitions can change depending on what type of claim, SAC or MAC, the ET is presented with, making short-term comparison equally difficult.

However, it should be noted that, while the SETA Outcome types are similar to the ET Outcome/Disposal types listed in the previous section, they are different in several respects as shown in Table 7.7, below:

Table 7.7

Comparison of ET Outcome/Disposal and SETA (SAC) Outcome Types

ET Outcome /Disposal Types 1-10	ET Outcome /Disposal Type	SETA	SETA Outcome Type		ET Outcome /Disposal 1-10 Equivalent
1	2	3	4	5	6
1	Successful at Hearing	1998 to 2018	Successful at Hearing	S1	1
2	Default Judgement	1998	Successful at Hearing		
		2003			
		2008			
		2013	Default Judgement	S2	2
2018					
3	Acas Conciliated Settlement	1998 to 2018	Acas Conciliated Settlement	S3	3
4&5	Withdrawn: Rule 51 & Dismissed upon Withdrawal: Rule 52	1998 to 2018	Privately Settled	S4a	4&5
			Withdrawn	S4b	
6	Struck Out (Pre 2006/07 Disposed of Otherwise)	1998 to 2018	Dismissed/ Disposed	S6/S8	6&8 merged
7	Unsuccessful at Hearing	1998 to 2018	Unsuccessful at Hearing	S7	7
8	Dismissed at Preliminary Hearing	1998 to 2018	Dismissed/ Disposed	S8/S6	8&6 merged
9	Dismissed Rule 27	n/a	n/a		n/a
10	Case Discontinued	n/a	n/a		n/a
Sources: SETA 1998: Department of Trade and Industry, 2004c, p.68 SETA 2003: Department of Trade and Industry, 2004b, p.23 SETA 2008: Department for Business Innovation and Skills, 2010b, p.20 SETA 2013: Department for Business Innovation and Skills, 2014b, p.40 SETA 2018: Department for Business, Energy and Industrial Strategy, 2020, Table 5.1, p.242					

Table 7.7 shows, firstly, that with regards to the ET Outcome/Disposal Type 4, Withdrawn (and the associated ET Outcome/Disposal Type 5, Dismissed upon Withdrawal: Rule 52), the SETA series asked specific questions to unpack the ET Outcome/Disposal Type 4, Withdrawn, into claims that were either, Privately Settled or actually Withdrawn, shown in Table 7.7, column 5, above, as SETA 4a and 4b respectively. SETA has taken this step because the ET data, as published by the MoJ and its predecessors, does not make any distinction between privately settled and Withdrawn claims and the SETA series was used to unpack these particular claims and clarify this important distinction (DTI, 2004b, p.23).

Secondly, with regards to the ET Outcome/Disposal Type 6, Struck Out, the 1998, 2003, 2008, 2013 and 2018 SETA all use the term 'dismissed/disposed' as one of the recorded Outcome of Tribunal applications, as shown in Table 7.7, column 5, above. None of the surveys uses the term 'Struck Out'. However, the 'disposed' part of the SETA term 'dismissed/disposed' almost certainly includes what is currently known as 'Struck Out', because, in 2006/07, there was a change in terminology for several of the outcome/disposal types including 'disposed' (Employment Tribunal Service, 2007, Table 2, Footnotes 1, 2 and 3), although there was no change in the actuality of the outcome/disposal. Pre 2006/07, 'Struck Out' is referred to as 'Disposed of Otherwise'. In the 1998 and 2003 SETA, therefore, the terminology for 'Struck Out' would have been 'Disposed of Otherwise' and this terminology appears to have been carried on into the 2008, 2013 and 2018 SETA, despite the noted change in terminology. The conflation of ET Outcome Type 6, Struck Out (Disposed of otherwise), and ET Outcome Type 8, Dismissed at preliminary hearing, into SETA Outcome, Dismissed/Disposed is confirmed in the SETA 2003 Technical Report, where in Table 7.1, information on ET Outcome Type 6, Disposed and ET Outcome Type 8, Dismissed, is displayed in two separate columns, (DTI, 2004b, p.23), although no such information on separation is provided in the 1998, 2008, 2013 or 2018 SETA. This consolidation of 'Struck Out'/Disposed with 'Dismissed' by the SETA series implies that for SACs, at least, the ET claim has 'failed' which conforms to the general understanding and definition of 'Struck Out'. This begins to highlight the importance of understanding how SACs and MACs are different.

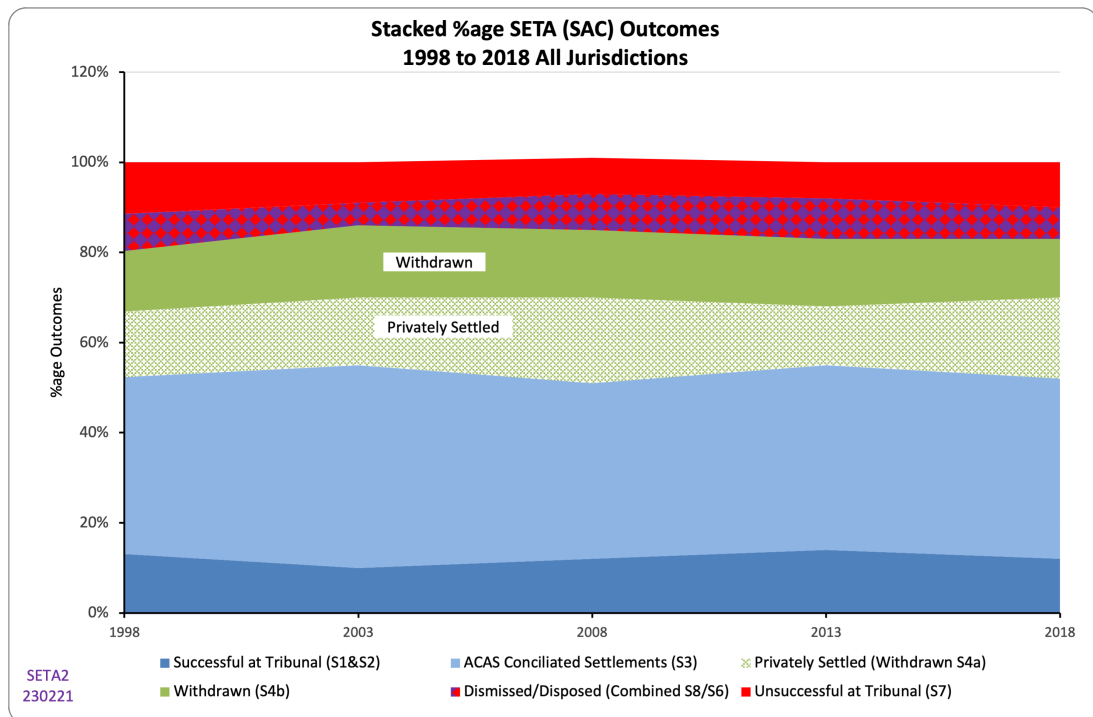
The seven possible SETA outcomes can be 'consolidated' down to the six listed below:

- S1 Successful at Hearing and S2-Default Judgment – Dark Blue
- S3 Acas Conciliated Settlements – Light Blue
- S4a Privately Settled – Dark Green
- S4b Withdrawn – Green
- S8/S6 Dismissed/Disposed – Red/Purple

- S7 Unsuccessful at hearing, – Red

The ‘consolidated’ SETA (SAC) outcomes for the 1998, 2003, 2008, 2013 and 2018 SETA are shown in Figure 7.8, below:

Figure 7.8



As can be seen in Figure 7.8, the six SETA outcomes do not show much variation over the period, unlike the five consolidated ET Outcome/Disposals shown in Figure 7.7, above, which showed much greater variance over the period under review. However, the SETA Outcomes are different to the ET Outcomes/Disposals in two respects. Firstly, splitting the ET Outcome/Disposal Type 4, Withdrawn into the SETA Outcomes 4a, Privately Settled, and 4b, Withdrawn, reveals that almost half of the claims previously classified as ‘Withdrawn’ are ‘privately settled’ and this can be seen in Table 7.8, below. This adds credence to Deakin et al.’s comment, noted in the literature review, that:

‘Official statistical series do not indicate whether withdrawn applications led to a settlement, but it is *likely* [italics added] that many of them did’ (Deakin et al., 2015, p.392).

The second difference between SETA Outcomes and the ET Outcome/Disposals is the consolidation in the SETA series of the ET Outcome/Disposals 'Struck Out' and Dismissed at Preliminary Hearing into the SETA Outcome Dismissed/Disposed. This is not unreasonable, because as was noted above, it implies that for SACs, at least, the ET claim has 'failed' which conforms to the general understanding and definition of 'Struck Out'. In light of this, the SETA Outcome Dismissed/Disposed should be regarded as part of the Unsuccessful category and this can also be seen in Table 7.8, below.

Table 7.8

**Survey of Employment Tribunal Applications (SETA) (SAC)
All Jurisdictions Consolidated Outcome/Disposal Type Percentages
1998 to 2018**

Consolidated SETA (SAC) Outcome Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	S1&S2	2,151	12.10%
Acas Conciliated Settlements	S3	7,320	41.16%
Privately Settled	S4a	2,817	15.84%
Withdrawn	S4b	2,619	14.73%
Struck Out	6	0	0%
Unsuccessful at Tribunal	S7& Combined S8/S6	2,917	16.40%
Total		17,824	100.23%
<i>SETA Total</i>		17,784	
ET Withdrawn Equivalent	S4a&S4b	5,436	30.57%
'Likely' Successful ^b	S3, S4a&S4b	12,756	71.73%
√230217			
Data shown in Appendix 13, Table A13.10, Survey of Employment Tribunal Applications (SETA) Outcome/Disposals Breakdown 1998 to 2018			
^a It is acknowledged that the sum of the 8 Outcome/Disposals listed above is 17,824, yet the SETA Outcome sum is 17,784. The difference is a consequence of SETA 2008 Table 9.1 showing total sample as 4,027 and individual outcome percentages summing to 101% yielding individual SETA outcome data of 4,067.			
^b based on Deakin et al.'s 2015 nomenclature			

As was noted earlier, the 1998, 2003, 2008, 2013 and 2018 SETA series Outcomes data provides a useful comparator for the ET Outcome/Disposal data, particularly as the SETA data are based on SACs and the ET Outcome/Disposal data includes MACs.. This comparison, which highlights

that SACs have a different outcome/disposal profile to MACs, is shown in Table 7.9, below:

Table 7.9

Comparison of ET All Jurisdictions Consolidated Outcome/Disposal Type Percentages 1985/86 to 2018/19 and Survey of Employment Tribunal Applications (SETA) (SAC) All Jurisdictions Consolidated Outcome/Disposal Type Percentages 1998 to 2018

Row No:	Consolidated Outcome Type	Includes Outcome/Disposal No:		ET %age 1985/86 to 2018/19	SETA (SAC) %age 1998 to 2018	SETA (SAC) Higher/Lower
		ET	SETA			
	A	B	C	D	E	F
1	Successful at Tribunal	1&2	S1&S2	14.32%	12.10%	2.22% Lower
2	Acas Conciliated Settlements	3	S3	28.54%	41.16%	12.62% Higher
3	Privately Settled		S4a		15.84%	-
4	Withdrawn	4&5	S4b	32.90%	14.73%	-
5	Struck Out	6		14.52%	0%	-
6	Unsuccessful at Tribunal	7&8	S7& Combined S3/S6	9.77%	16.40%	6.63 Higher
7	Total			100.05%	100.23%	-
8	Withdrawn	4&5	S4a&S4b	32.90%	30.57%	2.33% Lower
9	'Likely' Successful ^a	3,4,5 &6	S3,S4a &S4b	75.95%	71.73%	4.22% Lower
10	'Settled'	3	S3&S4a	28.54%	55.89%	27.35% Higher

√230221

^a based on Deakin et al.'s 2015 nomenclature

Comparing 'Successful at Tribunal' reveals that the ET Outcome/Disposals (column D, row 1) reflect a slightly higher success rate than the SETA series (column E, row 1), 14.32% against 12.10% respectively, whereas in the Acas Conciliated Settlement Outcome the ET Outcome/Disposals is 12.62% lower than the SETA Outcome series, 28.54% (column D, row 2) against 41.16% (column E, row 3) respectively. Adding the SETA Outcome S4a 'Privately Settled' percentage of 15.84% (column E, row 3) to the SETA Outcome Acas Conciliated Settlement S3 percentage of 41.16% (column E, row 2) give a joint SETA 'Settled' percentage of 55.89% (15.84% + 41.16%) (column E, row 10). Recombining the SETA Outcome S4a, 'Privately Settled' and S4b, Withdrawn

gives a joint SETA Outcome 4a&4b percentage of 30.57% (column E, row 8) which is slightly lower than the equivalent ET Outcome/Disposal type 4, 'Withdrawn' percentage of 32.90%, (column D, row 8). Table 7.9 also shows that 'Unsuccessful at Tribunal' is lower in the ET Outcome/Disposal data than the SETA series, 9.77% (column D, row 6) against 16.40% (column E, row 6) respectively.

The comparison of the two datasets indicates the difference between SACs and MACs. In the SETA series, the consolidation of 'Struck Out/Disposed with Dismissed as Dismissed/Disposed probably reflects the claim failing. The SETA information is based on SAC survey responses where the claim participants will know that a claim that has been 'Struck Out' has failed. In which case, the SETA Outcome 'Unsuccessful at Tribunal' of 16.40%, as shown in Table 7.9 column E, row 6, which includes the SETA Outcome Dismissed/Disposed (Combined S8/S6) does represent failed claims and the level of failed claims is reflected in Figure 7.8 above by the two sections Dismissed/Disposed S8/S6 and 'Unsuccessful at Tribunal' (S7). It should be noted that the percentage of failed claims that Dismissed/Disposed S8/S6 and 'Unsuccessful at Tribunal' (S7) begins at 19% in 1998, falls to 14% in 2003 and then hovers between 16% and 17% for the remainder of the period as shown in Figure 7.8 above, and in Appendix 13, Table A13.10.

Although the ET Outcome/Disposal data includes both SACs and MACs the profile of 'Unsuccessful at Tribunal' and 'Struck Out' in Figure 7.7 is very different to the SETA Outcome profiles for 'Unsuccessful at Tribunal' and Dismissed/Disposed' in Figure 7.8. Compared to the SETA consolidated Outcome 'Unsuccessful at Tribunal', the ET consolidated Outcome/Disposal 'Unsuccessful at Tribunal' has been declining over time, reaching a low point in 2014/15 of 2% of outcome/disposals. The ET consolidated Outcome/Disposal 'Struck Out' appears to have replaced 'Unsuccessful at Tribunal'. As was highlighted earlier, with regard to the 243,501 Working Time Directive claims, 'Struck Out' in 2014/15, the ET has increasingly used 'Struck Out' for the administrative act of removing large scale MACs from the ET's records.

The comparison between the two datasets feeds into the 'Likely Successful' discussion. While the SETA Outcome finding that 50% of claims of the 'Withdrawn' Outcome type were 'Privately Settled' (SETA S4a in Table 7.9) lends credence to Deakin et al.'s (2015) observation that some of the ET Outcome/Disposal 'Withdrawn' claims were likely settled, it also shows that within the SETA series there is a 50% limit to the number of Withdrawn claims that are 'Likely Successful'. As the SETA information is based on SAC survey responses where the claim participants will know that a claim has been 'Privately Settled' as opposed to just Withdrawn with no settlement, the SETA findings make clear that there is a potential limit of 50% to the percentage of 'Likely Successful' claims in ET Outcome/Disposal type Withdrawn for SACs. However, for MACs, which are not included in the SETA series, as noted in the literature review, the potential ET Outcome/Disposal 'Withdrawn' 'Likely Successful' limit is much less clear. In Table 7.9, above, the ET Outcome/Disposal 'Withdrawn' type percentage of 32.90% (column D, row 8), is not dissimilar to the SETA Withdrawn Outcome percentage of 30.57% (column E, row 8), so it might be argued that the potential 50% 'likely successful' limit applies to the ET Outcome/Disposal 'Withdrawn' type. However, examination of the Jurisdictional Outcome/Disposal information in Table 7.4, above, would cast doubt on this conclusion, at least for Equal Pay and Sex Discrimination. The low 'Success at Tribunal' percentages of these two Jurisdictions, 2.16% and 4.28% respectively, compared to an All Jurisdiction 'Success at Tribunal' percentage of 11.66% suggest that the potential 'Likely Successful' limit of the ET Outcome/Disposal 'Withdrawn' type might be different for each Jurisdiction.

In the literature review it was noted that the literature focused on either the TCA level or the individual claim level, rather than the 'intermediate' level of SACs and MACs and their interaction with the TCA. By highlighting the difference between SACs and MACs with regards to the outcome/disposal types Withdrawn and in particular the interchangeability of Struck Out and Withdrawn in relation to MACs, this section has further shown how important it is to understand how SACs and MACs are different. It has also been shown how a definitional change, made over time, not only makes longitudinal

comparison difficult (Hand D., 2018), but masks how the growth in large scale contended law MACs illustrates how the ET has developed into the forum for the negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004). This analysis has also developed the issue identified in the literature around what ‘success’ means in relation to an ET claim, (Fredman, 2011; Deakin et al., 2015).

The next section analyses the Outcome/Disposal by Jurisdiction and examines if the ‘Likely Successful’ limit of the ET Outcome/Disposal ‘Withdrawn’ type might be different for each Jurisdiction.

7.4.4 Jurisdictional Complaint Outcome/Disposal Analysis

This section extends the analysis of the ET Outcome/Disposals beyond the Total Claims Outcome/Disposals to the seven Jurisdictional Complaints with the highest TCA Contained Percentage, as highlighted in Chapter 5, Figure 5.13, above, Breach of Contract, Equal Pay, Redundancy Pay, Sex Discrimination, Unauthorised Deductions, Unfair Dismissal and Working Time Directive. Given the Working Time Directive administrative ‘ghost claim’ effect on the percentages of claim outcome/disposals in 2014/15, the analysis begins the Working Time Directive jurisdictional complaint, as it would be informative to look at the Working Time Directive jurisdictional outcome/disposal percentages in the same way, to tease out any further effects that are not so immediately clear in Figure 7.7 above⁸².

7.4.4.1 Working Time Directive Outcome/Disposals

Figure 7.9, below, displays the total Working Time Directive outcome/disposals by year from 1999/00 to 2018/19 and Figure 7.10 displays the stacked percentages of the five ‘consolidated’ ET outcome/disposal types for the same period.

⁸² All the jurisdictional complaint outcome/disposal information used in the following graphs is shown in Appendix 13, Tables A13.2 to A13.9, Employment Tribunal Claims, Outcome/Disposal, Data Series, (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19).

Figure 7.9

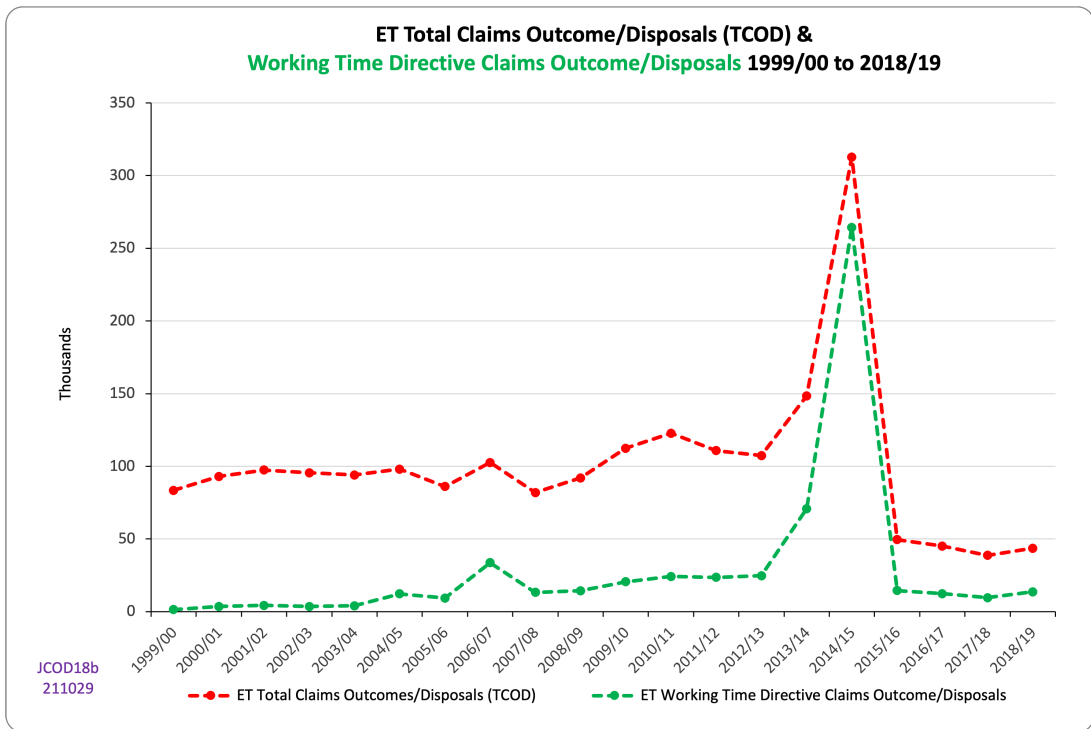
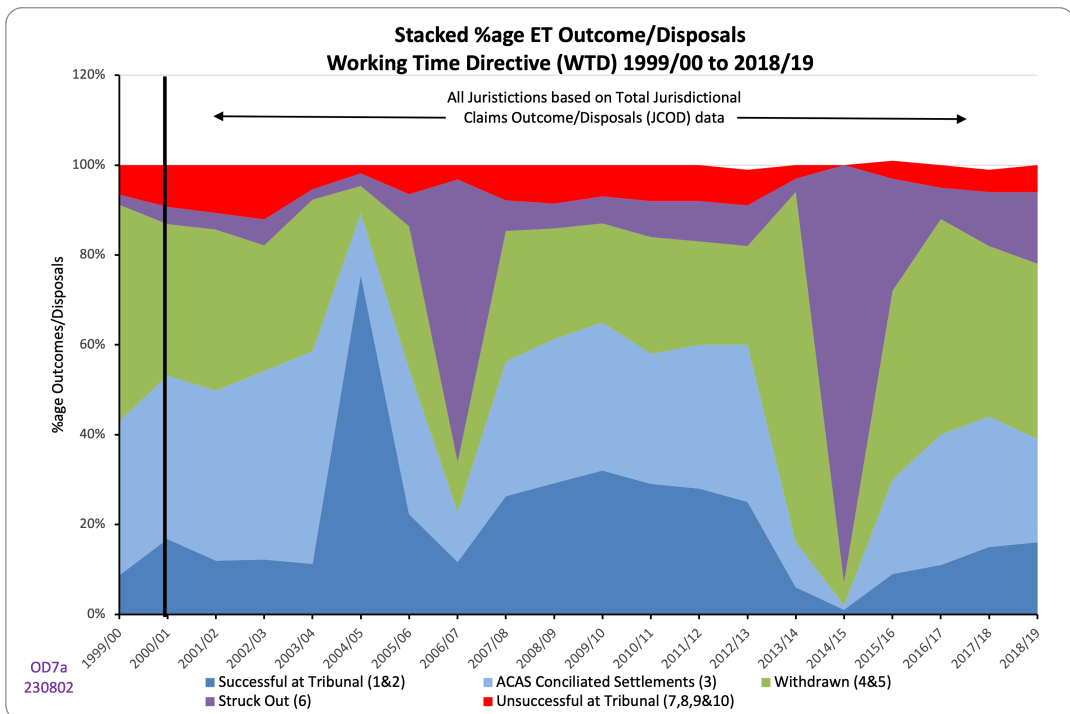


Figure 7.10



In Figure 7.10 there are four spikes, one of which is masked by the sharp spike in 'Struck Out' in 2014/15. Within the Working Time Directive jurisdictional complaint outcome/disposals, the 245,836 claims 'Struck Out', represents

93% of the Working Time Directive outcome/disposals for 2014/15. It is literally a graphic representation of the effect of the administrative 'ghost claims' on the ET statistics. The 2014/15 spike is so large it almost overwhelms the spike in the Withdrawn outcome/disposal type in 2013/14 where the 54,566 claims represent 77% of the of the Working Time Directive outcome/disposals for 2013/14. It is interesting to note that there is another 'Struck Out' spike in 2006/07. In this instance 21,156 claims were Struck Out representing 63% of the claim outcome/disposals in the Working Time Directive jurisdictional complaint in 2006/07. There is also a spike in the 'Successful at Tribunal' outcome in 2004/05. In this instance 9,249 claims were 'Successful at Tribunal' representing 76% of the claim outcome/disposals in the Working Time Directive jurisdictional complaint in 2004/05. Several observations follow from this. The similarity of the spikes in 2004/05 and 2006/07 to the large spikes in 2013/14 and 2014/15 point to the claims being MACs and secondly it seems reasonable to suggest that the already established effects of the administrative 'ghost claims' in this jurisdictional complaint has increased the number of claims accepted by the ET which has fed into and inflated the outcome/disposal statistics as discussed above. The use of the outcome/disposal type 'Struck Out' instead of 'Withdrawn' has effectively masked the successful outcome of the claims. Reclassifying both 'Withdrawn' and 'Struck Out' as 'Likely' Successful in this jurisdiction is possibly a better reflection of what the ET is actually doing. The 'Likely' Successful percentage of claim outcome/disposals in the Working Time Directive jurisdictional complaint since 1999/00 is 85.75% and this is shown in detail, in Table 7.10, below and in summary in Table 7.18 at the end of this section.

Table 7.10

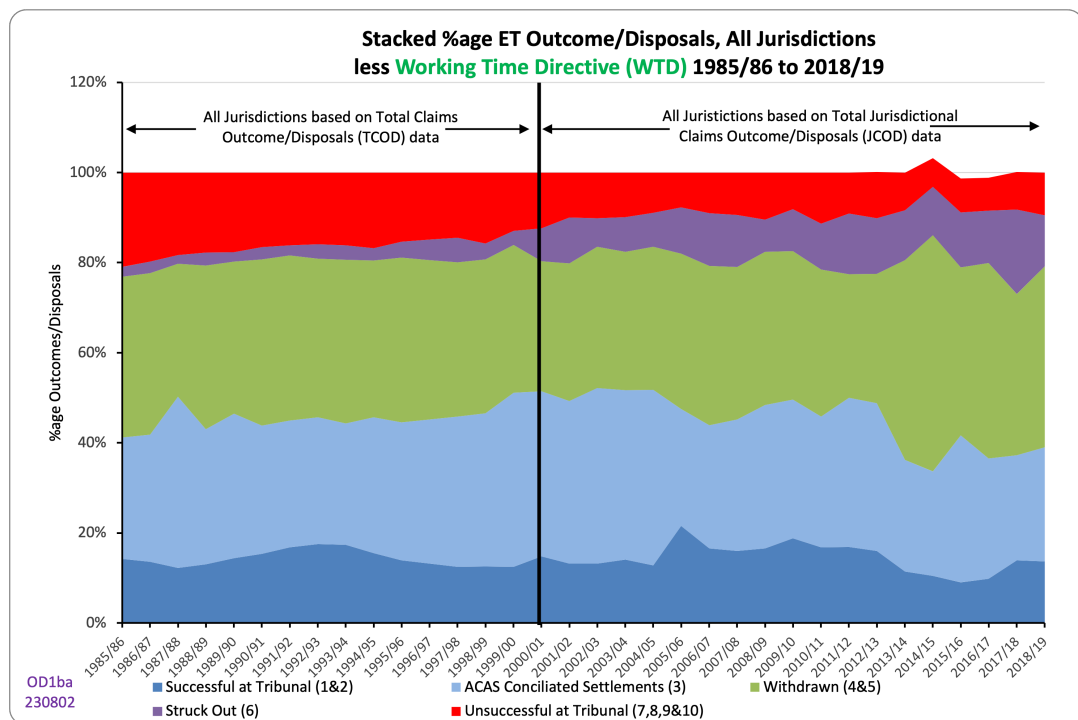
**Working Time Directive
Consolidated Outcome/Disposal Type Percentages
1999/00 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	64,540	11.17%
Acas Conciliated Settlements	3	76,040	13.16%
Withdrawn	4&5	131,695	22.79%
Struck Out	6	287,763	49.80%
Unsuccessful at Tribunal	7, 8, 9 &10	17,546	3.04%
Actual Total		577,585	99.92%
MoJ Total		577,782 ^a	
'Likely' Successful ^b	3,4,5 & 6	495,499	85.75%
√230223			
Data shown in Appendix 13, Table A13.9, Working Time Directive (WTD) Outcome/Disposal Breakdown 1999/00 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19)			
^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 577,585 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 577,782.			
^b based on Deakin et al.'s 2015 nomenclature			

The above analysis of the Working Time Directive jurisdictional complaint outcome/disposals has highlighted the volume of claims 'Struck Out'. Beyond the Working Time Directive jurisdictional complaint this is potentially misleading. The Working Time Directive jurisdictional complaint outcome/disposals represent 48% (287,763/598,764) of *all* claims 'Struck Out' in the period 1985/86 to 2018/19. In Chapter 6, the volume of ET claims excluding the Working Time Directive jurisdictional complaint was examined to establish the likely underlying volume of ET claims and it would seem prudent to do the same with All Jurisdiction consolidated outcome/disposal type percentages to ensure that the volume of Working Time Directive jurisdictional complaint outcome/disposals does not lead to a false conclusion regarding the growth of the 'Struck Out' type of disposal. Figure 7.11 shows the consolidated outcome/disposals for All Jurisdictions less the Working Time Directive jurisdictional complaint outcome/disposals. It should be noted that unlike Chapter 6, where the Working Time Directive jurisdictional complaint was 'excluded' up to and including the ET year 2013/14, the last full year prior

to the ending of the administrative 'ghost claim' issue by the Presidential Order, the Working Time Directive jurisdictional complaint outcome/disposals have been 'excluded' from all the All Jurisdiction data up to and including 2018/19, as claims filed prior to the Presidential Order are likely to be still in the system and therefore in the outcome/disposal figures. It is acknowledged that this is not a perfect solution but is less misleading than excluding outcome/disposals from 2014/15 onwards.

Figure 7.11



It can be seen that the volume of the 'Struck Out' outcome/disposal type has still increased over time and the extreme spikes caused by the Working Time Directive jurisdictional complaint outcome/disposals have gone, showing that the observation that the volume of the 'Struck Out' outcome/disposal type has increased over time is still valid. Table 7.11, below, shows that the combined 'Likely' Successful outcome/disposal type percentage, at 74.35%, is very similar to the previous All Jurisdiction percentage of 75.96%, shown in Table 7.6, above. The information is shown in detail in Table 7.11, below, and in summary in Table 7.18 at the end of this section.

Table 7.11

**ET All Jurisdictions less Working Time Directive
Consolidated Outcome/Disposal Type Percentages
1985/86 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	526,028	14.83%
Acas Conciliated Settlements	3	1,100,771	31.04%
Withdrawn	4&5	1,225,014	34.54%
Struck Out	6	311,001	8.77%
Unsuccessful at Tribunal	7, 8, 9 &10	385,575	10.87%
Actual Total		3,548,389	100.06%
MoJ Total		3,546,242 ^a	
'Likely' Successful ^b	3,4,5 & 6	3,132,284	74.35%
√211011			
Data shown in Appendix 13, Table A13.1 Total Claim Outcome/Disposal (TCOD) Breakdown - All Jurisdictions 1985/86 to 2018/19 & Table A13.9, Working Time Directive (WTD) Outcome/Disposal Breakdown 1999/00 to 2018/19 (both tables based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19) ^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 3,548,389 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 3,546,242. ^b based on Deakin et al.'s 2015 nomenclature			

It is also worth noting that the combined percentage of 'Successful at Tribunal' and 'Likely' Successful has hardly changed, dropping from 90.27% to 89.18%. The exclusion of the Working Time Directive jurisdictional complaint outcome/disposals does not change the earlier conclusion that 'Unsuccessful at Tribunal' has reduced over time to be replaced by an increase in 'Likely' Successful outcome/disposal types.

While the Working Time Directive jurisdictional complaint effect on the percentages of claim outcome/disposals in 2014/15 is clearer, it would be informative to look at some of the other individual jurisdictional outcome/disposal percentages in the same way to tease out any further effects that are not so immediately clear in Figures 7.7 and 7.11, above.

7.4.4.2 Breach of Contract Outcome/Disposals

The second jurisdictional complaint outcome/disposal to be examined is the Breach of Contract jurisdictional complaint. Figure 7.12, below, displays the

total Breach of Contract jurisdictional complaint outcome/disposals by year from 1999/00 to 2018/19 and Figure 7.13, displays the stacked percentages of the five 'consolidated' outcome/disposal types for the same period.

Figure 7.12

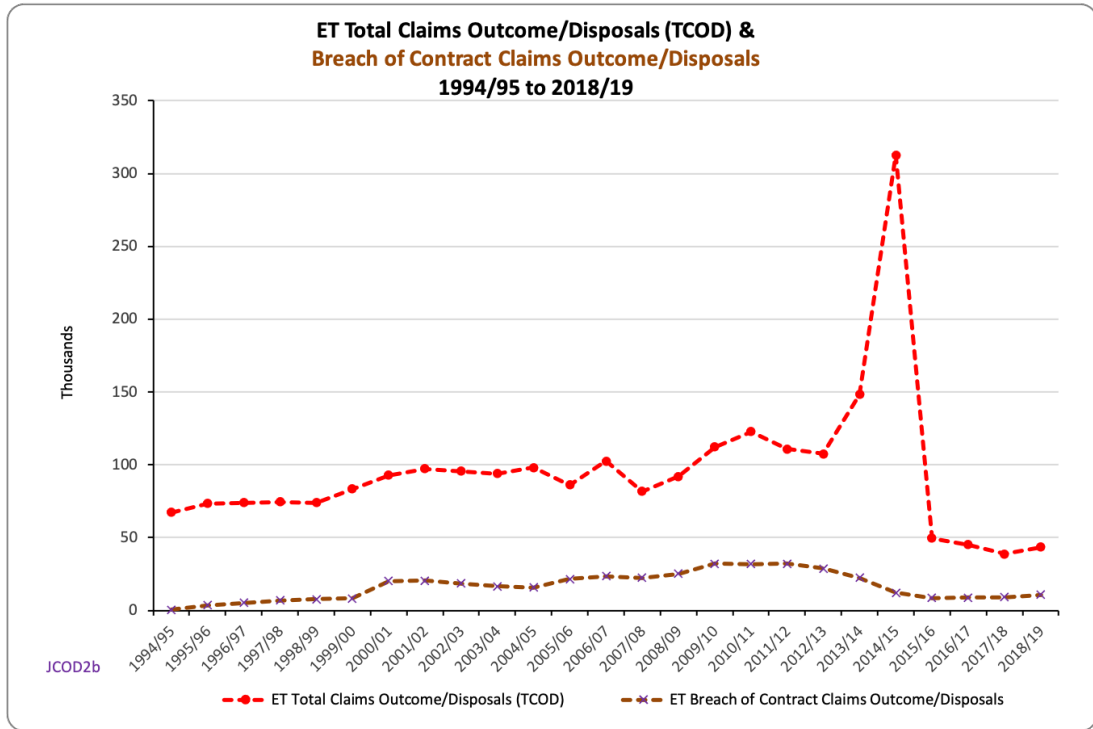
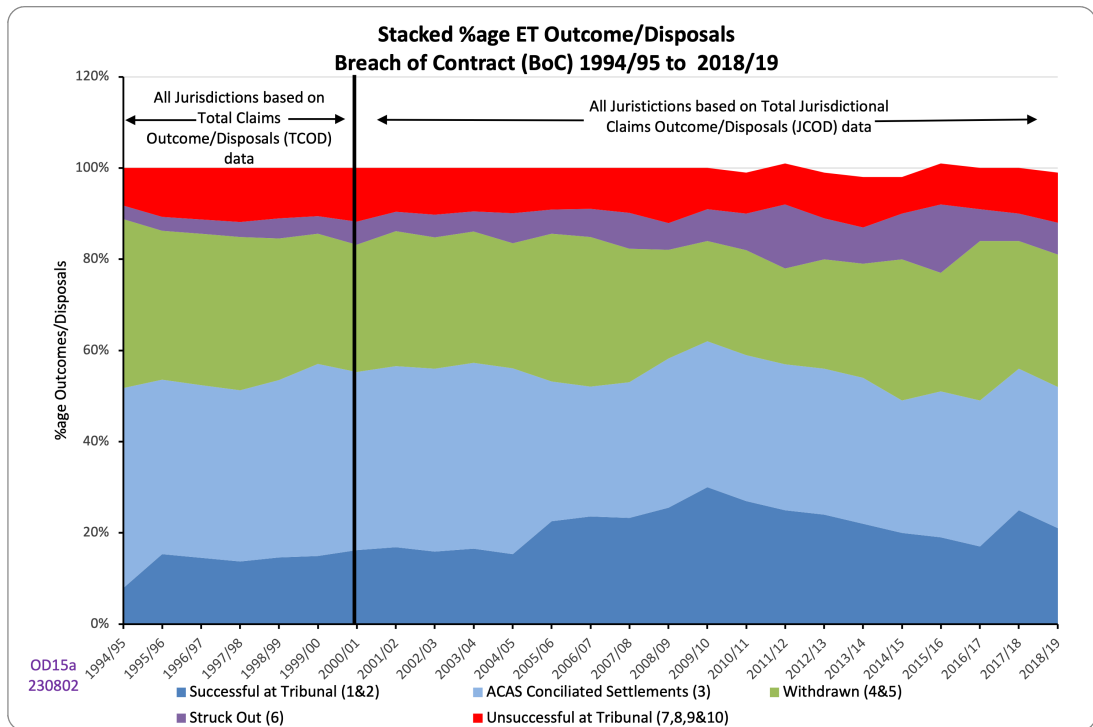


Figure 7.13



The changes in the Breach of Contract jurisdictional complaint outcome/disposals are more gentle. The percentage of the consolidated 'Success at Tribunal' rises from 8% in 1994/95 to a high of 30% in 2009/10. The percentage of 'Struck Out' increases from 3% in 1994/95 to a high of 15% in 2015/16. The story here is one of modest change. The 'Likely' Successful percentage of claims outcome/disposals since 1994/95 is 68.14% and this is shown in detail in Table 7.12, below, and in summary in Table 7.18 at the end of this section.

Table 7.12

**Breach of Contract
Consolidated Outcome/Disposal Type Percentages
1994/95 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	89,644	21.72%
Acas Conciliated Settlements	3	139,713	33.86%
Withdrawn	4&5	111,844	27.10%
Struck Out	6	29,644	7.18%
Unsuccessful at Tribunal	7, 8, 9 & 10	40,807	9.89%
Actual Total		411,652	99.75%
MoJ Total		412,643 ^a	
'Likely' Successful ^b	3,4,5 & 6	281,200	68.14%
			√230223
Data shown in Appendix 13, Table A13.2, Breach of Contract (BoC) Outcome/Disposal Breakdown 1994/95 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19)			
^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 411,652 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 412,643.			
^b based on Deakin et al.'s 2015 nomenclature			

7.4.4.3 Equal Pay Outcome/Disposals

The third jurisdictional complaint outcome/disposals to be examined is the Equal Pay jurisdictional complaint. Figure 7.14 displays the total Equal Pay outcome/disposals by year from 1985/86 to 2018/19 and Figure 7.15 displays the stacked percentages of the five 'consolidated' outcome/disposal types for the same period.

Figure 7.14

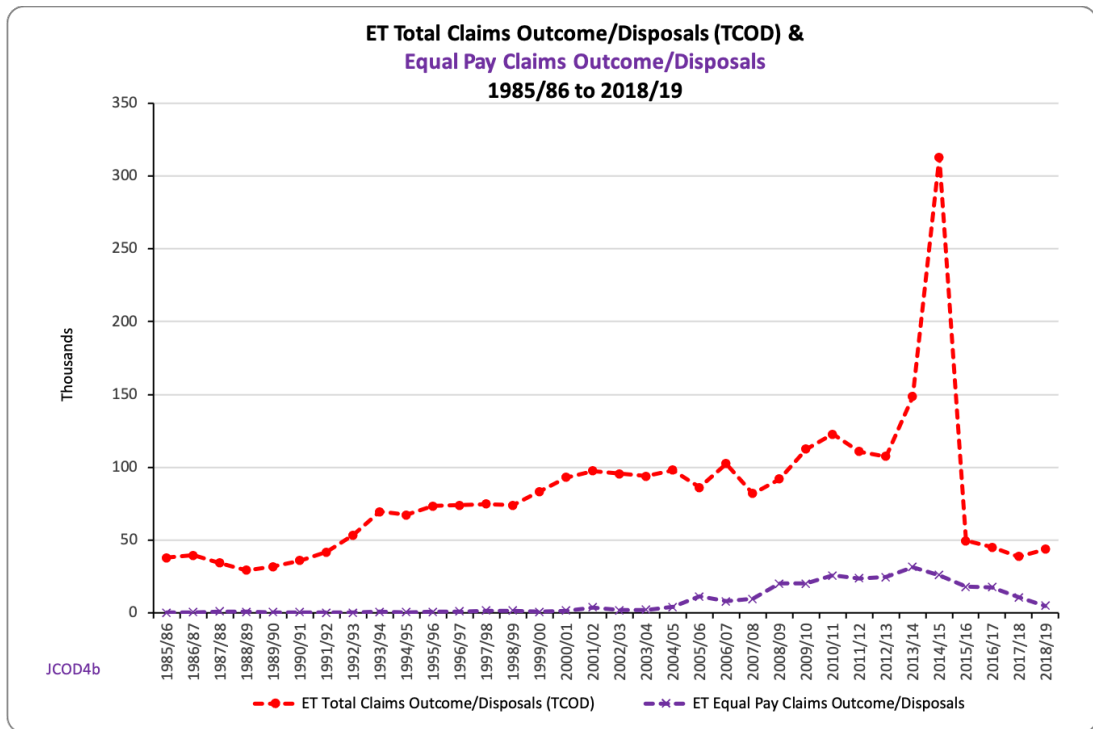
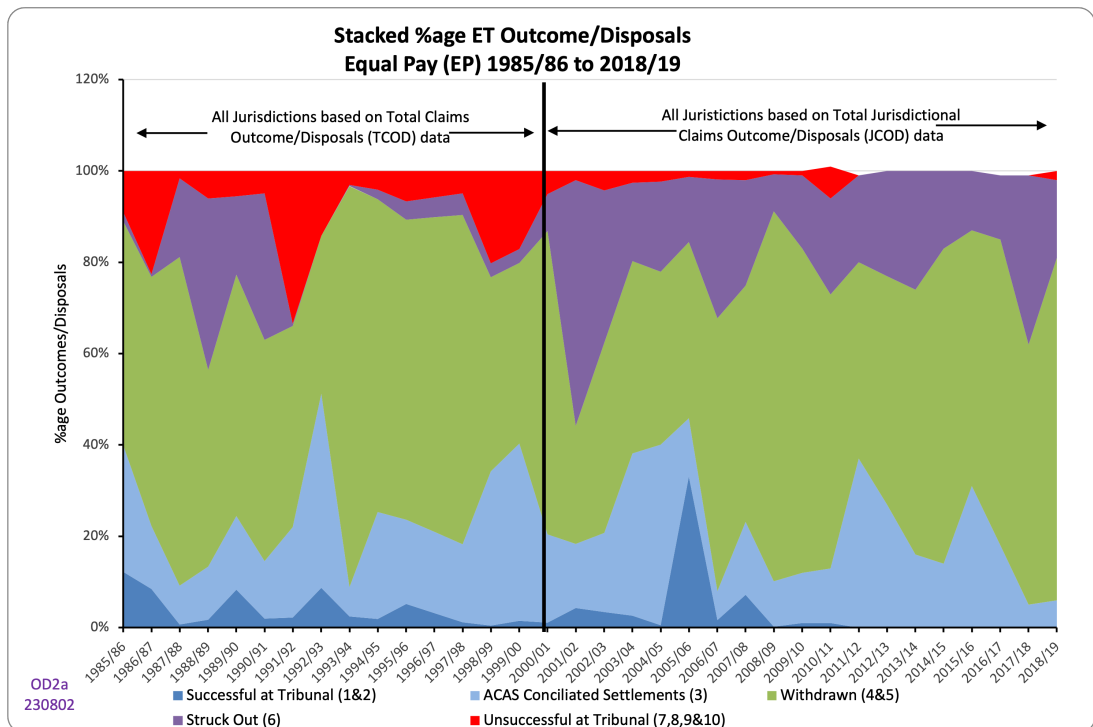


Figure 7.15



The first point to note in the Equal Pay outcome/disposals in Figure 7.14, above, is that the number of Equal Pay outcome/disposals only climbs above 1,500 in 1997/98. This means that although the 'Unsuccessful at Tribunal' (red

zone) in Figure 7.15 looks significant prior to this it is only dealing with small numbers. There are two noticeable spikes. In 2001/02, 47.7% of Equal Pay Claim outcome/disposals were 'Struck Out' and in 2005/06 33% of outcome/disposals were 'Successful at Tribunal'. What is perhaps more noticeable is that after 2005/06 'Success at Tribunal' and 'Unsuccessful at Tribunal' almost disappear as outcome/disposal types, and all outcome/disposals are in the 'Likely' Successful area of the graph. Given that the literature review acknowledged the presence of the no-win, no-fee lawyers in this jurisdictional complaint (Godwin, 2006, quoted in Dickens, 2007; McLaughlin, 2014), it would seem to illustrate that the definition of 'success' is much wider than simply 'Success at Tribunal', otherwise the no-win, no-fee lawyers could not have survived/thrived in the late 1990s and 2000s (Deakin et al., 2015, p.385). The 'Likely' Successful percentage of claims outcome/disposals since 1985/86 is 96.36% and this is shown in detail, in Table 7.13, below and in summary in Table 7.18 at the end of this section.

Table 7.13

**Equal Pay
Consolidated Outcome/Disposal Type Percentages
1985/86 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	5,671	2.06%
Acas Conciliated Settlements	3	49,923	18.15%
Withdrawn	4&5	161,593	58.74%
Struck Out	6	53,548	19.47%
Unsuccessful at Tribunal	7, 8, 9 &10	4,199	1.53%
Actual Total		274,934	99.95%
MoJ Total		275,092 ^a	
'Likely' Successful ^b	3,4,5 & 6	265,064	96.36%
√230223			
<small>Data shown in Appendix 13, Table A13.3, Equal Pay (EP) Outcome/Disposal Breakdown 1976 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19) ^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 274,934 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 275,092. ^b based on Deakin et al.'s 2015 nomenclature</small>			

7.4.4.4 Redundancy Pay Outcome/Disposals

The fourth jurisdictional complaint outcome/disposals to be examined is the Redundancy Pay jurisdictional complaint. Figure 7.16, below, displays the total Redundancy Pay outcome/disposals by year from 1985/86 to 2018/19 and Figure 7.17, also below, displays the stacked percentages of the five 'consolidated' outcome/disposal types for the same period.

Figure 7.16

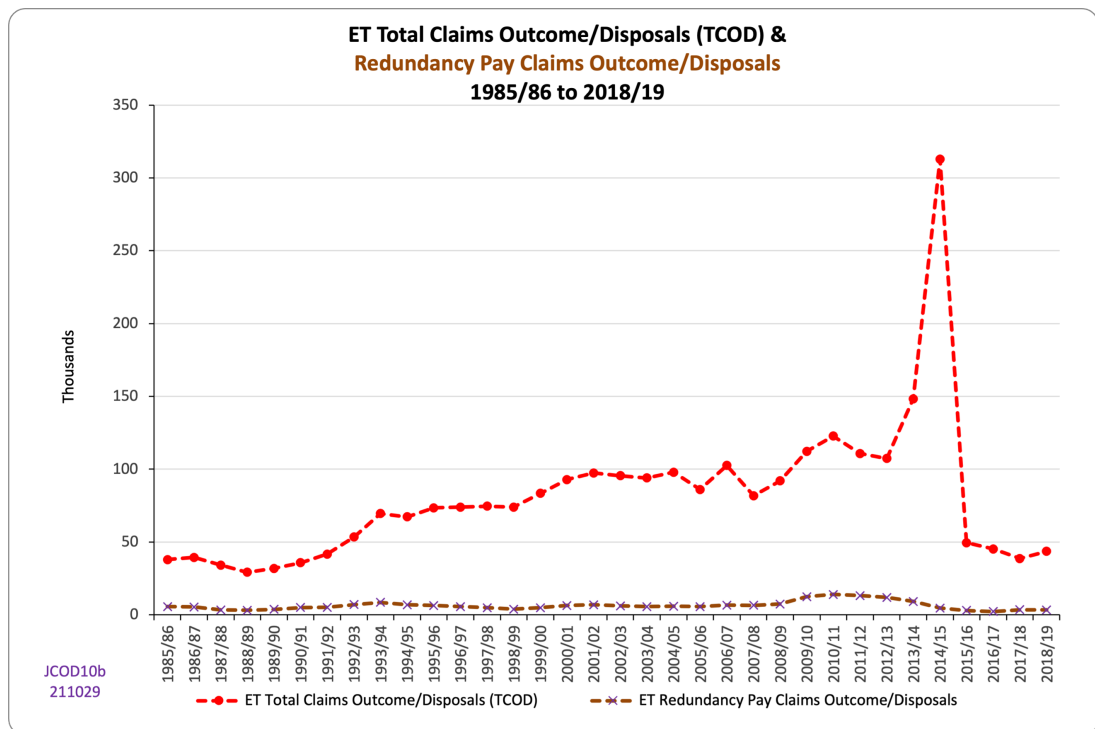
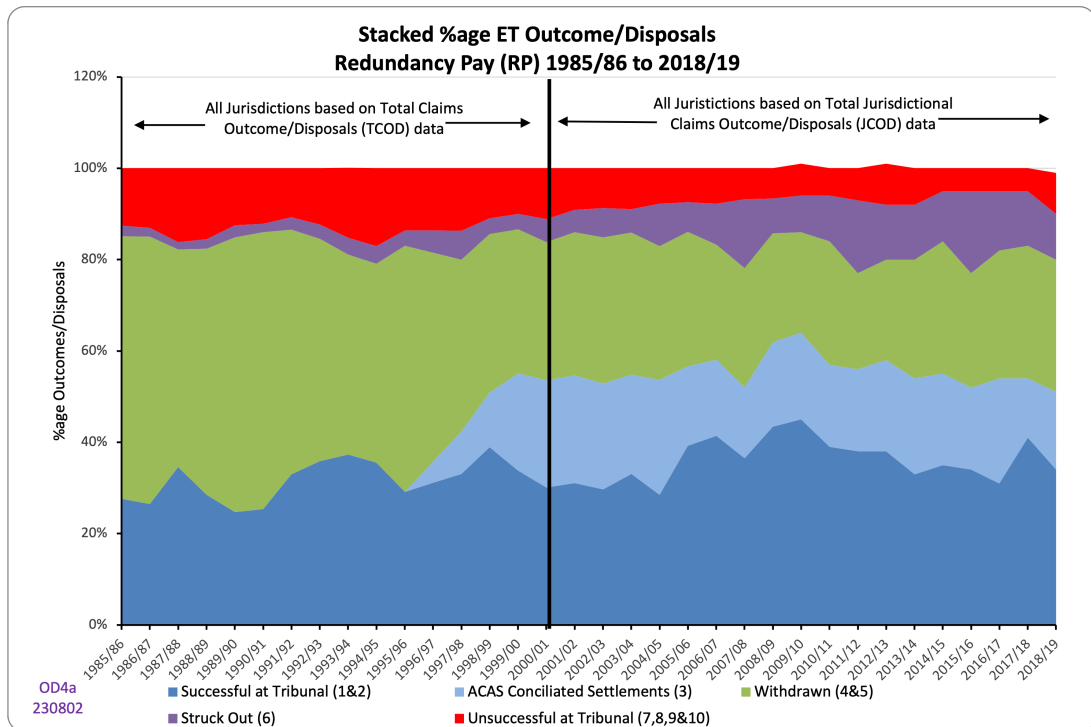


Figure 7.17



The outcome/disposal percentages of the Redundancy Pay jurisdictional complaint are unusual in that prior to 1995/96 there are no Acas conciliated settlements recorded. The reason for this is noted in the July 1996 *Labour Market Trends* report on ET statistics for 1993/94 and 1994/95 which confirms that:

‘Acas has a statutory duty to offer conciliation in most cases dealt with by Industrial [Employment] Tribunals (redundancy payments being the main exception)’ (*Labour Market Trends*, 1996, p.305).

Post 1995/96, however, it can be seen that Acas conciliated settlements take up some of the space occupied by the Withdrawn outcome/disposal type. The reason for this change is not noted in subsequent statistics reports. This requires further research which is beyond the scope of this thesis.

It is also interesting that as the ‘Unsuccessful at Tribunal’ outcome/disposal type declines the percentage of ‘Struck Out’ claims increases. It is also clear that this jurisdictional complaint has a consistently high percentage of ‘Successful at Tribunal’ outcome/disposals, never dropping below 25%. The ‘Likely’ Successful percentage of claims outcome/disposals since 1985/86 is

55.41% and this is shown in detail in Table 7.14, below and in summary in Table 7.18 at the end of this section.

Table 7.14

**Redundancy Pay
Consolidated Outcome/Disposal Type Percentages
1985/86 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	75,429	35.00%
Acas Conciliated Settlements	3	28,684	13.31%
Withdrawn	4&5	74,528	34.58%
Struck Out	6	16,216	7.52%
Unsuccessful at Tribunal	7, 8, 9 &10	20,888	9.69%
Actual Total		215,745	100.10%
MoJ Total		215,525 ^a	
'Likely' Successful ^b	3,4,5 & 6	119,428	55.41%
			√210709
<small>Data shown in Appendix 13, Table A13.5, Redundancy Pay (RP) Outcome/Disposal Breakdown 1985/86 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19) ^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 215,745 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 215,525. ^b based on Deakin et al.'s 2015 nomenclature</small>			

7.4.4.5 Sex Discrimination Outcome/Disposals

The fifth jurisdictional complaint outcome/disposal to be examined is the Sex Discrimination jurisdictional complaint. Figure 7.18 displays the total Sex Discrimination outcome/disposals by year from 1985/86 to 2018/19 and Figure 7.19 displays the stacked percentages of the five 'consolidated' outcome/disposal types for the same period.

Figure 7.18

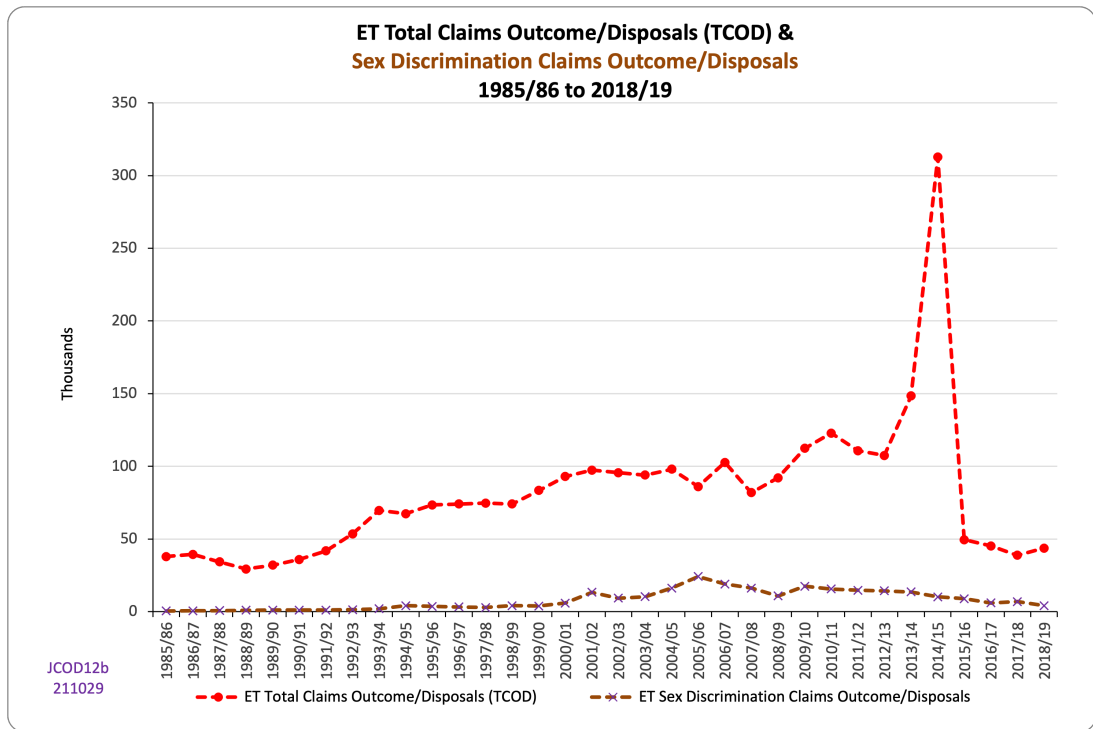
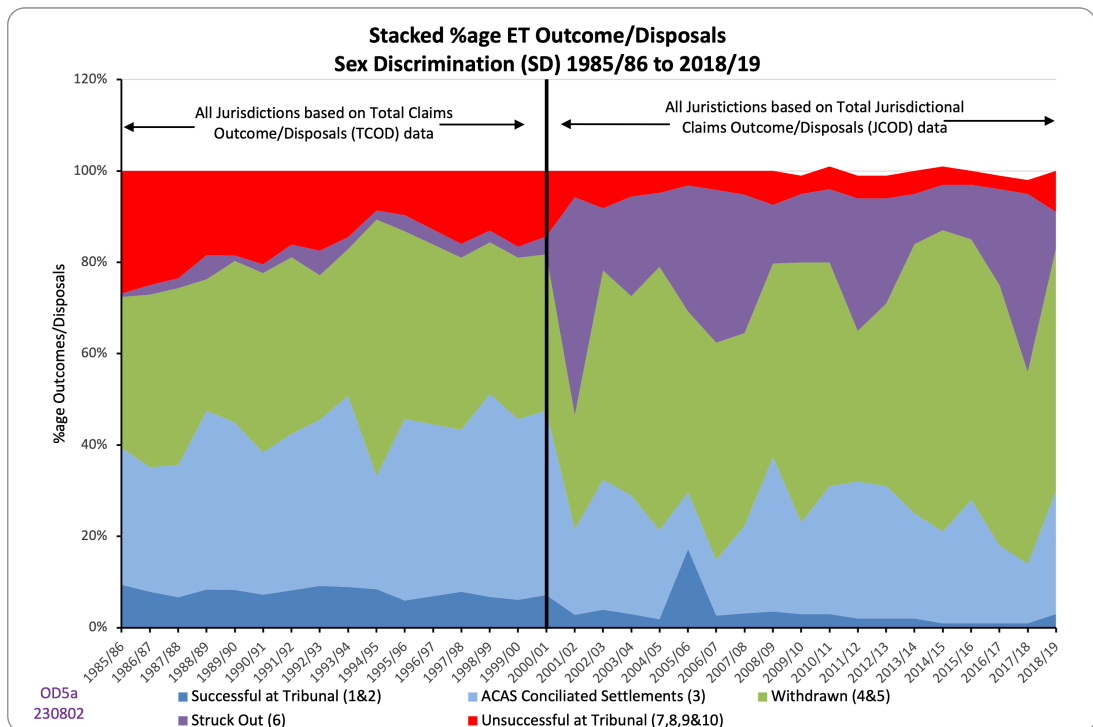


Figure 7.19



The Sex Discrimination jurisdictional complaint outcome/disposal percentages are similar to the Equal Pay jurisdictional complaint above. There are again two noticeable spikes. In 2001/02, 48% of Sex Discrimination Claim

outcome/disposals were 'Struck Out' and in 2005/06 17% of outcome/disposals were 'Successful at Tribunal'. What is perhaps more noticeable is that just like the Equal Pay jurisdictional complaint above, after 2005/06 'Success at Tribunal' and 'Unsuccessful at Tribunal' almost disappear as an outcome/disposal type and all outcome/disposals are in the 'Likely' Successful area of the graph. The 'Likely' Successful percentage of claims outcome/disposals since 1985/86 is 89.29% and this is shown in detail below, in Table 7.15, and in summary in Table 7.18.

Table 7.15

**Sex Discrimination
Consolidated Outcome/Disposal Type Percentages
1985/86 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	11,866	4.43%
Acas Conciliated Settlements	3	63,690	23.80%
Withdrawn	4&5	121,882	45.55%
Struck Out	6	53,352	19.94%
Unsuccessful at Tribunal	7, 8, 9 & 10	16,611	6.21%
Actual Total		267,401	99.93%
MoJ Total		267,602 ^a	%
'Likely' Successful ^b	3,4,5 & 6	238,924	89.29%
			√230223
Data shown in Appendix 13, Table A13.6, Sex Discrimination (SD) Outcome/Disposal Breakdown 1976 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19)			
^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 267,401 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 267,602.			
^b based on Deakin et al.'s 2015 nomenclature			

7.4.4.6 Unauthorised Deductions Outcome/Disposals

The sixth jurisdictional complaint outcome/disposal to be examined is the Unauthorised Deductions jurisdictional complaint. Figure 7.20 displays the total Unauthorised Deductions jurisdictional complaint outcome/disposals by year from 1987/88 to 2018/19 and Figure 7.21 displays the stacked percentages of the five 'consolidated' outcome/disposal types for the same period.

Figure 7.20

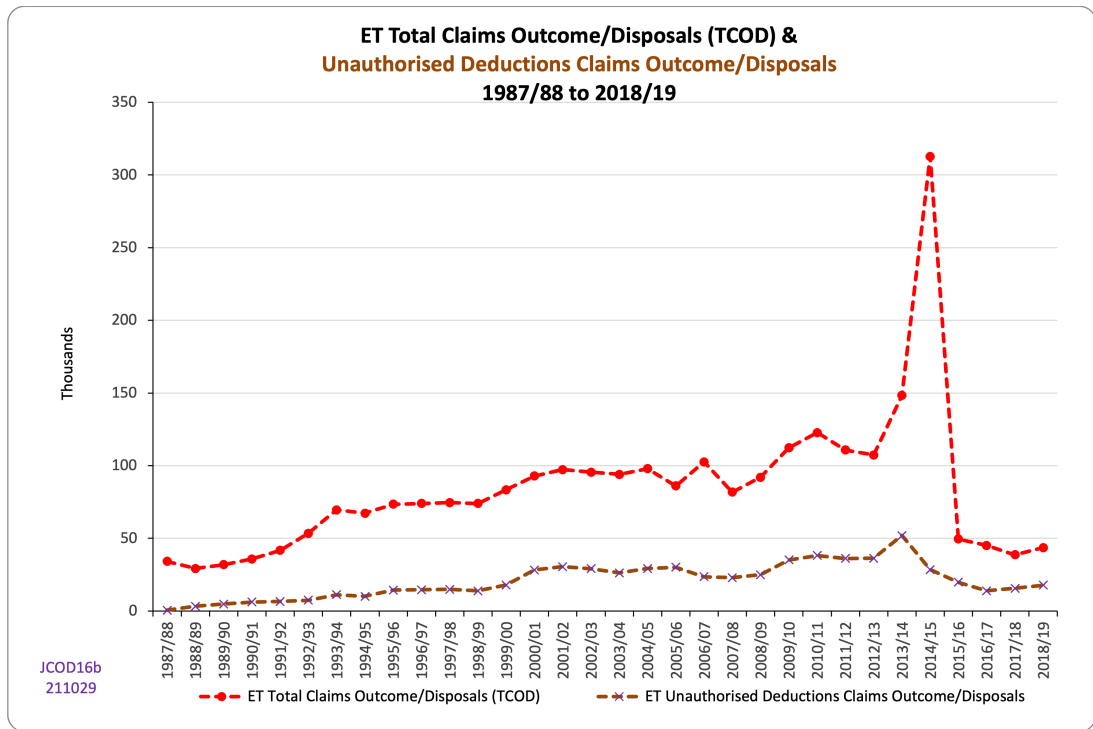
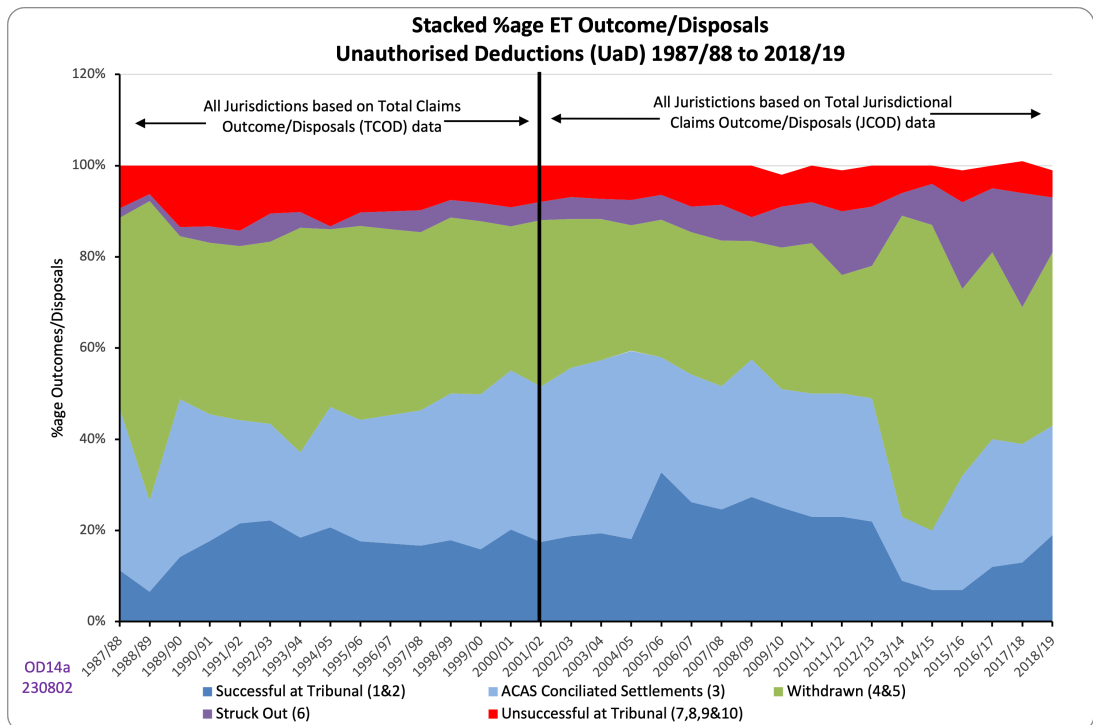


Figure 7.21



Interestingly this Jurisdictional Complaint's outcome/disposal percentages show two spikes. In 2005/06 the 'Successful at tribunal' consolidated outcome/disposal type has a spike at the same time as the Equal Pay and Sex

Discrimination jurisdictional complaint outcome/disposals. Is the 'spike' in this jurisdictional complaint related? In 2013/14 and 2014/15 there is a 'spike' in the 'Withdrawn' consolidated outcome/disposal type similar to those noted in these years in the Working Time Directive jurisdictional complaint outcome/disposals discussion above. The similarities noted between the timing of Equal Pay and Sex Discrimination spikes and the Unauthorised Deductions jurisdictional complaint spikes perhaps indicates that they are related, and similarly with the 2013/14 and 2014/15 Working Time Directive spike. As the Equal Pay and Sex Discrimination plus the Working Time Directive spikes are probably MAC driven, then the related Unauthorised Deductions jurisdictional complaint spikes could show that at least some of the Unauthorised Deductions jurisdictional complaint claims are also probably MAC driven.

The 'Likely' Successful percentage of claims outcome/disposals since 1987/88 is 72.71% and this is shown in detail in Table 7.16, below and in summary in Table 7.18 at the end of this section.

Table 7.16

**Unauthorised Deductions
Consolidated Outcome/Disposal Type Percentages
1987/88 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/Disposal No:	Outcome/Disposals	%age
Successful at Tribunal	1&2	126,749	19.06%
Acas Conciliated Settlements	3	183,254	27.56%
Withdrawn	4&5	249,766	37.56%
Struck Out	6	50,462	7.59%
Unsuccessful at Tribunal	7, 8, 9 &10	53,442	8.04%
Actual Total		663,673	99.81%
MoJ Total		664,960 ^a	
'Likely' Successful ^b	3,4,5 & 6	483,483	72.71%
			√210709
<small>Data shown in Appendix 13, Table A13.7, Unauthorised Deductions (UaD) (Formerly Wages Act) Outcome/Disposal Breakdown 1987/88 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19) ^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 663,673 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 664,960. ^b based on Deakin et al.'s 2015 nomenclature</small>			

7.4.4.7 Unfair Dismissal Outcome/Disposals

The last of the seven jurisdictional complaint outcome/disposals to be examined is the Unfair Dismissals jurisdictional complaint. Figure 7.22 displays the total Unfair Dismissal outcome/disposals by year from 1985/86 to 2018/19 and Figure 7.23 displays the stacked percentages of the five 'consolidated' outcome/disposal types for the same period.

Figure 7.22

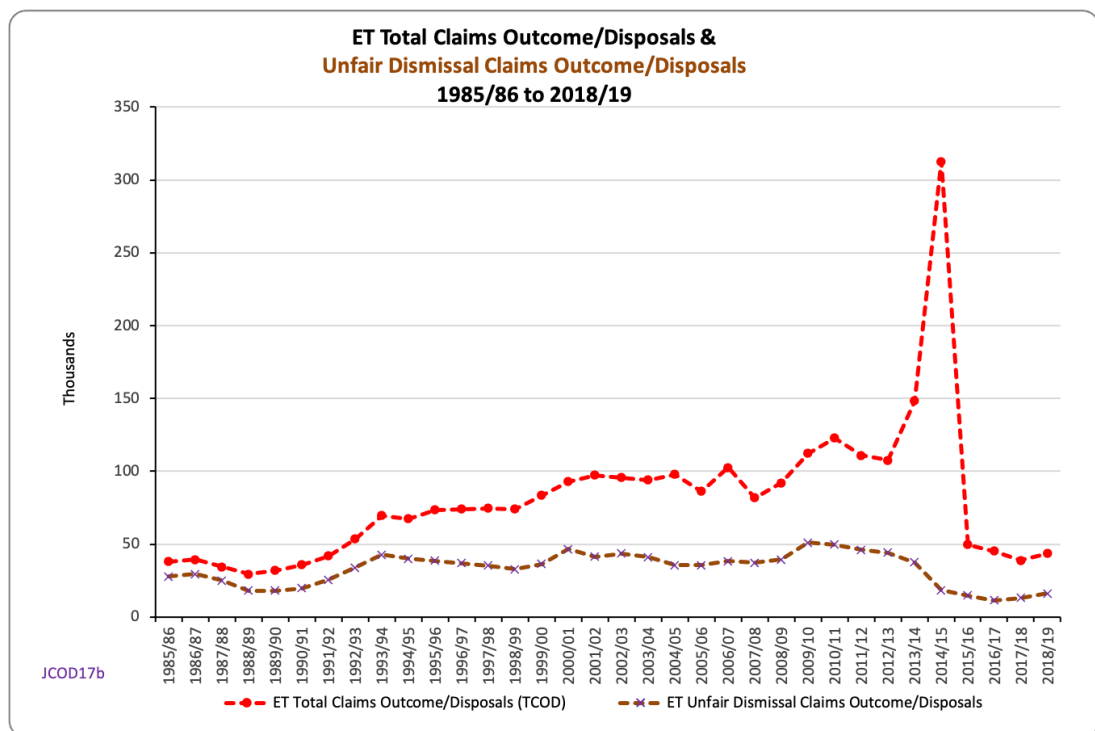
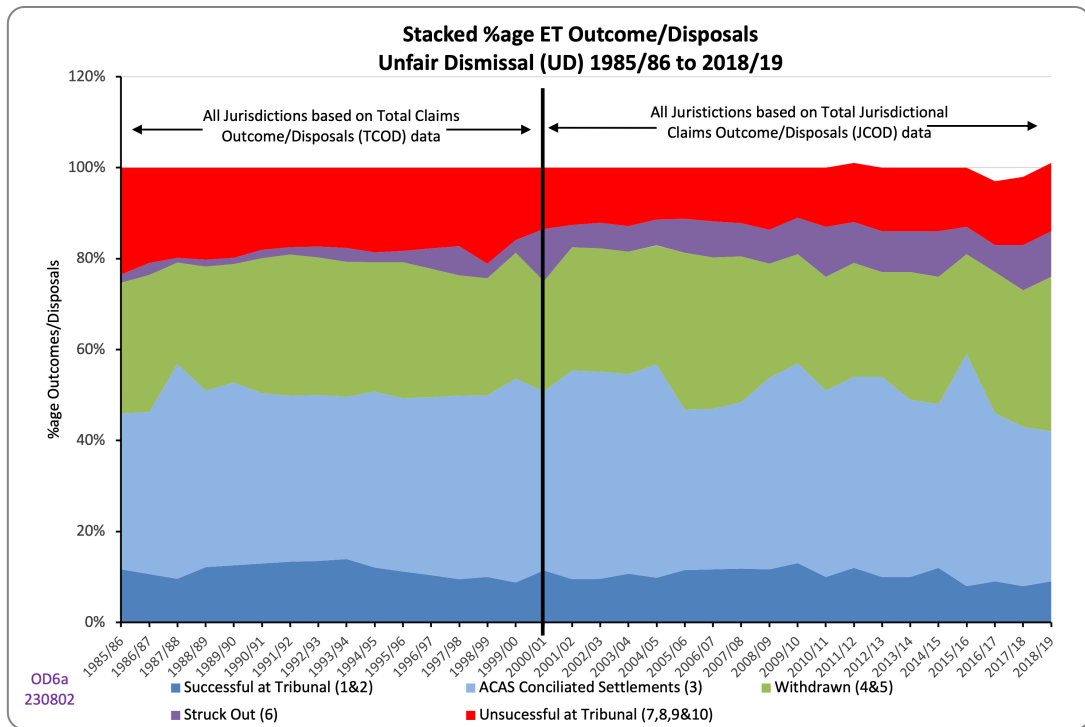


Figure 7.23



The changes in the Unfair Dismissal outcome/disposals are more gentle. There is a slight decline in the 'Unsuccessful at Tribunal' outcome/disposals type which is mirrored by the increase in 'Struck Out' outcome disposals. The story here is one of modest change. The 'Likely' Successful percentage of claims outcome/disposals since 1985/86 is 73.73% and this is shown in detail in Table 7.17, below and in summary in Table 7.18 at the end of this section.

Table 7.17

**Unfair Dismissal
Consolidated Outcome/Disposal Type Percentages
1985/86 to 2018/19**

Consolidated Outcome/Disposal Type	Includes Outcome/ Disposal No:	Outcome/ Disposals	%age
Successful at Tribunal	1&2	123,304	11.03%
Acas Conciliated Settlements	3	450,117	40.25%
Withdrawn	4&5	308,973	27.63%
Struck Out	6	65,436	5.85%
Unsuccessful at Tribunal	7, 8, 9 &10	170,427	15.24%
Actual Total		1,118,257	100.00%
MoJ Total		1,118,250 ^a	
'Likely' Successful ^b	3,4,5 & 6	824,526	73.73%
			√210709
<small>Data shown in Appendix 13, Table A13.8, Unfair Dismissal (UD) Outcome/Disposal Breakdown 1985/86 to 2018/19 (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19) ^a It is acknowledged that the sum of the 10 Outcome/Disposals listed above is 1,118,257 but due to variation in the MoJ source data, individual Outcome/Disposal types do not exactly match the MoJ Total Outcome/Disposal figure which is 1,118,250. ^b based on Deakin et al.'s 2015 nomenclature</small>			

7.4.4.8 Summary of Jurisdictional Complaint Outcome/Disposal analysis

So, having looked at the stacked percentages of the consolidated outcome/disposals by jurisdiction, this summary section will further highlight that the outcome/disposal profiles of SACs and MACs are different. To help highlight this, the consolidated 'Successful at Tribunal' and 'Likely' Successful outcome/disposal types for each jurisdiction are shown in Table 7.18, below:

Table 7.18

ET 'Successful' and 'Likely' Successful Outcome/Disposal Type Percentages

Row	Jurisdictional Complaint	Successful at Tribunal %age	'Likely' Successful ^a %age				Successful + 'Likely' Successful %age	Relationship SAC/ MAC
			Acas Conciliated Settlement	With drawn	Struck Out	Total		
		A	B	C	D	E1=B+C+D	F1=A+E1	
1	All Jurisdictions (1985/86 to 2018/19) (Table 7.6)	14.32%	28.54%	32.90%	14.52%	75.96%	90.28%	
2	All Jurisdictions less Working Time Directive (1985/86 to 2018/19) (Table 7.11)	14.83%	31.04%	34.54%	8.77%	74.35%	89.18%	
3	Equal Pay (1985/86 to 2018/19) (Table 7.13)	2.06%	18.15%	58.74%	19.47%	96.36%	98.42%	MAC
4	Working Time Directive (1999/00 to 2018/19) (Table 7.10)	11.17%	13.16%	22.79%	49.80%	85.75%	96.92%	MAC
5	Sex Discrimination (1985/86 to 2018/19) (Table 7.15)	4.43%	23.80%	45.55%	19.94%	89.29%	93.72%	MAC
			'Likely' Successful %age (failed)			E2=B+C (E1=B+C+D)	F2=A+E2 (F1=A+E1)	
6	Unauthorised Deductions (1987/88 to 2018/19) (Table 7.16)	19.06%	27.56%	37.56%	(7.59%)	E2=65.12% E1=(72.71%)	F2=84.18% (F1=91.77%)	Inconclusive
7	Redundancy Pay (1985/86 to 2018/19) (Table 7.14)	35.00%	13.31%	34.58%	(7.52%)	E2=47.89% E1=(55.41%)	F2=82.89 (F1=90.41%)	
8	Breach of Contract (1994/95 to 2018/19) (Table 7.12)	21.72%	33.86%	27.10%	(7.18%)	E2=60.96% E1=(68.14%)	F2=82.68% (F1=89.86%)	
9	Unfair Dismissal (1985/86 to 2018/19) (Table 7.17)	11.03%	40.25%	27.63%	(5.85%)	E2=67.88% E1=(73.73%)	F2=78.91% (F1=84.76%)	SAC
								✓230601
Data shown in Appendix 13, Table A13.1 to A13.9, Employment Tribunal Claims Outcome/Disposal Data Series (based on Total Claims Outcome/Disposals 1985/86 to 1999/00 and Jurisdictional Complaints Outcome/Disposals 2000/01 to 2018/19) ^a based on Deakin et al.'s 2015 nomenclature								

The foregoing discussion has shown evidence of how the use of the ET outcome/disposal type 'Struck Out' has changed over time to become an interchangeable outcome/disposal type to Withdrawn. Once this change is recognised then it is reasonable to argue that the shadow of an Employment Tribunal case plays a major role in resolving claims without the need to actually have a hearing. This is illustrated in Table 7.18, above, in the Equal Pay jurisdictional complaint (row 3) where 18.15% of claims are resolved as 'Acas Conciliated, 58.74% as Withdrawn', which together with the 19.47% of 'Struck Out' claims, makes the 96.36% of claims/disputes resolved in the 'Likely Successful' categories, although, it should be acknowledged that this 'Likely Successful' category (Deakin et al., 2015) is an upper bound. The new understanding of how the ET uses the outcome/disposal term/method 'Struck Out' widens the 'Likely Successful' category which supports and expands Deakin et al.'s (2015) contention, noted in the literature review, that a 'successful' ET claim is likely to be more than the outcome/disposal category 'Successful at Hearing'.

The same applies to the Sex Discrimination (row 5) and Working Time Directive (row 4) jurisdictional complaints which have a combined 'Likely Successful' outcome/disposal of 89.29% and 85.75% respectively, with 'Struck Out' making a large contribution in both jurisdictional complaints. It can also be seen in Table 7.18 that the use of 'Struck Out' is still notable even if the Working Time Directive jurisdictional complaint is excluded (row 2).

However, it should be noted that these three jurisdictional complaints, Equal Pay (row 3), Working Time Directive (row 4) and Sex Discrimination (row 5) have different 'Likely Successful' profiles to the remaining four jurisdictional complaints. As is shown in Table 7.18, Equal Pay (row 3), Working Time Directive (row 4) and Sex Discrimination (row 5) all display low levels of Acas Conciliated Settlement and either a high percentage level of Withdrawn or Struck Out compared to Unauthorised Deductions (row 6), Redundancy Pay (row 7), Breach of Contract (row 8) and Unfair Dismissal (row 9).

The difference in the make-up of the 'Likely Successful' outcome/disposals between the Working Time Directive, Equal Pay and Sex Discrimination

jurisdictional complaints and Unauthorised Deductions, Redundancy Pay, Breach of Contract and Unfair Dismissal potentially illustrates the difference between MACs and SACs. In the earlier comparison between the ET Outcome/Disposals and the SETA (SAC) Outcomes, it was noted that the 50% 'privately settled' element of Withdrawn may not be valid for the Equal Pay and Sex Discrimination jurisdictions given low 'Success at Tribunal' percentages of these two Jurisdictions, 2.16% and 4.28% respectively, compared to an All Jurisdiction 'Success at Tribunal' percentage of 11.66% as shown in Table 7.4, above. The high level of 'Withdrawn' shown in Table 7.18, above, for Equal Pay, 58.74% (row 3, column C) and Sex Discrimination, 45.55% (row 5, column C), compared to the other jurisdictions and the acknowledged presence of the no-win, no-fee lawyers in the Equal Pay (Deakin et al., 2015) and associated Sex Discrimination jurisdictional complaints, lend credence to the argument that the level of negotiated 'privately settled' claims in the Equal Pay and Sex Discrimination jurisdictional complaint is probably higher than the 50% of the Withdrawn Outcome/Disposals type identified in the SETA (SAC) Withdrawn Outcome, as shown in Table 7.9, above (rows 3 and 4, column E).

Given that the ET has been interchangeably using Withdrawn and Struck Off to administratively remove a claim from the list of live claims, the higher levels of 'Struck Out', shown in Table 7.18, above, in the Equal Pay and associated Sex Discrimination jurisdictional complaints, 19.47% (row 3, column D) and 19.94% (row 5, column D), respectively compared to Unauthorised Deductions, 7.59% (row 6, column D), Redundancy Pay, 7.52% (row 7, column D), Breach of Contract, 7.18% (row 8, column D) and Unfair Dismissal, 5.85% (row 9, column D), potentially illustrates that there are 'privately settled' claims in the 'Struck Off outcome/disposal type in the Equal Pay and Sex Discrimination jurisdictional complaints. The Employment Tribunal Service Annual Report for 2001/02, for example, refers to the part-time pension cases [claims] being struck out as they are settled (Employment Tribunal Service, 2002, p.4).

The same arguments apply to Working Time Directive jurisdictional complaint with regards to 'Struck Out' and Withdrawn. As was noted earlier, the ET 'Struck Out' 245,501 Working Time Directive jurisdictional complaints in

2014/15, related to an airline MAC following settlement (MoJ, 2015). This again lends credence to the argument that the level of negotiated 'privately settled' claims in the Working Time Directive jurisdictional complaint are probably higher than the 50% of the Withdrawn Outcome/Disposals type identified in the SETA (SAC) Withdrawn Outcome, as shown in Table 7.9, above (rows 3 and 4, column E).

The remaining Unauthorised Deductions, Redundancy Pay, Breach of Contract, and Unfair Dismissal jurisdictional complaints are, potentially, more like the identified SETA (SAC) Outcomes, shown in Table 7.9, above (rows 3 and 4, column E). If these jurisdictions are mostly associated with SACs then the common understanding of 'Struck Out' will mostly apply, the cases have been Struck Out because they have failed, and this is reflected in Table 7.18 by brackets around the 'Struck Out' percentage (rows 6, 7, 8, and 9, column D) and the 50% 'privately settled' element of 'Withdrawn', identified in the SETA (SAC) Withdrawn Outcome, as shown in Table 7.9, above (rows 3 and 4, column E), is more likely to be a potential limit. However, this still supports Deakin et al.'s (2015) observation that success at the ET is more than the outcome/disposal type 'Successful at Hearing', even for SACs.

The evidence presented in Table 7.18 points to a split between the jurisdictional complaints associated with MACs, the Working Time Directive, Equal Pay and potentially Sex Discrimination, and the jurisdictional complaints associated with SACs, Unauthorised Deductions, Redundancy Pay, Breach of Contract, and Unfair Dismissal. As far as MACs are concerned the combination of 'Likely Successful' outcomes/disposals, Acas Conciliated Settlements, Withdrawn and Struck Out, indicate a higher rate of 'successful' claim outcomes than previously acknowledged and much higher than simply 'Successful at Tribunal'. Even, acknowledging this as an upper bound and also with regard to SACs and the likelihood that 'Struck Out' is an indication of claim failure, the combination of the remaining 'Likely Successful' outcomes/disposals, Acas Conciliated Settlements and Withdrawn indicate a higher rate of 'successful' claim outcomes than previously acknowledged and much higher than simply 'Successful at Tribunal', particularly when taking into

account the 50% 'privately settled' element of the SETA (SAC) Outcome Withdrawn, as shown in Table 7.9, above (rows 3 and 4, column E).

Even taking in to account the difference between MACs and SACs with regard to the ET's use of 'Struck Out', the combined outcome/disposal percentages of 'Likely' Successful and 'Successful' in Table 7.18 shows evidence of informal resolution and undermines the argument that ET claims are a burden on business, but rather create conditions for dispute resolution to occur in a variety of ways.

This section has analysed the ET outcome/disposal data of the claims/disputes. It has been shown that the ET has, over time, used the ET outcome/disposal type 'Struck Out' interchangeably with 'Withdrawn, certainly as far as MACs are concerned. By adopting the Deakin et al.'s (2015) consolidated term 'Likely' Successful and including the ET outcome/disposal type 'Struck Out' for MACs along with Acas Conciliated Settlements and Withdrawn, it has become clear that success at the ET is more than the outcome/disposal type 'Successful at Hearing', although, it should be acknowledged that this 'Likely' Successful category (Deakin et al., 2015) is an upper bound and further research is required to establish the actual upper limit of the 'Likely' Successful category.

It should, perhaps, be noted that while the new evidence/understanding of how the ET uses the outcome/disposal type 'Struck Out' is clear in relation to the Working Time Directive administrative 'ghost claims' and Equal Pay claims, it is not as clear cut in the other jurisdictional complaints. It is still likely that claims in the Unauthorised Deductions, Redundancy Pay, Breach of Contract, and Unfair Dismissal jurisdictional complaints will be 'Struck Out' because they have failed. It is, however, this thesis' contention that despite this, the growth in 'Struck Out' as a 'Likely' Successful outcome/disposal type for MACs, is a valid conclusion provided allowance is made for the ET to use 'Struck Out' for SACs in its original understanding and therefore the thesis acknowledges this as an upper boundary, but evidence, nonetheless, of success going beyond those claims explicitly categorised as outcome/disposal types 1 and 2, 'Successful at Tribunal', in the official data. Further research is needed to fully

understand the extent to which these 'Likely' Successful claims are or are not successful.

This section has also shown that, for MACs, the outcome/disposal types Withdrawn and Struck Out have become largely interchangeable terms for the administrative act of removing completed claims from the ET's records. This finding, when combined with the evidence of the rise of large scale 'contended law' Change Type 3 MACs, highlights that the ETs are, indeed, actually being used as a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory 'beneficial constraints' rather than being a Burden on Business.

So, having shown that 'success' at tribunal is more than the outcome/disposal type 'Successful at Hearing' what can we learn about the way workplace conflict is resolved from this data? It is to this we now turn.

7.5 Has the government policy of prompt conflict resolution, preferably close to the source, been achieved?

In the introduction it was noted that from the time ETs began hearing Unfair Dismissal claims in February 1972, government policy has been concerned with the volume of claims that have been filed with ETs (Sanders, 2009, p.33). This concern has shown itself in government policy in two ways:

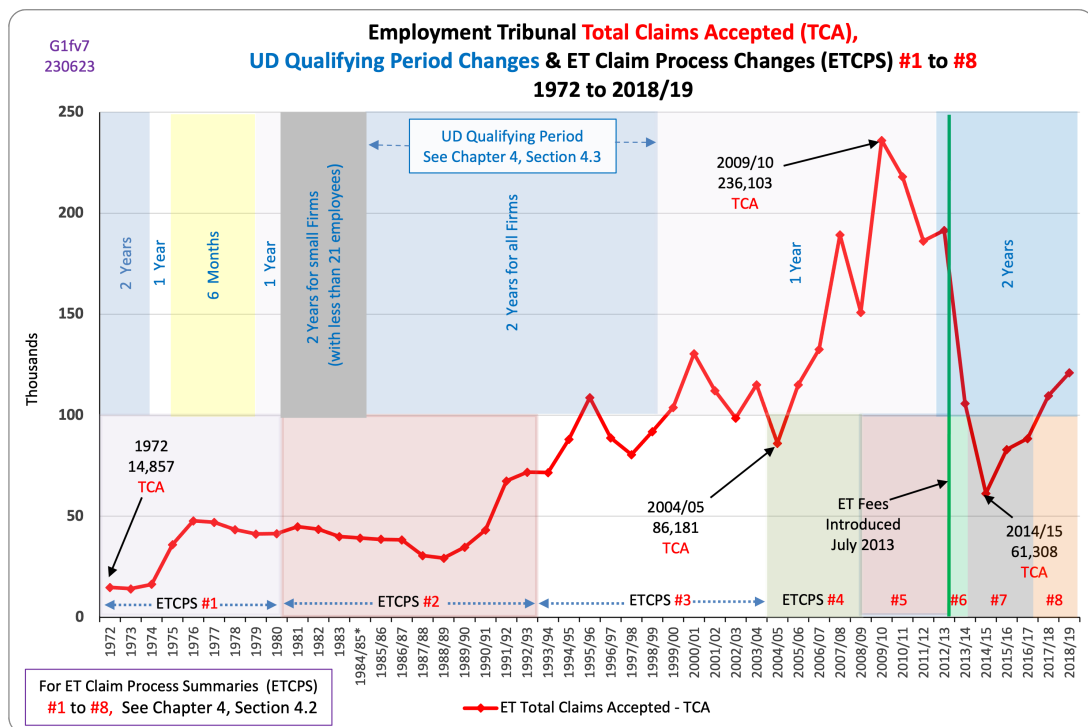
1. ET claims are a burden on business which government policy should minimise by making claims more difficult to file through such steps, as ET Fees and increasing the Unfair Dismissal qualifying period (Ewing and Hendy, 2012; Hepple, 2013; Welch, 2016).
2. Prompt conflict resolution preferably close to the source (DTI, 2001a; Gibbons, 2007).

Having considered the notion of burden on business, this section will examine the second aspect of government policy 'Prompt conflict resolution preferably close to the source' in the light of the earlier discussion regarding 'success' and 'likely' success at tribunal.

The second goal of government policy has been to prevent potential claims becoming an actual ET Claim and instead resolving the potential claim as close to the source or before it becomes a public employment dispute by focusing on Early Dispute Resolution and this was expressed in *Routes to Resolution: Improving Dispute Resolution in Britain: A Consultation* (DTI, 2001), *Better Dispute Resolution: A review of dispute resolution in Great Britain* (Gibbons, 2007) and in *Resolving workplace disputes: A Consultation* (BIS, 2011).

Over the 47 years from 1972 to 2018/19, there have been changes in how the ET processed a claim, as shown by the seven government and one court mandated procedural changes to the ET Claim Process itself, detailed in Chapter 4, Section 4.2 and changes in eligibility, such as the 8 government mandated changes in the Unfair Dismissal Qualifying Period detailed in Chapter 4, Section 4.3. Figure 7.24, below, shows the combined Unfair Dismissal Qualifying Period and ET Claim Process changes.

Figure 7.24



As Figure 7.24 shows, the ET Claims Process has steadily developed since 1972, and now consists of three distinct parts which can be classified as follows:

1. The Invisible Potential ET Claim. This is represented by Section A in ET Claim Process #8 as shown in Chapter 4, Figures 4.8a&b, above. All employment disputes that arise between the employer and employee are invisible to the outside world. The number of potential ET claims is unquantifiable. Potential claims are not expected to emerge from this section unless an attempt by the employee and employer has been made to resolve the employment dispute. At this point 'workplace conflict' can be described as 'non-legal'. This area of workplace conflict is outside the scope of this thesis.
2. The Visible Potential ET Claim. This is represented as section B in Chapter 4, Figures 4.8a&b, above. If an employment dispute cannot be resolved between the employer and employee, then the employee must notify Acas as required by Acas Early Conciliation. Acas will attempt to resolve the employment dispute through conciliation although, as previously noted, neither the employee nor employer has to engage. If the conciliation is successful, then the potential ET claim is resolved and the Government policy goal of preventing potential ET claims turning into actual ET claims has been met. Once Acas is notified and thus records the potential claim it has become visible. At this point 'workplace conflict' can be described as 'semi-legal'.
3. The Actual ET Claim. This is represented as section C in Chapter 4, Figures 4.8a&b, above. If the potential ET claim is still unresolved following Acas Early Conciliation, then the claim is filed with the ET and is recorded as an actual claim. At this point 'workplace conflict' can be described as 'legal'.

The aim of government policy has been to prevent as many potential claims as possible moving from Section A to Section B and thence into Section C⁸³ and this has been done via the combined government mandated procedural changes to Unfair Dismissal Qualifying Period and ET Claim Process, as noted above, which represent the formal government input into negotiation of the mechanism for managing the beneficial constraints within which the employment relationship operates. The following discussion is an assessment the success or failure of this policy in the light of the previous analysis of outcome/disposals.

The ETs have arrived at the post ET Fees ET Claim Process shown in Chapter 4, Figures 4.8a&b, above, as a result of trial and error. Trial being represented, for example, by the 2004 introduction and subsequent 2009 removal of the Statutory Dispute Resolution Procedure and error by the Supreme Court's decision ruling that ET Fees were unlawful. The 2017 ET Claims Process, shown in Chapter 4, Figures 4.8a&b, above, has been achieved almost in spite of government policy which has had different themes depending on which political party was in government, or in the case of the Coalition Government, the concurrent opposing themes of removing the burden on business, while at the same time promoting early resolution of employment disputes through the introduction of Acas Early Conciliation. It is also the case, that the last three reviews and consultations were trying to deal with the growth in ET claims without identifying what was really driving the growth, as noted above in relation to the burden on business discussion with regards to the Change Type 1 administrative 'ghost claim' issue and the rise of Change Type 3 'contended law' MACs. It should also be noted that none of the various consultations really distinguishes between SACs and MACs. This has the effect that policy changes are focused on bringing down the total volume of ET claims, without a full understanding of what was driving the claims increases. Even the 2012 Underhill Review, *Employment Tribunal Rules: Review by Mr Justice Underhill Impact Assessment* (BIS, 2012a), which had the aim of 'streamlining' the ET

⁸³ It is, perhaps, worth noting that Section B only exists from April 2009, as shown in ET Claim Process #5 in Chapter 4, Section 4.2, Figures 4.5a&b.

System (BIS, 2012a, p.2), while acknowledging that MACs account for two thirds of the claims filed each year, only makes a recommendation to formalise the informal system of 'lead [test] claim' that already exists for dealing with MACs (BIS, 2012a, p.7).

However, this is not the end of the story of how ETs have developed as part of a 'system' of Dispute Resolution. When a claim is filed with the ET it has to be processed to an outcome/disposal. Over time this 'processing' has become more like a dispute resolution process, potentially yielding a 'likely' successful outcome/disposal without going through an ET hearing.

The crucial finding here is that, for MACs, the outcome/disposal types Withdrawn and Struck Out have become largely interchangeable terms for the administrative act of removing completed claims from the ET's records. This finding facilitates the second finding that a 'likely' successful ET outcome/disposal is the most probable outcome/disposal of an actual ET claim, even for SACs, as demonstrated by the SETA series finding that 50% of 'Withdrawn' claims are privately settled as shown in Table 7.9, above (rows 3 and 4, column E).

As was discussed above there are currently 10 outcome/disposals which by combining the similar outcome types were reduced to three by combining the similar outcome types into, 'Successful at Tribunal', 'Likely' Successful (Deakin et al., 2015) and 'Unsuccessful at Tribunal'.

As was noted above in Table 7.18, it is possible to see that for All Jurisdictions, in the period 1985/86 to 2018/19 the 'Likely' Successful outcome/disposal types represented 75.96% (row 1, column E) of the claims processed by the ET. It is acknowledged that this as an upper bound as some claimants in the 'Likely' Successful outcome/disposal types will achieve a settlement that matches or betters what could have been achieved at a Hearing while others will achieve lower settlements or possibly nothing at all, From the foregoing, it can be seen, that even when a potential ET claim reaches the point of being filed with the ET, the processing of the ET claim is still part of the process of 'dispute resolution'. The realisation that, for 'contended law' Change Type 3 MACs, the outcome/disposal types Withdrawn and Struck Out are

interchangeable terms for the ET removing claims from the list of outstanding claims following a settlement, along with Acas conciliated settlements, supports Deakin et al.'s (2015) notion that a larger percentage of claim outcome/disposals are 'likely' successful than was previously thought, indicating that the ETs are actually being used as a forum for negotiating what Streeck (1997) regards as the societal benefit of regulatory 'beneficial constraints'.

The steady growth in 'Likely' Successful in All Jurisdictions, in the period 1985/86 to 2018/19 illustrates that even if a claim is filed with the ET, the 'processing' of the claim by the ET does not mean the end of dispute resolution by negotiation, either involving Acas or between the parties themselves. The ET is still part of the 'dispute resolution' system until the hearing, by which time nearly 76% of actual claims will have been 'resolved', leaving 24% to be determined by a Hearing. Of the remaining 24%, less than 10% have been unsuccessful in the period since 2001/02. In some jurisdictions, such as Equal Pay, 100% of ET claims in recent years are 'resolved' before a hearing. Given the acknowledged presence of the no-win, no-fee lawyers in the Equal Pay jurisdictional complaint, as noted in the literature review (Deakin et al., 2015), it would seem to illustrate that the definition of 'success' is much wider than simply 'Successful at Tribunal' otherwise the no-win, no-fee lawyers could not have survived/thrived in the late 1990s and 2000s.

By 2018/19 the ETs are at last fulfilling their potential. ETs are part of a 'Dispute Resolution System' that resolves a large percentage of disputes without the need for an ET Hearing to determine the outcome and is acting as a forum for negotiation of what Streeck (1997) regards as societal benefit of regulatory 'beneficial constraints'. This has been achieved largely by accident but suggests an ad hoc/informal system has established itself.

The previous discussion has highlighted that neither the burden on business nor the need for greater use of early conflict resolution approaches to government policy have been evidence based. Both policy strands were based on a misunderstanding regarding the drivers of the increases in ET claims in

the 2000s. Despite this the ET 'System' that has developed is a by-product of government policy.

Government policy in the 2000s was very much focused on the early resolution of conflict. The Gibbons Review (2007) recommended Acas Pre-claim conciliation, which when introduced in April 2009, was deemed successful in preventing potential claims becoming actual ET claims (BIS, 2012, p.21). The Coalition Government followed this success up, by making Acas Pre-claim conciliation mandatory and renaming it Acas Early Conciliation in May 2014.

The burden on business policy manifested itself in the introduction of ET Fees, a policy which directly impacted SACs, but largely ignored MACs which through the Change Type 1 administrative 'ghost claims' issue and the Change Type 3 'contended law' MACs, were the real drivers of the claims increases. Following the introduction of the ET Fees, in July 2013, the number of claims fell sharply. However, it has been shown in Chapter 6 that the fall in claims was not all down to the introduction of ET Fees. The ET Fees did have a direct impact on the fall in SAC claims, but the fall in MAC claims was partly due to the unwinding of the Change Type 1 Administrative issue, 'ghost claims' and the Change Type 2 'Rule 9' consequences of the new Rules of Procedure introduced concurrently with ET Fees.

So partly by misdirected government policy and judicial review the current ET System emerged. The misdirected government policy has been caused by either a mistaken belief that ET claims were/are a burden on business or potentially a lack of interest in the real drivers of the growth in ET claims given that the MoJ acknowledged in April 2021 (Booth, 2021) that they were aware of the administrative 'ghost claim' issue. In short, government policy has not been evidence based. However, the ET 'System' that has emerged does resemble what was envisioned by the 2007 Gibbons Review.

It has been a long journey of nearly 50 years, but the current 'system' is performing an essential service in resolving employment disputes between an individual and their employer with several checks during the full ET claims process where a settlement can be reached without the formal step of an ET Hearing. ETs are also a forum for the resolution of complex legal issues

regarding employment law, important in a case law based system, affecting thousands of claimants directly and for the whole working population indirectly, through the clarification of how employment law should be applied in practice and the negotiation of what Streeck (1997) regards as societal benefit of regulatory 'beneficial constraints'. It is unfortunate that the journey involved various periods, such as the ET Fee introduction, which meant that thousands of people, who had genuine SACs, were unnecessarily subject to a significant barrier to justice in the form of ET Fees introduced as a solution to the perceived problem of increasing numbers of vexatious claims, which were largely explained by Change Type 1 administrative 'ghost claims' in the data and Change Type 3 'contended law' MACs.

7.6 Conclusion

This chapter has carefully built on the previous discussions in Chapters 5 and 6 plus the literature review to the answer to the question: What are the implications of the observed changes in Tribunal claims? This was done by:

Firstly, by examining whether the volume of employment disputes has increased and what effect, if any, this has had on the burden on business.

Secondly, by looking at what the tribunal data tells us about the resolution of employment disputes.

These questions were examined because, almost since the ETs began hearing Unfair Dismissal claims in February 1972, governments of all political stripe have been concerned with the volume of claims that have been filed with the ET (Sanders, 2009, p.33). This concern has manifested itself in government policy in two ways:

1. ET claims are a burden on business which government policy should minimise by making claims more difficult to file through such steps as ET Fees and increasing the Unfair Dismissal qualifying period (Ewing and Hendy, 2012; Hepple, 2013; Welch, 2016).
2. Employment disputes can and should be resolved in the workplace with prompt conflict resolution preferably close to the source. ET claims

therefore should only be submitted as a last resort (DTI, 2001a; Gibbons, 2007).

Each of the two policy strands was discussed and it was shown that there is a mismatch between evidence and policy, because policy was implemented and delivered without a full understanding of the data.

With regard to the longstanding 'burden on business' policy strand, it was highlighted that by 2010 it had become an accepted ideological 'truth' in Conservative Government circles that 'vexatious' claims were responsible for the increase in ET claims in the 2000s (*BBC*, 2011; Raab, 2011; BIS 2012). This chapter has carefully refuted the increasing 'burden on business' argument by demonstrating that the ET TCA data are, at best, nothing more than a record of the number of claims accepted by the ET. In particular, the evidence shows that it was the Working Time Directive MACs and the associated administrative 'ghost claims', combined with the 'particularities' of the 'contended law' Equal Pay MACs that were really driving the 'dramatic' increase in ET claims in the period ending in 2012/13, rather than 'vexatious' claims. Significant proportions of the perceived increase in workplace conflict brought to Employment Tribunals is actually a reflection of process and practice, both of the ET itself, in the form of Change Type 1: Internal ET Administrative Procedural Changes, and the consequences of the ET being a forum for negotiating, what Streeck (1997) regards as the societal benefit of regulatory 'beneficial constraints' through the mechanism of 'contended law' MACs, rather than necessarily a reflection of a growth in workplace conflict. The increasing 'burden on business' argument is only sustainable if the evidence contained within the ET claims data are ignored.

As noted, above, the literature made reference to successful MACs, which appeared to be missing from the ET outcome/disposal data and an example was given (Heery, 1998) showing this conundrum. The answer to this conundrum feeds through into how effective the 'prompt conflict resolution preferably close to the source' policy strand is.

This chapter has demonstrated, that in relation to MACs, the use of the ET outcome/disposal type 'Struck Out' has changed over time to become an

alternate/interchangeable outcome/disposal type to Withdrawn, a change that has consequences for interpreting the 'success' of a claim in the ET.

By consolidating the 10 ET outcome/disposal term/methods into 'Successful at Tribunal' or 'Likely' Successful and 'Unsuccessful at Tribunal' with 'Struck Out' included in 'Likely' Successful, following Deakin et al.'s (2015) nomenclature, a new understanding of a 'successful claim' is possible. This was illustrated by the finding that between 1985/86 and 2018/19 'Successful at Tribunal' and 'Likely' Successful accounted for 90.28% of all claim outcome/disposals. Even with regard to SACs and the likelihood that 'Struck Out' is an indication of claim failure, the combination of the remaining 'Likely Successful' outcomes/disposals, Acas Conciliated Settlements and Withdrawn indicate a higher rate of 'successful' claim outcomes than previously acknowledged and much higher than simply 'Successful at Tribunal', particularly when taking into account the 50% 'privately settled' element of the SETA (SAC) Outcome Withdrawn.

This 'new interpretation' of 'success' then feeds through into how effective the 'prompt conflict resolution preferably close to the source' policy strand is. It was shown that despite policy being implemented and delivered without a full understanding of the data, the ET have evolved over time into, firstly, a 'system' of Dispute Resolution operating much as the Gibbons Review envisioned in 2007 and, secondly, a forum for the negotiation of what Streeck (1997) regards as societal benefit of regulatory 'beneficial constraints'.

So in answering the question 'What are the implications for the observed changes in tribunal claims?' it has been shown, firstly, that the supposed increasing burden on business argument based on a vanguard of vexatious claimants is undermined by a host of Change Type 1 administrative 'ghost claims' and Change Type 3 'contended law' MACs and, secondly, that the ET Data supports a new interpretation of how effective the ETs have become both as a dispute resolution 'system' and a forum for the negotiation of what Streeck (1997) regards as societal benefit of regulatory 'beneficial constraints'.

This chapter has also presented evidence that contributes to the debate highlighted in the literature review regarding the possible relationship between

the Economic Cycle and the level of ET Claims (Brown et al., 1997; Burgess et al., 2001, Schulze-Marmeling, 2013, Latreille and Saundry, 2015), by showing that, although in the period 1999/00 to 2013/14 there appears to be a relationship, it is not driven by economic factors but rather by changes in process linked to the Working Time Directive and Equal Pay jurisdictions.

And finally, looking at the overarching Research Question: 'What do Employment Tribunals claims tell us about workplace conflict?', this chapter and indeed, the thesis, suggests that ET claims can and do tell us so much about workplace conflict and in the example of the host of administrative 'ghost claims', 'non workplace conflict', and almost all of what it does tell us is not what you think or expect. The thesis indicates an important and broadly effective role for ETs in defining the parameters within which employment relationships operate and supporting and encouraging the early resolution of conflict in a way that tries to support such relations.

The next and final Chapter, Discussion and Conclusion, presents a summary of the key points from each chapter, then goes on to look at the academic contributions of this thesis and briefly looks at potential areas for future research.

Chapter 8

Discussion and Conclusion

8.1 Introduction

This thesis has examined the question *What do Employment Tribunal claims tell us about workplace conflict?* The summary answer is that rather than telling us about conflict per se they tell us more about the employment relationship more broadly and the ways in which the rules that this relationship operates within are determined.

The aim of this thesis is to gain an understanding of what Employment Tribunal claims tell us about the nature of conflict in the workplace. It has done this by looking at how the growth of ET multi-applicant claims (MACs) have, over time, changed the makeup of the annual ET total claims accepted (TCA) count and hence changed what conclusions can be made about the 'workplace conflict' that the annual TCA statistic represents. The TCA has previously been used both as a proxy for workplace conflict (Dix et al., 2009, p.177; Saundry, et al., 2014, p.2; Corby, 2015, p.163) and an illustration of the 'burden on business' (BBC, 2011; Raab, 2011, p.7; BIS, 2012; Kwarteng et al., 2012; Ross, 2014) and this thesis has shown that the TCA is not a suitable proxy for workplace conflict or an illustration of the 'burden on business'.

What the thesis shows instead, through developing an understanding of MACs, is that the 'conflict' presented before ETs has shifted, since their inception as the adjudicator of Unfair Dismissal claims, from conflict focused on contended facts to cover a much wider range of conflict with a role focusing on norm-generating contended law claims. This growing role as mediator in moving toward the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004) shapes the context within which the parties to the employment relationship operate. In many ways, they confirm the earlier debates (Dickins, 2000; Deakin and Morris, 2005, in Heery, 2011) around the impact of juridification, but with an important nuance.

8.2 Summary answers to the research questions

The chapter now proceeds to explicitly answer the research questions, which led to these contributions. In so doing, the chapter lays the foundation for the

author to articulate the intellectual contributions of the thesis in the section that follows. The research questions are:

- Firstly, what does Employment Tribunal claims data tell us about employment disputes in Great Britain?
- Secondly, what factors lie behind the observed changes in Employment Tribunal claims?
- Thirdly, what are the implications of the observed changes in Employment Tribunal claims?

8.2.1 What does Employment Tribunal claims data tell us about employment disputes in Great Britain?

In Chapter 5, it was noted that following the introduction of the Unfair Dismissal jurisdiction to the ETs in 1972, the TCA grew quickly to 47,804 in 1976 and stayed around that level until 1990/91. Thereafter the TCA grew steadily reaching 108,827 in 1990/91 where it hovered until 2004/05 when the TCA sharply increased, reaching 236,103 in 2009/10.

Chapter 5 showed that the TCA is the sum of two types of claims, single applicant claims (SACs) and multi-applicant claims (MACs) and the statistical breakdown between them only became available in 1999/00 (Lord and Redfern, 2014, p.15) when the 33,000 MACs represented 32% of the 103,935 TCA. By 2009/10 this ratio was reversed, with 164,823 MACs representing 70% of the 236,103 TCA. This change coincides with the sharp growth in the TCA from 2004/05, so whatever is driving the growth in MACs is driving the growth in the TCA, as the volume of SACs during this period was relatively constant until the introduction of ET Fees in 2013/14. MACs are broadly missing from discussions of workplace conflict in employment relations literature, which means that the picture of workplace conflict is an incomplete one. This thesis makes an important contribution to that gap. The main argument of this thesis is that the current understanding of workplace conflict, using ETs as a proxy (Dix et al., 2009; Corby, 2015), is perhaps not sufficiently nuanced to reflect all the intricacies of workplace conflict.

The change from a TCA consisting of mostly SACs to one consisting of mostly MACs also potentially highlights a shift in the nature of workplace conflict brought to the ET for adjudication. This thesis illustrated this, by using the concept of total claims accepted 'contained percentage'. to tease out the relationships between jurisdictional complaints and SACs and MACs. This revealed that although the number of Unfair Dismissal jurisdictional complaints, was steady over the period 1998/99 to 2012/13, the Unfair Dismissal TCA contained percentage that this represented, declined from 52% in 1990/00 to 25.6% in 2012/13, while the Working Time Directive, moved the other way, from a 1.44% TCA contained percentage to 52.01% in the same time period (see Chapter 5, Figures 5.14 and 5.15, p.210 and p.211, respectively).

The TCA contained percentage highlighted the different drivers of the SACs and MACs and subsequent comparison analysis summarised in Chapter 5, Table 5.4 (p.220), showed that the Unfair Dismissal jurisdictional complaint is associated with SACs. In contrast it was shown that the Working Time Directive and Equal Pay jurisdictional complaints are strongly associated with MACs and, as has been noted, it is MACs that are driving the increase in the TCA.

In the literature review, it was noted that there were several commonly cited causes for this growth in ET claims, such as the decline in trade union membership (Shackleton, 2002, p.45; Renton, 2012, p.138), the increase in the number of statutory rights (Dickens, 2000, p.69) and the interaction of the economic cycle with the rise and fall in the TCA (Sanders, 2009; Schulze-Marmeling, 2013) along with the possible consequences of the 8 million increase in the number of people in employment between 1972 and 2018/19. This thesis demonstrated that neither the decline in trade union membership nor the growth in the number of people in employment were directly responsible, as both were long-term trends, whereas the sharp growth in the TCA was in the short period between 2006/07 and 2009/10. With regard to the interaction of the economic cycle and the rise and fall of the TCA, the analysis was as yet inconclusive. The examination of the last cited cause, the increase in the number of statutory rights (Dickens, 2000, p.69), or juridification (Deakin

and Morris, 2005, in Heery, 2011) highlighted that juridification may have been a potential cause of the sharp increase from 2004/05. It was observed that the April 2004 introduction of the Civil Aviation Working Time Regulations almost exactly mirrored the start of the sharp growth in the TCA.

8.2.1.1 What is known about workplace conflict that manifests as Multi-Applicant Claims (MACs)?

The literature review noted that while there is a wide literature on ETs covering all aspects of their history and operation to date (e.g., Dickens, 1985; Davies and Freedland, 1993; Corby and Latreille, 2012; Mangan, 2013; Kirk, 2018), MACs in particular are not widely covered within employment relations literature and are often only tangentially referred to. This thesis has filled some of this gap in knowledge by, for the first time, analysing the MACs contained in the ET Decision Index. This analysis of the 1,382 MACs in the ET Decision Index between February 2017 and February 2019 revealed that MACs are not uniform in nature.

The full analysis within the thesis shows, for example, that 78% of the 1,379 MACs analysed were in the range of 2-10 claims. Only 2% of the MACs in the sample contained more than 100 claims. This is an important finding, because for the first time it makes clear that the majority of MACs are small in size. This finding supports the comment made in the literature review regarding the January 2011 Department for Business Innovation and Skills (BIS) consultation *Resolving workplace disputes: A Consultation* (BIS, 2011) where it was noted 'that smaller multiple claims might be suitable for early conciliation' (BIS, 2011, p.24). It should be noted however, that the policy document only says these small MACs 'might' be suitable and further research on ADR approaches to group conflict would be warranted.

In the literature review it was also noted that there was an underlying assumption in the literature that claims and claimants 'matched' and an example of this 'assumption' was given (Saundry and Dix, 2014, p.477). However, the ET Decision analysis showed that there are more claims than individuals, with 14,991 claims compared to 14,400 individuals associated with them. At this point the difference may not appear particularly important, but it

becomes hugely significant in relation to the rise in Working Time Directive administrative 'ghost claims' which also clearly show that the number of claims reaching the TCA and the number of people filing them are NOT the same.

In addition to clarifying the MAC claim size range, it was also found that there were three distinct MAC types, Type 1a were 'standard' MACs, Type 1b where the MAC related to an employer entering Administration/Liquidation and Type 2 where the claims presented as a SAC but were actually a MAC (SACaMAC).

The analysis enabled the finding that of the 764 Private Sector MACs in the spreadsheet sample, 43% were against respondents/employers who were in the process of administration/liquidation. These claims are 'administrative' in that the ET is used as a means of establishing a liability on behalf of the claimant. They are, perhaps, part of the administrative and evolutionary lifecycle of business and reflect the important procedural role played by modern day ETs in ensuring employment rights are adhered to, even beyond the end of the employment contract. This identification of a large number of 'administrative claims' suggests that the use of ET statistics as a reflection of workplace conflict must be undertaken with caution.

The analysis of the ET Decision Index dataset shows that the MACs in the dataset are not uniform in nature which is an important finding/conclusion because it indicates that workplace conflict is far more nuanced than has previously been recognised. This analysis of the ET Decisions has not really been possible before because the information has been hard to come by. Equally, the dataset has given us new insight on the nature of workplace conflict and MACs in particular, for example, MACs are more prevalent in the Public Sector than the Private Sector and also amongst smaller employers. This understanding of MACs has previously been bypassed in research for a concentration on SACs and thus this work begins to give us a better picture. Although largely descriptive this section adds a lot of value to academic understanding and addresses gaps previously noted in the literature review (Dix et al., 2009, p.188).

8.2.1.2 Claims and Outcome/Disposal Statistics – What can a percentage delayed comparison tell us about the changing jurisdictional composition of claims?

A 'contended fact' claim such as Unfair Dismissal should be processed quicker because the ET makes a decision on the 'contended facts' before them even though the facts may be differently remembered by the claimant and respondent [employer] (Dennison and Corby, 2005). The facts of an Unfair Dismissal claim may be complex, but the ET can and will make the decision on the 'contended facts' before it. The decision can then only be referred to the Employment Appeal Tribunal on a 'question of law' (Courts and Tribunal Judiciary, 2022, p.3). Findings of fact cannot generally be challenged. If, however, the claim is a 'contended law' claim such as Equal Pay with complicated 'questions of law' at stake which require adjudication from the ultimate judicial body, then the ET decision can and will be referred to the Employment Appeal Tribunal and on to the Court of Appeal, Supreme Court and finally European Court of Justice. If SACs are made up of jurisdictional complaints which revolve around contended facts, then they should be processed to outcome/disposal quicker than more complicated 'contended law' MACs. An attempt was made within the thesis to test if this 'relationship' has merit using the seven jurisdictional complaints with the largest percentage of TCA 'containing' that jurisdictional complaint, as shown in Chapter 5, Figure 5.13 (p.209). The claims accepted and outcome/disposals were calculated and the difference compared for each of the seven jurisdictional complaints, Breach of Contract, Equal Pay, Sex Discrimination, Redundancy Pay, Unfair Dismissal, Unauthorised Deductions and Working Time Directive, for the period 1998/99 to 2018/19.

By this comparison, Unfair Dismissal was classified as a SAC and therefore a contended fact based jurisdictional complaint, Unauthorised Deductions, Working Time Directive and Equal Pay are classified as contended law based jurisdictional complaints and are strongly associated with MACs. Breach of Contract, Sex Discrimination and Redundancy Pay were classified as inconclusive and not clearly associated with either SACs or MACs (see Chapter 5, Table 5.23, p.268).

This 'relationship' demonstrates that there is a potential relationship between the jurisdictional complaint 'percentage delayed' statistic and the jurisdictional complaints relationship with either SAC or MAC. The higher the 'percentage delayed' statistic then the more a jurisdictional complaint is likely to be a MAC jurisdictional complaint with a higher degree of contended law based conflict.

This analysis again illustrates the importance of understanding the missing intermediate level, that is, beyond the TCA, to the SACs, MACs and their interaction with the jurisdictional complaints. Workplace conflict as represented by the TCA can only be understood when all the missing aspects of the TCA are identified and this thesis is filling in what appears to be a significant gap in our knowledge of ETs, which will enhance our academic understanding and potentially improve policy implementation.

8.2.2 What factors lie behind the observed changes in Employment Tribunal claims

The previous section examined what the ET data tells us about employment disputes in Great Britain. It looked at, how the volume of ET claims has changed over time, how the type of claim has changed and, in particular, examined the rise of MACs compared to SACs and in conjunction with this, how the jurisdiction of claims has changed.

Chapter 6 built on the previous discussion by examining what factors lie behind the changes in ET claims. This was done by, firstly, examining the phenomenon of 'administrative' claims, where the ETs own administrative processes rather than workplace conflict generates ET claims. Secondly, by looking at the effects of changes in legal regulation such as the change in the Unfair Dismissal qualifying period, the introduction of ET Fees and Acas Early Conciliation on the ET statistics. Thirdly, by examining the change from 'contended facts' to 'contended law', which was outlined in the literature review and reflects a change in what the ET is being asked to adjudicate on, and, lastly, by looking at underlying ET total claims accepted and total claims output/disposal statistics to reveal that there are issues with the reliability and construct validity of the data.

The analysis began with the observation that the total claims accepted (TCA) statistic is not a 'fixed' statistic, which makes longitudinal comparison difficult (Hand D., 2018). What counts, when it counts, and who can make a claim has changed over the period from 1972 and this, in itself, has the potential to change our perceptions of the volume of workplace conflict. The literature notes these changes to 'eligibility' (Dickens, 1978, p.4; Saundry and Dix, 2014, p.483) and 'point of acceptance' (Saundry and Dix, 2014, p.485; Kirk, 2017, p.979) but only engages with the consequences of the changes at either the TCA level or the individual claim level. How the changes impact the 'intermediate' level of SACs, MACs and their interaction with the TCA is largely ignored. Following on from this, four types of 'changes' were identified:

Change Type 1: Internal ET Administrative Procedural Changes (ET Administrative), which were identified in Chapter 4. The annual TCA has been increased or reduced as an unintended *administrative* consequence of the ET system itself, for example, by changing the *administrative* definition of what counts as a claim (Hand D., 2018). Change Type 1 needs to be considered when making longitudinal comparisons across the data series, as it is questionable whether some of these changes are in fact reflections of new workplace conflict, although this is acknowledged to be a problem as it is often not clear in the data that a Change Type 1 is in effect.

Change Type 2: Government Mandated Procedural Changes, which were identified in Chapter 4, Section 4.2. The annual TCA has been affected by government mandated *design/policy* procedural changes to the ET claim process, usually with the goal of reducing and preventing potential ET claims becoming actual ET claims. These include changes to the Unfair Dismissal Qualifying Period and the introduction of ET Fees. Change Type 2 needs to be considered when making longitudinal comparisons across the data series, as what gets counted as an actual ET claim is not a static phenomenon, as noted in the literature review (Hand D., 2018).

Change Type 3: Change from 'Contended Facts' to 'Contended Law', which was outlined in the literature review and reflects a change in what the ET is being asked to adjudicate on from 'contended facts' to 'contended law'. The increase in large-scale MACs associated with the Working Time Directive and Equal Pay jurisdictional complaints represents an increase in employment disputes about the law, whereas the Unfair Dismissal jurisdictional complaint represents employment disputes about 'contended facts'. Change Type 3 needs to be considered when making longitudinal comparisons across the data series because 'contended law' MACs have different drivers to 'contended facts' Unfair Dismissal claims. Change Type 3 also includes the court mandated procedural changes identified in Chapter 4, Section 4.2.

Change Type 4: The annual TCA or total claim outcome/disposal statistics are found to have *reliability and construct validity* issues compromising longitudinal comparison across the data series, as noted in the literature review (Hand D., 2018).

The next section discusses how these four Change Types each impact on the ET TCA statistics and reveal how the TCA is not a very accurate measure of ET claims filed and consequently should only be used as a proxy for workplace conflict with extreme caution.

8.2.2.1 Change Type 1: Internal ET Administrative Procedural Changes (ET Administrative)

The research noted that whilst numbers had gone up, the underlying data suggested that part of the growth in workplace conflict is actually a reflection of changes in administrative processes over any genuine growth in workplace conflict. It was noted in Chapter 6, Table 6.1 (p.279), that in 2010/11, 52.32% of the TCA contained a Working Time Directive jurisdictional complaint claim. Following a detailed analysis of this phenomenon, it was shown that the Working Time Directive jurisdiction was responsible for a large number of purely administrative claims generated by the interaction of Working Time Directive jurisdictional complaint claim filing 'time limits' and the filing of

several large-scale MACs. It was shown how in several large Working Time Directive MACs, such as *British Airways PLC v Ms S. Williams & Others*, the resolution of which required years, the ET's administrative interpretation of the Working Time Directive filing 'time limit' required claimants to continually file new additional administrative 'ghost claims' every three months to 'protect' themselves from 'ongoing' losses. As a result of this, it was shown how, over 10 years, each 'originating' Working Time Directive claim could potentially generate 39 more administrative 'ghost claims' which were not related to workplace conflict in any way. This thesis has identified a 'host of ghosts'.

The effect of removing the Working Time Directive jurisdictional complaint from the TCA reduces the peak of the TCA from 236,103 in 2009/10 to 140,905, which is only 8% (140,905/130,408) higher than the previous peak in 2000/01 of 130,408. The generation of Working Time Directive administrative claims ended with Presidential Direction 117, issued in December 2014, which removed the requirement to file new administrative 'ghost claims' every three months to protect 'ongoing' losses. This illustrates the 'inflation' in workplace conflict that administrative 'ghost claims' are probably responsible for and highlights the 'administrative data' caveat raised by Hand D., (2018) regarding operational definitional changes making longitudinal comparison difficult.

It should be acknowledged that there are two parts to this procedural change in terms of how it develops our understanding. Firstly, there is the internal ET administrative aspect, beyond government mandate, which has generated the 'ghost claims', which is part of the procedural mechanism for managing the beneficial constraints (Streeck, 1997) within which the employment relationship operates. Secondly, there is the contended law aspect. The Working Time Directive MAC claims initially filed by the trade unions, following the introduction of the *Civil Aviation (Working Time) Regulations 2004* and underlying the generation of the 'ghost claims', represents the 'contended law' negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright 2004).

Of a similar nature are administrative claims related to Redundancy Pay. In the case of an employer going into administration and thence being unable to pay statutory redundancy pay, the former employees of the company have to file claims with the ET to establish their entitlement. If successful at the ET, then the Secretary of State (currently Business, Energy & Industrial Strategy) will pay the employee out of the National Insurance Fund (Wallington, 2015, pp.643-645). These claims are 'administrative' in that the ET is used as a means of establishing a liability on behalf of the claimant.

The average number of Redundancy Pay jurisdictional complaint claims in the years 2007/08 to 2012/13 was 13,431 compared to 3,067 for the years 2014/15 to 2016/17, following the introduction of ET Fees. These Redundancy Pay administrative claims were also noted in Chapter 5, in the ET Decision Index analysis, where, out of 764 identified Companies in the spreadsheet sample of MACs, 330 were in the process of bankruptcy. This represents 43% of the identified Companies in the sample (see Chapter 5, Table 5.19, p.249).

These are Redundancy Pay jurisdictional complaint claims that people are entitled to bring and are not a 'burden on business' but rather a 'burden on the employee'.

This section has highlighted that the growth in ET claims noted from 2004/5 onwards cannot be classified as a growth in workplace conflict but is largely the result of the previously unrecognised 'administrative' claim type arising from the ET's own 'processes' generating claims and although this is not workplace conflict as defined in the literature review, these 'administrative' claims are still constraints that the employment relationship operates within. The literature review highlighted that there was a gap in the literature around 'administrative' claims and raised the possibility that there may be more to administrative claims than the literature acknowledged (see. p.45). This thesis has answered that question.

8.2.2.2 Change Type 2: Government Mandated Procedural Changes

Change Type 2: the annual TCA has been affected by government mandated *design/policy* changes to the ET Claim process, usually with the goal of reducing/preventing potential ET claims becoming actual ET claims. Change Type 2 needs to be taken into account when making longitudinal comparisons across the data series, as what gets counted as an actual ET claim is not a static phenomenon (Hand D., 2018), as shown by the eight claim processes detailed in Chapter 4, Section 4.2, although many authors treat it as such (Saundry and Dix, 2014; Corby, 2015).

After the three changes introduced by the Coalition Government in 2013 and 2014, claims fell by 70% across the TCA, SACs and MACs. Various reasons for this sudden and dramatic fall were examined but then dismissed as, although they did seem to explain the fall in SACs, they did not adequately explain the fall in MACs. In Chapter 6, it was shown that at the same time as the 70% fall in MACs following the three government mandated changes, there were two previously unnoticed changes that seem to better explain the fall in MACs. Firstly, the fall coincided with the ending of the Working Time Directive administrative 'ghost claim' issue by the Presidential Direction 117, noted above, and secondly, MACs were particularly affected by the 'Rule 9' issue following the introduction of new Rules of Procedure to deal with the introduction of ET Fees.

Under 'Rule 9' the claims in a MAC had to be 'based on the same set of facts'. It now meant that if a MAC contained a claim which the ET deemed as *not* 'based on the same set of facts' and therefore the MAC was 'polluted', not only was the polluted claim dismissed, but all the claims in the MAC would be too. Even when ET Fees were declared unlawful by the Supreme Court in July 2017, the issue of 'Rule 9' carried on as it had taken on a legal life of its own.

The fall in MACs following the introduction of ET Fees etc., is therefore better explained by the unwinding of the Working Time Directive administrative 'ghost claims' issue and the introduction of 'Rule 9'. The role of administrative changes in the changes in perceived volume of workplace conflict has not

previously been fully discussed. However, as has been noted several times, the TCA is made up of both SACs and MACs, which are different and this is a good example of how. This thesis has shown evidence that the Coalition Government's 2013 and 2014 design/policy changes, increasing the Unfair Dismissal qualifying period from 1 to 2 years, the introduction of both ET Fees and Acas Early Conciliation, were all introduced to solve a problem that was perhaps misunderstood, leading to a profound barrier to justice in the form of ET Fees for the vulnerable employees who needed the ET the most – the individuals who made single applicant claims.

8.2.2.3 Change Type 3: Change from 'Contended Facts' to 'Contended Law'

Change Type 3 highlighted how the claims being brought to the ET for adjudication have changed over time from being largely about 'contended facts' (Dennison and Corby, 2005) to being largely about 'contended law'. It has been shown that the increase in large-scale MACs associated with the Working Time Directive and Equal Pay jurisdictional complaints represents an increase in employment disputes about the law, whereas the Unfair Dismissal jurisdictional complaint represents employment disputes about 'contended facts'. Change Type 3 needs to be considered when making longitudinal comparisons across the data series because norm-generating 'contended law' MACs have different drivers to 'contended facts' Unfair Dismissal claims and, perhaps, are isomorphism exemplified with ETs increasingly undertaking work intended for the wider court system (Corby and Latreille, 2012) and represent the negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004).

Beyond isomorphism, the rise of Change Type 3 'contended law' MACs as pursued by Balpa, the airline pilots union in *British Airways PLC v Ms S Williams & Others*, is an illustration of collective workplace conflict beyond strike action which Acas recently noted was 'not easy to measure' (Acas, 2023), meaning that the literature on collective workplace conflict beyond strike action was limited, with no systemic understanding of collective workplace conflict that manifests elsewhere. In analysing MACs, this thesis is

providing material for a taxonomy of contemporary collective workplace conflict.

8.2.2.4 Change Type 4: Reliability and Construct Validity Issues

Following a careful audit of the available claim and outcome/disposal statistics, this thesis has shown that, as Hand D., (2018) noted regarding 'administrative data', the ET statistics are 'neither complete, nor error free' (Hand, 2018, p.562) and, indeed, contain fundamental flaws. An unexplained gap between the number of claims filed and the number of outcome/disposals was revealed along with a hitherto unacknowledged method of claim disposal, as well as ongoing data integrity issues.

In March 2017 we were told by the Ministry of Justice that the outstanding case [claim] load was 272,032. When this was compared to the 733,539 claims outstanding at the same date, which was calculated using all the available ET statistics, there is a 461,507 difference between these numbers. One potential explanation for this was examined. It was noted that between October and December 2014, following a review of all ET cases [claims], around 10% of existing cases [claims] were closed and removed from the outstanding case [claim] load (Ministry of Justice, 2015a, p.18). It is not clear what this means or how often this 'review' takes place, as it is not mentioned elsewhere. It is certainly outside the 10 published outcome/disposal types outlined in all Ministry of Justice statistics reporting publications (see, for example, MoJ, 2019, Tab ET_3). It was observed that if this was not the explanation for the 'missing' 461,507 claims, then there is a serious unexplained issue, because the missing number represents an overstatement of the TCA by 12.28% every year since 1972. Any analysis of claims to the ET system is undermined by a potential overstatement of annual claims.

Beyond the 461,507 'missing' claims, there are ongoing data integrity issues with the ET statistics. Perhaps the most obvious example of reliability and construct validity issues is the complete loss of any outcome/disposal statistics for the year 1996/97. This is reported in *Hansard* as being 'Due to changes in the Employment Tribunals Service computerised records in 1996' (*Hansard*, 2003). If this was an unusual occurrence then perhaps that would be

understandable as all computer systems occasionally have problems, but unfortunately the 1996/97 data loss was shown to be emblematic, as data integrity issues run through the history of the ET statistics. This has been noted in the literature (Hand J., 2010, p.591; Lord, 2014, p.109) but this thesis has made clear the persistence and scale of the issues.

This is a problem in practice, beyond just academic understanding, because as was noted in Chapter 6, the main users of the ET statistics are Ministers and officials in central government responsible for developing policy with regards to tribunals' (MoJ, 2017a). However, given the highlighted reliability and construct validity issues, policy makers were acting on incorrect/incomplete data.

Because of the Change Type 1, 2, 3 and 4 issues, highlighted above, the ET TCA statistics should not be regarded as hard credible data. They are at best a not very accurate measure of ET claims filed and should be used as a proxy for workplace conflict with extreme caution. These findings support the caveats raised by Hand D., (2018) regarding 'administrative data'.

8.2.3 What are the implications of the observed changes in Employment Tribunal claims?

The previous Research Question examined what factors lie behind the changes in ET claims and identified four Change Types. The data included in the previous section, and within this thesis, has identified that significant proportions of the perceived increase in workplace conflict brought to Employment Tribunals is actually a reflection in process and practice, and also a reflection of issues with data rather than necessarily a reflection of a growth in workplace conflict.

This Research Question built on the previous discussion by considering the answer to the question: What are the implications of the observed changes in Tribunal claims? This was be done by, firstly, examining whether the volume of employment disputes has increased and what effect, if any, this has had on the burden on business, secondly, by looking at what the tribunal data tells us about the resolution of employment disputes and, lastly, re-examining what

the ET data now tells us about any potential relationship between the economic cycle and ET claims, following the unresolved discussion in Chapter 5, Section 5.2.2.

8.2.3.1 Evidence of Burden on Business

The burden on business perception started almost as soon as the ETs began hearing Unfair Dismissal jurisdiction claims in 1972. By 1978 Dickens was already noting comments about ET claims being too easy to file (Dickens, 1978, p.4). Kirk (2018) explains this perception as an employer's natural reaction to an ET Claim. It is a challenge to managerial authority so the term 'weak and vexatious' is actually code for disputed (Kirk, 2018, p.980).

By the time of the Coalition Government in 2010, the perception of an increasing burden on business has become an ideological 'truth'; weak and vexatious claims are the cause of the rise in ET claims (*BBC*, 2011; Raab, 2011; BIS, 2012; Kwarteng et al., 2012; Ross, 2014). This view is generally held despite the Gibbons Review (2007) concluding that: 'weak and vexatious cases [claims] make up only a small minority of tribunal claims' (Gibbons, 2007, p.51).

The problem with the burden on business narrative is that it does not adequately explain either, why ET claims increased sharply in the period between 2004/05 and 2009/10, to 236,103, or the sharp fall in claims after the 2013/14 introduction of ET Fees. Vexatious claims were perhaps the 'obvious' explanation for the rise and their 'successful removal' following the introduction of ET Fees and accepted as such. This 'acceptance' was based on a misinterpretation of the nature of claims submitted to the ETs (TCAs).

The idea of vexatious individuals bringing claims has been contested within the thesis. As has been noted several times, the TCA is made up of both SACs and MACs and it was MACs driving the growth in the TCA. In Chapter 7, it was shown that the increase in MACs was down to two factors, firstly, the number of administrative 'ghost claims' generated by the Working Time Directive jurisdictional complaints, defined as Change Type 1, and, secondly, the particularities of the Equal Pay claims as discussed in the literature review

(see, for example, Deakin et al., 2015, Heery, 1998; Heery and Conley, 2007; McLaughlin, 2014) involving Change Type 3, the change from ‘contended facts’ to ‘contended law’, rather than individuals bringing vexatious claims against employers. It was shown that if these two jurisdictional complaints, Working Time Directive and Equal Pay, were removed from the TCA, the peak of the TCA, far from being 236,103 in 2009/10, was reduced to 103,520, 21% below the previous peak of 130,408 in 2000/01. This illustrates that the underlying volume of ET claims beyond the particularities of the Working Time Directive and Equal Pay jurisdictional complaints is much lower than previously acknowledged. From this it is hard to conclude that there is an increasing burden on business driven by vexatious claims.

8.2.3.2 Resolution of Employment Disputes

This thesis has highlighted that the ET outcome/disposal data also tells us a surprising amount about the resolution of employment disputes. Following a detailed analysis of the 10 different possible ET outcome/disposals from 1985/86 to 2018/19, it was found that the term ‘Struck Out’ had over time become largely interchangeable with Withdrawn, a good example of a definitional change made over time, which makes longitudinal comparison difficult (Hand D., 2018). The 10 outcome/disposal types were then consolidated down to three, ‘Successful at Tribunal’, ‘Unsuccessful at Tribunal’ and following Deakin et al.’s 2015 nomenclature, ‘Likely’ Successful. Once the outcome/disposal statistics were reinterpreted using these three consolidated outcome/disposal types it was found that for All Jurisdictions, ‘Likely’ Successful and ‘Successful at Tribunal’ accounted for 90.28% of all outcome/disposals between 1985/86 and 2018/19. This conclusion was reinforced by the observation that in the Equal Pay jurisdictional complaint from 2005/06 ‘Success at Tribunal’ and ‘Unsuccessful at Tribunal’ almost disappear as an outcome/disposal type and all outcome/disposals are in the ‘Likely’ Successful categories, although, it should be acknowledged that this ‘Likely’ Successful category (Deakin et al., 2015) is an upper bound and further research is required to establish the actual upper limit of the ‘Likely’ Successful category.

This clear analysis showing that 90.28% of All Jurisdictions outcome/disposals are 'Successful at Tribunal' or 'Likely' Successful, further undermines the 'burden on business' claim, but also the high percentage of 'Likely' Successful suggests that ETs play a role in nudging the resolution of employment disputes without a hearing, which when combined with 'Successful at Tribunal' illustrates that success at the ET is much better than recognised (Deakin et al., 2015). Thus, it could be argued that the ETs play an important role in encouraging informal resolution prior to hearings.

As a result of government policy to reduce claims, both for reasons of burden, but also for the purpose of early resolution, the ETs have developed as part of a 'system' of Dispute Resolution. When a claim is filed with the ET it has to be processed to an outcome/disposal. Over time this 'processing' itself has become more like a standalone dispute resolution process, creating an impending shadow, which potentially yields a 'Likely' Successful outcome/disposal without going through an ET hearing. These 'Likely' Successful outcomes reflect ET claims that probably needed the pressure of ETs to help with their resolution but did not need a full hearing, although, again, it should be acknowledged that this 'Likely' Successful category (Deakin et al., 2015) is an upper bound.

It has been a long journey of nearly 50 years, but the current 'System' is performing an essential service in resolving employment disputes between an individual and their employer with several checks during the full ET claims process where a settlement can be reached without the formal step of an ET Hearing. ETs are also a forum for the resolution of complex legal issues regarding employment law, affecting thousands of claimants directly and for the whole working population indirectly through the clarification of how employment law should be applied in practice, illustrating how the ET has developed into the forum for the negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004).

It is unfortunate that the journey involved various periods, such as the ET Fee introduction, which meant that 1,000s of people who had genuine single applicant claims were unnecessarily subject to a significant barrier to justice

in the form of the ET Fees introduced as a solution to the perceived problem of increasing numbers of vexatious claims, which were in fact largely explained by multi-applicant 'administrative ghost claims' in the data and the particularities of the large scale 'contended law' Equal Pay MACs.

It was noted in the literature review (Heery, 1998) that the ET outcome/disposal process was largely ignored in favour of the ET claims applications as represented by the TCA. It was further observed that even where outcome/disposals were discussed there was a tendency to focus on 'Success at Hearing' as the criteria by which outcome/disposals were assessed (Fredman, 2011). This thesis has addressed this gap in the literature by using Deakin et al.'s (2015) nomenclature to extend our understanding of the outcome/disposal process which when combined with the finding that 'Struck Out' has become largely interchangeable with 'Withdrawn' led to the inclusion of 'Likely Successful' as well as 'Successful at Tribunal' in the criteria for assessing the success of ET outcome/disposals and thus filled a gap our knowledge and changed our understanding of the ET Process.

This outcome/disposal analysis is also an example of how this thesis is developing our understanding by using Hand D.'s (2018) guiding caveats regarding 'administrative data' to thoroughly examine the ET claims data which is used widely in academic and policy debate.

8.2.3.3 The Economic Cycle and Employment Tribunal Claims

The evidence presented in this thesis contributes to the debate highlighted in the literature review regarding the possible relationship between the Economic Cycle and the level of ET claims (Brown et al., 1997; Burgess et al., 2001, Schulze-Marmeling, 2013, Latreille and Saundry, 2015), by showing that, although in the period 1999/00 to 2013/14 there appears to be a relationship, it is not driven by economic factors but rather by the Change Type 1 Administrative 'Ghost Claims' and the Change Type 3 from Contended Facts to Contended Law as represented by the large scale Equal Pay MACs and the Working Time Directive MACs underlying the Change Type 1 Administrative 'Ghost Claims'.

8.3 Contributions

This section summarises the multi-faceted nature of the contributions made within this research. The author respectfully puts forward the four main contributions listed below:

Firstly, the thesis provides a greater understanding of the nuances behind the levels of employment disputes in the workplace, where we use ET claims as a proxy for workplace conflict, by going beyond the annual ET total claims accepted statistics (TCA) and examining how the TCA is made up at the intermediate level, the Single Applicant Claims (SACs) and Multi-Applicant Claims (MACs), to reveal previously 'hidden' changes and begin to draw out a more complete picture of the nature of employment disputes that pass through ETs.

Secondly, a rejection of the idea that an increase in ET claims directly represents an increase in workplace conflict. This thesis shows that neither genuine employment disputes nor vexatious claims are major drivers of the observed increases in the ET TCA statistics, but rather a combination of the ETs own administrative processes generating administrative 'ghost claims' and a change in what the ET is being asked to adjudicate from 'contended facts' to 'contended law', which reflects how, over time, the ET has become a forum, not just for resolving workplace conflict, but also for designing the rules of the employment relationship through negotiating the level of beneficial constraints (Streeck, 1997; Wright, 2004).

Thirdly, it shows that ETs may play an important role in creating pressure for informal resolution. This contribution extends Deakin et al.'s (2015) nomenclature to reinterpret what 'success' means at an ET and is based on the key finding that the ET has, over time, redefined the meaning of 'Struck Out' as an outcome/disposal type which leads to a reassessment of what successful in terms of the ET might actually mean.

Finally, using Hand D.'s (2018) guiding caveats regarding 'administrative data' the thesis shows that data around ETs are problematic and this problematic nature impacts our ability to fully understand conflict in the workplace.

Each of these four main contributions will be dealt with in more detail in turn.

8.3.1 A greater understanding of the nuances behind the levels of conflict in the workplace, where we use Employment Tribunals as a proxy for workplace conflict.

This section deals with the thesis contributions relating to the ‘missing’ intermediate level, the SACs and particularly MACs, how they are different and how their relationship has changed over time and how this has changed the TCA. Understanding this ‘missing’ intermediate level is important because it fills in a significant gap in our knowledge of ETs.

8.3.1.1 We simply know more about Multi-Applicant Claims (MACs)

It was noted in the literature review that while there is a wide literature on ETs covering all aspects of their history and operation to date (Dickens, 1978; Hepple et al., 2000; Ewing and Hendy, 2012; Adams and Prassl, 2017), MACs in particular were not widely covered and are often only tangentially referred to. The literature review discussed the Equal Pay jurisdictional complaint in detail as a proxy for what was known about MACs (Mclaughlin, 2014; Deakin et al., 2015; Guillaume, 2015), which meant that although the equal pay literature was informative about MACs, MACs were only brought into the discussion as an adjunct to the main story of equal pay. Therefore, the first part of this contribution is simply that we now know much more about MACs. Although largely of descriptive nature, MACs have been described in this thesis in a way that has not been done before, which will enable a better understanding of MACs and their interaction with the TCA, SACs and jurisdictional complaints. In turn, this greater knowledge of MACs, gives us a deeper understanding of conflict in the workplace more broadly.

8.3.1.2 Multi-Applicant Claims (MACs) are not ‘uniform’ but multifaceted

The second part of this contribution is the finding that MACs are not ‘uniform’ but multifaceted and are often quite different from SACs, which have featured so prominently in previous ET analysis. Writing in 2009, Dix et al., observed that potentially MACs are not employment disputes that revolve around broken

relationships. This has been directly observed in Chapter 6 with the Working Time Directive jurisdictional complaint and in the literature review with the Equal Pay jurisdictional complaint (see, for example, Deakin et al., 2015, Heery, 1998; Heery and Conley, 2007; McLaughlin, 2014). In both the Working Time Directive and Equal Pay jurisdictional complaints, large-scale MACs have involved claims against employers by current employees, with the cases run by either trade unions or no-win, no-fee lawyers. Beyond this point it has also been shown that MACs are more than just large blocks of claims, but also include smaller 2-10 person blocks, as highlighted in the Chapter 5 ET Decision Index analysis, where the MACs are about broken relationships as shown by the ET claim. This understanding that MACs are not homogeneous is important as a bedrock going forward as to how we analyse and review workplace conflict data.

8.3.1.3 There is more to Employment Tribunal Statistics than so far understood

The third part of this contribution is the finding that there is more to ET statistics than government, press and other researchers have so far revealed. The literature review (Saundry and Dix, 2014; Corby, 2015) observed in detail that the relationship between TCA/SACs/MACs and jurisdictional complaints is/was not well understood in either the academic literature or by government policy makers which would mean that government policy is based on partial analysis of the data and this thesis in part goes some way to rectifying this. The thesis has also produced clear evidence that has undermined the increasing burden on business argument. The rise in claims was not the result of 'vexatious' claims. This identification of gaps in understanding sets an agenda for future research in the area.

8.3.2 The increase Multi-Applicant Claims (MACs) has shifted the Employment Tribunal to a norm-generating role

This section deals with the thesis contributions relating to the shift in the role of the ET change towards a 'norm generating' precedent setting function, as represented, for example, by the large-scale Equal Pay MACs, where the matter at dispute is not 'contended facts' but 'contended law'. This thesis has

revealed this change and in doing so develops our understanding of how the role of the ET has shifted and grown, over time, into both a forum for the negotiation of the rules of employment relationship through what Streeck (1997), regards as the societal benefit of beneficial constraints and a forum for the resolution of collective workplace differences, potentially substituting for collective bargaining between trade unions and employers.

It has been shown that the ET has been subject to three types of change, Change Type 1, Internal ET Administrative Procedural Changes, Change Type 2, Government Mandated Procedural Changes and Change Type 3, From Contended Facts to Contended Law. Each of these changes represents an aspect of the negotiation of the optimal level of 'beneficial constraints' (Streeck, 1997; Wright 2004) to govern the employment relationship.

These three Change Types represent two different aspects of constraint, Procedural and Substantive.

8.3.2.1 Procedural Constraints

Change Type 1, Internal ET Administrative Procedural Changes, as represented by the administrative 'ghost claims' is part of the procedural mechanism for managing the beneficial constraints (Streeck, 1997) within which the employment relationship operates. The ET is effectively determining the parameters of the negotiating forum within the boundaries set by the government.

The ET is required to operate within the Change Type 2, Government Mandated Procedural Changes. As was shown in Chapter 4, there have been regular government mandated changes to the ET process, usually with the goal of reducing/preventing potential ET claims becoming actual ET claims. This represents the governmental input into the negotiation of the beneficial constraints. By setting the boundaries within which the ET operates, the government can unilaterally move the level of beneficial constraints, either towards the optimal level for the capitalist interests or towards optimal level for economic performance (Wright, 2004).

An example of how government mandated procedural constraints would be the consequence of the changes in the ET Rules of Procedure, introduced with ET Fees in July 2013, subsequently known as 'Rule 9' which made filing a MAC claim a much more precarious venture because all the claims in a MAC now had to relate to *exactly* the same set of circumstances with profound consequences if they did not. This was effectively a fundamental rewriting of the rules. Although the ET Fees were ruled unlawful by the Supreme Court in 2017, the issues around 'Rule 9' persisted because it had taken on a legal life of its own. 'Rule 9' still impacts MACs filed today. In Chapter 6, it was shown that the introduction of 'Rule 9' reduced the number of MAC claims filed with the ET. This thesis has for the first time identified the phenomenon of 'Rule 9' and its previously unacknowledged consequences which were until now, unknown to the academic literature.

8.3.2.2 Substantive Constraints

Beyond the administration of the ET within the procedural constraints mandated by government, the ETs have facilitated the application of substantive constraints through the rise of Change Type 3 'contended law' large scale MACs in the Equal Pay and Working Time Directive jurisdictions, through which the ETs have, in Great Britain, become a key forum for resolving the negotiation of the optimal level of 'beneficial constraints' (Streeck, 1997; Wright 2004) that govern the employment relationship.

The actual of the optimal level of beneficial constraints is not easily apparent but is negotiated via the interaction of the procedural and substantive constraints which represent the tension between the optimal level of constraints for the capitalist interests as shown in Chapter 2, Figure 2.4 (p.103) as point A, and the optimal level of constraints for economic performance as shown in Figure 2.4 (p.103) as point B (Wright, 2004).

Beyond beneficial constraints, the rise of 'contended law' MACs as pursued by the trade unions and no-win, no-fee lawyers, is an illustration of collective workplace conflict which Acas recently noted was 'not easy to measure' (Acas, 2023), meaning that the literature on collective workplace conflict beyond strike action was limited, with no systemic understanding of collective

workplace conflict that manifests elsewhere. In analysing MACs, this thesis has provided material for a taxonomy of contemporary collective workplace conflict in Great Britain.

Moving from the abstract or theoretical to the practical, it should be noted that the findings regarding the changing role of the ETs to a norm-generating, beneficial constraint negotiating forum revolve around the rise of large scale contended law MACs. The claims that revolve around 'contended facts' are still brought to the ET for adjudication and it is these that generate what Kitching (2006) and Jordan et al., (BIS, 2013) acknowledge is a perceived 'burden on business', particularly for small businesses. The findings in this thesis may highlight that there is more to the increase in the TCA than vexatious claims and undermines the *increasing* 'burden on business' argument (BBC, 2011; Raab, 2011, p.7; BIS, 2012; Kwarteng et al., 2012; Ross, 2014) but does not undermine the 'perceived' burden on business' as seen from a small business point of view.

8.3.2.3 Change Type 1 – Part 2: Administrative 'Ghost Claims' show that individuals and claims are not the same

The third part of this contribution is the finding that claims and individuals are NOT the same. In Chapter 6 it was shown that the sharp growth in the TCA from 2004/05 to 2009/10 was largely the result of administrative 'ghost claims' where the ET itself was generating large numbers of administrative claims to enable the **same** individual to comply with the ET's administrative procedural requirements regarding time limits in the Working Time Directive jurisdictional complaint. This is certainly something that has never been noted or explicitly discussed in the literature before. The literature review highlighted that there was a gap in the literature around 'administrative' claims and raised the possibility that there may be more to administrative claims than the literature acknowledged. This thesis has answered that question. This is an important contribution, as any discussion about how the rising level of ET claims relates to increased workplace conflict needs to acknowledge that a rise in ET claims is not necessarily a rise in individual employment disputes, it may just be that more claims have been generated by the **same** individuals for the **same**

employment dispute. This is a key finding, as it makes using the annual TCA statistics as a proxy for workplace conflict difficult and undermines the increasing 'burden on business' argument. This finding also undermines the importance of the various alternate arguments put forward in the literature review for the increase in ET MAC claims such as individualisation (Dickens, 2000), juridification (Deakin and Morris, 2005, pp.25-26, in Heery, 2011, p.1), trade unions (Shackleton, 2002; Renton, 2012) and no-win, no fee lawyers (Deakin et al., 2015). This contribution has changed our understanding of workplace conflict as represented by the TCA.

8.3.2.4 Employment Tribunal Fees are not wholly responsible for the fall in Claims following Employment Tribunal Fee introduction

The fourth part of this contribution is that the large fall in claims following the introduction of the ET Fees in 2013 was not entirely due to the introduction of ET Fees, as was shown in Chapter 6. For MACs, it was caused by a combination of the unwinding of the Working Time Directive administrative 'ghost claims' issue following the issuing of the Presidential Order and the effects of 'Rule 9' requiring that all claims in a MAC relate to *exactly* the same set of circumstances. It was shown that the introduction of ET Fees along with the change in the Unfair Dismissal Qualifying period and Acas Early Conciliation did affect SACs but not MACs. It was noted in the literature review that the Supreme Court ruled ET Fees unlawful on the basis that the fall in the number of claims was 'so sharp, so substantial and so sustained ... that the Fees Order effectively prevents access to justice' (Supreme Court, 2017, p.29). This conclusion was partly based on an article by Adams and Prassl (2017). This contribution makes it clear there is much more to the fall in the number of claims following the introduction of ET Fees than the literature has acknowledged.

8.3.3 Employment Tribunals may play an important role in creating pressure for informal resolution

This section deals with the thesis contributions relating to the reinterpretation of what 'success' at tribunal means and in so doing shifts our thinking about the role of ETs in encouraging early resolution.

8.3.3.1 'Likely' Successful and redefining 'Struck Out'

The third contribution of this thesis is the finding that the ET has over time redefined the meaning of 'Struck Out' as an outcome/disposal type. It was found to have become largely interchangeable with the outcome/disposal type 'Withdrawn'. This finding led to the reassessment of what successful in terms of the ET might mean using Deakin et al.'s (2015) nomenclature. Once 'Struck Out' is included as a 'Likely' Successful category of outcome/disposal it becomes clear that in the period 1985/86 to 2018/19 90.28% of outcome/disposals were either 'Successful at Tribunal' or 'Likely' Successful. This finding then leads on to the observation that the ET is operating as part of a 'Dispute Resolution System' that resolves a large percentage of employment disputes without the need for an ET Hearing to determine the outcome. It was noted in the literature review that Deakin et al., (2015) implied that a 'successful' claim was more than 'Success at Tribunal' following a hearing and this thesis has shown that this is indeed possible, by re-examining how the various ET outcome/disposals could be interpreted, although, it should be acknowledged that this 'Likely' Successful category (Deakin et al, 2015) is an upper bound and further research is required to establish the actual upper limit of the 'Likely' Successful category.

8.3.4 Data around Employment Tribunals are problematic and this problematic nature impacts our ability to fully understand conflict in the workplace

This section deals with the thesis contributions relating to problems with ET data and statistics and the disjointed availability of the data sources. As previously noted, this is a problem in practice beyond just academic understanding, because the main users of the ET statistics are 'Ministers and

officials in central government responsible for developing policy with regards to tribunals' (MoJ, 2017a).

8.3.4.1 Data Integrity

One of the key underpinning contributions of this thesis has been to consider the gaps in the data and highlight the issues around the reliability and construct validity of the ET claims data. In the literature review it was noted that the ET claims data and statistics are what Hand D. (2018) classed as 'administrative data', which comes with several caveats, which have proven particularly relevant in relation to the ET data and by using Hand D.'s guiding caveats this thesis has thoroughly examined the data integrity and completeness of the ET claims data.

Hand D.'s first caveat is that 'administrative data' are the 'data exhaust' from the ET management system which may not be useful for later statistical analysis. For example, certain data may not be collected because it is not needed for operational purposes and this has been proven to be continually relevant throughout the thesis. The frustrating disconnect between the TCA, SACs, MACs and jurisdictional complaints at the intermediate level is probably a result of the MoJ and its predecessors not requiring the relevant information for operational purposes. However, this disconnect has limited our understanding of the intermediate level and this has affected our understanding of the nature of conflict that reaches ETs. This thesis has therefore used several novel methods of comparison to tease out the relationships between the TCA, SACs, MACs and jurisdictional complaints at the intermediate level and this has greatly contributed to our understanding of ETs.

Hand D.'s second caveat is that control of the methods by which the 'administrative data' are collected and processed rests with the MoJ and its predecessors. Although it might be expected that any data collected for operational purposes would be collected diligently and accurately, this may not be the situation, meaning the ET data may not be complete and error free. Again, this has been proven to be continually relevant throughout the thesis as it has been found that the ET data and statistics are not reliable, valid or

accurate. It was noted in the literature review that there was a lack of consistent and readily available ET data and statistics (see, for example, Burgess et al., (Department of Trade and Industry (DTI), 2001); Hand J., 2010; Lord 2014).

This thesis has clarified this problem. It has shown that the ET data has had these data problems from 1972, when the ET began hearing Unfair Dismissal claims. Not only has there been ongoing issues such as the complete loss of outcome/disposal statistics for the year 1996/97 but a careful audit of the input and output statistics from 1972 to 2016/17 revealed an unexplained difference of 461,507 between total claims accepted and total claim outcome/disposals. This potentially equates to an annual average TCA overstatement of 12.28%. This renders any analysis of the input of claims to ET questionable and undermines the use of the TCA as a proxy for workplace conflict.

In addition to Hand D.'s second caveat it was found that the ET data do not comply with a single characteristic of the Audit Commission's requirement for improvement of data quality (Audit Commission, 2007), as detailed in the literature review, Chapter 2, Table 2.2 (p.30).

Hand D.'s third caveat is that ET 'administrative data' definitions used may change over time as operational requirements change, making longitudinal comparison difficult. This is perhaps the most significant caveat of all. For example, the finding regarding the generation of Administrative 'ghost claims' as a result of the ET's interpretation of the Working Time Directive 'time limit' clause and subsequent cessation of 'ghost claim' generation following a reinterpretation of the Working Time Directive 'time limit' clause highlights how operational definitional changes makes longitudinal comparison difficult.

The applicability of Hand D.'s third caveat regarding ET 'administrative data' definitions is also shown by the finding that the ET has over time redefined the meaning of 'Struck Out' as an outcome/disposal type to become largely interchangeable with the outcome/disposal type 'Withdrawn'.

To clarify, the ET data are, indeed, the 'data exhaust' from the ET management system, collected for operational purposes, and have been

found to be neither 'complete or error free' and have been found to be subject to 'long-term definitional changes', all of which has made longitudinal comparison difficult. In short, by comparison with Hand D.'s statistical caveats, the ET data is deficient. This analysis again illustrates the importance of understanding the missing intermediate level, that is, beyond the TCA, to the SACs, MACs and their interaction with the jurisdictional complaints. Workplace conflict as represented by the TCA can only be understood when all the missing aspects of the TCA are identified and this thesis is filling in what appears to be a significant gap in our knowledge of ETs which will enhance our academic understanding and potentially improve policy implementation.

This thesis has also made as explicitly clear as possible all sources of ET data used. All the individual data sources are listed in as much detail as possible. My own exploration of ETs would have been considerably easier if there have been a comprehensive and accurate list of the various data sources for ET data. It would have saved me a considerable amount of time, which was spent finding the statistics as opposed to establishing what the statistics were telling me and I have tried to provide enough detail on the sources to enable any subsequent researcher to go straight to analysing the data as opposed to finding it.

8.4 Limitations

Having outlined the four important contributions that this thesis has made to our understanding of conflict in the workplace, it is important to note key limitations with the work. A main limitation of this work was the lack of availability of full sets of data and as a result different datasets needed to be connected. This had potential implications for the construct validity of the work. Because of the known disconnect between the TCA statistic, jurisdictional complaints and how they are split across SACs and MACs an attempt was made to bridge the disconnect by approaching the one body that had the relevant information, the MoJ, via a Freedom of Information request. However, as noted in Chapter 3, this turned out to be less successful than hoped, meaning that the only data source for the ET statistics was the data that was already in the public domain with its associated frustrating disconnect between

TCA, SACs, MACs and jurisdictional complaints. To compensate for the disconnect, several different comparisons and correlations have been used in Chapters 5 and 7 to tease out the relationships between the between TCA, SACs, MACs and jurisdictional complaints. These findings are representative of the actual situation regarding the associations of the jurisdictional complaints and therefore the findings are valid, but a single set of data would have offered greater construct validity.

It is also the case that, as this thesis has shown, the data published by the Ministry of Justice and its predecessors in relation to the ET statistics is neither reliable, valid or accurate. Unfortunately, there has been no way to correct for this. It is therefore acknowledged that the analyses carried out are only indicative but are put forward as valid findings on the basis that they are based on the best information available.

Due to time constraints the analysis of the ET Decision Index dataset was limited to MACs only. This produced a wealth of information which was discussed in Chapter 5. Producing it was, however, very resource intensive as it required constant individual reference and cross reference to multiple data sources, such as the ET Decision Index itself, Companies House and the Office for National Statistics etc. for EACH of the 1,382 MAC entries in the ET Decision Index. It would have, obviously, been very informative to do the same analysis for the 22,115 SACs in the dataset but that is another PhD's worth of work!

In Chapter 3, it was noted that the two formal interviews with the employment solicitor and the leading 'no-win, no-fee' lawyer had proven particularly relevant in relation to MACs where the emergent phenomena were confirmed and elaborated on by individuals involved in the actual phenomena themselves. It is acknowledged that these interviews were with 'external practitioners' and the thesis would have benefited from additional formal interviews with 'internal practitioners' such as internal Employment Tribunal Service data staff and potentially the England and Wales and Scottish ET President(s), which would have helped to further clarify some points of interpretation and understanding around the emergent phenomena from a

different 'internal' perspective. It would have, perhaps, clarified, for example, how and why 'Struck Out' as an outcome/disposal had become largely interchangeable with 'Withdrawn'.

The author earlier acknowledged that the work adopts a pluralist frame of reference (see Heery, 2016, p.2). Given this framing, it could be argued, from a unitarist perspective, that the finding that the role of the employment tribunal is important in negotiating the optimal level of beneficial constraints (Streeck,1997; Wright, 2004), is no more than confirming the pluralist perspective. However, the author respectfully suggests that, while the thesis is open to this unitarist criticism at the theoretical level, it is the author's contention that the underlying analysis raises issues around the understanding of 'workplace conflict' in ways that have not been done before and therefore this thesis advances our understanding and knowledge to the benefit of all perspectives, be they pluralist, unitarist or critical management.

While an international comparison would have added to the overall findings, 'the difficulty of providing a proper contextualisation of the patterns of conflict under different institutional, legal and social settings', associated with an international comparison (Forth and Dix, 2016, p.2) means that any international focus is beyond the scope of this thesis which focuses solely on Great Britain. For a PhD with an international focus, see Schulze-Marmeling, *Conflict at Work and External Dispute Settlement: A cross-country comparison*, 2013.

8.5 Directions for future research

The ET Decision Index is a treasure trove of original ET information. The analysis of MACs carried out for this thesis shows how it can be used to throw light on previously hidden aspects of claims, claimants and respondents. It is the only place where all the information regarding a claim is available enabling the rebuilding of a database from the ground up. For example, all the jurisdictional complaints associated with an ET decision are shown, as are the number of claims and individuals. It is also clear if it is a SAC or a MAC. The availability of the claimant and respondent/employer's details enables further details to be collected via Companies House and subsequently analysed,

which would yield a much more detailed picture of the workplace conflict that reaches ETs.

It would also finally establish how many claimants have more than one claim associated with them. In the process of researching MACs for this thesis it has been noticeable that SACs quite often have more than one claim associated with each claimant. It is not known how prevalent this is, but it further supports the argument that the claims and claimants are not the same.

This thesis, in Chapter 7, has also developed the issue identified in the literature around what 'success' means in relation to an ET claim, (Fredman, 2011; Deakin et al., 2015). By analysing the ET outcome/disposal data of the claims/disputes it has been shown that the ET has, over time, used the ET outcome/disposal type 'Struck Out' interchangeably with 'Withdrawn, certainly as far as MACs are concerned. By adopting Deakin et al.'s (2015) consolidated term 'Likely' Successful and including the ET outcome/disposal type 'Struck Out' for MACs along with Acas Conciliated Settlements and Withdrawn, it has become clear that success at the ET is more than the outcome/disposal type 'Successful at Hearing', although, it should be acknowledged that this 'Likely' Successful category (Deakin et al., 2015) is an upper bound and further research is required to establish the actual upper limit of the 'Likely' Successful category.

Although evidence was presented in this thesis which contributes to the debate highlighted in the literature review regarding the possible relationship between the Economic Cycle and the level of ET Claims (Brown et al., 1997; Burgess et al., 2001, Schulze-Marmeling, 2013, Latreille and Saundry, 2015), the findings were not definitive and this an area for further research.

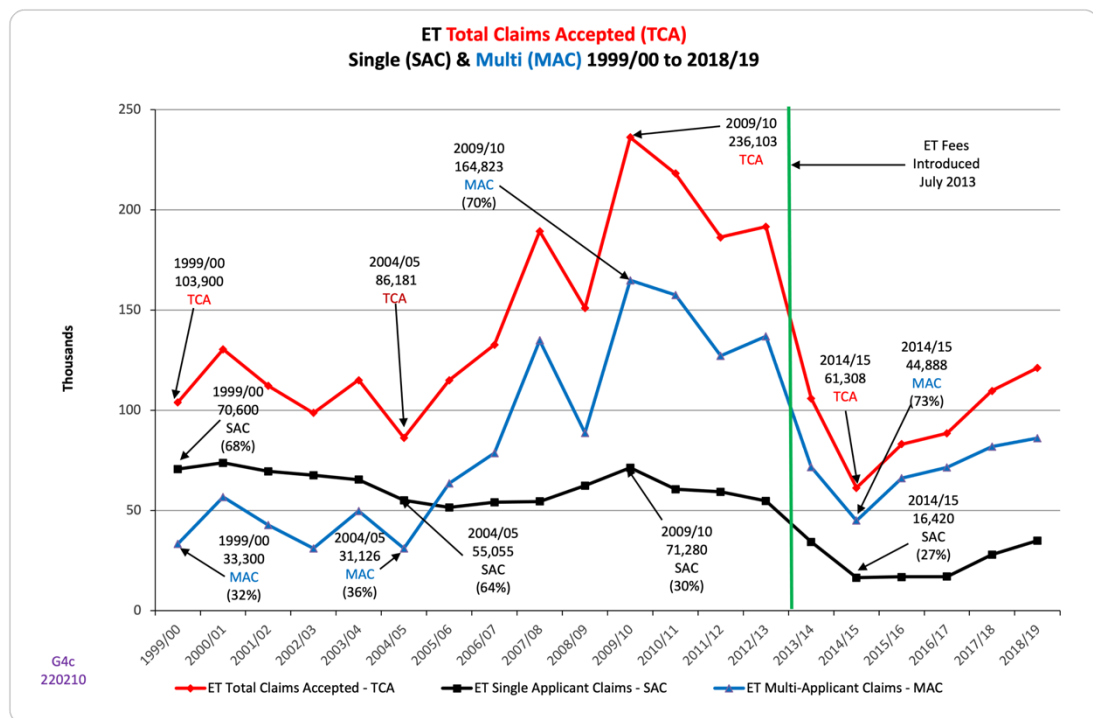
8.6 Conclusion

This PhD has been a research journey into Employment Tribunals (ETs) and ET claim statistics somewhat akin to Jules Verne's *Journey to the Centre of the Earth* and, similar to Professor Otto Lidenbrock at the end of his remarkable journey, the landscape and understanding of ETs and ET claim

statistics is very different from the landscape and understanding at the beginning.

The journey began with the graph of total claims accepted, single applicant claims and multi-applicant claims, shown below as Figure 8.1, and questioning what was driving the increase in MACs and hence the TCA from 2004/05 onwards.

Figure 8.1



The research which flowed from this question has been more interesting than I would have believed at the start and the results more profound. I hope that this thesis has conveyed some of the excitement that I felt when I confirmed that the rise and fall in the MACs shown in the graph were at least partly explained by the rise and fall of a ‘host of administrative ghosts’ in the system and the introduction of ‘Rule 9’.

To then have found ‘Struck Out’ had become largely interchangeable with ‘Withdrawn’ which enabled a reappraisal of what ‘success’ means in the context of how ETs were/are successfully delivering an essential service in resolving workplace conflict was an unexpected bonus.

Interwoven with the findings enumerated above is a story of change, the change from 'Contended Facts' to 'Contended Law', which reflects a shift in what the ET is being asked to adjudicate on. The increase in large-scale MACs associated with the Working Time Directive and Equal Pay jurisdictional complaints represents an increase in employment disputes about the law, and it has been argued are the negotiation of the optimal level of beneficial constraints (Streeck, 1997; Wright, 2004) and represents the way in which the rules that the employment relationship operates within are determined. ETs have become a forum where the beneficial constraints provided by the juridification of the employment contract are mediated. This finding makes an important contribution to our existing understanding and is a key part of the reason that the research presented in this thesis adds real value to the field of employment relations.

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Abbreviations

Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
AD	Age Discrimination
ADR	Alternative Dispute Resolution
AJ	All Jurisdictions
BA	British Airways
BC	Borough Council
BEIS	Department for Business, Energy and Industrial Strategy
BELH	Butterworths Employment Law Handbook
BIFU	Banking, Insurance and Finance Union
BIS	Department for Business, Innovation and Skills
BoB	Burden on Business
BoC	Breach of Contract
CA	Court of Appeal
CAWTR	Civil Aviation (Working Time) Regulations 2004
CH	Companies House
CO	ACAS Conciliation Officer
CBI	Confederation of British Industry
CCT	Compulsory Competitive Tendering
CITB	Construction Industry Training Board
CJEU	Court of Justice of the European Union
CRE	Commission for Racial Equality
CSO	Civil Society Organisations

DBA	Damage-based Agreements
DCA	Department for Constitutional Affairs
DoE	Department of Employment
DTI	Department of Trade and Industry
EAT	Employment Appeal Tribunal
EC	European Community
ECITB	Engineering Construction Industry Training Board
ECJ	European Court of Justice
EG	<i>Employment Gazette</i>
EHRC	Equality and Human Rights Commission
EOC	Equal Opportunities Commission
EP	Equal Pay
EPA	Equal Pay Act 1970
ET	Employment Tribunal
ETCPS	Employment Tribunal Claims Process Summary
ETF	Employment Tribunal Fees
ETS	Employment Tribunal Service
EU	European Union
FOI	Freedom of Information
GB	Great Britain (England, Wales and Scotland only)
GMB	General, Municipal, Boilermakers Union
HMCTS	HM Courts and Tribunals Service
HMRC	HM Revenue and Customs

HoL	House of Lords
HSE	Health and Safety Executive
IDS	Income Data Services
IT	Industrial Tribunal
JC	Jurisdictional Complaint
JCd	Jurisdictional Code
JCOD	Jurisdictional Complaint Outcome/Disposal
LA	Local Authority
MAC	Multi-Applicant Claim
MACCP	Multi-Applicant Claim Contained Percentage
MACOD	Multi-Applicant Claim Outcome/Disposal
MBC	Metropolitan Borough Council
MJ	Main Jurisdiction
MoJ	Ministry of Justice
MSF	Manufacturing, Science and Finance Union
NATFHE	National Association of Teachers in Further and Higher Education
NCCL	National Council for Civil Liberties
NHS	National Health Service
NMW	National Minimum Wage
NoPiE	Number of People in Employment
NWNF	No-Win, No-Fee Law Firm
NUM	National Union of Mineworkers

NUPE	National Union of Public Employees
OJ	Other Jurisdiction
ONS	Office for National Statistics
RC	Royal Commission
RD	Race Discrimination
RoP	Employment Tribunal Rules of Procedure
RP	Redundancy Pay
RPI	Retail Prices Index
SAC	Single Applicant Claim
SACaMAC	Single Applicant Claim that is actually part of a Multi-Applicant Claim
SACOD	Single Applicant Claim Outcome/Disposal
SC	Supreme Court
SD	Sex Discrimination
SETA	Survey of Employment Tribunal Applications
SIC	Standard Industrial Classification
SITA	Survey of Industrial Tribunal Applications
SSA	Single Spine Agreement
TCA	Total Claims Accepted
TCACP	Total Claims Accepted Contained Percentage
TCOD	Total Claims Outcome/Disposals
T&GWU	Transport and General Workers Union
TS	Tribunals Service

TUC	Trades Union Congress
TUPE	Transfer of Undertakings (Protection of Employment)
UD	Unfair Dismissal
UaD	Unauthorised Deductions (Formerly Wages Act)
UDAOD	Unfair Dismissal Annual Outcome/Disposals
UK	United Kingdom
USDAW	Union of Shop, Distributive and Allied Workers
WERS	Workplace Employment Relations Study
WTD	Working Time Directive

Appendix 1

List of Sources and Number of Documents/Websites Reviewed

Appendix 1

Table A1.1

List of Sources and Number of Documents/Websites Reviewed

Sources	Number of Documents/Websites
Accountancy website	
duedil.com	1
Total	1
Advice Centres	
Citizens Advice	1
Advice Services Alliance	1
Total	2
Employer related documents	
CBI/Harvey Nash: Employment trends survey 2011	1
NHS Scotland: Central Legal Office, Employment Update	1
Total	2
Employment Tribunal related documents and websites	
(UK) Supreme Court blog	1
Court of Appeal Judgments	5
Court of Justice of the European Communities (ECJ) Judgment	13
Court of Justice of the European Communities (ECJ) Opinion	10
Employment Appeal Tribunal judgments	6
Employment Tribunal Judgments	100+
Employment Tribunals Service, Annual Report and Accounts, 1999/00 to 2005/06	7
Employment Tribunals Service, ET and EAT statistics 2006/07, 2007/08	2
Employment Tribunals: Case Management Orders of the President	37
HM Courts and Tribunal Service: Annual Report and Accounts, 2011/12 to 2016/17	6
HM Courts and Tribunal Service: Employment tribunal fees for individuals (Ref: T435), July 2013	1
HM Courts and Tribunal Service: Making a claim to an Employment tribunal (T420) 2018 and 2020 versions	2
Table A1.1, Page 1	

Sources	Number of Documents
HM Courts and Tribunals Service, <i>Employment tribunal fees for groups and multiples</i> , (Ref: T436)	1
HM Courts and Tribunals Service, <i>The Employment Tribunals Rules of Procedure 2013 (as subsequently amended up to 17th February 2015)</i>	1
judiciary.uk	1
Judiciary.uk - History of Part-Time Worker Pension Cases	30
Supreme Court Judgments	5
Supreme Court Press Summaries	5
Tribunals Service, Annual Report and Accounts, 2006/07 to 2010/11	5
Tribunals Service, ET and EAT statistics 2008/09,	1
<u>Wayback</u> <u>Machine:</u> www.employmenttribunals.gov.uk:80/england/ptcasesfr.html	56
History of Part-Time Worker Pension Cases	
Total	295
European Union related documents and websites	
Official Journal of the European Communities	1
Treaty of Rome	1
Total	2
Government Agency related documents and websites (including Acas)	
Advisory, Conciliation and Arbitration Service Annual Report and Accounts, 1999/00 to 2018/19	20
Advisory, Conciliation and Arbitration Service Documents	3
Advisory, Conciliation and Arbitration Service Research Papers, No. 10/11 and 04/15	2
Advisory, Conciliation and Arbitration Service, Policy Discussion Papers, March 2014	1
Audit Commission	1
Cabinet Office: Better Regulation Taskforce	2
Companies House	3
Construction Industry Training Board	2
Engineering Construction Industry Training Board	1
Equal Opportunities Commission Annual Report & Accounts, 2004/05, 2006/07 and April to Sept 2007	3
Equality and Human Rights Commission's Concluded Interventions: All Cases	1
Table A1.1, Page 2	

Sources	Number of Documents
Equality and Human Rights Commission's Concluded Interventions: Employment Cases	1
Financial Ombudsman, Ombudsman News, No:47, 2005	1
Gov.uk: 20 years of the National Minimum Wage	1
Gov.uk: Dismissing staff	1
Gov.uk: Employment Decisions	1
Gov.uk: The Government Data Quality Framework	1
Government Equalities Office	1
HM Government: UK Labour Market Enforcement Strategy – Introductory Report	1
Law Commission: Employment Law Hearing Structures, Consultation Paper, 2018	1
Women & Work Commission: Shaping a Fairer Future: A review of the recommendations of the Women and Work Commission three years on	1
Total	49
Government Departments/Ministries	
Department for Business Innovation & Skills, Fundamental Review of Employment Tribunal Rules (Underhill Review), 2011 to 2013	6
Department for Business Innovation & Skills, The Beecroft Report, October 2011	1
Department for Business Innovation & Skills: Employment Relations Research Series, No. 101, No. 123	2
Department for Business Innovation & Skills: Resolving workplace disputes: A consultation	2
Department for Business, Energy & Industrial Strategy, Central Arbitration Committee, Tailored Review Report 2017	1
Department for Business, Energy & Industrial Strategy, Good Work Plan: establishing a new Single Enforcement Body for employment rights, Consultation, July 2019	1
Department for Business, Energy & Industrial Strategy, Trade Union Membership Statistical Bulletins, 2017, 2018,	2
Department for Business, Energy & Industrial Strategy, Trade Union Membership Statistical Tables, 2019	1
Department for Business, Enterprise & Regulatory Reform: Employment Relations Research Series, No. 61	1
Department of Constitutional Affairs, Transforming Public Services: Complaints, Redress and Tribunals, July 2004	1
Table A1.1, Page 3	

Sources	Number of Documents
Department of Trade and Industry Consultation 2001: Routes to Resolution: Improving Dispute Resolution in Britain	1
Department of Trade and Industry, Moving Forward: The Report of the Employment Tribunal System Taskforce, July 2002	1
Department of Trade and Industry: Better Dispute Resolution - A review of employment dispute resolution in Great Britain - Michael Gibbons - 2007	1
Department of Trade and Industry: Employment Relations Research Series, No. 10, No.14, No.45	3
Ministry of Justice Press Release, 25 th June 2008	1
Ministry of Justice, Ad-hoc publication, Employment Tribunal Receipt Statistics (Management Information): July to September 2013	1
Ministry of Justice, Employment Tribunal Lay Judge Recruitment Pack 2019	3
Ministry of Justice, ET & EAT statistics 2009/10, 2010/11 and 2011/12	3
Ministry of Justice, Guide to Tribunals and Gender Recognition Certificate Statistics Quarterly, June 2017, March 2018, September 2018, September 2019, December 2018	5
Ministry of Justice, Quarterly Statistics for the Tribunals Service 2010/11 to April-June 2014	17
Ministry of Justice, Research Series, No.17/09	1
Ministry of Justice, Tribunals and Gender Recognition Certificate Statistics Quarterly, July – September 2014 to April – June 2019	20
Ministry of Justice: Employment Tribunal Fees Post Implementation Review 11th June 2015	1
Total	76
Government Publications	
<i>Employment Gazette</i> - monthly 1971 to 1995	288
<i>Labour Market Trends</i> - monthly 1996 to 2006	132
Total	420
Legal Databases	
bailii.org	9
Lexis PSL	1
people.exeter.ac.uk	1

Table A1.1, Page 4

Sources	Number of Documents
Swarb.co.uk	11
Total	22
Law Firms	
Cloisters.com	5
Edwards Geldard (Solicitors) Briefing Note 09/98: Working Time Directive	1
ksablaw.co.uk	1
Leigh Day: Asda Equal Pay Claims: Action for individuals who are being paid unfairly because of their gender	1
leighday.co.uk, latest updates	1
oldsquare.co.uk	2
pauldoranlaw.com/equal-pay	1
thompsonstradeunion.law	2
Total	14
Law websites	
croneri.co.uk	5
equalpaynow.co.uk	6
law.cornell.edu	1
uk.practicallaw.thomsonreuters.com	2
Total	14
Newspapers and Magazines	
<i>barrons.com</i>	1
<i>Local Government Lawyer</i>	1
<i>nytimes.com</i>	1
<i>Personnel Today</i>	5
<i>telegraph.co.uk</i>	2
<i>The Guardian</i>	11
<i>The Irish News</i>	1
<i>The Journal</i>	1
<i>The Law Gazette</i>	1
<i>The Observer</i>	1
<i>The Times</i>	22
<i>walesonline.co.uk</i>	1
Total	48

Table A1.1, Page 5

Sources	Number of Documents
News websites	
BBC News website	8
bloomberg.com	2
Total	10
Office for National Statistics	
Economic & Labour Market Review, June 2007, June 2008, June 2009, June 2010, Labour Disputes	4
Office for National Statistics, Labour Disputes Dataset LABD01 and LABD02	2
Office for National Statistics: Broad Industry Group (SIC) – Business Register and Employment Survey (BRES) Datasets: Tables 1 and 2 - September 2018	2
Office for National Statistics: Earnings and hours worked, industry by four digit SIC dataset: ASHE Table 16 – October 2018	1
Office for National Statistics: Employment by Industry Dataset: EMP13 – November 2019	1
Office for National Statistics: Labour Disputes in 2010, Labour Disputes in 2017, Labour Disputes in 2018	3
Office for National Statistics: Labour Market overview, UK, August 2019	1
Office for National Statistics: Public and private sector employment Dataset: EMP02 – September 2019	1
Office for National Statistics: Statistical Bulletin: Labour Market Statistics March 2011	1
Office for National Statistics: UK Business Register and Employment Survey (BRES): provisional results 2017, revised results 2016	1
Office for National Statistics: UK business; activity, size and location:2019	1
Office for National Statistics: Workforce jobs by industry Dataset: JOBS02 – June 2019	1
Total	19
Parliament related documents and websites	
Acts of Parliament	3
hansard.parliament.uk	1
House of Commons Library Briefing Papers	2

Table A1.1, Page 6

Sources	Number of Documents
House of Commons Library Research Papers	1
House of Commons Parliamentary Papers Online, 1986, <i>Building Businesses...Not Barriers</i> , Cmnd 9794	1
House of Commons, Committee of Public Accounts, 118 th Report of Session 2017-19	1
House of Commons, Justice Committee, 2 nd Report of Session 2019	1
House of Commons, Women and Equalities Committee, 9 th Report of Session 2017-19	1
House of Lords and House of Commons Joint Committee on Human Rights, 12 th and 18 th Reports of Session 2001-02	2
Legislation.co.uk	11
publications.parliament.uk	1
Statutory Instruments	2
UK Parliament	1
Total	28
Professional bodies related documents and websites	
CIPD Newsletter	1
Institute of Chartered Accountants in England and Wales	1
Total	2
Think Tank related documents and websites	
Centre for Policy Studies	1
The Institute of Employment Rights	1
Total	2
Survey of Employment Tribunal Applications	
Survey of Employment Tribunal Applications 1998 (Department of Trade and Industry)	2
Survey of Employment Tribunal Applications 2003 (Department of Trade and Industry)	2
Survey of Employment Tribunal Applications 2008 (Department of Trade and Industry)	2
Survey of Employment Tribunal Applications 2013 (Department for Business Innovation & Skills)	6
Survey of Employment Tribunal Applications 2018 (Department for Business, Energy & Industrial Strategy)	2
Table A1.1, Page 7	

Sources	Number of Documents
Survey of Industrial Tribunal Applications 1992 (Employment Department)	1
Total	15
Union related documents and websites	
balpa.org	2
fbu.org.uk	11
GMB: Equal Pay, CEC Special Report 2009	1
gmb.co.uk	1
TUC	2
Unison Facebook page	1
Unison.org.uk, Documents	2
Unison.org.uk, Press releases, 2005 to Feb 2019	131
Wayback Machine:	1
TUC Response to Government Consultation: Routes to Resolution: Improving Dispute Resolution in Britain	
Total	152
University MA/MSc/PhD Dissertations	
University MA/MSc/PhD Dissertations	3
Total	3
Websites - miscellaneous	
agediscrimination.info	1
mrsmarkleham.wordpress.com	1
Powerinaunion.co.uk	1
thejusticegap.com	1
theyworkforyou.com	2
tupe.uk.net	1
twitter.com	2
Union News	1
Wikipedia	1
Total	11
Total Documents Reviewed	1187+

Table A1.1, Page 8

Appendix 2

Employment Tribunal Terminology

Appendix 2

Employment Tribunal Terminology

This section is to clarify the terms which are used by the Ministry of Justice and others regarding Employment Tribunals.

A2.1 Claims

Table A2.1 below, shows the Employment Tribunal *Total Claims Accepted* by year from 1972 to 2018/19⁸⁴. This is the generally accepted statistic that is used to measure the work of the ET System. Before 1998/99 it is the only statistic we have. In 2009/10 the *TCA* by year is shown as **236,103**.

Table A2.1

**Employment Tribunal
Total Claims Accepted (TCA) by Year
1972 to 2018/19**

Year	Total Claims	Year	Total Claims	Year	Total Claims
1972	14,857	1988/89	29,304	2004/05	86,181
1973	14,062	1989/90	34,697	2005/06	115,039
1974	16,320	1990/91	43,243	2006/07	132,577
1975	35,897	1991/92	67,448	2007/08	189,303
1976	47,804	1992/93	71,821	2008/09	151,028
1977	46,961	1993/94	71,661	2009/10	236,103
1978	43,321	1994/95	88,061	2010/11	218,096
1979	41,244	1995/96	108,827	2011/12	186,331
1980	41,424	1996/97	88,910	2012/13	191,541
1981	44,852	1997/98	80,435 ^b	2013/14	105,803
1982	43,660	1998/99	91,913	2014/15	61,308
1983	39,959	1999/00	103,935	2015/16	83,031
1984/85 ^a	39,191	2000/01	130,408	2016/17	88,476
1985/86	38,593	2001/02	112,227	2017/18	109,698
1986/87	38,385	2002/03	98,617	2018/19	121,075
1987/88	30,543	2003/04	115,042		
					√230601
^a In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April - March. ^b Sum of TCA 1972 to 1998/99, 1,262,480 Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19					

⁸⁴ All Employment Tribunal statistics in this thesis refer to Great Britain only i.e., England, Wales and Scotland. Northern Ireland statistics are NOT included.

Table A2.2 below shows that the **236,103 TCA** figure for 2009/10, shown in column A, is made up of two different numbers as shown in columns B and C:

Table A2.2

**Breakdown of ET Total Claims Accepted (TCA) by Year
1998/99 to 2018/19**

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	Multi-Applicant Claims (MACs)	Actual number of Multi-Applicant Cases	Average number of Claims per Multi-Applicant Case	Total Number of Cases	Jurisdictional Complaints (JCs)	Average number of Jurisdictional Complaints per Claim
	A	B	C	D	E	F=B+D	G	H=G/A
1998/99	91,913						148,771	1.62
1999/00	103,935	70,600	33,300				176,749	1.70
2000/01	130,408	73,726	56,682				218,101	1.67
2001/02	112,227	69,553	42,674				194,120	1.73
2002/03	98,617	67,527	31,090				172,322	1.75
2003/04	115,042	65,364	49,678				197,365	1.72
2004/05	86,181	55,055	31,126				156,081	1.81
2005/06	115,039	51,496	63,543				201,514	1.75
2006/07	132,577	54,100	78,600				238,546	1.80
2007/08	189,303	54,500	134,800	6,582	20.48	61,082	296,920	1.57
2008/09	151,028	62,370	88,658	7,356	12.05	69,726	266,542	1.76
2009/10	236,103	71,280	164,823	7,339	22.46	78,619	392,777	1.66
2010/11	218,096	60,591	157,505	5,956	26.44	66,547	382,386	1.75
2011/12	186,331	59,247	127,084	5,662	22.45	64,909	321,836	1.73
2012/13	191,541	54,704	136,837	6,278	21.80	60,982	332,859	1.74
2013/14	105,803	34,219	71,584	3,126	22.90	37,345	193,968	1.83
2014/15	61,308	16,420	44,888	1,921	23.37	18,341	129,966	2.12
2015/16	83,031	16,935	66,096	1,295	51.04	18,230	178,079	2.14
2016/17	88,476	17,005	71,471	1,101	66.45	18,106	143,946	1.63
2017/18	109,698	27,916	81,782	2,016	40.57	29,932	172,731	1.57
2018/19	121,075	34,974	86,101	2,592	33.22	37,566	198,715	1.64
								√220426
Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19								

- Firstly, *Single Applicant Claims (SACs)* (column B), which are brought by an individual employee or worker against his/her individual employer. In 2009/10 there were 71,280 SACs, i.e., 71,280 individuals filed 71,280 claims which were unrelated to each other.
- Secondly, *Multi-Applicant Claims (MACs)* (column C), are brought by two or more people, usually against a common respondent [employer], where the claims arise out of the same or similar circumstances (Employment Tribunal Service, 2000, p.9, footnote 3). However, for reporting purposes, it is the number of claims that is counted. In 2009/10 there were 164,823 MACs, i.e., 164,823 claims filed in association with other claims, which were subsequently grouped together.
- 71,280 SACs + 164,823 MACs = 236,103 TCAs by the ET

Each SAC is a Single **Case**, so by definition the 71,280 SACs for 2009/10 equals 71,280 Single **Cases**. The **164,823 MAC** claims are grouped together to be heard in **Cases**. In 2009/10, there were 7,339 **Cases** (column D) which are reported as an average of 22.46 claims (column E) per Multi-Applicant **Case**. So, in 2009/10, the **236,103 TCAs** by the ET translates into 71,280 Single **Cases** + 7,339 Multi-Applicant **Cases** = **78,619 Cases** (column F) accepted by the ET.

Jurisdiction in this context refers to each separate employment right, such as Unfair Dismissal or Sex Discrimination. Each jurisdiction is a separate reason for an individual to make a claim. A claim can involve multiple jurisdictions, i.e., an individual can make a claim which alleges both Unfair Dismissal and Sex Discrimination. This would be referred to as two Jurisdictional Complaints. In 2009/10 there was **392,777** Jurisdictional Complaints (column G) which gives an average of 1.66 Jurisdictional Complaints per Claim (column H).

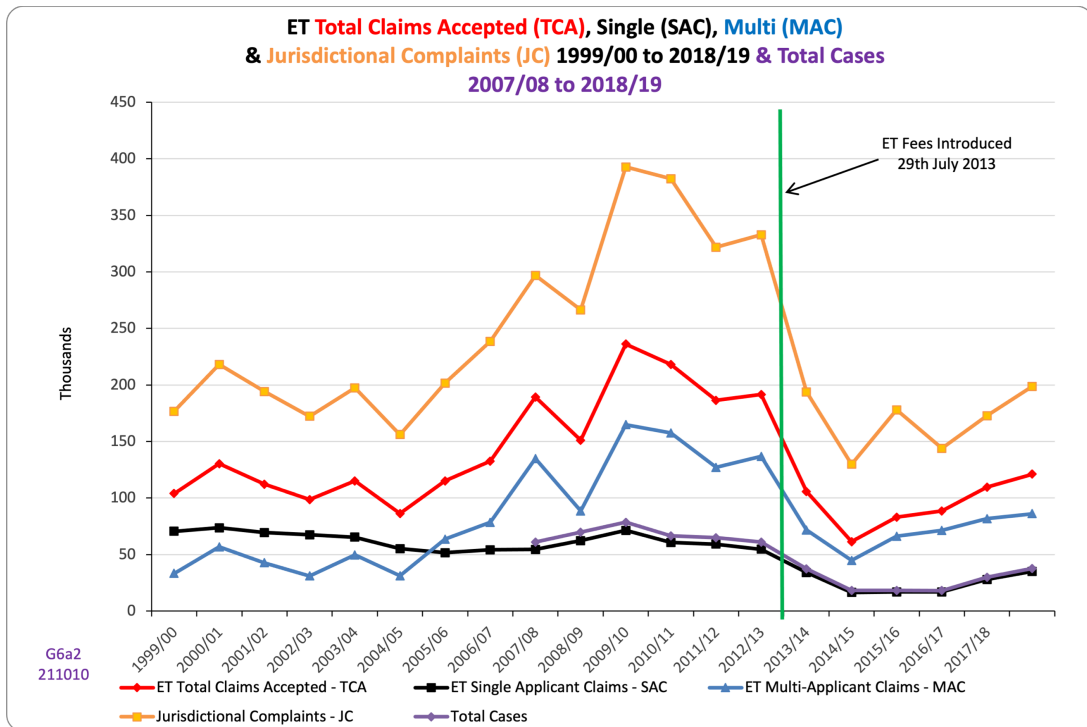
The MoJ and its predecessors regularly publish data on 21 jurisdictional complaints and aggregates the remaining jurisdictions under the term 'Other' (MoJ, 2019). In 2011, the Tribunals Service listed 66 separate jurisdictions (Tribunals Service, 2011), which are shown in Appendix 9. A list of the 21 jurisdictions, for which the MoJ publishes separate data, as at 2019, is shown below, in Table A2.3.

So, to sum up in 2009/10 there were:

1. **236,103 Total Claims Accepted** (column A)
2. 71,280 SACs (column B)
3. **164,823 MACs** (column C)
4. 7,339 Multi-Applicant Cases (Column D)
5. 22.46 average claims per Multi-Applicant Case (Column E)
6. **78,619 Cases** (column F)
7. **392,777 Jurisdictional Complaints (JCs)** (Column G)
8. 1.66 Jurisdictional Complaints (JCs) per Claim (Column H)

This is represented graphically in Figure A2.1 below:

Figure A2.1



The colour coding used is carried through all tables and graphs. The terminology outlined above will be consistently used throughout.

Table A2.3

2019 List of Jurisdictional Complaints for which MoJ publishes separate data

Jurisdictional Complaints	ET Fee Type
Age Discrimination	A
Breach of Contract	A
Disability Discrimination	B
Equal Pay	B
National Minimum Wage	B
Part Time Workers Regulations	B
Public Interest Disclosure	B
Race Discrimination	B
Redundancy – failure to inform and consult	B
Redundancy Pay	A
Religion or belief discrimination	B
Sex Discrimination	B
Sexual Orientation discrimination	B
Suffer a detriment/unfair dismissal – pregnancy	B
TUPE – failure to inform and consult	B
Unauthorised Deductions	A
Unfair Dismissal	B
Working Time Directive	A
Written pay statement	A
Written statement of reasons for dismissal	A
Written statement of Ts and Cs	A
Others	
Source: MoJ 2019	

A2.2 ET Claim Filing Time Limits

In 1972 Claims to the ET for Unfair Dismissal had to be filed no more than 4 weeks from the date of dismissal. In 1974 the time limit was changed to three months from the date of dismissal (Dickens, 1985, p.13), where it has remained (HMCTS, 2020, p.7). As more statutory employment rights have been added, the three-month time limit for filing has been applied to the new jurisdictions. Although the claim time limit is strictly applied by the ET, as the current guidance publication makes clear, the time limit can be extended at

the discretion of the ET in exceptional circumstances (HMCTS, 2020, p.8). How many claims this 'hard' limit affects is unknown, but once a potential claim passes out of time it ceases to be a potential claim thereby restricting the number of potential claims that become 'accepted' and therefore part of the TCA.

A2.3 All Jurisdictions = Main Jurisdictions + Other Jurisdictions between 1998/99 to 2003/04

To further complicate matters in the *Employment Tribunal Service (ETS) Annual Reports* for the period between 1998/99 and 2003/04, what are subsequently, 2004/05 onwards, referred to as **Jurisdictional Complaints** (see above), are referred to as 'All Jurisdictions' (AJ) and split between 'Main Jurisdiction' (MJ) and 'Other Jurisdictions' (OJ). The ETS explain this in the *2000/01 Annual Report* as follows:

'As identified by ETS staff as the principal type of claim when first received. A claim may be brought under more than one jurisdiction or subsequently amended/clarified in the course of proceedings but will be counted only once against the main jurisdiction' (Employment Tribunal Service, 2001, p21, footnote 1).

The consequence of this is that if any ET claim contains more than one jurisdiction, then second and subsequent jurisdictions are classified as Other Jurisdictions in this period.

'Main Jurisdiction' + 'Other Jurisdictions' = All Jurisdictions where All Jurisdictions equates to what are subsequently referred to as **Jurisdictional Complaints**.

The sum of the Main Jurisdictions such as Unfair Dismissal, Wages Act (now Unauthorised Deductions), Breach of Contract etc. in each year equates to the annual **TCA** statistic, so the 1998/9 sum of 91,913 for the Main Jurisdictions is the **TCA** statistic for 1998/9 shown in Table A2.1 above.

An example of the split between Main Jurisdiction, Other Jurisdictions, and All Jurisdictions for 1998/9, 1999/0 and 2000/1 is shown below in Table A2.4 in

the form of an extract from the *ETS Annual Report for 2000/1* (Employment Tribunal Service, 2001, p.21).

Table A2.4

Extract from: Employment Tribunal Service Annual Report 2000/01,
Page 21, Appendix 1, Table 1, Applications Registered by Employment
Tribunals



Employment
Tribunals Service

APPENDIX 1
EMPLOYMENT TRIBUNAL AND
EAT STATISTICS (GB) 2000/1

TABLE 1
APPLICATIONS REGISTERED BY EMPLOYMENT TRIBUNALS

NATURE OF CLAIM	MAIN JURISDICTION ¹		OTHER JURISDICTIONS		ALL JURISDICTIONS	
	1998/9	1999/0	1998/9	1999/0	1998/9	1999/0
Unfair dismissal	37,034	44,538	4,880	6,732	41,914	51,270
Wages Act	16,689	21,285	12,971	18,609	29,660	39,894
Breach of contract	8,986	9,725	18,202	21,233	27,188	30,958
Sex discrimination ²	6,203	4,926	3,954	2,875	10,157	7,801
Equal pay	5,018	2,391	2,204	2,321	7,222	4,712
Part Time Worker Regulations	-	10,530	-	-	-	12,280
Redundancy pay	4,812	5,911	3,830	4,935	8,642	10,846
Working Time Directive	636	2,314	690	3,281	1,326	5,595
Disability discrimination	1,430	1,743	1,721	2,022	3,151	3,765
Race discrimination	2,746	3,246	572	769	3,318	4,015
Written statement of terms and conditions	1,061	676	2,037	2,086	3,098	2,762
Transfer of an undertaking - failure to inform and consult	886	679	1,174	657	2,060	1,336
Unfair dismissal - transfer of an undertaking	505	771	57	516	562	1,287
Unfair dismissal - pregnancy	765	648	576	568	1,341	1,216
Unfair dismissal - health and safety	313	255	302	349	615	604
National minimum wage	-	357	-	949	-	1,306
Unfair dismissal - exercise of a statutory right	242	386	266	412	508	798
Unfair dismissal - trade union membership/activities	173	132	272	266	445	398
Others	4,414	3,952	3,150	4,234	7,564	8,186
Total	91,913	103,935	56,858	72,814	148,771	176,749

¹ As identified by ETS staff as the principal type of claim when first received. A claim may be brought under more than one jurisdiction or subsequently amended/clarified in the course of proceedings, but will be counted only once against the main jurisdiction.
² Includes approximately 12,000 Part-Time Worker Pension cases.
³ Total for 2000/1 reflects growth in all jurisdictions of approximately 20% over the last three years.

A2.4 Claim Outcome/Disposals

Table A2.5 below shows the ET *Total Claim Outcome/Disposals (TCOD)* by year from 1985/86 to 2018/19. This statistic is not available prior to 1985/86. In 2009/10 the *Total Claim Outcome/Disposals by year* is shown as 112,364.

Table A2.5

**Employment Tribunal
Total Claim Outcome/Disposals (TCOD) by Year
1985/86 to 2018/19**

Year	TCOD	Year	TCOD	Year	TCOD
1985/86	37,910	1997/98	74,614	2009/10	112,364
1986/87	39,404	1998/99	74,006	2010/11	122,792
1987/88	34,233	1999/00	83,409	2011/12	110,769
1988/89	29,317	2000/01	92,938	2012/13	107,420
1989/90	31,913	2001/02	97,386	2013/14	148,387
1990/91	35,826	2002/03	95,554	2014/15	312,773
1991/92	41,768	2003/04	93,973	2015/16	49,529
1992/93	53,445	2004/05	97,966	2016/17	45,177
1993/94	69,612	2005/06	86,083	2017/18	38,761
1994/95	67,325	2006/07	102,597	2018/19	43,594
1995/96	73,472	2007/08	81,857		
1996/97	n/a ^a	2008/09	92,018		
					√210709
Sources: See Chapter 3, Table 3.3, Data Sources for Employment Tribunal Total Claim Outcome/Disposal (TCOD) Statistics 1985/86 to 2018/19					
^a 1996/97 Annual Outcome/Disposal Statistics not available – See <i>Hansard</i> , 30th October 2003					

Table A2.6 below shows that the 112,364 Total Claims Outcome/Disposal figure for 2009/10 shown in column A is made up of two different numbers as shown in columns B and C:

Table A2.6

**Breakdown of Employment Tribunal
Total Claim Outcome/Disposals (TCOD)
2000/01 to 2018/19**

Year	Total Claims O/D (TCODs)	Single Applicant Claims O/D (SACODs)	Multi-Applicant Claims O/D (MACODs)	Actual number of Multi-Applicant Cases	Average number of Claims per Multi-Applicant Case O/D	Total Number of Cases	Jurisdictional Codes (Complaints) O/D (JCODs)	Average number of Jurisdictional Codes (Complaints) per TCOD
	A	B	C	D	E	F=B+D	G	H=G/A
2000/01	92,938						129,725	1.40
2001/02	97,386						139,059	1.43
2002/03	95,554						132,492	1.39
2003/04	93,973						126,793	1.35
2004/05	97,966						146,951	1.50
2005/06	86,083						160,557	1.87
2006/07	102,597						176,434	1.72
2007/08	81,857			5,693			157,493	1.92
2008/09	92,018			5,912			172,944	1.88
2009/10	112,364	65,018	47,346	6,697	7.07	71,715	226,968	2.02
2010/11	122,792	62,887	59,905	6,136	9.76	69,023	243,952	1.99
2011/12	110,769	59,402	51,367	5,856	8.77	65,258	229,968	2.08
2012/13	107,420	56,011	51,409	6,681	7.69	62,692	225,896	2.10
2013/14	148,387	42,165	106,222	5,972	17.78	48,137	275,561	1.86
2014/15	312,773	18,839	293,934	3,061	96.03	21,900	386,465	1.24
2015/16	49,529	15,342	34,187	950	35.98	16,292	102,551	2.07
2016/17	45,177	14,755	30,422	861	35.33	15,616	88,922	1.97
2017/18	38,671	17,221	21,450	1,139	18.83	18,360	86,664	2.24
2018/19	43,594	24,200	19,394	1,677	11.56	25,877	94,322	2.16
√210709								
Sources: See Chapter 3, Table 3.3, Data Sources for Employment Tribunal Total Claim Outcome/Disposal (TCOD) Statistics 1985/86 to 2018/19								

- Firstly, *Single Applicant Claims Outcome/Disposals (SAC ODs)* (column B), which are the result of the SACs brought by an individual employee or worker against his/her individual employer. In 2009/10 there were 65,018 *SAC Outcome/Disposals*, i.e., 65,018 individual claims were processed by the ET, which were unrelated to each other.
- Secondly, *Multi-Applicant Claims Outcome/Disposals (MAC ODs)* (column C), which were brought by two or more people, usually against a common respondent [employer], where the claims arose out of the same or similar circumstances. However, for reporting purposes it is the number of claims processed that is counted. In 2009/10, there were 47,346 *MAC Outcome/Disposals*, i.e., 47,346 claims processed in association with other claims that have been grouped together.
- 65,018 SAC Outcome/Disposals + 47,346 MAC Outcome/Disposals = 112,364 Total Claims Outcome/Disposals processed by the ET

Each SAC Outcome/Disposal is a Single Case, so by definition the 65,018 SAC Outcome/Disposals for 2009/10 equals 65,018 Single Cases. The 47,346 MAC Outcome/Disposal claims are grouped together to be heard in Cases. In 2009/10 there were 6,697 Cases (column D) which are reported as an average of 7.07 claims (column E) per Multi-Applicant Case. So, in 2009/10, the 112,364 Total Claims Outcome/Disposals (TCODs) processed by the ET translates into 65,018 Single Cases + 6,697 Multi-Applicant Cases = 71,715 Cases (column F) processed by the ET.

Jurisdiction in this context refers to each separate employment right such as Unfair Dismissal or Sex Discrimination, although when the claim decision is published, each separate jurisdiction is referred to as a jurisdiction code rather than a jurisdiction complaint. Each jurisdiction is a separate reason for an individual to make a claim. In 2011 the Tribunal Service listed 66 separate jurisdictions (Tribunals Service, 2011) which are shown in Appendix 9. A claim can involve multiple jurisdictions, i.e., an individual can make a claim which alleges both Unfair Dismissal and Sex Discrimination. This would be referred to as two Jurisdictional Complaints and the ET would process these two Jurisdictional Complaints together. In 2009/10, there was 226,968 Jurisdictional Code (Complaint) Outcome/Disposals (JCODs) processed (column G), which gives an average of 2.02 Jurisdictional Codes (Complaints) per Total Claims Outcome/Disposals (column H).

A list of the 42 jurisdictional codes used in the Chapter 5, ET Decision analysis is shown below, in Table A2.7. It should be noted that there are slight differences in the description of the jurisdiction codes compared to the description of the jurisdictional complaints shown in Table A2.3 above. An example would be the jurisdiction code 'Unlawful deduction from wages'. In the annual ET TCA and ET claims jurisdictional complaint outcome/disposal information provided by the MoJ and its predecessor organisations, this jurisdictional complaint is referred to as 'Unauthorised Deduction from wages'. It is the same jurisdiction code/jurisdictional complaint yet confusingly the nomenclature is slightly different.

So, to sum up in 2009/10 there were:

1. 112,364 Total Claim Outcome/Disposals processed (column A)
2. 65,018 SAC Outcome/Disposals processed (column B)
3. 47,346 MAC Outcome/Disposals processed (column C)
4. 6,697 Multi-Applicant Cases processed (Column D)
5. 7.07 average claims per multiple case processed (Column E)
6. 71,715 Cases processed (column F)
7. 226,968 Jurisdictional Code (Complaint) Outcome/Disposals processed (Column G)
8. 2.02 Jurisdictional Code (Complaints) per Total Claim Outcome/Disposals processed (Column H)

Table A2.7

**List of ET Decision Index
Jurisdictional Codes**

Jurisdictional Code
Age Discrimination
Agency Workers ^a
Breach of Contract
Contract of Employment ^a
Disability Discrimination
Equal Pay Act
Fixed Term Regulations ^a
Flexible Working ^a
Health & Safety ^a
Improvement Notice ^a
Interim Relief ^a
Jurisdictional Points ^a
Maternity & Pregnancy Rights ^a
National Minimum Wage
Notice Appeal ^a
Part-Time Workers
Pensions ^a
Practice & Procedure ^a
Protective Award ^a
Public Interest Disclosure
Race Discrimination
Redundancy – failure to inform and consult
Redundancy Pay
Religion or belief discrimination
Remuneration ^a
Right to be Accompanied ^a
Rights on Insolvency ^a
Sex Discrimination
Sexual Orientation Discrimination
Suffer a detriment/unfair dismissal - pregnancy
Time Limits ^a
Time Off ^a
Time to Train ^a
TU Membership ^a
TU Rights ^a
TUPE
Unlawful deduction from wages
Unfair dismissal
Victimisation Discrimination ^a
Working Time Directive
Written Pay Statement
Written statement of reasons for dismissal/T&Cs
Other
^a Jurisdiction Codes highlighted in grey are normally combined as 'Other' in MoJ statistics

A2.4.1 Employment Tribunal Outcome/Disposal Types

Once a claim is registered by the ET it begins a journey that will result in it being recorded by the MoJ as a claim outcome/disposal with one of the formal outcome/disposal types shown below. From 2006/07 there was a change in terminology for several of the outcome/disposal types (Employment Tribunal Service, 2007, Table 2, Footnotes 1, 2 and 3) although there was no change in the actuality of the outcome/disposal. Where this has happened post 2006/07 outcome/disposal terminology is shown first followed by pre 2006/07 in *italics*. Where reference is made to a Rule Number this refers to *The Employment Tribunals Rules of Procedure 2013 (as subsequently amended up to 17th February 2015)* (HMCTS, 2015a) and are extracts or partial extracts.

1. **Successful at hearing**: Following an ET hearing the claim is decided in favour of the claimant.
2. **Default Judgment**: Judgment was entered against the Respondent [Employer] in default in consequence of their failure to enter a response to the claim in accordance with the prescribed time limits.
3. **Acas Conciliated Settlement**: A settlement has been agreed between the claimant and the Respondent [Employer] through Acas.
4. **Withdrawn: Rule 51**: Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end (HMCTS, 2015a, p.19).
5. **Dismissed upon Withdrawal: Rule 52**:

Where a claim, or part of it has been withdrawn under Rule 51 [see outcome/disposal type 4 above], the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same complaint) unless –

- (c) The claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be a legitimate reason for doing so; or

(d) The Tribunal believes that to issue such a judgment would not be in the interests of justice (HMCTS, 2015a, p.19).

6. **Struck Out** (not at a hearing): Rule 37 [*Pre 2006/07: Disposed of Otherwise*]:

At any stage of the proceedings [from the claim being accepted by the ET], either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –

(f) that it is scandalous or vexatious or has no reasonable prospect of success:

(g) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(h) for non-compliance with any of these Rules [of Procedure] or with an order of the Tribunal;

(i) that it has not been actively pursued;

(j) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out) (HMCTS, 2015a, p.16).

7. **Unsuccessful at hearing** [*Pre 2006/07: Dismissed at tribunal hearing (other reasons)*]: Following an ET hearing the claim is decided in favour of the Respondent [Employer].

8. **Dismissed at a preliminary hearing: Rule 53** [*Pre 2006/07: Dismissed at tribunal hearing (out of scope)*]:

A Preliminary Hearing is a hearing at which the Tribunal may do one or more of the following –

(f) ...

(g) ...

(h) consider whether a claim or response, or any part, should be struck out under rule 37 [see outcome/disposal type 6 above];

(i) ...

(j) ... (HMCTS, 2015a, p.19).

9. **Dismissed Rule 27:** If the Employment Judge considers either that the Tribunal has no Jurisdiction to consider the claim, or part of it, has no reasonable prospect of success, the Tribunal shall send a notice to the parties –
 - (c) setting out the Judge’s view and the reasons for it; and
 - (d) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed (HMCTS, 2015a, p.14).
10. **Case Discontinued:** this records complaints dismissed under rule 40(1) [Tribunal Fees] where a party has not satisfied requirements in respect of paying a tribunal fee or demonstrating a case for remission (MoJ, 2019a, p.27).

The 10 Official MoJ Outcome/Disposal types can be regarded as 3 different types of overall outcome:

Success for the claimant: Outcomes 1, Successful at hearing and 2, Default Judgment are both a success for the claimant,

‘Likely Successful’ for the claimant: Outcomes 3, Acas Conciliated Settlement, 4, Withdrawn: Rule 51, 5, Dismissed upon Withdrawal: Rule 52 and 6, Struck Out are all ‘Likely Successful’ in that the claimant is likely to have achieved some degree, of, or maybe complete satisfaction.

Unsuccessful: Outcomes 7, Unsuccessful at hearing, 8, Dismissed at a preliminary hearing: Rule 53, 9, Dismissed Rule 27 and 10, Case Discontinued, are all versions of failure – the claim has failed.

A2.4.2 Survey of Employment Tribunal Applications (SETA) Outcome Types

This section provides information on the SETA Outcome types which are similar to the ET Outcome/Disposal types listed in the previous section but different in several respects as shown below in Table A2.8:

Table A2.8

Comparison of ET Outcome/Disposal and SETA Outcome Types

ET Outcome /Disposal Types 1-10	ET Outcome /Disposal Type	SETA	SETA Outcome Type		ET Outcome /Disposal 1-10 Equivalent
1	2	3	4	5	6
1	Successful at Hearing	1998 to 2018	Successful at Hearing	S1	1
2	Default Judgement	1998	Successful at Hearing		
		2003			
		2008			
		2013	Default Judgement	S2	2
2018					
3	Acas Conciliated Settlement	1998 to 2018	Acas Conciliated Settlement	S3	3
4&5	Withdrawn: Rule 51 & Dismissed upon Withdrawal: Rule 52	1998 to 2018	Privately Settled	S4a	4&5
			Withdrawn	S4b	
6	Struck Out (Pre 2006/07 Disposed of Otherwise)	1998 to 2018	Dismissed/ Disposed	S8/S6	8&6 merged
7	Unsuccessful at Hearing	1998 to 2018	Unsuccessful at Hearing	S7	7
8	Dismissed at Preliminary Hearing	1998 to 2018	Dismissed/ Disposed	S8/S6	8&6 merged
9	Dismissed Rule 27	n/a	n/a		n/a
10	Case Discontinued	n/a	n/a		n/a
Sources: SETA 1998: Department of Trade and Industry, 2004c, p.68 SETA 2003: Department of Trade and Industry, 2004b, p.23 SETA 2008: Department for Business Innovation and Skills, 2010b, p.20 SETA 2013: Department for Business Innovation and Skills, 2014b, p.40 SETA 2018: Department for Business, Energy and Industrial Strategy, 2020, p.242, Table 5.1					

Firstly, with regards to the ET Outcome/Disposal Type 4, Withdrawn (and the associated ET Outcome/Disposal Type 5, Dismissed upon Withdrawal: Rule 52), the SETA series asked specific questions to unpack the ET Outcome/Disposal Type 4, Withdrawn, into claims that were either, privately settled or actually Withdrawn, shown in Table A2.8, column 5, above, as SETA 4a and 4 b respectively. SETA has taken this step because the ET Data, as published by the MoJ and its predecessors, does not make any distinction between privately settled and Withdrawn claims and the SETA series was

used to unpack these particular claims and clarify this important distinction (DTI, 2004b, p.23).

Secondly, with regards to the ET Outcome/Disposal Type 6, Struck Out the 1998, 2003, 2008, 2013 and 2018 SETA all use the term 'dismissed/disposed' as one of the recorded Outcome of Tribunal applications, as shown in Table A2.8, column 5, above. None of the surveys uses the term 'Struck Out'. However, the 'disposed' part of the SETA term 'dismissed/disposed' almost certainly includes what is currently known as 'Struck Out', because, in 2006/07 there was a change in terminology for several of the outcome/disposal types including 'disposed' (Employment Tribunal Service, 2007, Table 2, Footnotes 1, 2 and 3), although there was no change in the actuality of the outcome/disposal. Pre 2006/07, 'Struck Out' is referred to as 'Disposed of Otherwise'. In the 1998 and 2003 SETA, therefore, the terminology for 'Struck Out' would have been 'Disposed of Otherwise' and this terminology appears to have been carried on into the 2008, 2013 and 2018 SETA, despite the noted change in terminology. The consolidation of ET Outcome Type 6, Struck Out (Disposed of otherwise), and ET Outcome Type 8, Dismissed at preliminary hearing, into SETA Outcome, Dismissed/Disposed is confirmed in the SETA 2003 Technical Report, where in Table 7.1, information on ET Outcome Type 6, Disposed and ET Outcome Type 8, Dismissed, is displayed in two separate columns, (DTI, 2004b, p.23), although no such information on separation is provided in the 1998, 2008, 2013 or 2018 SETA.

The 7 Official SETA Outcome/Disposal types can be regarded as 3 different types of overall outcome:

Success for the claimant: Outcomes S1, Successful at hearing and S2, Default Judgment are both a success for the claimant,

'Likely Successful' for the claimant: Outcomes S3, Acas Conciliated Settlement, S4a, Privately Settled, and S4b, Withdrawn, are all 'Likely Successful' in that the claimant is likely to have achieved some degree, of, or maybe complete satisfaction.

Unsuccessful: Outcomes S7, Unsuccessful at hearing, and combined S6, Dismissed/Disposed are all versions of failure – the claim has failed.

A2.5 Unfair Dismissal Annual Outcome/Disposals

Unfair Dismissal Annual Outcome/Disposals (UDAOD) are the number of Unfair dismissals claims completed in any annual measurement period such as 1999/2000. The statistic is available every year from 1972 to 2018/19, apart from 1996/7⁸⁵. Unfair Dismissal Annual Outcome/Disposals is the number of ET Unfair Dismissal claims disposed of per year. This is a different timeframe to the Total Claims Accepted statistic, which is the number of claims accepted in any monitored time-period – 2006/07 for instance. Unfair Dismissal Annual Outcome/Disposals is the number of Unfair Dismissal claims outcome/disposals in a given time period, 2006/07, where the originating claims may have been filed in any year prior such as 2003/04, 2004/05 or 2005/06 depending on how quickly the claim is processed by the ET. In 2006/07 there were 38,376 Unfair Dismissal Annual Outcome/Disposals (Employment Tribunal Service, 2007, Table 2). made up of:

⁸⁵ 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30th October 2003

Table A2.9

**Unfair Dismissal Annual Outcome/Disposals (UDAOD)
2006/2007**

Type	Outcome/Disposal	Number Disposed
1	Successful at Tribunal	3,870
2	Default Judgment	608
3	ACAS conciliated settlements	13,540
4	Withdrawn	12,764
5	Dismissed upon Withdrawal: Rule 52	0
6	Struck Out [<i>Pre 2006/07 Disposed of Otherwise</i>]	3,049
7	Unsuccessful at Hearing [<i>Pre 2006/07 Dismissed at tribunal hearing (other reasons)</i>]	3,567
8	Dismissed at a Preliminary Hearing [<i>Pre 2006/07 Dismissed at tribunal hearing (out of scope)</i>]	978
9	Dismissed Rule 27	0
10	Case Discontinued	0
Total		38,376

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Source: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

Appendix 3
Employment Tribunal Statistics
Data Sources

Table A3.1

Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19

Year	Total Claims Accepted	Cases	SAC/MAC Split	Jurisdictional Complaints	Source	
1972	Page 488	No	No	No	<i>Employment Gazette</i> , November 1984	
1973						
1974						
1975						
1976						
1977						
1978						
1979						
1980						
1981						
1982						
1983						
1984/85 ^a	Page 19	No	No	No	Hawes W.R., 2000, <i>Setting the pace or running alongside? Acas and the changing employment relationship</i> , In: Towers, Brian and Brown, William, eds. <i>Employment relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service</i> , Oxford: Blackwell	
1985/86						
1986/87						
1987/88						
1988/89						
1989/90						
1990/91						
1991/92						
1992/93						
1993/94						
1994/95						
1995/96						
1996/97						
1997/98						
1998/99						
1999/00	Page 21 ^b	No	No	Page 21	Employment Tribunal Service Annual Report and Accounts 2000-2001	
	No		Page 15	No	Lord and Redfern, 2014	
2000/01	No		Page 4 ^c	No	Employment Tribunal Service Annual Report and Accounts 2001-2002	
	Page 23 ^b		No	Page 23	Employment Tribunal Service Annual Report and Accounts 2002-2003	
2001/02	Page 23 ^b		Page 4 ^c	Page 23	Employment Tribunal Service Annual Report and Accounts 2003-2004	
2002/03	No		Page 4 ^c	No	Employment Tribunal Service Annual Report and Accounts 2004-2005	
2003/04	Page 28		No	Page 28	Employment Tribunal Service Annual Report and Accounts 2005-2006	
2004/05	No		Page 8	No	Employment Tribunal Service Annual Report and Accounts 2006-2007	
2005/06	Page 28		No	Page 28	ET and EAT Statistics (GB) 1 st April 2006 to 31 st March 2007	
2006/07	Table 1		No	Table 1	BIS, <i>Resolving workplace disputes: A Consultation</i> , Impact Assessment, Jan 2011, p.40	
	No		Page 40	No		
2007/08	No		No	No		
2008/09	Yes		Yes	Yes	Yes	Ministry of Justice, 2019, Main Tables (July to September 2019), <i>Tribunals statistics quarterly: July to September 2019</i>
2009/10						
2010/11						
2011/12						
2012/13						
2013/14						
2014/15						
2015/16						
2016/17						
2017/18						
2018/19						

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^a In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April – March

^b The Total Claims Accepted (TCA) statistic is shown as the 'Main Jurisdiction' total in the Employment Tribunal Service Annual Reports in this period

^c The SAC and MAC statistics are not directly quoted but are estimated using the information provided on page 4 of the relevant Employment Tribunal Service Annual Reports

Table A3.2

Examples of variation in reporting Employment Tribunal **Total Claim Accepted (TCA) Statistics**

Year	Total Claims Accepted	Year	Hawes 2000	Year	Employment Gazette 1984	Year	Burgess et al. 2001	Year	Hansard 2003
1972	14,857			1972	14,857				
1973	14,062			1973	14,062			1973	14,472
1974	16,320			1974	16,320			1974	16,443
1975	35,897			1975	35,897			1975	35,915
1976	47,804			1976	47,804			1976	47,644
1977	46,961			1977	46,961			1977	46,968
1978	43,321			1978	43,321			1978	43,312
1979	41,244			1979	41,244			1979	41,221
1980	41,424	1980	41,424	1980	41,424			1980	41,403
1981	44,852	1981	44,852	1981	44,852			1981	44,831
1982	43,660	1982	43,660	1982	43,660			1982	43,645
1983	39,959	1983	39,959	1983	39,939			1983	39,939
1984/85 ^a	39,191	1984 ^b	39,191					1984	39,824
								1985	36,468
1985/86	38,593	1985	38,593			1985 ^c	38,590	1985/86	35,964
1986/87	38,385	1986	38,385			1986	38,395	1986/87	38,727
1987/88	30,543	1987	30,543			1987	30,510	1987/88	31,414
1988/89	29,304	1988	29,304			1988	29,304	1988/89	28,832
1989/90	34,697	1989	34,697			1989	34,703	1989/90	34,697
1990/91	43,243	1990	43,243			1990	43,244	1990/91	43,243
1991/92	67,448	1991	67,448			1991	67,691	1991/92	67,448
1992/93	71,821	1992	71,821			1992	72,377	1992/93	71,821
1993/94	71,661	1993	71,661			1993	72,346	1993/94	71,661
1994/95	88,061	1994	88,061			1994	75,172	1994/95	88,061
1995/96	108,827	1995	108,827			1995	81,894	1995/96	108,827
1996/97	88,910	1996	88,910			1996	88,918	1996/97	88,910
1997/98	80,435	1997	80,435			1997	79,372	1997/98	80,435
1998/99	91,913	1998	91,913					1998/99	91,913
1999/00	103,935							1999/00	103,935
2000/01	130,408							2000/01	130,408
2001/02	112,227							2001/02	112,227
2002/03	98,617							2002/03	98,617
2003/04	115,042	Source quoted: Employment Tribunal Service		Source quoted: Employment Gazette		Source quoted: Employment Tribunal Service		Source quoted: Employment Tribunal Service and Employment Gazette	
2004/05	86,181								
2005/06	115,039								
2006/07	132,577								
2007/08	189,303								
2008/09	151,028								
2009/10	236,103								
2010/11	218,096								
2011/12	186,331								
2012/13	191,541								
2013/14	105,803								
2014/15	61,308								
2015/16	83,031								
2016/17	88,476								
2017/18	109,698								
2018/19	121,075								

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Sources:
 Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19
 Hawes, 2000, Burgess et al., DTI, 2001, *Employment Gazette*, 1984, November, p.488, HMSO, *Hansard*, 30 October 2003
^a In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April – March.
^b Hawes acknowledges the 1984 change in the ET claims counting year from calendar year to government financial year i.e. April – March
^c Burgess et al., confirm that ET claims counting year matched government financial year

Table A3.3

Data Sources for Employment Tribunal Total Claim Outcome/Disposal (TCOD) Statistics 1985/86 to 2018/19

Year	TCOD	Cases	Single Applicant Claim Outcome/Disposals (SACOD)/ Multi-Applicant Claims Outcome/Disposals (MACOD)/ Split	Jurisdictional Complaints Outcome/ Disposals	Source		
1985/86	Page 499	No	No	Yes	<i>Employment Gazette</i> , October 1987		
1986/87					<i>Employment Gazette</i> , May 1989		
1987/88	<i>Employment Gazette</i> , April 1990						
1988/89	<i>Employment Gazette</i> , May 1991						
1989/90	<i>Employment Gazette</i> , December 1991						
1990/91	<i>Employment Gazette</i> , November 1993						
1991/92	<i>Employment Gazette</i> , October 1994,						
1992/93	<i>Labour Market Trends</i> , July 1996						
1993/94	<i>Labour Market Trends</i> , April 1997						
1994/95	Not available ^a						
1995/96	Page 494	No	No	Yes	<i>Labour Market Trends</i> , September 1999		
1996/97				Page 22	Employment Tribunal Service Annual Report and Accounts 1999-2000		
1997/98	Page 22 ^b			Employment Tribunal Service Annual Report and Accounts 2000-2001			
1998/99	Page 22 ^b			Employment Tribunal Service Annual Report and Accounts 2001-2002			
1999/00	Page 24 ^b			Employment Tribunal Service Annual Report and Accounts 2002-2003			
2000/01	Page 24 ^b			Employment Tribunal Service Annual Report and Accounts 2003-2004			
2001/02	Page 29			Employment Tribunal Service Annual Report and Accounts 2004-2005			
2002/03	Page 29			Employment Tribunal Service Annual Report and Accounts 2005-2006			
2003/04	Table 2			ET S ET and EAT Statistics (GB) 1 st April 2006 to 31 st March 2007			
2004/05	Table 2			ETS ET and EAT Statistics (GB) 1 st April 2007 to 31 st March 2008			
2005/06	Table 2			Tribunals Service ET and EAT Statistics (GB) 1 st April 2008 to 31 st March 2009			
2006/07	Yes			Yes	Yes	Yes	Ministry of Justice, 2019, Main Tables (July to September 2019), <i>Tribunals statistics quarterly: July to September 2019</i>
2007/08							
2008/09							
2009/10							
2010/11							
2011/12							
2012/13							
2013/14							
2014/15							
2015/16							
2016/17							
2017/18							
2018/19							

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^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30th October 2003
^b The Total Claims Outcome/Disposal (TCOD) statistic is shown as the 'Main Jurisdiction' total in the Employment Tribunal Service (ETS) Annual Reports in this period

Table A3.4

**Data Sources for Selective ET Jurisdictional Complaint
Annual Outcome/Disposals 1972 to 2018/19**

Year	UD ^a	EP ^b	SD ^c	RD ^d	RP ^e	UaD ^f	BoC ^g	WTD ^h	Source
1972	p.504								<i>Employment Gazette</i> , June 1974
1973									
1974	p.535								<i>Emp Gazette</i> , June 1975
1975	p.595								<i>Emp Gazette</i> , June 1976
1976		p.458	p.460						<i>Emp Gazette</i> , May 1977
	p.1079								<i>Emp Gazette</i> , October 1977
1977		p.435	p.437						<i>Emp Gazette</i> , April 1978
	p.555								<i>Emp Gazette</i> , May 1978
1978		p.361	p.363						<i>Emp Gazette</i> , April 1979
	p.866								<i>Emp Gazette</i> , Sept 1979
1979		p.384	p.386						<i>Emp Gazette</i> , April 1980
	p.82								<i>Emp Gazette</i> , Feb 1981
1980		p.239	p.240						<i>Emp Gazette</i> , May 1981
	p.539								<i>Emp Gazette</i> , Dec1981
1981		p.202	p.204						<i>Emp Gazette</i> , May 1982
	p.520								<i>Emp Gazette</i> , Dec1982
1982		p.167	p.169						<i>Emp Gazette</i> , April 1983
	p.490								<i>Emp Gazette</i> , Nov 1984
1983		p.541	p.542	p.544					<i>Emp Gazette</i> , Dec 1984
									<i>Emp Gazette</i> , Feb 1986
1984/85 ⁱ	p.48	p.53	p.54	p.55					
1985/86	p.499								<i>Emp Gazette</i> , October 1987
1986/87									
1987/88	p.258								<i>Emp Gazette</i> , May 1989
1988/89	p.214								<i>Emp Gazette</i> , April 1990
1989/90	p.304								<i>Emp Gazette</i> , May 1991
1990/91	p.682								<i>Emp Gazette</i> , Dec 1991
1991/92	p.528								<i>Emp Gazette</i> , Nov 1993
1992/93									
1993/94	p.368								<i>Emp Gazette</i> , October 1994
1994/95	p.306								<i>Lab Mkt Trends</i> , July 1996
1995/96	p.152								<i>Lab Mkt Trends</i> , April 1997
1996/97	Not available ^j								
1997/98									
1998/99	p.494								<i>Lab Mkt Trends</i> , Sept 1999
1999/00	p.22								ETS Ann Rpt. & Accts 99/00
2000/01	p.22								ETS Ann Rpt. & Accts 00/01
2001/02	p.22								ETS Ann Rpt. & Accts 01/02
2002/03	p.24								ETS Ann Rpt. & Accts 02/03
2003/04	p.24								ETS Ann Rpt. & Accts 03/04
2004/05	p.29								ETS Ann Rpt. & Accts 04/05
2005/06	p.29								ETS Ann Rpt. & Accts 05/06
2006/07	Table 2								ETS ET and EAT Statistics (GB) 1 st April 2006 to 31 st March 2007
2007/08	Table 2								ETS ET and EAT Statistics (GB) 1 st April 2007 to 31 st March 2008
2008/09	Table 2								Tribunals Service ET and EAT Statistics (GB) 1 st April 2008 to 31 st March 2009
2009/10	Tab ET_3								Ministry of Justice, 2019, Main Tables (July to September 2019), <i>Tribunals statistics quarterly: July to September 2019</i>
2010/11									
2011/12									
2012/13									
2013/14									
2014/15									
2015/16									
2016/17									
2017/18									
2018/19									

^a Unfair Dismissal, ^b Equal Pay, ^c Sex Discrimination, ^d Race Discrimination, ^e Redundancy Pay, ^f Unauthorised Deductions, ^g Breach of Contract, ^h Working Time Directive

ⁱ In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April - March.

^j 1996/97 Annual Outcome/Disposals Statistics not available – See *Hansard*, 30th October 2003

Table A3.5

**1983 Acts of Parliament mandating adjudication by an
Employment Tribunal**

Act	Year
Docks and Harbours Act	1966
Equal Pay Act	1970
Health and Safety at Work etc Act	1974
Sex Discrimination Act	1975
Social Security Pensions Act	1975
Employment Protection Act	1975
Race Relations Act	1976
Employment Protection (Consolidation) Act (as amended)	1978
Employment Act	1980
The Transfer of Undertaking (Protection of Employment) Regulations	1981
Industrial Training Act	1982
Various Acts under which compensation may be awarded	
Source: <i>Employment Gazette</i> , November 1984, p.487	

Appendix 4
Legal Definitions

Appendix 4

Legal Definitions

Damages-based agreement: A damages-based agreement (DBA) is a form of “no-win, no-fee” agreement between a lawyer and client, under which the lawyer is paid an agreed proportion of the sums the client recovers in litigation (Summit Law, 2022).

Frivolous: not having any serious purpose or value (Oxford Dictionary of English online, 2023).

Implied term: A contractual term that has not been expressly agreed between the parties but has been implied into the contract either by common law or by statute (Thomson Reuters Practical Law, 2021). The examples are numerous. For instance, the National Minimum Wage Act 1998, provides that in any contract for work, the worker must be paid according to a minimum wage set by Parliament.

Meritless: (of a case, claim, etc.) lacking some or all of the legal or substantive elements required to have a prospect of success (Oxford Dictionary of English online, 2023).

Meritorious: (of an action or claim) likely to succeed on the merits of the case ((Oxford Dictionary of English online, 2023).

Precedent: A judgment or decision of a court used as an authority for reaching the same decision in subsequent cases. It is that part of the judgment that represents the legal reasoning (or *ratio decidendi*) of a case that is binding, but only if the legal reasoning is from a superior court and, in general, from the same court in an earlier case. Accordingly, *ratio decidendis* of the House of Lords [Supreme Court] are binding upon the Court of Appeal and all lower courts and are normally followed by the House of Lords [Supreme Court] itself. The *ratio decidendis* of the Court of Appeal are binding on all lower courts and, subject to some exceptions, on the Court of Appeal itself. *Ratio decidendis* of the High Court [for Employment Tribunals, the High Court equivalent is the Employment Appeal Tribunal] are binding on inferior courts, but not on itself.

The *ratio decidendis* of inferior courts do not create any binding precedent (Law and Martin, 2014).

Reasonableness: In defending a case for unfair dismissal, the employer must be able to prove that the dismissal was reasonable in the circumstances. The latter include the size and administrative resources of the employing organization, the substantial merits of the case, and equity. In determining reasonableness, a key issue for the Employment Tribunal is the extent to which the dismissal was procedurally fair. For example, was the employee given the opportunity to change behaviour, mount a defence, and seek representation, were equivalent cases dealt with in the same manner, and was the punishment of dismissal proportionate to the offence? In deciding whether a dismissal was reasonable, a tribunal can have regard to the ACAS Code on Disciplinary Practice and Procedures (Heery and Noon, 2017).

Reasonable prospects of success: Legal expenses insurance policies usually contain a clause that entitles the insurer to withhold or withdraw funding for legal proceedings if there are no "reasonable prospects of success" (financial-ombudsman.org.uk, 2005, p.11).

Struck Out: The court has the power to strike out (i.e., dismiss) either party's statement of case (in whole or in part only). A strike out will usually end the claim (or part thereof). There are various grounds on which a party's claim may be struck out (LexisNexis, 2023).

Vexatious: Proceedings brought with no reasonable prospect of success and for the purpose of annoying the other party (Law and Martin, 2014).

Appendix 5

Thesis Definitions

Appendix 5

Thesis Definitions

Burden: Transitive: To lay a (material) burden on; to load. *Figurative:* To load, encumber, oppress, lay a burden on, tax (memory, conscience, resources, etc.) (Oxford Dictionary of English online, 2023).

Employment Tribunal Claim: ‘a claim made to an ET and *accepted* by the ET’

Employment Dispute: ‘an expression of [workplace] conflict between workers and their employers in relation to:

1. terms and conditions of employment;
2. recruitment, suspension, and dismissal of employees;
3. work allocation and responsibilities;
4. discipline at work;
5. membership of trade unions and the rights of trade union officers;
and
6. procedural matters relating to trade union recognition, negotiation,
and consultation.

This definition excludes disputes that are not between workers and their employers, for example demarcation disputes between competing groups of workers. Disputes can arise for a wide variety of reasons and assume a number of different forms. A distinction can be drawn between individual disputes between employers and their employees and collective disputes that involve employers and trade unions’ (Heery and Noon, 2017).

Workplace Conflict: Most academic observers regard conflict as an intrinsic, unavoidable feature of the employment relationship and believe that, whilst manifestations of conflict rise and fall over time, they can never wholly disappear. The reason behind this is a fundamental disparity of interest within the employment relationship, which finds expression in the employer’s search for higher output, stricter control and reduced costs whilst the employee wants protection from overwork, autonomy, and higher wages. In analysing industrial [workplace] conflict, several important distinctions can be drawn. The first is

between latent and manifest conflict and refers to the distinction between conflict of interests and actual resort to conflict behaviour by workers and their managers. The second is between forms of conflict. These may be individual and informal, often embracing behaviour such as absenteeism, quitting, restriction of output, and sabotage. Alternatively, conflict may assume a collective, more organized form and embrace strikes and other forms of industrial action. It must also be recognized that employers engage in conflict, including the disciplining and dismissal of workers, the threat of closure, and the use of the lockout and victimization to counter trade unions' (Heery and Noon, 2017).

Appendix 6

Employment Tribunal Claims Data Analysis

Table A6.1

ET Total Claims Accepted (TCA) by Year 1999/00 to 2018/19
Showing Split between Single Applicant Claims and
Multi-Applicant Claims

Year	Total Claims Accepted (TCA)	Single Applicant Claims (SACs)	SACs as %age of TCA	Multi-Applicant Claims (MACs)	MACs as %age of TCA
	A	B	B/A	C	C/A
1999/00	103,935	70,600	68%	33,300	32%
2000/01	130,408	73,726	57%	56,682	43%
2001/02	112,227	69,553	62%	42,674	38%
2002/03	98,617	67,527	68%	31,090	32%
2003/04	115,042	65,364	57%	49,678	43%
2004/05	86,181	55,055	64%	31,126	36%
2005/06	115,039	51,496	45%	63,543	55%
2006/07	132,577	54,100	41%	78,600	59%
2007/08	189,303	54,500	29%	134,800	71%
2008/09	151,028	62,370	41%	88,658	59%
2009/10	236,103	71,280	30%	164,823	70%
2010/11	218,096	60,591	28%	157,505	72%
2011/12	186,331	59,247	32%	127,084	68%
2012/13	191,541	54,704	29%	136,837	71%
2013/14	105,803	34,219	32%	71,584	68%
2014/15	61,308	16,420	27%	44,888	73%
2015/16	83,031	16,935	20%	66,096	80%
2016/17	88,476	17,005	19%	71,471	81%
2017/18	109,698	27,916	25%	81,782	75%
2018/19	121,075	34,974	29%	86,101	71%

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Sources: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19

Table A6.2

**Employment Tribunal
Total Claims Accepted (TCA) by Year and Unfair Dismissal Annual
Outcome/Disposals (UDAOD) 1972 to 2018/19**

Year	Total Claims	Unfair Dismissal Disposals	UD as %age of TCA	Year	Total Claims	Unfair Dismissal Disposals	UD as %age of TCA
1972	14,857	5,197	35%	1996/97	88,910	n/a ^b	
1973	14,062	9,350	66%	1997/98	80,435	35,183	44%
1974	16,320	10,109	62%	1998/99	91,913	32,632	36%
1975	35,897	22,632	63%	1999/00	103,935	36,197	35%
1976	47,804	33,701	70%	2000/01	130,408	46,497	36%
1977	46,961	35,389	75%	2001/02	112,227	41,258	37%
1978	43,321	34,180	79%	2002/03	98,617	43,510	44%
1979	41,244	33,383	81%	2003/04	115,042	40,927	36%
1980	41,424	28,624	69%	2004/05	86,181	35,482	41%
1981	44,852	36,276	81%	2005/06	115,039	35,415	31%
1982	43,660	33,109	76%	2006/07	132,577	38,376	29%
1983	39,959	30,076	75%	2007/08	189,303	37,004	20%
1984/85 ^a	39,191	28,052	72%	2008/09	151,028	39,427	26%
1985/86	38,593	27,632	72%	2009/10	236,103	50,892	22%
1986/87	38,385	29,392	77%	2010/11	218,096	49,649	23%
1987/88	30,543	24,916	82%	2011/12	186,331	46,107	25%
1988/89	29,304	17,870	61%	2012/13	191,541	43,956	23%
1989/90	34,697	18,098	52%	2013/14	105,803	37,412	35%
1990/91	43,243	19,554	45%	2014/15	61,308	18,387	30%
1991/92	67,448	25,533	38%	2015/16	83,031	14,549	18%
1992/93	71,821	33,683	47%	2016/17	88,476	11,417	13%
1993/94	71,661	42,757	60%	2017/18	109,698	13,085	12%
1994/95	88,061	40,039	45%	2018/19	121,075	15,987	13%
1995/96	108,827	38,557	35%				
							√210709
^a In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April - March. ^b 1996/97 Unfair Dismissal Annual Outcome/Disposal Statistics not available – See <i>Hansard</i> , 30th October 2003 Sources: Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19 Unfair Dismissal Annual Outcome/Disposals: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19							

Table A6.3

Percentage of People in Employment submitting ET Claims and Unfair Dismissal Annual Outcome/Disposals (UDOAD) by Year 1972 to 2018/19

Year	Number of People in Employment ^a	Total Claims Accepted	%age of People in Employment submitting Claims	Unfair Dismissal	%age of People in Employment vs UD Claims Disposed
	A	B	C=B/A	D	E=D/A
1972	24,579,250	14,857	0.0604%	5,197	0.0211%
1973	24,965,000	14,062	0.0563%	9,350	0.0375%
1974	25,029,250	16,320	0.0652%	10,109	0.0404%
1975	24,933,250	35,897	0.1443%	22,632	0.0908%
1976	24,786,000	47,804	0.1929%	33,701	0.1360%
1977	24,809,000	46,961	0.1893%	35,389	0.1426%
1978	24,939,750	43,321	0.1737%	34,180	0.1371%
1979	25,195,250	41,244	0.1637%	33,383	0.1325%
1980	25,086,250	41,424	0.1651%	28,624	0.1141%
1981	24,430,000	44,852	0.1836%	36,276	0.1485%
1982	23,950,750	43,660	0.1823%	33,109	0.1382%
1983	23,775,250	39,959	0.1681%	30,076	0.1265%
1984/85 ^b	24,382,500	39,191	0.1607%	28,052	0.1186%
1985/86	24,631,250	38,593	0.1567%	27,632	0.1122%
1986/87	24,810,000	38,385	0.1547%	29,392	0.1181%
1987/88	25,456,250	30,543	0.1200%	24,916	0.0979%
1988/89	26,268,750	29,304	0.1116%	17,870	0.0680%
1989/90	26,826,250	34,697	0.1293%	18,098	0.0675%
1990/91	26,778,750	43,243	0.1615%	19,554	0.0730%
1991/92	25,957,500	67,448	0.2598%	25,533	0.0984%
1992/93	25,433,000	71,821	0.2824%	33,683	0.1324%
1993/94	25,334,250	71,661	0.2829%	42,757	0.1688%
1994/95	25,570,000	88,061	0.3444%	40,039	0.1566%
1995/96	25,893,500	108,827	0.4203%	38,557	0.1489%
1996/97	26,162,500	88,910	0.3398%	N/A ^c	N/A
1997/98	26,599,750	80,435	0.3024%	35,183	0.1323%
1998/99	26,884,750	91,913	0.3419%	32,632	0.1214%
1999/00	27,249,250	103,935	0.3814%	36,197	0.1328%
2000/01	27,548,750	130,408	0.4734%	46,497	0.1688%
2001/02	27,755,500	112,227	0.4043%	41,258	0.1486%
2002/03	28,019,250	98,617	0.3520%	43,510	0.1553%
2003/04	28,311,250	115,042	0.4063%	40,927	0.1446%
2004/05	28,612,500	86,181	0.3012%	35,482	0.1240%
2005/06	28,914,500	115,039	0.3979%	35,415	0.1225%
2006/07	29,174,250	132,577	0.4544%	38,376	0.1315%
2007/08	29,500,500	189,303	0.6417%	37,004	0.1254%
2008/09	29,549,000	151,028	0.5111%	39,247	0.1328%
2009/10	29,067,750	236,103	0.8123%	50,892	0.1751%
2010/11	29,335,500	218,096	0.7435%	49,649	0.1692%
2011/12	29,381,000	186,331	0.6342%	46,107	0.1569%
2012/13	29,793,250	191,541	0.6429%	43,956	0.1475%
2013/14	30,216,250	105,803	0.3501%	37,412	0.1238%
2014/15	30,909,500	61,308	0.1983%	18,387	0.0595%
2015/16	31,388,750	83,031	0.2645%	14,549	0.0464%
2016/17	31,837,000	88,476	0.2779%	11,417	0.0359%
2017/18	32,156,250	109,698	0.3411%	13,085	0.0407%
2018/19	32,527,750	121,075	0.3722%	15,987	0.0491%

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Sources: Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19

Unfair Dismissal Annual Outcome/Disposals: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

Office for National Statistics, 2022, *Number of People in Employment (aged 16 and over, seasonally adjusted)*, Source dataset: *Labour Market Statistics time series dataset (LMS)*, Series ID: MGRZ.

^a MGRZ is a UK data series that includes Northern Ireland

^b In April 1984 the ET claims counting year changed from calendar year to government financial year i.e., April - March. The NoPiE annual figures from 1984 have been calculated on a similar basis using the NoPiE quarterly figures.

^c 1996/97 Unfair Dismissal Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

Table A6.4

**Total number of workers involved in Labour Disputes
as a %age of NoPiE**

Year	Number of People in Employment ^a	Total number of workers involved in year	Total number of workers involved as a %age of NoPiE
1972	24,579,250	1,734,000	7.05%
1973	24,965,000	1,528,000	6.11%
1974	25,029,250	1,626,000	6.50%
1975	24,933,250	809,000	3.24%
1976	24,786,000	668,000	2.70%
1977	24,809,000	1,166,000	4.70%
1978	24,939,750	1,041,000	4.17%
1979	25,195,250	4,608,000	18.29%
1980	25,086,250	834,000	3.32%
1981	24,430,000	1,513,000	6.19%
1982	23,950,750	2,103,000	8.78%
1983	23,775,250	574,000	2.41%
1984 ^b	24,382,500	1,464,000	6.00%
1985	24,631,250	791,000	3.21%
1986	24,810,000	720,000	2.90%
1987	25,456,250	887,000	3.48%
1988	26,268,750	790,000	3.01%
1989	26,826,250	727,000	2.71%
1990	26,778,750	298,000	1.11%
1991	25,957,500	176,000	0.68%
1992	25,433,000	148,000	0.58%
1993	25,334,250	385,000	1.52%
1994	25,570,000	107,000	0.42%
1995	25,893,500	174,000	0.67%
1996	26,162,500	364,000	1.39%
1997	26,599,750	130,000	0.49%
1998	26,884,750	93,000	0.35%
1999	27,249,250	141,000	0.52%
2000	27,548,750	183,000	0.66%
2001	27,755,500	180,000	0.65%
2002	28,019,250	943,000	3.37%
2003	28,311,250	151,000	0.53%
2004	28,612,500	293,000	1.02%
2005	28,914,500	93,000	0.32%
2006	29,174,250	713,000	2.44%
2007	29,500,500	745,000	2.53%
2008	29,549,000	511,000	1.73%
2009	29,067,750	209,000	0.72%
2010	29,335,500	133,000	0.45%
2011	29,381,000	1,530,000	5.21%
2012	29,793,250	237,000	0.80%
2013	30,216,250	395,000	1.31%
2014	30,909,500	733,000	2.37%
2015	31,388,750	81,000	0.26%
2016	31,837,000	154,000	0.48%
2017	32,156,250	33,000	0.10%
2018	32,527,750	39,000	0.12%

Source: [✓221202](#)
Office for National Statistics, 2022, *Number of People in Employment (aged 16 and over, seasonally adjusted)*, Source dataset: *Labour Market Statistics time series dataset (LMS)*, Series ID: MGRZ.
^a MGRZ is a UK data series that includes Northern Ireland
Office for National Statistics, 2020, *Labour disputes, annual estimates, UK*
^b From 1984, the NoPiE annual figures shown in this table are based on the government financial year i.e., April to March. This means there is a slight timing difference with the Labour dispute statistics which are from January to December

Table A6.5

**Trade Union Membership as %age of NoPiE
1972 to 2016/17**

Year	Number	Year	Number	Year	Number
1972	46%	1987	41%	2002/03	28%
1973	46%	1988	40%	2003/04	27%
1974	46%	1989	37%	2004/05	26%
1975	47%	1990	37%	2005/06	26%
1976	49%	1991	37%	2006/07	26%
1977	51%	1992	35%	2007/08	26%
1978	52%	1993	34%	2008/09	25%
1979	52%	1994	32%	2009/10	25%
1980	50%	1995	31%	2010/11	25%
1981	50%	1996	30%	2011/12	24%
1982	49%	1997	29%	2012/13	24%
1983	48%	1998	29%	2013/14	23%
1984	44%	1999/00	29%	2014/15	23%
1985	44%	2000/01	28%	2015/16	22%
1986	43%	2001/02	28%	2016/17	22%

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Source:

Department for Business, Energy and Industrial Strategy, 2019, *Trade Union Membership statistics 2018: tables, Tab 1.1*

Office for National Statistics, 2022, *Number of People in Employment (aged 16 and over, seasonally adjusted)*, Source dataset: *Labour Market Statistics time series dataset (LMS)*, Series ID: MGRZ (Data Series MGRZ is a UK data series that includes Northern Ireland)

Table A6.6a

Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05

Type of Jurisdiction Complaint	ET Fee Type	1998/1999	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Total Claims Accepted		91,913	103,935	130,408	112,227	98,617	115,042	86,181
SAC			70,600	73,726	69,553	67,527	65,364	55,055
MAC			33,300	56,682	42,674	31,090	49,678	31,126
Total Jurisdictional Complaints		148,771	176,749	218,101	194,120	172,322	197,365	156,081
Average Jurisdictional Complaints per claim		1.6186	1.7006	1.6725	1.7297	1.7474	1.7156	1.8111
Age Discrimination	A							
Breach of Contract	A	27,188	30,958	31,333	30,791	29,635	29,661	22,788
Disability Discrimination	B	3,151	3,765	4,630	5,273	5,310	5,655	4,942
Equal Pay	B	7,222	4,712	17,153	8,762	5,053	4,412	8,229
National Minimum Wage	B		1,306	852	556	829	613	597
Part Time Workers Regulations	B			12,280	831	500	833	561
Public Interest Disclosure	B							
Race Discrimination	B	3,318	4,015	4,238	3,889	3,638	3,492	3,317
Redundancy – failure to inform and consult	B			1,542	3,862	3,112	5,630	3,664
Redundancy Pay	A	8,642	10,846	9,440	8,919	8,558	9,087	6,877
Religion or belief discrimination	B						70	307
Sex Discrimination	B	10,157	7,801	25,940	15,703	11,001	17,722	11,726
Sexual Orientation discrimination	B						61	349
Suffer a detriment/unfair dismissal - pregnancy	B	1,341	1,216	963	981	878	1,170	1,345
TUPE – failure to inform and consult	B	2,060	1,336	1,323	2,027	1,054	1,321	1,031
Unauthorised Deductions	A	29,660	39,894	41,711	42,205	39,451	42,524	37,470
Unfair Dismissal	B	44,044	54,357	50,488	53,318	46,534	46,370	39,727
Working Time Directive	A	1,326	5,595	6,389	4,980	6,436	16,869	3,223
Written pay statement	A			884	1,082	1,117	1,387	1,076
Written statement of reasons for dismissal	A			1,425	1,526	1,658	1,829	1,401
Written statement of Ts and Cs	A	3,098	2,762	2,420	3,208	2,753	3,288	1,992
Others		7,564	8,186	5,090	6,207	4,805	5,371	5,459
√210710								
Sources: Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19 Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)								

Table A6.6b

Jurisdictional Complaint (JC) Breakdown 2005/06 to 2011/12

Type of Jurisdiction Complaint	ET Fee Type	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Total Claims Accepted		115,039	132,577	189,303	151,028	236,103	218,096	186,331
SAC		51,496	54,100	54,500	62,370	71,280	60,591	59,247
MAC		63,543	78,600	134,800	88,658	164,823	157,505	127,084
Total Jurisdictional Complaints		201,514	238,546	296,920	266,542	392,777	382,386	321,836
Average Jurisdictional Complaints per claim		1.7517	1.7993	1.5685	1.7649	1.6636	1.7533	1.7272
Age Discrimination	A		972	2,900	3,801	5,184	6,821	3,715
Breach of Contract	A	26,230	27,298	25,100	32,829	42,441	34,609	32,075
Disability Discrimination	B	4,585	5,533	5,800	6,578	7,547	7,241	7,676
Equal Pay	B	17,268	44,013	62,700	45,748	37,385	34,584	28,801
National Minimum Wage	B	440	806	430	595	501	524	511
Part Time Workers Regulations	B	402	776	600	664	530	1,575	774
Public Interest Disclosure	B			1,498	1,773	2,008	2,048	2,517
Race Discrimination	B	4,103	3,780	4,100	4,983	5,712	4,992	4,843
Redundancy – failure to inform and consult	B	4,056	4,802	4,500	11,371	7,487	7,436	7,984
Redundancy Pay	A	7,214	7,692	7,300	10,839	19,025	16,012	14,661
Religion or belief discrimination	B	486	648	710	832	1,000	878	939
Sex Discrimination	B	14,250	28,153	26,900	18,637	18,204	18,258	10,783
Sexual Orientation discrimination	B	395	470	580	600	706	638	613
Suffer a detriment/unfair dismissal - pregnancy	B	1,504	1,465	1,600	1,835	1,949	1,866	1,861
TUPE – failure to inform and consult	B	899	1,108	1,400	1,262	1,768	1,883	2,594
Unauthorised Deductions	A	32,330	34,857	34,600	33,839	75,536	71,275	51,185
Unfair Dismissal	B	41,832	44,491	40,900	52,711	57,350	47,884	46,326
Working Time Directive	A	35,474	21,127	55,700	23,976	95,198	114,104	94,697
Written pay statement	A	794	990	1,100	1,144	1,355	1,333	1,287
Written statement of reasons for dismissal	A	955	1,064	1,100	1,105	1,097	929	962
Written statement of Ts and Cs	A	3,078	3,429	5,000	3,919	4,743	4,016	3,630
Others		5,219	5,072	12,402	7,501	6,051	3,480	3,402
								√210710
Sources:								
Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19								
Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)								

Table A6.6c

Jurisdictional Complaint (JC) Breakdown 2012/13 to 2018/19

Type of Jurisdiction Complaint	ET Fee Type	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	
Total Claims Accepted		191,541	105,803	61,308	83,031	88,476	109,698	121,075	
SAC		54,704	34,219	16,420	16,935	17,005	27,916	34,974	
MAC		136,837	71,584	44,888	66,096	71,471	81,782	86,101	
Total Jurisdictional Complaints		332,859	193,968	129,966	178,079	143,946	172,731	198,715	
Average Jurisdictional Complaints per claim		1.7378	1.8333	2.1199	2.1447	1.6269	1.5746	1.6413	
Age Discrimination	A	2,818	1,994	1,087	12,636	7,628	6,770	2,493	
Breach of Contract	A	29,820	16,762	8,250	9,279	7,934	12,186	14,239	
Disability Discrimination	B	7,492	5,196	3,106	3,470	3,794	5,477	6,919	
Equal Pay	B	23,638	17,202	9,621	17,063	10,467	35,558	27,730	
National Minimum Wage	B	500	259	161	239	224	362	350	
Part Time Workers Regulations	B	823	1,163	304	215	374	341	301	
Public Interest Disclosure	B	2,754	2,226	1,395	1,400	1,497	2,191	2,599	
Race Discrimination	B	4,818	3,064	1,858	2,002	2,240	2,991	3,589	
Redundancy – failure to inform and consult	B	11,075	3,604	2,307	4,085	2,410	4,097	5,657	
Redundancy Pay	A	12,748	6,663	2,939	3,944	2,317	4,104	5,547	
Religion or belief discrimination	B	979	584	339	340	384	670	753	
Sex Discrimination	B	18,814	13,722	4,471	5,380	8,841	5,522	9,427	
Sexual Orientation discrimination	B	639	361	189	188	197	316	461	
Suffer a detriment/unfair dismissal - pregnancy	B	1,589	1,248	790	865	872	1,357	1,810	
TUPE – failure to inform and consult	B	1,591	1,219	568	635	811	819	799	
Unauthorised Deductions	A	53,581	27,385	28,701	36,362	9,152	24,089	22,488	
Unfair Dismissal	B	49,036	28,528	12,652	13,302	12,038	17,714	21,592	
Working Time Directive	A	99,627	49,087	31,451	36,813	30,313	16,950	49,725	
Written pay statement	A	1,363	940	282	375	263	484	2,237	
Written statement of reasons for dismissal	A	808	433	209	210	159	257	223	
Written statement of Ts and Cs	A	4,199	2,226	925	1,023	976	1,200	1,417	
Others		4,147	10,102	18,361	28,253	41,055	29,276	18,359	
									√210710
Sources:									
Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19									
Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)									

Table A6.7

**Jurisdictional Complaint Breakdown Comparison
1998/99 to 2004/05 vs 2005/06 to 2011/12**

Type of Jurisdiction Complaint	ET Fee Type	1998/1999 to 2004/2005 7-year Average	2005/2006 to 2011/2012 7-year Average	Increase/Decrease Per Annum	%age Increase/Decrease
Total Claims Accepted					
		105,475	175,497	70,022	66.39%
SAC		66,971*	59,083	-7,888	-11.78%
MAC		40,758*	116,430	75,672	186%
Total Jurisdictional Complaints					
		180,501	300,074	119,573	66.25%
Average Jurisdictional Complaints per claim					
		1.7113	1.7099		
Age Discrimination	A	0	3,342	3,342	*
Breach of Contract	A	28,908	31,512	2,604	9.01%
Disability Discrimination	B	4,675	6,423	1,748	37.38%
Equal Pay	B	7,935	38,643	30,708	387.01%
National Minimum Wage	B	679	544	-135	-19.90%
Part Time Workers Regulations	B	2,144	760	-1,383	-64.54%
Public Interest Disclosure	B	0	1,406	1,406	*
Race Discrimination	B	3,701	4,645	944	25.50%
Redundancy – failure to inform and consult	B	2,544	6,805	4,261	167.47%
Redundancy Pay	A	8,910	11,820	2,911	32.67%
Religion or belief discrimination	B	54	785	731	1,357%
Sex Discrimination	B	14,293	19,312	5,019	35.12%
Sexual Orientation discrimination	B	59	572	513	876.1%
Suffer a detriment/unfair dismissal – pregnancy	B	1,128	1,726	598	53.03%
TUPE – failure to inform and consult	B	1,450	1,559	109	7.51%
Unauthorised Deductions	A	38,988	47,660	8,672	22.24%
Unfair Dismissal	B	47,834	47,356	-477	-1.01%
Working Time Directive	A	6,403	62,897	56,494	882%
Written pay statement	A	792	1,143	351	44.30%
Written statement of reasons for dismissal	A	1,120	1,030	-90	-8.00%
Written statement of Ts and Cs	A	2,789	3,974	1,185	42.49
Others		6,097	6,161	64	1.04%
					√210710
* 6 Year Average as no SAC/MAC data available for 1998/99 Based on data in Appendix 6, Tables A6.6a and A6.6b, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05 and 2005/06 to 2011/12					

Table A6.8

**Jurisdictional Complaint Correlations between
Jurisdictional Complaints, TCA, SACs and MACs**

	1999/00 to 2012/13			1999/00 to 2018/19		
Jurisdictional Complaint (JC)	Correlations between JC and			Correlations between JC and		
	TCA	SAC	MAC	TCA	SAC	MAC
Age Discrimination	0.77 (p=0.000)	0.64 (p=0.000)	0.73 (p=0.000)	-0.11 (p=0.000)	-0.32 (p=0.000)	0.00 (p=0.000)
Breach of Contract	0.63 (p=0.000)	0.61 (p=0.000)	0.52 (p=0.001)	0.70 (p=0.000)	0.94 (p=0.000)	0.37 (p=0.000)
Disability Discrimination	0.84 (p=0.000)	-0.17 (p=0.000)	0.85 (p=0.000)	0.84 (p=0.000)	0.45 (p=0.000)	0.76 (p=0.000)
Equal Pay	0.68 (p=0.000)	-0.39 (p=0.000)	0.72 (p=0.000)	0.65 (p=0.000)	0.06 (p=0.000)	0.72 (p=0.000)
National Minimum Wage	-0.49 (p=0.000)	0.50 (p=0.000)	-0.56 (p=0.000)	0.08 (p=0.000)	0.76 (p=0.000)	-0.25 (p=0.000)
Part Time Workers Regulations	-0.09 (p=0.000)	0.50 (p=0.000)	-0.17 (p=0.000)	0.05 (p=0.000)	0.35 (p=0.000)	-0.11 (p=0.000)
Public Interest Disclosure	0.10 (p=0.000)	-0.16 (p=0.000)	0.15 (p=0.000)	0.40 (p=0.000)	0.40 (p=0.000)	0.38 (p=0.000)
Race Discrimination	0.87 (p=0.000)	0.13 (p=0.000)	0.83 (p=0.000)	0.86 (p=0.000)	0.80 (p=0.000)	0.62 (p=0.000)
Redundancy – failure to inform and consult	0.59 (p=0.000)	-0.22 (p=0.000)	0.62 (p=0.000)	0.68 (p=0.000)	0.33 (p=0.000)	0.64 (p=0.000)
Redundancy Pay	0.80 (p=0.000)	0.31 (p=0.000)	0.73 (p=0.000)	0.85 (p=0.000)	0.74 (p=0.000)	0.63 (p=0.000)
Religion or belief discrimination	0.84 (p=0.000)	0.15 (p=0.000)	0.86 (p=0.000)	0.82 (p=0.000)	0.42 (p=0.000)	0.86 (p=0.000)
Sex Discrimination	0.32 (p=0.000)	-0.16 (p=0.000)	0.34 (p=0.000)	0.55 (p=0.000)	0.58 (p=0.000)	0.37 (p=0.000)
Sexual Orientation discrimination	0.80 (p=0.000)	0.08 (p=0.000)	0.83 (p=0.000)	0.87 (p=0.000)	0.62 (p=0.000)	0.84 (p=0.000)
Suffer a detriment/unfair dismissal - pregnancy	0.79 (p=0.000)	-0.41 (p=0.000)	0.84 (p=0.000)	0.80 (p=0.000)	0.33 (p=0.000)	0.77 (p=0.000)
TUPE – failure to inform and consult	0.57 (p=0.000)	0.20 (p=0.000)	0.53 (p=0.000)	0.71 (p=0.000)	0.65 (p=0.000)	0.51 (p=0.000)
Unauthorised Deductions	0.77 (p=0.000)	0.28 (p=0.000)	0.71 (p=0.003)	0.76 (p=0.000)	0.63 (p=0.002)	0.58 (p=0.000)
Unfair Dismissal	0.27 (p=0.000)	0.77 (p=0.000)	0.15 (p=0.013)	0.58 (p=0.000)	0.97 (p=0.000)	0.22 (p=0.000)
Working Time Directive	0.92 (p=0.000)	-0.26 (p=0.106)	0.94 (p=0.000)	0.80 (p=0.000)	0.01 (p=0.232)	0.91 (p=0.000)
Written pay statement	0.57 (p=0.000)	0.15 (p=0.000)	0.55 (p=0.000)	0.51 (p=0.000)	0.54 (p=0.000)	0.36 (p=0.000)
Written statement of reasons for dismissal	-0.66 (p=0.000)	0.56 (p=0.000)	-0.74 (p=0.000)	0.23 (p=0.000)	0.90 (p=0.000)	-0.15 (p=0.000)
Written statement of Ts and Cs	0.86 (p=0.000)	-0.19 (p=0.000)	0.87 (p=0.000)	0.84 (p=0.000)	0.74 (p=0.000)	0.62 (p=0.000)
Others	-0.01 (p=0.000)	-0.01 (p=0.000)	-0.01 (p=0.000)	-0.45 (p=0.000)	-0.83 (p=0.000)	-0.13 (p=0.000)

√230126

Based on data in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19 Correlation and p-value calculations shown in Appendix 6, Tables A6.26a to A6.26v

Table A6.9a

**Jurisdictional Complaint as %age of Total Claims Accepted (TCA)
containing that JC 1998/99 to 2004/05**

Type of Jurisdiction Complaint	ET Fee Type	1998/1999	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Total Claims Accepted		91,913	103,935	130,408	112,227	98,617	115,042	86,181
SAC			70,600	73,726	69,553	67,527	65,364	55,055
MAC			33,300	56,682	42,674	31,090	49,678	31,126
Total Jurisdictional Complaints		148,771	176,749	218,101	194,120	172,322	197,365	156,081
Average Jurisdictional Complaints per claim		1.6186	1.7006	1.6725	1.7297	1.7474	1.7156	1.8111
Age Discrimination	A							
Breach of Contract	A	29.58%	29.79%	24.03%	27.44%	30.05%	25.78%	26.44%
Disability Discrimination	B	3.43%	3.62%	3.55%	4.70%	5.38%	4.92%	5.73%
Equal Pay	B	7.86%	4.53%	13.15%	7.81%	5.12%	3.84%	9.55%
National Minimum Wage	B		1.26%	0.65%	0.50%	0.84%	0.53%	0.69%
Part Time Workers Regulations	B			9.42%	0.74%	0.51%	0.72%	0.65%
Public Interest Disclosure	B							
Race Discrimination	B	3.61%	3.86%	3.25%	3.47%	3.69%	3.04%	3.85%
Redundancy – failure to inform and consult	B			1.18%	3.44%	3.16%	4.89%	4.25%
Redundancy Pay	A	9.40%	10.44%	7.24%	7.95%	8.68%	7.90%	7.98%
Religion or belief discrimination	B						0.06%	0.36%
Sex Discrimination	B	11.05%	7.51%	19.89%	13.99%	11.16%	15.40%	13.61%
Sexual Orientation discrimination	B						0.05%	0.40%
Suffer a detriment/unfair dismissal - pregnancy	B	1.46%	1.17%	0.74%	0.87%	0.89%	1.02%	1.56%
TUPE – failure to inform and consult	B	2.24%	1.29%	1.01%	1.81%	1.07%	1.15%	1.20%
Unauthorised Deductions	A	32.27%	38.38%	31.99%	37.61%	40.00%	36.96%	43.48%
Unfair Dismissal	B	47.92%	52.30%	38.72%	47.51%	47.19%	40.31%	46.10%
Working Time Directive	A	1.44%	5.38%	4.90%	4.44%	6.53%	14.66%	3.74%
Written pay statement	A			0.68%	0.96%	1.13%	1.21%	1.25%
Written statement of reasons for dismissal	A			1.09%	1.36%	1.68%	1.59%	1.63%
Written statement of Ts and Cs	A	3.37%	2,66%	1.86%	2.86%	2.79%	2.86%	2.31%
Others		8.23%	7.88%	3.90%	5.53%	4.87%	4.67%	6.33%
Total		161.86%	170.06%	167.25%	172.97%	174.74%	171.56%	181.11%
√210710								
Jurisdictional Complaint calculations based on data shown in Appendix 6, Table A6.6a, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)								

Table A6.9b

**Jurisdictional Complaint as %age of Total Claims Accepted (TCA)
containing that JC 2005/06 to 2011/12**

Type of Jurisdiction Complaint	ET Fee Type	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Total Claims Accepted		115,039	132,577	189,303	151,028	236,103	218,096	186,331
SAC		51,496	54,100	54,500	62,370	71,280	60,591	59,247
MAC		63,543	78,600	134,800	88,658	164,823	157,505	127,084
Total Jurisdictional Complaints		201,514	238,546	296,920	266,542	392,777	382,386	321,836
Average Jurisdictional Complaints per claim		1.7517	1.7993	1.5685	1.7649	1.6636	1.7533	1.7272
Age Discrimination	A		0.73%	1.53%	2.52%	2.20%	3.13%	1.99%
Breach of Contract	A	22.80%	20.59%	13.26%	21.74%	17.98%	15.87%	17.21%
Disability Discrimination	B	3.99%	4.17%	3.06%	4.36%	3.20%	3.32%	4.12%
Equal Pay	B	15.01%	33.20%	33.12%	30.29%	15.83%	15.86%	15.46%
National Minimum Wage	B	0.38%	0.61%	0.23%	0.39%	0.21%	0.24%	0.27%
Part Time Workers Regulations	B	0.35%	0.59%	0.32%	0.44%	0.22%	0.72%	0.42%
Public Interest Disclosure	B			0.79%	1.17%	0.85%	0.94%	1.35%
Race Discrimination	B	3.57%	2.85%	2.17%	3.30%	2.42%	2.29%	2.60%
Redundancy – failure to inform and consult	B	3.53%	3.62%	2.38%	7.53%	3.17%	3.41%	4.28%
Redundancy Pay	A	6.27%	5.80%	3.86%	7.18%	8.06%	7.34%	7.87%
Religion or belief discrimination	B	0.42%	0.49%	0.38%	0.55%	0.42%	0.40%	0.50%
Sex Discrimination	B	12.39%	21.24%	14.21%	12.34%	7.71%	8.37%	5.79%
Sexual Orientation discrimination	B	0.34%	0.35%	0.31%	0.40%	0.30%	0.29%	0.33%
Suffer a detriment/unfair dismissal - pregnancy	B	1.31%	1.11%	0.85%	1.22%	0.83%	0.86%	1.00%
TUPE – failure to inform and consult	B	0.78%	0.84%	0.74%	0.84%	0.75%	0.86%	1.39%
Unauthorised Deductions	A	28.10%	26.29%	18.28%	22.41%	31.99%	32.68%	27.47%
Unfair Dismissal	B	36.36%	33.56%	21.61%	34.90%	24.29%	21.96%	24.86%
Working Time Directive	A	30.84%	15.94%	29.42%	15.88%	40.32%	52.32%	50.82%
Written pay statement	A	0.69%	0.75%	0.58%	0.76%	0.57%	0.61%	0.69%
Written statement of reasons for dismissal	A	0.83%	0.80%	0.58%	0.73%	0.46%	0.43%	0.52%
Written statement of Ts and Cs	A	2.68%	2.59%	2.64%	2.59%	2.01%	1.84%	1.95%
Others		4.54%	3.83%	6.55%	4.97%	2.56%	1.60%	1.83%
Total		175.17%	179.93%	156.85%	176.49%	166.36%	175.33%	172.72%
√210710								
Jurisdictional Complaint calculations based on data shown in Appendix 6, Table A6.6b, Jurisdictional Complaint (JC) Breakdown, 2005/06 to 2011/12								
Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)								

Table A6.9c

**Jurisdictional Complaint as %age of Total Claims Accepted (TCA)
containing that JC 2012/13 to 2018/19**

Type of Jurisdiction Complaint	ET Fee Type	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019
Total Claims Accepted		191,541	105,803	61,308	83,031	88,476	109,698	121,075
SAC		54,704	34,219	16,420	16,935	17,005	27,916	34,974
MAC		136,837	71,584	44,888	66,096	71,471	81,782	86,101
Total Jurisdictional Complaints		332,859	193,968	129,966	178,079	143,946	172,731	198,715
Average Jurisdictional Complaints per claim		1.7378	1.8333	2.1199	2.1447	1.6269	1.5746	1.6413
Age Discrimination	A	1.47%	1.88%	1.77%	15.22%	8.62%	6.17%	2.06%
Breach of Contract	A	15.57%	15.84%	13.46%	11.18%	8.97%	11.11%	11.76%
Disability Discrimination	B	3.91%	4.91%	5.07%	4.18%	4.29%	4.99%	5.71%
Equal Pay	B	12.34%	16.26%	15.69%	20.55%	11.83%	32.41%	22.90%
National Minimum Wage	B	0.26%	0.24%	0.26%	0.29%	0.25%	0.33%	0.29%
Part Time Workers Regulations	B	0.43%	1.10%	0.50%	0.26%	0.42%	0.31%	0.25%
Public Interest Disclosure	B	1.44%	2.10%	2.28%	1.69%	1.69%	2.00%	2.15%
Race Discrimination	B	2.52%	2.90%	3.03%	2.41%	2.53%	2.73%	2.96%
Redundancy – failure to inform and consult	B	5.78%	3.41%	3.76%	4.92%	2.72%	3.73%	4.67%
Redundancy Pay	A	6.66%	6.30%	4.79%	4.75%	2.62%	3.74%	4.58%
Religion or belief discrimination	B	0.51%	0.55%	0.55%	0.41%	0.43%	0.61%	0.62%
Sex Discrimination	B	9.82%	12.97%	7.29%	6.48%	9.99%	5.03%	7.79%
Sexual Orientation discrimination	B	0.33%	0.34%	0.31%	0.23%	0.22%	0.29%	0.38%
Suffer a detriment/unfair dismissal - pregnancy	B	0.83%	1.18%	1.29%	1.04%	0.99%	1.24%	1.49%
TUPE – failure to inform and consult	B	0.83%	1.15%	0.93%	0.76%	0.92%	0.75%	0.66%
Unauthorised Deductions	A	27.97%	25.88%	46.81%	43.79%	10.34%	21.96%	18.57%
Unfair Dismissal	B	25.60%	26.96%	20.64%	16.02%	13.61%	16.15%	17.83%
Working Time Directive	A	52.01%	46.39%	51.30%	44.34%	34.26%	15.45%	41.07%
Written pay statement	A	0.71%	0.89%	0.46%	0.45%	0.30%	0.44%	1.85%
Written statement of reasons for dismissal	A	0.42%	0.41%	0.34%	0.25%	0.18%	0.23%	0.18%
Written statement of Ts and Cs	A	2.19%	2.10%	1.51%	1.23%	1.10%	1.09%	1.17%
Others		2.17%	9.55%	29.95%	34.03%	46.40%	26.69%	15.16
Total		173.78%	183.33%	211.99%	214.47%	162.69%	157.46%	164.13%
√210710								
Jurisdictional Complaint calculations based on data shown in Appendix 6, Table A6.6c, Jurisdictional Complaint (JC) Breakdown 2012/13 to 2018/19								
Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)								

Table A6.10

**Jurisdictional Complaint as %age of Total Claims Accepted (TCA)
containing that JC Breakdown Comparison
1998/99 to 2004/05 vs 2005/06 to 2011/12**

Type of Jurisdiction Complaint	ET Fee Type	1998/1999 to 2004/2005 7-year Average	2005/2006 to 2011/2012 7-year Average	Increase/ Decrease Per Annum	%age Increase/ Decrease
Total Claims Accepted		105,475	175,497	70,022	66.39%
SAC		66,971*	59,083	-7,888	-11.78%
MAC		40,758*	116,430	75,672	186%
Total Jurisdictional Complaints		180,501	300,074	119,573	66.25%
Average Jurisdictional Complaints per claim		1.7113	1.7099		
				Increase/ Decrease in %age	
Age Discrimination	A	0.00%	1.90%	1.90	
Breach of Contract	A	27.41%	17.96%	-9.45	
Disability Discrimination	B	4.43%	3.66%	-0.77	
Equal Pay	B	7.52%	22.02%	14.50	
National Minimum Wage	B	0.64%	0.31%	-0.33	
Part Time Workers Regulations	B	2.03%	0.43%	-1.60	
Public Interest Disclosure	B	0.00%	0.80%	0.80	
Race Discrimination	B	3.51%	2.65%	-0.86	
Redundancy – failure to inform and consult	B	2.41%	3.88%	1.47	
Redundancy Pay	A	8.45%	6.74%	-1.71	
Religion or belief discrimination	B	0.05%	0.45%	0.40	
Sex Discrimination	B	13.55%	11.00%	-2.55	
Sexual Orientation discrimination	B	0.06%	0.33%	0.27	
Suffer a detriment/unfair dismissal – pregnancy	B	1.07%	0.98%	-0.09	
TUPE – failure to inform and consult	B	1.38%	0.89%	-0.49	
Unauthorised Deductions	A	36.96%	27.16%	-9.81	
Unfair Dismissal	B	45.35%	26.98%	-18.37	
Working Time Directive	A	6.07%	35.84%	29.77	
Written pay statement	A	0.75%	0.65%	-0.10	
Written statement of reasons for dismissal	A	1.06%	0.59%	-0.47	
Written statement of Ts and Cs	A	2.64%	2.26%	-0.38	
Others		5.78%	3.51%	-2.27	
Total		171.13%	170.99%		
*6 Year Average as no SAC/MAC data available for 1998/99					√210710
Based on data in Appendix 6, Tables A6.6a and A6.6b, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05 and 2005/06 to 2011/12					

Table A6.11a

**Total Jurisdictional Complaints breakdown for 1998/99 to 2018/19
showing %age of TCA containing that JC**

Rank	Type of Jurisdiction Complaint	ET Fee Type	1998/99 to 2018/19	%age of TCA contained that JC
	Total Claims Accepted		2,727,732	
	SAC			
	MAC			
	Total Jurisdictional Complaints		4,714,294	172.83%
	Average Jurisdictional Complaints per claim		1.728	
1	Unfair Dismissal	B	821,194	30.11%
2	Unauthorised Deductions	A	808,295	29.63%
3	Working Time Directive	A	799,060	29.29%
4	Breach of Contract	A	521,406	19.12%
5	Equal Pay	B	467,321	17.13%
6	Sex Discrimination	B	301,412	11.05%
7	Others		235,362	8.63%
8	Redundancy Pay	A	183,374	6.72%
9	Disability Discrimination	B	113,140	4.15%
10	Redundancy – failure to inform and consult	B	98,681	3.62%
11	Race Discrimination	B	78,982	2.90%
12	Written statement of Ts & Cs	A	59,302	2.17%
13	Age Discrimination	A	58,819	2.16%
14	Suffer a detriment/unfair dismissal - pregnancy	B	28,505	1.05%
15	TUPE – failure to inform and consult	B	27,508	1.01%
16	Public Interest Disclosure	B	23,906	0.88%
17	Part Time Workers Regulations	B	23,847	0.87%
18	Written pay statement	A	19,493	0.71%
19	Written statement of reasons for dismissal	A	17,350	0.64%
20	National Minimum Wage	B	10,655	0.39%
21	Religion or belief discrimination	B	9,919	0.36%
22	Sexual Orientation discrimination	B	6,763	0.25%
	Total		4,714,294	173.17%
				√210706
Annual data is shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19				

Table A6.11b

**Total Jurisdictional Complaints breakdown for 1998/99 to 2012/13
showing %age of TCA containing that JC**

Jurisdictional Complaint	1998/99 to 2012/13	%age of TCA containing that JC
Total Claims Accepted	2,158,341	
Total Jurisdictional Complaints	3,696,889	171.28%
Average Jurisdictional Complaints per claim	1.7128	
Age Discrimination	26,211	1.21%
Breach of Contract	452,756	20.98%
Disability Discrimination	85,178	3.95%
Equal Pay	349,680	16.20%
National Minimum Wage	9,060	0.42%
Part Time Workers Regulations	21,149	0.98%
Public Interest Disclosure	12,598	0.58%
Race Discrimination	63,238	2.93%
Redundancy – failure to inform and consult	76,521	3.55%
Redundancy Pay	157,860	7.31%
Religion or belief discrimination	6,849	0.32%
Sex Discrimination	254,049	11.77%
Sexual Orientation discrimination	5,051	0.23%
Suffer a detriment/unfair dismissal – pregnancy	21,563	1.00%
TUPE – failure to inform and consult	22,657	1.05%
Unauthorised Deductions	660,118	30.58%
Unfair Dismissal	715,368	33.14%
Working Time Directive	584,721	27.09%
Written pay statement	14,912	0.69%
Written statement of reasons for dismissal	15,859	0.73%
Written statement of Ts and Cs	51,535	2.39%
Others	89,956	4.17%
Total	3,696,889	171.27%
		√210710
Annual data is shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19		

Table A6.12

**Jurisdictional Breakdown Comparison Pre and Post ET Fees
Ranked by %age *Decrease***

Rank	Type of Jurisdiction Complaint	ET Fee Type	2007/2008 to 2012/2013 6 Year Average	2014/2015 to 2016/2017 3 Year Average	Increase/ Decrease Per annum	%age Increase/ Decrease
	Total Claims Accepted		195,400	77,605	117,795	60.28%
	SAC		60,449	16,787	43,662	72.23%
	MAC		134,951	60,818	74,133	54.93%
	Total Jurisdictional complaints		332,220	150,664	181,556	54.65%
	Average Jurisdictional complaints per claim		1.7002	1.9414	0.2412	14.19%
1	Written statement of reasons for dismissal	A	1,000	193	808	80.74%
2	Redundancy Pay	A	13,431	3,067	10,364	77.17%
3	Written statement of Ts and Cs	A	4,251	975	3,277	77.08%
4	Written Pay Statement	A	1,264	307	957	75.73%
5	Unfair Dismissal	B	49,035	12,664	36,371	74.17%
6	Breach of Contract	A	32,812	8,488	24,325	74.13%
7	Sexual Orientation Discrimination	B	629	191	438	69.60%
8	Equal Pay	B	38,809	12,384	26,426	68.09%
9	Sex Discrimination	B	18,599	6,231	12,369	66.50%
10	Redundancy – failure to inform and consult	B	8,309	2,934	5,375	64.69%
11	Part Time Workers Regulations	B	828	298	530	64.04%
12	TUPE – failure to inform and consult	B	1,750	671	1,078	61.63%
13	Religion or belief discrimination	B	890	354	535	60.17%
14	National Minimum Wage	B	510	208	302	59.23%
15	Working Time Directive	A	80,550	32,859	47,691	59.21%
16	Race Discrimination	B	4,908	2,033	2,875	58.57%
17	Unauthorised Deductions	A	53,336	24,738	28,598	53.62%
18	Suffer a detriment	B	1,783	842	941	52.77%
19	Disability Discrimination	B	7,056	3,457	3,599	51.01%
20	Public Interest Disclosure	B	2,100	1,431	669	31.86%
21	Age Discrimination	A	4,207	7,117	2,911	69.19%
22	Others		6,164	29,223	23,059	374.10%
√210711						
Sources: Annual data is shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19 Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)						

Table A6.13

**Jurisdictional Breakdown Comparison Pre and Post ET Fees
Ranked by Largest Volume *Decrease***

Rank	Type of Jurisdictional Complaint	ET Fee Type	2007/2008 to 2012/2013 6 Year Average	2014/2015 to 2016/2017 3 Year Average	Increase/ Decrease Per annum	%age Increase/ Decrease
	Total Claims Accepted		195,400	77,605	117,795	60.28%
	SAC		60,449	16,787	43,662	72.23%
	MAC		134,951	60,818	74,133	54.93%
	Total Jurisdictional complaints		332,220	150,664	181,556	54.65%
	Average Jurisdictional complaints per claim		1.7002	1.9414	0.2412	14.19%
1	Working Time Directive	A	80,550	32,859	47,691	59.21%
2	Unfair Dismissal	B	49,035	12,664	36,371	74.17%
3	Unauthorised Deductions	A	53,336	24,738	28,598	53.62%
4	Equal Pay	B	38,809	12,384	26,426	68.09%
5	Breach of Contract	A	32,812	8,488	24,325	74.13%
6	Sex Discrimination	B	18,599	6,231	12,369	66.50%
7	Redundancy Pay	A	13,431	3,067	10,364	77.17%
8	Redundancy – failure to inform and consult	B	8,309	2,934	5,375	64.69%
9	Disability Discrimination	B	7,056	3,457	3,599	51.01%
10	Written statement of Ts and Cs	A	4,251	975	3,277	77.08%
11	Race Discrimination	B	4,908	2,033	2,875	58.57%
12	TUPE – failure to inform and consult	B	1,750	671	1,078	61.63%
13	Written Pay Statement	A	1,264	307	957	75.73%
14	Suffer a detriment	B	1,783	842	941	52.77%
15	Written statement of reasons for dismissal	A	1,000	193	808	80.74%
16	Public Interest Disclosure	B	2,100	1,431	669	31.86%
17	Religion or belief discrimination	B	890	354	535	60.17%
18	Part Time Workers Regulations	B	828	298	530	64.04%
19	Sexual Orientation Discrimination	B	629	191	438	69.60%
20	National Minimum Wage	B	510	208	302	59.23%
21	Age Discrimination	A	4,207	7,117	2,911	69.19%
22	Others		6,164	29,223	23,059	374.10%
√210711						
Sources:						
Annual data is shown in Appendix 6, Tables A6.6a to A6.6c, Jurisdictional Complaint (JC) Breakdown 1998/99 to 2004/05, 2005/06 to 2011/12 and 2012/13 to 2018/19						
Employment tribunal fees type: See HMCTS, 2015, p.10 and MoJ, 2012, pp.45-50 (See Appendix 8)						

Table A6.14

Figure 2.1 Correlation and p-value calculations

Figure 2.1

Total Claims Accepted vs Unfair Dismissal Annual

Outcome/Disposals

1972 to 1988/89

Positive Correlation 0.98 (p=0.000)

t-Test: Paired Two Sample for Means

	<i>Variable 1</i>	<i>Variable 2</i>
Mean	25926.91765	35669.23529
Variance	94515851.69	120854156.7
Observations	17	17
Pearson Correlation	0.98	
Hypothesized Mean Difference	0	
df	16	
t Stat	-15.3224784	
P(T<=t) one-tail	2.77583E-11	
t Critical one-tail	1.745883676	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.119905299	

G13ba

√221129

Table A6.15

Figure 5.2 Correlation and p-value calculations

Figure 5.2

TCA vs NoPiE 1972 to 2012/13

Positive Correlation 0.86 (p = 0.000)

t-Test: Paired Two Sample for Means

	<i>Variable 1</i>	<i>Variable 2</i>
Mean	26480006.1	83412.46341
Variance	3.3898E+12	3340189260
Observations	41	41
Pearson Correlation	0.86	
Hypothesized Mean Difference	0	
df	40	
t Stat	94.34042677	
P(T<=t) one-tail	6.49277E-49	
t Critical one-tail	1.683851013	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.02107539	

G14a

√221128

Table A6.16

Figure 5.4 Correlation and p-value calculations

Figure 5.4
TCA vs GDP Year-on-Year Growth %age
1972 to 2018/19
Negative Correlation 0.25 (p=0.000)

t-Test: Paired Two Sample for Means

	<i>Variable 1</i>	<i>Variable 2</i>
Mean	84878.76596	0.020680851
Variance	2970253105	0.000449396
Observations	47	47
Pearson Correlation	-0.25	
Hypothesized Mean Difference	0	
df	46	
t Stat	10.67704588	
P(T<=t) one-tail	2.43171E-14	
t Critical one-tail	1.678660414	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.012895599	
G15Ac		√230125

Table A6.17

Figure 5.5 Correlation and p-value calculations

Figure 5.5
TCA vs Number of People Unemployed (NoPU)
1972 to 2018/19
Positive Correlation 0.05 (p=0.000)

t-Test: Paired Two Sample for Means

	<i>Variable 1</i>	<i>Variable 2</i>
Mean	84878.76596	2022494.681
Variance	2970253105	4.10774E+11
Observations	47	47
Pearson Correlation	0.05	
Hypothesized Mean Difference	0	
df	46	
t Stat	-20.7346	
P(T<=t) one-tail	2.80742E-25	
t Critical one-tail	1.678660414	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.012895599	
G15Aa		√230125

Table A6.18

Figure 5.6 Correlation and p-value calculations

<p>Figure 5.6 TCA vs GDP Year-on-Year Growth %age 1999/00 to 2013/14 Negative Correlation 0.57 (p=0.000)</p>			<p>Figure 5.6 TCA vs GDP Year-on-Year Growth %age 1999/00 to 2018/19 Negative Correlation 0.58 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	144815.4	0.017333333	Mean	131790.95	0.01895
Variance	2256139014	0.000393381	Variance	2313420239	0.000304261
Observations	15	15	Observations	20	20
Pearson Correlation	-0.57		Pearson Correlation	-0.58	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	11.80802584		t Stat	12.2538671	
P(T<=t) one-tail	5.75069E-09		P(T<=t) one-tail	9.0889E-11	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ad		√230128	G15Ad		√230125
<p>Figure 5.6 SAC vs GDP Year-on-Year Growth %age 1999/00 to 2013/14 Negative Correlation 0.12 (p=0.000)</p>			<p>Figure 5.6 SAC vs GDP Year-on-Year Growth %age 1999/00 to 2018/19 Negative Correlation 0.22 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	60283.13333	0.017333333	Mean	50874.85	0.01895
Variance	104766829.6	0.000393381	Variance	371612380	0.000304261
Observations	15	15	Observations	20	20
Pearson Correlation	-0.12		Pearson Correlation	-0.22	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	22.8102119		t Stat	11.8024673	
P(T<=t) one-tail	8.98468E-13		P(T<=t) one-tail	1.7137E-10	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ad		√230128	G15Ad		√230125
<p>Figure 5.6 MAC vs GDP Year-on-Year Growth %age 1999/00 to 2013/14 Negative Correlation 0.54 (p=0.000)</p>			<p>Figure 5.6 MAC vs GDP Year-on-Year Growth %age 1999/00 to 2018/19 Negative Correlation 0.56 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	84532.26667	0.017333333	Mean	80916.1	0.01895
Variance	2255781735	0.000393381	Variance	1758505076	0.000304261
Observations	15	15	Observations	20	20
Pearson Correlation	-0.54		Pearson Correlation	-0.56	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	6.893176812		t Stat	8.62934681	
P(T<=t) one-tail	3.70218E-06		P(T<=t) one-tail	2.673E-08	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ad		√230128	G15Ad		√230125

Table A6.19

Figure 5.7 Correlation and p-value calculations

Figure 5.7 TCA vs Number of People Unemployed (NoPU) 1999/00 to 2013/14 Positive Correlation 0.72 (p=0.000)			Figure 5.7 TCA vs Number of People Unemployed (NoPU) 1999/00 to 2018/19 Positive Correlation 0.65 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	144815.4	1897883.333	Mean	131790.95	1826775
Variance	2256139014	2.15961E+11	Variance	2313420239	1.86385E+11
Observations	15	15	Observations	20	20
Pearson Correlation	0.72		Pearson Correlation	0.65	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	-15.73343997		t Stat	-18.8605694	
P(T<=t) one-tail	1.35094E-10		P(T<=t) one-tail	4.6127E-14	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ab		√230128	G15Ab		√230125
Figure 5.7 SAC vs Number of People Unemployed (NoPU) 1999/00 to 2013/14 Negative Correlation 0.26 (p=0.000)			Figure 5.7 SAC vs Number of People Unemployed (NoPU) 1999/00 to 2018/19 Positive Correlation 0.10 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	60283.13333	1897883.333	Mean	1826775	50874.85
Variance	104766829.6	2.15961E+11	Variance	1.8638E+11	371612379.6
Observations	15	15	Observations	20	20
Pearson Correlation	-0.26		Pearson Correlation	0.10	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	-15.22387316		t Stat	18.4615772	
P(T<=t) one-tail	2.09145E-10		P(T<=t) one-tail	6.7872E-14	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ab		√230128	G15Ab		√230125
Figure 5.7 MAC vs Number of People Unemployed (NoPU) 1999/00 to 2013/14 Positive Correlation 0.78 (p=0.000)			Figure 5.7 MAC vs Number of People Unemployed (NoPU) 1999/00 to 2018/19 Positive Correlation 0.70 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	84532.26667	1897883.333	Mean	1826775	80916.1
Variance	2255781735	2.15961E+11	Variance	1.8638E+11	1758505076
Observations	15	15	Observations	20	20
Pearson Correlation	0.78		Pearson Correlation	0.70	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	-16.38397533		t Stat	19.3588151	
P(T<=t) one-tail	7.87411E-11		P(T<=t) one-tail	2.877E-14	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ab		√230128	G15Ab		√230125

Table A6.20

Figure 5.8 Correlation and p-value calculations

Figure 5.8

TCA vs TU Membership 1972 to 2012/13

Negative Correlation 0.80 (p = 0.000)

t-Test: Paired Two Sample for Means

	<i>Variable 1</i>	<i>Variable 2</i>
Mean	9621097.561	83412.46341
Variance	3.93858E+12	3340189260
Observations	41	41
Pearson Correlation	-0.80	
Hypothesized Mean Difference	0	
df	40	
t Stat	30.06787399	
P(T<=t) one-tail	2.22414E-29	
t Critical one-tail	1.683851013	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.02107539	
G16b		√221128

Table A6.21a

Table 5.4 Unfair Dismissal Jurisdictional Complaint correlation and p-value calculations

<p>Table 5.4 Unfair Dismissal vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.27 (p=0.000)</p>			<p>Table 5.4 Unfair Dismissal vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.58 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	47951.71429	Mean	131790.95	38857.5
Variance	2304251299	27874693.45	Variance	2313420239	233219911.9
Observations	14	14	Observations	20	20
Pearson Correlation	0.27		Pearson Correlation	0.58	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	13		df	19	
t Stat	7.960299192		t Stat	10.0936551	
P(T<=t) one-tail	1.18062E-06		P(T<=t) one-tail	2.2641E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC17a		√221128
<p>Table 5.4 Unfair Dismissal vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.77 (p=0.000)</p>			<p>Table 5.4 Unfair Dismissal vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.97 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	47951.71429	Mean	38857.5	50879.1
Variance	56640548.98	27874693.45	Variance	233219912	371579440.2
Observations	14	14	Observations	20	20
Pearson Correlation	0.77		Pearson Correlation	0.97	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	13		df	19	
t Stat	11.06391978		t Stat	-9.56984778	
P(T<=t) one-tail	2.75028E-08		P(T<=t) one-tail	5.3176E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC17a		√221128
<p>Table 5.4 Unfair Dismissal vs Multi-Applicant Claim 1999/00 to 2012/13 Positive Correlation 0.15 (p=0.013)</p>			<p>Table 5.4 Unfair Dismissal vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.22 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	47951.71429	Mean	38857.5	80911.85
Variance	2415484127	27874693.45	Variance	233219912	1758377494
Observations	14	14	Observations	20	20
Pearson Correlation	0.15		Pearson Correlation	0.22	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	13		df	19	
t Stat	2.884586699		t Stat	-4.54327699	
P(T<=t) one-tail	0.006390214		P(T<=t) one-tail	0.00011113	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.013		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128			√221128

Table A6.21b

Table 5.4 Breach of Contract Jurisdictional Complaint correlation and p-value calculations

Table 5.4 Breach of Contract vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.63 (p=0.000)			Table 5.4 Breach of Contract vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.70 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	30397.71429	Mean	131790.95	24710.9
Variance	2304251299	22096406.37	Variance	2313420239	97910486.2
Observations	14	14	Observations	20	20
Pearson Correlation	0.63		Pearson Correlation	0.70	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	9.703917342		t Stat	11.4671164	
P(T<=t) one-tail	1.27355E-07		P(T<=t) one-tail	2.779E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC2		√221128

Table 5.4 Breach of Contract vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.61 (p=0.000)			Table 5.4 Breach of Contract vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.94 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	30397.71429	Mean	24710.9	50879.08943
Variance	56640548.98	22096406.37	Variance	97910486.2	371579015.3
Observations	14	14	Observations	20	20
Pearson Correlation	0.61		Pearson Correlation	0.94	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	19.86301047		t Stat	-11.1981058	
P(T<=t) one-tail	2.07117E-11		P(T<=t) one-tail	4.1277E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC2		√221128

Table 5.4 Breach of Contract vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.52 (p=0.000)			Table 5.4 Breach of Contract vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.37 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	30397.71429	Mean	24710.9	80916.11057
Variance	2415484127	22096406.37	Variance	97910486.2	1758504257
Observations	14	14	Observations	20	20
Pearson Correlation	0.52		Pearson Correlation	0.37	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	4.395664696		t Stat	-6.38589336	
P(T<=t) one-tail	0.000361707		P(T<=t) one-tail	1.9979E-06	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.001		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC2		√221128

Table A6.21c

Table 5.4 Working Time Directive Jurisdictional Complaint correlation and p-value calculations

<p>Table 5.4 Working Time Directive vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.92 (p=0.000)</p>			<p>Table 5.4 Working Time Directive vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.80 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	41671.07143	Mean	131790.95	39886.7
Variance	2304251299	1729241412	Variance	2313420239	1231816230
Observations	14	14	Observations	20	20
Pearson Correlation	0.92		Pearson Correlation	0.80	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	20.78174591		t Stat	14.0669038	
P(T<=t) one-tail	1.17008E-11		P(T<=t) one-tail	8.4699E-12	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC18		√221128
<p>Table 5.4 Working Time Directive vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation -0.26 (p=0.106)</p>			<p>Table 5.4 Working Time Directive vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.011 (p=0.232)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	41671.07143	Mean	50879.0894	39886.7
Variance	56640548.98	1729241412	Variance	371579015	1231816230
Observations	14	14	Observations	20	20
Pearson Correlation	-0.26		Pearson Correlation	0.01	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	1.735020709		t Stat	1.23365462	
P(T<=t) one-tail	0.053182692		P(T<=t) one-tail	0.1161877	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.106		P(T<=t) two-tail	0.232	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC18		√221128
<p>Table 5.4 Working Time Directive vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.94 (p=0.000)</p>			<p>Table 5.4 Working Time Directive vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.91 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	41671.07143	Mean	80916.1106	39886.7
Variance	2415484127	1729241412	Variance	1758504257	1231816230
Observations	14	14	Observations	20	20
Pearson Correlation	0.94		Pearson Correlation	0.91	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	9.298246896		t Stat	10.3485567	
P(T<=t) one-tail	2.07845E-07		P(T<=t) one-tail	1.5111E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC18		√221128

Table A6.21d

Table 5.4 Equal Pay Jurisdictional Complaint correlation and p-value calculations

<p>Table 5.4 Equal Pay vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.68 (p=0.000)</p>			<p>Table 5.4 Equal Pay vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.65 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	24461.28571	Mean	131790.95	23004.95
Variance	2304251299	336184187	Variance	2313420239	262384404.8
Observations	14	14	Observations	20	20
Pearson Correlation	0.68		Pearson Correlation	0.65	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	12.10204648		t Stat	12.3227412	
P(T<=t) one-tail	9.43902E-09		P(T<=t) one-tail	8.2639E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC4		√221128
<p>Table 5.4 Equal Pay vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation -0.39 (p=0.000)</p>			<p>Table 5.4 Equal Pay vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.06 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	24461.28571	Mean	50879.0894	23004.95
Variance	56640548.98	336184187	Variance	371579015	262384404.8
Observations	14	14	Observations	20	20
Pearson Correlation	-0.39		Pearson Correlation	0.06	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.309066025		t Stat	5.10427963	
P(T<=t) one-tail	1.35269E-05		P(T<=t) one-tail	3.1508E-05	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC4		√221128
<p>Table 5.4 Equal Pay vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.72 (p=0.000)</p>			<p>Table 5.4 Equal Pay vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.72 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	24461.28571	Mean	80916.1106	23004.95
Variance	2415484127	336184187	Variance	1758504257	262384404.8
Observations	14	14	Observations	20	20
Pearson Correlation	0.72		Pearson Correlation	0.72	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	5.986357351		t Stat	8.02705145	
P(T<=t) one-tail	2.27298E-05		P(T<=t) one-tail	7.9697E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC4		√221128

Table A6.21e

Table 5.4 Unauthorised Deductions Jurisdictional Complaint correlation and p-value calculations

Table 5.4 Unauthorised Deductions vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.77 (p=0.000)		
t-Test: Paired Two Sample for Means		
Variable 1	Variable 2	
Mean	147602	45032.71429
Variance	2304251299	182242819.5
Observations	14	14
Pearson Correlation	0.77	
Hypothesized Mean μ	0	
df	13	
t Stat	9.932302265	
P(T<=t) one-tail	9.73338E-08	
t Critical one-tail	1.770933396	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656	
	√221128	
Table 5.4 Unauthorised Deductions vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.28 (p=0.000)		
t-Test: Paired Two Sample for Means		
Variable 1	Variable 2	
Mean	62150.91347	45032.71429
Variance	56640548.98	182242819.5
Observations	14	14
Pearson Correlation	0.28	
Hypothesized Mean μ	0	
df	13	
t Stat	4.735146452	
P(T<=t) one-tail	0.000194858	
t Critical one-tail	1.770933396	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656	
	√221128	
Table 5.4 Unauthorised Deductions vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.71 (p=0.003)		
t-Test: Paired Two Sample for Means		
Variable 1	Variable 2	
Mean	85457.15796	45032.71429
Variance	2415484127	182242819.5
Observations	14	14
Pearson Correlation	0.71	
Hypothesized Mean μ	0	
df	13	
t Stat	3.712038415	
P(T<=t) one-tail	0.001304737	
t Critical one-tail	1.770933396	
P(T<=t) two-tail	0.003	
t Critical two-tail	2.160368656	
	√221128	
Table 5.4 Unauthorised Deductions vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.76 (p=0.000)		
t-Test: Paired Two Sample for Means		
Variable 1	Variable 2	
Mean	131790.95	38931.75
Variance	2313420239	237494648.1
Observations	20	20
Pearson Correlation	0.76	
Hypothesized Mean μ	0	
df	19	
t Stat	11.0223776	
P(T<=t) one-tail	5.3658E-10	
t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.09302405	
	√221128	
Table 5.4 Unauthorised Deductions vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.63 (p=0.002)		
t-Test: Paired Two Sample for Means		
Variable 1	Variable 2	
Mean	50879.0894	38931.75
Variance	371579015	237494648.1
Observations	20	20
Pearson Correlation	0.63	
Hypothesized Mean μ	0	
df	19	
t Stat	3.49778598	
P(T<=t) one-tail	0.00120371	
t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.002	
t Critical two-tail	2.09302405	
	√221128	
Table 5.4 Unauthorised Deductions vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.58 (p=0.000)		
t-Test: Paired Two Sample for Means		
Variable 1	Variable 2	
Mean	80916.1106	38931.75
Variance	1758504257	237494648.1
Observations	20	20
Pearson Correlation	0.58	
Hypothesized Mean μ	0	
df	19	
t Stat	5.33125723	
P(T<=t) one-tail	1.907E-05	
t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000	
t Critical two-tail	2.09302405	
	√221128	

Table A6.21f

Table 5.4 Sex Discrimination Jurisdictional Complaint correlation and p-value calculations

Table 5.4 Sex Discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.32 (p=0.000)			Table 5.4 Sex Discrimination vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.55 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
Variable 1	Variable 2		Variable 1	Variable 2	
Mean	147602	17420.85714	Mean	131790.95	14562.75
Variance	2304251299	38899047.98	Variance	2313420239	49882799.04
Observations	14	14	Observations	20	20
Pearson Correlation	0.32		Pearson Correlation	0.55	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	10.50765109		t Stat	11.7623568	
P(T<=t) one-tail	5.04952E-08		P(T<=t) one-tail	1.8147E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC12		√221128
Table 5.4 Sex Discrimination vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation -0.16 (p=0.000)			Table 5.4 Sex Discrimination vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.58 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
Variable 1	Variable 2		Variable 1	Variable 2	
Mean	62150.91347	17420.85714	Mean	50879.0894	14562.75
Variance	56640548.98	38899047.98	Variance	371579015	49882799.04
Observations	14	14	Observations	20	20
Pearson Correlation	-0.16		Pearson Correlation	0.58	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	15.90584114		t Stat	10.0218563	
P(T<=t) one-tail	3.34152E-10		P(T<=t) one-tail	2.5405E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC12		√221128
Table 5.4 Sex Discrimination vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.34 (p=0.000)			Table 5.4 Sex Discrimination vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.37 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
Variable 1	Variable 2		Variable 1	Variable 2	
Mean	85457.15796	17420.85714	Mean	80916.1106	14562.75
Variance	2415484127	38899047.98	Variance	1758504257	49882799.04
Observations	14	14	Observations	20	20
Pearson Correlation	0.34		Pearson Correlation	0.37	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	5.373121281		t Stat	7.44112088	
P(T<=t) one-tail	6.34271E-05		P(T<=t) one-tail	2.4149E-07	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC12		√221128

Table A6.21g

Table 5.4 Redundancy Pay Jurisdictional Complaint correlation and p-value calculations

<p>Table 5.4 Redundancy Pay vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.80 (p=0.000)</p>			<p>Table 5.4 Redundancy Pay vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.85 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	10658.42857	Mean	131790.95	8736.6
Variance	2304251299	13596024.57	Variance	2313420239	19062266.46
Observations	14	14	Observations	20	20
Pearson Correlation	0.80		Pearson Correlation	0.85	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.36031364		t Stat	12.377368	
P(T<=t) one-tail	2.00997E-08		P(T<=t) one-tail	7.6655E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC10		√221128
<p>Table 5.4 Redundancy Pay vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.31 (p=0.000)</p>			<p>Table 5.4 Redundancy Pay vs Single Applicant Claim 1999/00 to 2018/19 Positive Correlation 0.74 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	10658.42857	Mean	50879.0894	8736.6
Variance	56640548.98	13596024.57	Variance	371579015	19062266.46
Observations	14	14	Observations	20	20
Pearson Correlation	0.31		Pearson Correlation	0.74	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	26.473385		t Stat	11.5625532	
P(T<=t) one-tail	5.38612E-13		P(T<=t) one-tail	2.4192E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC10		√221128
<p>Table 5.4 Redundancy Pay vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.73 (p=0.000)</p>			<p>Table 5.4 Redundancy Pay vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.63 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	10658.42857	Mean	80916.1106	8736.6
Variance	2415484127	13596024.57	Variance	1758504257	19062266.46
Observations	14	14	Observations	20	20
Pearson Correlation	0.73		Pearson Correlation	0.63	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.017786143		t Stat	8.20729366	
P(T<=t) one-tail	2.15957E-05		P(T<=t) one-tail	5.7189E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC10		√221128

Table A6.22

Correlation and p-value calculations for Figure 7.3

<p>Figure 7.3 TCA less WTD & EP v GDP Year-on-Year Growth %age 1999/00 to 2013/14 Negative Correlation -0.13 (p=0.000) t-Test: Paired Two Sample for Means</p>		<p>Figure 7.3 TCA less WTD & EP v GDP Year-on-Year Growth %age 1999/00 to 2018/19 Negative Correlation -0.23 (p=0.000) t-Test: Paired Two Sample for Means</p>			
	<i>Variable 1</i>	<i>Variable 2</i>			
Mean	78672.6	0.017333333	Mean	68899.3	0.01895
Variance	341647341.3	0.000393381	Variance	599435814	0.000304261
Observations	15	15	Observations	20	20
Pearson Correlation	-0.13		Pearson Correlation	-0.23	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	16.48465838		t Stat	12.5851465	
P(T<=t) one-tail	7.25561E-11		P(T<=t) one-tail	5.773E-11	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ad1		√230128	G15Ad1		√230125
<p>Figure 7.3 MAC less WTD & EP v GDP Year-on-Year Growth %age 1999/00 to 2013/14 Negative Correlation -0.13 (p=0.000) t-Test: Paired Two Sample for Means</p>		<p>Figure 7.3 MAC less WTD & EP v GDP Year-on-Year Growth %age 1999/00 to 2018/19 Negative Correlation -0.14 (p=0.000) t-Test: Paired Two Sample for Means</p>			
	<i>Variable 1</i>	<i>Variable 2</i>			
Mean	18389.46667	0.017333333	Mean	18024.45	0.01895
Variance	88329167.55	0.000393381	Variance	97322514.9	0.000304261
Observations	15	15	Observations	20	20
Pearson Correlation	-0.13		Pearson Correlation	-0.14	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	14		df	19	
t Stat	7.57813195		t Stat	8.17089808	
P(T<=t) one-tail	1.27901E-06		P(T<=t) one-tail	6.1132E-08	
t Critical one-tail	1.761310136		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.144786688		t Critical two-tail	2.09302405	
G15Ad1		√230128	G15Ad1		√230125

Table A6.23

Figure 7.4 Correlation and p-value calculations

<p>Figure 7.4 TCA less WTD & EP v Number of People Unemployed (NoPU) 1999/00 to 2013/14 Negative Correlation -0.39 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>78672.6</td> <td>1897883.333</td> </tr> <tr> <td>Variance</td> <td>341647341.3</td> <td>2.15961E+11</td> </tr> <tr> <td>Observations</td> <td>15</td> <td>15</td> </tr> <tr> <td>Pearson Correlation</td> <td>-0.39</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>14</td> <td></td> </tr> <tr> <td>t Stat</td> <td>-14.92062631</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>2.72972E-10</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.761310136</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.144786688</td> <td></td> </tr> </tbody> </table> <p>G15Ab1 √230128</p>			Variable 1	Variable 2	Mean	78672.6	1897883.333	Variance	341647341.3	2.15961E+11	Observations	15	15	Pearson Correlation	-0.39		Hypothesized Mean μ	0		df	14		t Stat	-14.92062631		P(T<=t) one-tail	2.72972E-10		t Critical one-tail	1.761310136		P(T<=t) two-tail	0.000		t Critical two-tail	2.144786688		<p>Figure 7.4 TCA less WTD & EP v Number of People Unemployed (NoPU) 1999/00 to 2018/19 Negative Correlation -0.08 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>68899.3</td> <td>1826775</td> </tr> <tr> <td>Variance</td> <td>599435814</td> <td>1.86385E+11</td> </tr> <tr> <td>Observations</td> <td>20</td> <td>20</td> </tr> <tr> <td>Pearson Correlation</td> <td>-0.08</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>19</td> <td></td> </tr> <tr> <td>t Stat</td> <td>-18.0952345</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>9.7409E-14</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.72913281</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.09302405</td> <td></td> </tr> </tbody> </table> <p>G15Ab1 √230125</p>			Variable 1	Variable 2	Mean	68899.3	1826775	Variance	599435814	1.86385E+11	Observations	20	20	Pearson Correlation	-0.08		Hypothesized Mean μ	0		df	19		t Stat	-18.0952345		P(T<=t) one-tail	9.7409E-14		t Critical one-tail	1.72913281		P(T<=t) two-tail	0.000		t Critical two-tail	2.09302405	
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Table A6.24

Figure 7.5 Correlation and p-value calculations

Figure 7.5 TCA v GDP Year-on-Year Growth %age 1972 to 2013/14 Negative Correlation -0.24 (p=0.000)			Figure 7.5 TCA less WTD & EP v GDP Year-on-Year Growth %age 1972 to 2013/14 Negative Correlation -0.13 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	83945.57143	0.020309524	Mean	60119.619	0.020309524
Variance	3270657804	0.000500024	Variance	688501814	0.000500024
Observations	42	42	Observations	42	42
Pearson Correlation	-0.24		Pearson Correlation	-0.13	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	41		df	41	
t Stat	9.512720452		t Stat	14.8486895	
P(T<=t) one-tail	3.11308E-12		P(T<=t) one-tail	2.1454E-18	
t Critical one-tail	1.682878002		t Critical one-tail	1.682878	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.01954097		t Critical two-tail	2.01954097	
G15Ae1			G15Ae1		

Table A6.25

Figure 7.6 Correlation and p-value calculations

Figure 7.6 TCA v Number of People Unemployed (NoPU) 1972 to 2013/14 Positive Correlation 0.07 (p=0.000)			Figure 7.6 TCA less WTD & EP v Number of People Unemployed (NoPU) 1972 to 2013/14 Positive Correlation 0.03 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	83945.57143	2071190.476	Mean	60119.619	2071190.476
Variance	3270657804	4.32804E+11	Variance	688501814	4.32804E+11
Observations	42	42	Observations	42	42
Pearson Correlation	0.07		Pearson Correlation	0.03	
Hypothesized Mean [	0		Hypothesized Mean [	0	
df	41		df	41	
t Stat	-19.63003188		t Stat	-19.8167427	
P(T<=t) one-tail	9.22287E-23		P(T<=t) one-tail	6.4864E-23	
t Critical one-tail	1.682878002		t Critical one-tail	1.682878	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.01954097		t Critical two-tail	2.01954097	
G15Af1			G15Af1		

Table A6.26a

Table A6.8 Age Discrimination Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Age Discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.77 (p=0.000)			Table A6.8 Age Discrimination vs Total Claims Accepted 1999/00 to 2018/19 Negative Correlation 0.11 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	186425.5714	3744.428571	Mean	144182.308	4524.538462
Variance	1276329302	3466568.952	Variance	3088028463	10656353.1
Observations	7	7	Observations	13	13
Pearson Correlation	0.77		Pearson Correlation	-0.11	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	6		df	12	
t Stat	14.08953564		t Stat	8.98823523	
P(T<=t) one-tail	3.98965E-06		P(T<=t) one-tail	5.5972E-07	
t Critical one-tail	1.943180281		t Critical one-tail	1.78228756	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.446911851		t Critical two-tail	2.17881283	
	$\sqrt{230125}$		JC1	$\sqrt{230125}$	
Table A6.8 Age Discrimination vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.64 (p=0.000)			Table A6.8 Age Discrimination vs Single Applicant Claims 1999/00 to 2018/19 Negative Correlation 0.32 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	59541.71429	3744.428571	Mean	43404.6923	4524.538462
Variance	37568170.9	3466568.952	Variance	380779039	10656353.1
Observations	7	7	Observations	13	13
Pearson Correlation	0.64		Pearson Correlation	-0.32	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	6		df	12	
t Stat	28.77100566		t Stat	6.74606051	
P(T<=t) one-tail	5.83861E-08		P(T<=t) one-tail	1.0277E-05	
t Critical one-tail	1.943180281		t Critical one-tail	1.78228756	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.446911851		t Critical two-tail	2.17881283	
	$\sqrt{230125}$		JC1	$\sqrt{230125}$	
Table A6.8 Age Discrimination vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.73 (p=0.000)			Table A6.8 Age Discrimination vs Multi-Applicant Claims 1999/00 to 2018/19 No Correlation 0.00 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	126901	3744.428571	Mean	100786.846	4524.538462
Variance	1055224723	3466568.952	Variance	1476850890	10656353.1
Observations	7	7	Observations	13	13
Pearson Correlation	0.73		Pearson Correlation	0.00	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	6		df	12	
t Stat	10.45952172		t Stat	9.00052315	
P(T<=t) one-tail	2.24023E-05		P(T<=t) one-tail	5.5171E-07	
t Critical one-tail	1.943180281		t Critical one-tail	1.78228756	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.446911851		t Critical two-tail	2.17881283	
	$\sqrt{230125}$		JC1	$\sqrt{230125}$	

Table A6.26b

Table A6.8 Breach of Contract Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Breach of Contract vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.63 (p=0.000)</p>			<p>Table A6.8 Breach of Contract vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.70 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	30397.71429	Mean	131790.95	24710.9
Variance	2304251299	22096406.37	Variance	2313420239	97910486.2
Observations	14	14	Observations	20	20
Pearson Correlation	0.63		Pearson Correlation	0.70	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	13		df	19	
t Stat	9.703917342		t Stat	11.4671164	
P(T<=t) one-tail	1.27355E-07		P(T<=t) one-tail	2.779E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC2		√221128
<p>Table A6.8 Breach of Contract vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.61 (p=0.000)</p>			<p>Table A6.8 Breach of Contract vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.94 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	30397.71429	Mean	24710.9	50879.08943
Variance	56640548.98	22096406.37	Variance	97910486.2	371579015.3
Observations	14	14	Observations	20	20
Pearson Correlation	0.61		Pearson Correlation	0.94	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	13		df	19	
t Stat	19.86301047		t Stat	-11.1981058	
P(T<=t) one-tail	2.07117E-11		P(T<=t) one-tail	4.1277E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC2		√221128
<p>Table A6.8 Breach of Contract vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.52 (p=0.001)</p>			<p>Table A6.8 Breach of Contract vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.37 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	30397.71429	Mean	24710.9	80916.11057
Variance	2415484127	22096406.37	Variance	97910486.2	1758504257
Observations	14	14	Observations	20	20
Pearson Correlation	0.52		Pearson Correlation	0.37	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	13		df	19	
t Stat	4.395664696		t Stat	-6.38589336	
P(T<=t) one-tail	0.000361707		P(T<=t) one-tail	1.9979E-06	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.001		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC2		√221128

Table A6.26c

Table A6.8 Disability Discrimination Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Disability Discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.84 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>147602</td> <td>5859.071429</td> </tr> <tr> <td>Variance</td> <td>2304251299</td> <td>1569216.841</td> </tr> <tr> <td>Observations</td> <td>14</td> <td>14</td> </tr> <tr> <td>Pearson Correlation</td> <td>0.84</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>13</td> <td></td> </tr> <tr> <td>t Stat</td> <td>11.29558678</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>2.15119E-08</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.770933396</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.160368656</td> <td></td> </tr> </tbody> </table> <p style="text-align: right;">√230125</p>		Variable 1	Variable 2	Mean	147602	5859.071429	Variance	2304251299	1569216.841	Observations	14	14	Pearson Correlation	0.84		Hypothesized Mean μ	0		df	13		t Stat	11.29558678		P(T<=t) one-tail	2.15119E-08		t Critical one-tail	1.770933396		P(T<=t) two-tail	0.000		t Critical two-tail	2.160368656		<p>Table A6.8 Disability Discrimination vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.84 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>131790.95</td> <td>5499.45</td> </tr> <tr> <td>Variance</td> <td>2313420239</td> <td>1951260.155</td> </tr> <tr> <td>Observations</td> <td>20</td> <td>20</td> </tr> <tr> <td>Pearson Correlation</td> <td>0.84</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>19</td> <td></td> </tr> <tr> <td>t Stat</td> <td>12.0347298</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>1.2337E-10</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.72913281</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.09302405</td> <td></td> </tr> </tbody> </table> <p>JC3 √230125</p>		Variable 1	Variable 2	Mean	131790.95	5499.45	Variance	2313420239	1951260.155	Observations	20	20	Pearson Correlation	0.84		Hypothesized Mean μ	0		df	19		t Stat	12.0347298		P(T<=t) one-tail	1.2337E-10		t Critical one-tail	1.72913281		P(T<=t) two-tail	0.000		t Critical two-tail	2.09302405	
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Table A6.26d

Table A6.8 Equal Pay Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Equal Pay vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.68 (p=0.000)			Table A6.8 Equal Pay vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.65 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	24461.28571	Mean	131790.95	23004.95
Variance	2304251299	336184187	Variance	2313420239	262384404.8
Observations	14	14	Observations	20	20
Pearson Correlation	0.68		Pearson Correlation	0.65	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	12.10204648		t Stat	12.3227412	
P(T<=t) one-tail	9.43902E-09		P(T<=t) one-tail	8.2639E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC4		√221128
Table A6.8 Equal Pay vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation -0.39 (p=0.000)			Table A6.8 Equal Pay vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.06 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	24461.28571	Mean	50879.0894	23004.95
Variance	56640548.98	336184187	Variance	371579015	262384404.8
Observations	14	14	Observations	20	20
Pearson Correlation	-0.39		Pearson Correlation	0.06	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.309066025		t Stat	5.10427963	
P(T<=t) one-tail	1.35269E-05		P(T<=t) one-tail	3.1508E-05	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC4		√221128
Table A6.8 Equal Pay vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.72 (p=0.000)			Table A6.8 Equal Pay vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.72 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	24461.28571	Mean	80916.1106	23004.95
Variance	2415484127	336184187	Variance	1758504257	262384404.8
Observations	14	14	Observations	20	20
Pearson Correlation	0.72		Pearson Correlation	0.72	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	5.986357351		t Stat	8.02705145	
P(T<=t) one-tail	2.27298E-05		P(T<=t) one-tail	7.9697E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC4		√221128

Table A6.26e

Table A6.8 National Minimum Wage Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 National Minimum Wage vs Total Claims Accepted 1999/00 to 2012/13 Negative Correlation 0.49 (p=0.000)</p>			<p>Table A6.8 National Minimum Wage vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.08 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	647.1428571	Mean	131790.95	532.75
Variance	2304251299	55064.59341	Variance	2313420239	71386.61842
Observations	14	14	Observations	20	20
Pearson Correlation	-0.49		Pearson Correlation	0.08	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.42710784		t Stat	12.2097194	
P(T<=t) one-tail	1.87459E-08		P(T<=t) one-tail	9.6626E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC5		√230125
<p>Table A6.8 National Minimum Wage vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.50 (p=0.000)</p>			<p>Table A6.8 National Minimum Wage vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.76 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	647.1428571	Mean	50879.0894	532.75
Variance	56640548.98	55064.59341	Variance	371579015	71386.61842
Observations	14	14	Observations	20	20
Pearson Correlation	0.50		Pearson Correlation	0.76	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	31.04724767		t Stat	11.80378	
P(T<=t) one-tail	6.99244E-14		P(T<=t) one-tail	1.7105E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC5		√230125
<p>Table A6.8 National Minimum Wage vs Multi-Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.56 (p=0.000)</p>			<p>Table A6.8 National Minimum Wage vs Multi-Applicant Claims 1999/00 to 2018/19 Negative Correlation 0.25 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	647.1428571	Mean	80916.1106	532.75
Variance	2415484127	55064.59341	Variance	1758504257	71386.61842
Observations	14	14	Observations	20	20
Pearson Correlation	-0.56		Pearson Correlation	-0.25	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.439517324		t Stat	8.5585348	
P(T<=t) one-tail	1.10117E-05		P(T<=t) one-tail	3.032E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC5		√230125

Table A6.26f

Table A6.8 Part Time Workers Regulations Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Part Time Workers Regulations vs Total Claims Accepted 1999/00 to 2012/13 Negative Correlation 0.09 (p=0.000)			Table A6.8 Part Time Workers Regulations vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.05 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	150961	1626.846154	Mean	133257.053	1255.105263
Variance	2325148545	10328667.31	Variance	2396566162	7236536.099
Observations	13	13	Observations	19	19
Pearson Correlation	-0.09		Pearson Correlation	0.05	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	12		df	18	
t Stat	11.07410584		t Stat	11.7657078	
P(T<=t) one-tail	5.88418E-08		P(T<=t) one-tail	3.4636E-10	
t Critical one-tail	1.782287556		t Critical one-tail	1.73406361	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.17881283		t Critical two-tail	2.10092204	
		√230125	JC6		√230125
Table A6.8 Part Time Workers Regulations vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.50 (p=0.000)			Table A6.8 Part Time Workers Regulations vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.35 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	61500.98374	1626.846154	Mean	49841.1468	1255.105263
Variance	54954063.42	10328667.31	Variance	369478767	7236536.099
Observations	13	13	Observations	19	19
Pearson Correlation	0.50		Pearson Correlation	0.35	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	12		df	18	
t Stat	33.4944711		t Stat	11.4835429	
P(T<=t) one-tail	1.59201E-13		P(T<=t) one-tail	5.106E-10	
t Critical one-tail	1.782287556		t Critical one-tail	1.73406361	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.17881283		t Critical two-tail	2.10092204	
		√230125	JC6		√230125
Table A6.8 Part Time Workers Regulations vs Multi-Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.17 (p=0.000)			Table A6.8 Part Time Workers Regulations vs Multi-Applicant Claims 1999/00 to 2018/19 Negative Correlation 0.11 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	89469.24703	1626.846154	Mean	83422.2217	1255.105263
Variance	2372638780	10328667.31	Variance	1723608646	7236536.099
Observations	13	13	Observations	19	19
Pearson Correlation	-0.17		Pearson Correlation	-0.11	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	12		df	18	
t Stat	6.418088818		t Stat	8.54894348	
P(T<=t) one-tail	1.65634E-05		P(T<=t) one-tail	4.7022E-08	
t Critical one-tail	1.782287556		t Critical one-tail	1.73406361	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.17881283		t Critical two-tail	2.10092204	
		√230125	JC6		√230125

Table A6.26g

Table A6.8 Public Interest Disclosure Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Public Interest Disclosure vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.10 (p=0.000)</p>			<p>Table A6.8 Public Interest Disclosure vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.40 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	195400.3333	2099.666667	Mean	145149.417	1992.166667
Variance	855005811.9	216421.0667	Variance	3355494072	233305.6061
Observations	6	6	Observations	12	12
Pearson Correlation	0.10		Pearson Correlation	0.40	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	5		df	11	
t Stat	16.21722187		t Stat	8.5894936	
P(T<=t) one-tail	8.12568E-06		P(T<=t) one-tail	1.6509E-06	
t Critical one-tail	2.015048373		t Critical one-tail	1.79588482	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.570581836		t Critical two-tail	2.20098516	
		√230125	JC7		√230125
<p>Table A6.8 Public Interest Disclosure vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.16 (p=0.000)</p>			<p>Table A6.8 Public Interest Disclosure vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.40 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	60448.66667	2099.666667	Mean	42513.4167	1992.166667
Variance	38172279.07	216421.0667	Variance	404129672	233305.6061
Observations	6	6	Observations	12	12
Pearson Correlation	-0.16		Pearson Correlation	0.40	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	5		df	11	
t Stat	22.79525424		t Stat	7.04932297	
P(T<=t) one-tail	1.51056E-06		P(T<=t) one-tail	1.0642E-05	
t Critical one-tail	2.015048373		t Critical one-tail	1.79588482	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.570581836		t Critical two-tail	2.20098516	
		√230125	JC7		√230125
<p>Table A6.8 Public Interest Disclosure vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.15 (p=0.000)</p>			<p>Table A6.8 Public Interest Disclosure vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.38 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	134951.1667	2099.666667	Mean	102635.75	1992.166667
Variance	721906127	216421.0667	Variance	1562630290	233305.6061
Observations	6	6	Observations	12	12
Pearson Correlation	0.15		Pearson Correlation	0.38	
Hypothesized Mean $\bar{\mu}$	0		Hypothesized Mean $\bar{\mu}$	0	
df	5		df	11	
t Stat	12.14097012		t Stat	8.86037601	
P(T<=t) one-tail	3.34924E-05		P(T<=t) one-tail	1.221E-06	
t Critical one-tail	2.015048373		t Critical one-tail	1.79588482	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.570581836		t Critical two-tail	2.20098516	
		√230125	JC7		√230125

Table A6.26h

Table A6.8 Race Discrimination Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Race Discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.87 (p=0.000)</p>	<p>Table A6.8 Race Discrimination vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.86 (p=0.000)</p>
t-Test: Paired Two Sample for Means	t-Test: Paired Two Sample for Means
<i>Variable 1</i> <i>Variable 2</i>	<i>Variable 1</i> <i>Variable 2</i>
Mean 147602 4280	Mean 131790.95 3783.2
Variance 2304251299 473635.8462	Variance 2313420239 1055562.484
Observations 14 14	Observations 20 20
Pearson Correlation 0.87	Pearson Correlation 0.86
Hypothesized Mean μ 0	Hypothesized Mean μ 0
df 13	df 19
t Stat 11.31205136	t Stat 12.1249857
P(T<=t) one-tail 2.11429E-08	P(T<=t) one-tail 1.0873E-10
t Critical one-tail 1.770933396	t Critical one-tail 1.72913281
P(T<=t) two-tail 0.000	P(T<=t) two-tail 0.000
t Critical two-tail 2.160368656	t Critical two-tail 2.09302405
√230125	JC8 √230125
<p>Table A6.8 Race Discrimination vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.13 (p=0.000)</p>	<p>Table A6.8 Race Discrimination vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.80 (p=0.000)</p>
t-Test: Paired Two Sample for Means	t-Test: Paired Two Sample for Means
<i>Variable 1</i> <i>Variable 2</i>	<i>Variable 1</i> <i>Variable 2</i>
Mean 62150.91347 4280	Mean 50879.0894 3783.2
Variance 56640548.98 473635.8462	Variance 371579015 1055562.484
Observations 14 14	Observations 20 20
Pearson Correlation 0.13	Pearson Correlation 0.80
Hypothesized Mean μ 0	Hypothesized Mean μ 0
df 13	df 19
t Stat 29.00534143	t Stat 11.4042654
P(T<=t) one-tail 1.67344E-13	P(T<=t) one-tail 3.0462E-10
t Critical one-tail 1.770933396	t Critical one-tail 1.72913281
P(T<=t) two-tail 0.000	P(T<=t) two-tail 0.000
t Critical two-tail 2.160368656	t Critical two-tail 2.09302405
√230125	JC8 √230125
<p>Table A6.8 Race Discrimination vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.83 (p=0.000)</p>	<p>Table A6.8 Race Discrimination vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.62 (p=0.000)</p>
t-Test: Paired Two Sample for Means	t-Test: Paired Two Sample for Means
<i>Variable 1</i> <i>Variable 2</i>	<i>Variable 1</i> <i>Variable 2</i>
Mean 85457.15796 4280	Mean 80916.1106 3783.2
Variance 2415484127 473635.8462	Variance 1758504257 1055562.484
Observations 14 14	Observations 20 20
Pearson Correlation 0.83	Pearson Correlation 0.62
Hypothesized Mean μ 0	Hypothesized Mean μ 0
df 13	df 19
t Stat 6.252361223	t Stat 8.35202917
P(T<=t) one-tail 1.4803E-05	P(T<=t) one-tail 4.3946E-08
t Critical one-tail 1.770933396	t Critical one-tail 1.72913281
P(T<=t) two-tail 0.000	P(T<=t) two-tail 0.000
t Critical two-tail 2.160368656	t Critical two-tail 2.09302405
√230125	JC8 √230125

Table A6.26i

Table A6.8 Redundancy - failure to inform and consult Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Redundancy - failure to inform and consult vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.59 (p=0.000)			Table A6.8 Redundancy - failure to inform and consult vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.68 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	150961	5886.230769	Mean	133257.053	5193.736842
Variance	2325148545	9040667.526	Variance	2396566162	7554365.427
Observations	13	13	Observations	19	19
Pearson Correlation	0.59		Pearson Correlation	0.68	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	12		df	18	
t Stat	11.24563039		t Stat	11.8410067	
P(T<=t) one-tail	4.96738E-08		P(T<=t) one-tail	3.1267E-10	
t Critical one-tail	1.782287556		t Critical one-tail	1.73406361	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.17881283		t Critical two-tail	2.10092204	
		√230125	JC9		√230125
Table A6.8 Redundancy - failure to inform and consult vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.22 (p=0.000)			Table A6.8 Redundancy - failure to inform and consult vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.33 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	61500.98374	5886.230769	Mean	49841.1468	5193.736842
Variance	54954063.42	9040667.526	Variance	369478767	7554365.427
Observations	13	13	Observations	19	19
Pearson Correlation	-0.22		Pearson Correlation	0.33	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	12		df	18	
t Stat	23.37070251		t Stat	10.5205846	
P(T<=t) one-tail	1.12388E-11		P(T<=t) one-tail	2.0336E-09	
t Critical one-tail	1.782287556		t Critical one-tail	1.73406361	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.17881283		t Critical two-tail	2.10092204	
		√230125	JC9		√230125
Table A6.8 Redundancy - failure to inform and consult vs Multi- Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.62 (p=0.000)			Table A6.8 Redundancy - failure to inform and consult vs Multi- Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.64 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	89469.24703	5886.230769	Mean	83422.2217	5193.736842
Variance	2372638780	9040667.526	Variance	1723608646	7554365.427
Observations	13	13	Observations	19	19
Pearson Correlation	0.62		Pearson Correlation	0.64	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	12		df	18	
t Stat	6.423030915		t Stat	8.56685963	
P(T<=t) one-tail	1.6443E-05		P(T<=t) one-tail	4.5604E-08	
t Critical one-tail	1.782287556		t Critical one-tail	1.73406361	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.17881283		t Critical two-tail	2.10092204	
		√230125	JC9		√230125

Table A6.26j

Table A6.8 Redundancy Pay Jurisdictional Complaint correlation and p-value calculations

<p style="text-align: center;">Table A6.8 Redundancy Pay vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.80 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">147602</td><td style="text-align: right;">10658.42857</td></tr> <tr><td>Variance</td><td style="text-align: right;">2304251299</td><td style="text-align: right;">13596024.57</td></tr> <tr><td>Observations</td><td style="text-align: right;">14</td><td style="text-align: right;">14</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.80</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">13</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">11.36031364</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">2.00997E-08</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.770933396</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.160368656</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">√221128</p>		Variable 1	Variable 2	Mean	147602	10658.42857	Variance	2304251299	13596024.57	Observations	14	14	Pearson Correlation	0.80		Hypothesized Mean μ	0		df	13		t Stat	11.36031364		P(T<=t) one-tail	2.00997E-08		t Critical one-tail	1.770933396		P(T<=t) two-tail	0.000		t Critical two-tail	2.160368656		<p style="text-align: center;">Table A6.8 Redundancy Pay vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.85 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">131790.95</td><td style="text-align: right;">8736.6</td></tr> <tr><td>Variance</td><td style="text-align: right;">2313420239</td><td style="text-align: right;">19062266.46</td></tr> <tr><td>Observations</td><td style="text-align: right;">20</td><td style="text-align: right;">20</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.85</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">19</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">12.377368</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">7.6655E-11</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.72913281</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.09302405</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">JC10 √221128</p>		Variable 1	Variable 2	Mean	131790.95	8736.6	Variance	2313420239	19062266.46	Observations	20	20	Pearson Correlation	0.85		Hypothesized Mean μ	0		df	19		t Stat	12.377368		P(T<=t) one-tail	7.6655E-11		t Critical one-tail	1.72913281		P(T<=t) two-tail	0.000		t Critical two-tail	2.09302405	
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Table A6.26k

Table A6.8 Religion or belief discrimination Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Religion or belief discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.84 (p=0.000)</p>		<p>Table A6.8 Religion or belief discrimination vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.82 (p=0.000)</p>			
t-Test: Paired Two Sample for Means		t-Test: Paired Two Sample for Means			
	<i>Variable 1</i>	<i>Variable 2</i>			
Mean	162124.1	684.9	Mean	136914.5	619.9375
Variance	2443665736	96859.87778	Variance	2751589781	76560.0625
Observations	10	10	Observations	16	16
Pearson Correlation	0.84		Pearson Correlation	0.82	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	9		df	15	
t Stat	10.38206491		t Stat	10.4380681	
P(T<=t) one-tail	1.30836E-06		P(T<=t) one-tail	1.4172E-08	
t Critical one-tail	1.833112933		t Critical one-tail	1.75305036	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.262157163		t Critical two-tail	2.13144955	
		√230125	JC11		√230125
<p>Table A6.8 Religion or belief discrimination vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.15 (p=0.000)</p>		<p>Table A6.8 Religion or belief discrimination vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.42 (p=0.000)</p>			
t-Test: Paired Two Sample for Means		t-Test: Paired Two Sample for Means			
	<i>Variable 1</i>	<i>Variable 2</i>			
Mean	58870.7	684.9	Mean	46011	619.9375
Variance	37741062.01	96859.87778	Variance	342938210	76560.0625
Observations	10	10	Observations	16	16
Pearson Correlation	0.15		Pearson Correlation	0.42	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	9		df	15	
t Stat	30.14444458		t Stat	9.86548263	
P(T<=t) one-tail	1.18977E-10		P(T<=t) one-tail	2.9849E-08	
t Critical one-tail	1.833112933		t Critical one-tail	1.75305036	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.262157163		t Critical two-tail	2.13144955	
		√230125	JC11		√230125
<p>Table A6.8 Religion or belief discrimination vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.86 (p=0.000)</p>		<p>Table A6.8 Religion or belief discrimination vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.86 (p=0.000)</p>			
t-Test: Paired Two Sample for Means		t-Test: Paired Two Sample for Means			
	<i>Variable 1</i>	<i>Variable 2</i>			
Mean	103265.4	684.9	Mean	90911	619.9375
Variance	2210601220	96859.87778	Variance	1667569667	76560.0625
Observations	10	10	Observations	16	16
Pearson Correlation	0.86		Pearson Correlation	0.86	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	9		df	15	
t Stat	6.938905479		t Stat	8.8959956	
P(T<=t) one-tail	3.38372E-05		P(T<=t) one-tail	1.1377E-07	
t Critical one-tail	1.833112933		t Critical one-tail	1.75305036	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.262157163		t Critical two-tail	2.13144955	
		√230125	JC11		√230125

Table A6.261

Table A6.8 Sex Discrimination Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Sex Discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.32 (p=0.000)			Table A6.8 Sex Discrimination vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.55 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	17420.85714	Mean	131790.95	14562.75
Variance	2304251299	38899047.98	Variance	2313420239	49882799.04
Observations	14	14	Observations	20	20
Pearson Correlation	0.32		Pearson Correlation	0.55	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	10.50765109		t Stat	11.7623568	
P(T<=t) one-tail	5.04952E-08		P(T<=t) one-tail	1.8147E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC12		√221128
Table A6.8 Sex Discrimination vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation -0.16 (p=0.000)			Table A6.8 Sex Discrimination vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.58 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	17420.85714	Mean	50879.0894	14562.75
Variance	56640548.98	38899047.98	Variance	371579015	49882799.04
Observations	14	14	Observations	20	20
Pearson Correlation	-0.16		Pearson Correlation	0.58	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	15.90584114		t Stat	10.0218563	
P(T<=t) one-tail	3.34152E-10		P(T<=t) one-tail	2.5405E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC12		√221128
Table A6.8 Sex Discrimination vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.34 (p=0.000)			Table A6.8 Sex Discrimination vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.37 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	17420.85714	Mean	80916.1106	14562.75
Variance	2415484127	38899047.98	Variance	1758504257	49882799.04
Observations	14	14	Observations	20	20
Pearson Correlation	0.34		Pearson Correlation	0.37	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	5.373121281		t Stat	7.44112088	
P(T<=t) one-tail	6.34271E-05		P(T<=t) one-tail	2.4149E-07	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC12		√221128

Table A6.26m

Table A6.8 Sexual Orientation Discrimination Jurisdictional Complaint correlation and p-value calculations

<p style="text-align: center;">Table A6.8 Sexual Orientation Discrimination vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.80 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">162124.1</td><td style="text-align: right;">505.1</td></tr> <tr><td>Variance</td><td style="text-align: right;">2443665736</td><td style="text-align: right;">37461.87778</td></tr> <tr><td>Observations</td><td style="text-align: right;">10</td><td style="text-align: right;">10</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.80</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">9</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">10.37125741</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">1.31982E-06</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.833112933</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.262157163</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">√230125</p>		Variable 1	Variable 2	Mean	162124.1	505.1	Variance	2443665736	37461.87778	Observations	10	10	Pearson Correlation	0.80		Hypothesized Mean μ	0		df	9		t Stat	10.37125741		P(T<=t) one-tail	1.31982E-06		t Critical one-tail	1.833112933		P(T<=t) two-tail	0.000		t Critical two-tail	2.262157163		<p style="text-align: center;">Table A6.8 Sexual Orientation Discrimination vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.87 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">136914.5</td><td style="text-align: right;">422.6875</td></tr> <tr><td>Variance</td><td style="text-align: right;">2751589781</td><td style="text-align: right;">38823.5625</td></tr> <tr><td>Observations</td><td style="text-align: right;">16</td><td style="text-align: right;">16</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.87</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">15</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">10.4423308</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">1.4095E-08</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.75305036</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.13144955</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">√230125</p>		Variable 1	Variable 2	Mean	136914.5	422.6875	Variance	2751589781	38823.5625	Observations	16	16	Pearson Correlation	0.87		Hypothesized Mean μ	0		df	15		t Stat	10.4423308		P(T<=t) one-tail	1.4095E-08		t Critical one-tail	1.75305036		P(T<=t) two-tail	0.000		t Critical two-tail	2.13144955	
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t Stat	30.10839696																																																																								
P(T<=t) one-tail	1.20254E-10																																																																								
t Critical one-tail	1.833112933																																																																								
P(T<=t) two-tail	0.000																																																																								
t Critical two-tail	2.262157163																																																																								
	Variable 1	Variable 2																																																																							
Mean	46011	422.6875																																																																							
Variance	342938210	38823.5625																																																																							
Observations	16	16																																																																							
Pearson Correlation	0.62																																																																								
Hypothesized Mean μ	0																																																																								
df	15																																																																								
t Stat	9.91224168																																																																								
P(T<=t) one-tail	2.8053E-08																																																																								
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t Critical two-tail	2.13144955																																																																								
<p style="text-align: center;">Table A6.8 Sexual Orientation Discrimination vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.83 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">103265.4</td><td style="text-align: right;">505.1</td></tr> <tr><td>Variance</td><td style="text-align: right;">2210601220</td><td style="text-align: right;">37461.87778</td></tr> <tr><td>Observations</td><td style="text-align: right;">10</td><td style="text-align: right;">10</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.83</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">9</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">6.935120953</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">3.39798E-05</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.833112933</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.262157163</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">√230125</p>		Variable 1	Variable 2	Mean	103265.4	505.1	Variance	2210601220	37461.87778	Observations	10	10	Pearson Correlation	0.83		Hypothesized Mean μ	0		df	9		t Stat	6.935120953		P(T<=t) one-tail	3.39798E-05		t Critical one-tail	1.833112933		P(T<=t) two-tail	0.000		t Critical two-tail	2.262157163		<p style="text-align: center;">Table A6.8 Sexual Orientation Discrimination vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.84 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">90911</td><td style="text-align: right;">422.6875</td></tr> <tr><td>Variance</td><td style="text-align: right;">1667569667</td><td style="text-align: right;">38823.5625</td></tr> <tr><td>Observations</td><td style="text-align: right;">16</td><td style="text-align: right;">16</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.84</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">15</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">8.89952616</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">1.1319E-07</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.75305036</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.13144955</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">√230125</p>		Variable 1	Variable 2	Mean	90911	422.6875	Variance	1667569667	38823.5625	Observations	16	16	Pearson Correlation	0.84		Hypothesized Mean μ	0		df	15		t Stat	8.89952616		P(T<=t) one-tail	1.1319E-07		t Critical one-tail	1.75305036		P(T<=t) two-tail	0.000		t Critical two-tail	2.13144955	
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Table A6.26n

Table A6.8 Suffer a detriment/unfair dismissal – pregnancy Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Suffer a detriment/unfair dismissal - pregnancy vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.79 (p=0.000)			Table A6.8 Suffer a detriment/unfair dismissal - pregnancy vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.80 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	1444.428571	Mean	131790.95	1358.2
Variance	2304251299	131709.6484	Variance	2313420239	149214.5895
Observations	14	14	Observations	20	20
Pearson Correlation	0.79		Pearson Correlation	0.80	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.46123519		t Stat	12.2057971	
P(T<=t) one-tail	1.80921E-08		P(T<=t) one-tail	9.7154E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC14		√230125
Table A6.8 Suffer a detriment/unfair dismissal - pregnancy vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.41 (p=0.000)			Table A6.8 Suffer a detriment/unfair dismissal - pregnancy vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.33 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	1444.428571	Mean	50879.0894	1358.2
Variance	56640548.98	131709.6484	Variance	371579015	149214.5895
Observations	14	14	Observations	20	20
Pearson Correlation	-0.41		Pearson Correlation	0.33	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	29.57469913		t Stat	11.563254	
P(T<=t) one-tail	1.30433E-13		P(T<=t) one-tail	2.4167E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC14		√230125
Table A6.8 Suffer a detriment/unfair dismissal - pregnancy vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.84 (p=0.000)			Table A6.8 Suffer a detriment/unfair dismissal - pregnancy vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.77 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	1444.428571	Mean	80916.1106	1358.2
Variance	2415484127	131709.6484	Variance	1758504257	149214.5895
Observations	14	14	Observations	20	20
Pearson Correlation	0.84		Pearson Correlation	0.77	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.43574377		t Stat	8.5445832	
P(T<=t) one-tail	1.10771E-05		P(T<=t) one-tail	3.1084E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC14		√230125

Table A6.26o

Table A6.8 TUPE - failure to inform and consult Jurisdictional Complaint correlation and p-value calculations

Table A6.8 TUPE - failure to inform and consult vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.57 (p=0.000)			Table A6.8 TUPE - failure to inform and consult vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.71 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	1471.214286	Mean	131790.95	1272.4
Variance	2304251299	213877.7198	Variance	2313420239	256929.9368
Observations	14	14	Observations	20	20
Pearson Correlation	0.57		Pearson Correlation	0.71	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.45340863		t Stat	12.2261214	
P(T<=t) one-tail	1.82399E-08		P(T<=t) one-tail	9.4451E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC15		√230125
Table A6.8 TUPE - failure to inform and consult vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.20 (p=0.000)			Table A6.8 TUPE - failure to inform and consult vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.65 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	1471.214286	Mean	50879.0894	1272.4
Variance	56640548.98	213877.7198	Variance	371579015	256929.9368
Observations	14	14	Observations	20	20
Pearson Correlation	0.20		Pearson Correlation	0.65	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	30.48824639		t Stat	11.7067775	
P(T<=t) one-tail	8.82897E-14		P(T<=t) one-tail	1.9651E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC15		√230125
Table A6.8 TUPE - failure to inform and consult vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.53 (p=0.000)			Table A6.8 TUPE - failure to inform and consult vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.51 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	1471.214286	Mean	80916.1106	1272.4
Variance	2415484127	213877.7198	Variance	1758504257	256929.9368
Observations	14	14	Observations	20	20
Pearson Correlation	0.53		Pearson Correlation	0.51	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.425754089		t Stat	8.54587001	
P(T<=t) one-tail	1.12521E-05		P(T<=t) one-tail	3.1013E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230125	JC15		√230125

Table A6.26p

Table A6.8 Unauthorised Deductions Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Unauthorised Deductions vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.77 (p=0.000)			Table A6.8 Unauthorised Deductions vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.76 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	45032.71429	Mean	131790.95	38931.75
Variance	2304251299	182242819.5	Variance	2313420239	237494648.1
Observations	14	14	Observations	20	20
Pearson Correlation	0.77		Pearson Correlation	0.76	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	9.932302265		t Stat	11.0223776	
P(T<=t) one-tail	9.73338E-08		P(T<=t) one-tail	5.3658E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC16a		√221128
Table A6.8 Unauthorised Deductions vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.28 (p=0.000)			Table A6.8 Unauthorised Deductions vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.63 (p=0.002)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	45032.71429	Mean	50879.0894	38931.75
Variance	56640548.98	182242819.5	Variance	371579015	237494648.1
Observations	14	14	Observations	20	20
Pearson Correlation	0.28		Pearson Correlation	0.63	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	4.735146452		t Stat	3.49778598	
P(T<=t) one-tail	0.000194858		P(T<=t) one-tail	0.00120371	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.002	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC16a		√221128
Table A6.8 Unauthorised Deductions vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.71 (p=0.003)			Table A6.8 Unauthorised Deductions vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.58 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	45032.71429	Mean	80916.1106	38931.75
Variance	2415484127	182242819.5	Variance	1758504257	237494648.1
Observations	14	14	Observations	20	20
Pearson Correlation	0.71		Pearson Correlation	0.58	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	3.712038415		t Stat	5.33125723	
P(T<=t) one-tail	0.001304737		P(T<=t) one-tail	1.907E-05	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.003		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC16a		√221128

Table A6.26q

Table A6.8 Unfair Dismissal Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Unfair Dismissal vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.27 (p=0.000)</p>			<p>Table A6.8 Unfair Dismissal vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.58 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	47951.71429	Mean	131790.95	38857.5
Variance	2304251299	27874693.45	Variance	2313420239	233219911.9
Observations	14	14	Observations	20	20
Pearson Correlation	0.27		Pearson Correlation	0.58	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	7.960299192		t Stat	10.0936551	
P(T<=t) one-tail	1.18062E-06		P(T<=t) one-tail	2.2641E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC17a		√221128
<p>Table A6.8 Unfair Dismissal vs Single Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.77 (p=0.000)</p>			<p>Table A6.8 Unfair Dismissal vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.97 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	47951.71429	Mean	38857.5	50879.1
Variance	56640548.98	27874693.45	Variance	233219912	371579440.2
Observations	14	14	Observations	20	20
Pearson Correlation	0.77		Pearson Correlation	0.97	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.06391978		t Stat	-9.56984778	
P(T<=t) one-tail	2.75028E-08		P(T<=t) one-tail	5.3176E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128	JC17a		√221128
<p>Table A6.8 Unfair Dismissal vs Multi-Applicant Claim 1999/00 to 2012/13 Positive Correlation 0.15 (p=0.013)</p>			<p>Table A6.8 Unfair Dismissal vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.22 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	47951.71429	Mean	38857.5	80911.85
Variance	2415484127	27874693.45	Variance	233219912	1758377494
Observations	14	14	Observations	20	20
Pearson Correlation	0.15		Pearson Correlation	0.22	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	2.884586699		t Stat	-4.54327699	
P(T<=t) one-tail	0.006390214		P(T<=t) one-tail	0.00011113	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.013		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√221128			√221128

Table A6.26r

Table A6.8 Working Time Directive Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Working Time Directive vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.92 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>147602</td> <td>41671.07143</td> </tr> <tr> <td>Variance</td> <td>2304251299</td> <td>1729241412</td> </tr> <tr> <td>Observations</td> <td>14</td> <td>14</td> </tr> <tr> <td>Pearson Correlation</td> <td>0.92</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>13</td> <td></td> </tr> <tr> <td>t Stat</td> <td>20.78174591</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>1.17008E-11</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.770933396</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.160368656</td> <td></td> </tr> </tbody> </table> <p style="text-align: right;">√221128</p>		Variable 1	Variable 2	Mean	147602	41671.07143	Variance	2304251299	1729241412	Observations	14	14	Pearson Correlation	0.92		Hypothesized Mean μ	0		df	13		t Stat	20.78174591		P(T<=t) one-tail	1.17008E-11		t Critical one-tail	1.770933396		P(T<=t) two-tail	0.000		t Critical two-tail	2.160368656		<p>Table A6.8 Working Time Directive vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.80 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>131790.95</td> <td>39886.7</td> </tr> <tr> <td>Variance</td> <td>2313420239</td> <td>1231816230</td> </tr> <tr> <td>Observations</td> <td>20</td> <td>20</td> </tr> <tr> <td>Pearson Correlation</td> <td>0.80</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>19</td> <td></td> </tr> <tr> <td>t Stat</td> <td>14.0669038</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>8.4699E-12</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.72913281</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.09302405</td> <td></td> </tr> </tbody> </table> <p>JC18 √221128</p>		Variable 1	Variable 2	Mean	131790.95	39886.7	Variance	2313420239	1231816230	Observations	20	20	Pearson Correlation	0.80		Hypothesized Mean μ	0		df	19		t Stat	14.0669038		P(T<=t) one-tail	8.4699E-12		t Critical one-tail	1.72913281		P(T<=t) two-tail	0.000		t Critical two-tail	2.09302405	
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Table A6.8 Written pay statement Jurisdictional Complaint correlation and p-value calculations

<p style="text-align: center;">Table A6.8 Written Pay Statement vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.57 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">150961</td><td style="text-align: right;">1147.076923</td></tr> <tr><td>Variance</td><td style="text-align: right;">2325148545</td><td style="text-align: right;">36043.91026</td></tr> <tr><td>Observations</td><td style="text-align: right;">13</td><td style="text-align: right;">13</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.57</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">12</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">11.22742844</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">5.05695E-08</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.782287556</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.17881283</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">√230126</p>		Variable 1	Variable 2	Mean	150961	1147.076923	Variance	2325148545	36043.91026	Observations	13	13	Pearson Correlation	0.57		Hypothesized Mean μ	0		df	12		t Stat	11.22742844		P(T<=t) one-tail	5.05695E-08		t Critical one-tail	1.782287556		P(T<=t) two-tail	0.000		t Critical two-tail	2.17881283		<p style="text-align: center;">Table A6.8 Written Pay Statement vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.51 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Variable 1</th> <th style="text-align: center;">Variable 2</th> </tr> </thead> <tbody> <tr><td>Mean</td><td style="text-align: right;">133257.053</td><td style="text-align: right;">1025.947368</td></tr> <tr><td>Variance</td><td style="text-align: right;">2396566162</td><td style="text-align: right;">219460.4971</td></tr> <tr><td>Observations</td><td style="text-align: right;">19</td><td style="text-align: right;">19</td></tr> <tr><td>Pearson Correlation</td><td style="text-align: right;">0.51</td><td></td></tr> <tr><td>Hypothesized Mean μ</td><td style="text-align: right;">0</td><td></td></tr> <tr><td>df</td><td style="text-align: right;">18</td><td></td></tr> <tr><td>t Stat</td><td style="text-align: right;">11.8314607</td><td></td></tr> <tr><td>P(T<=t) one-tail</td><td style="text-align: right;">3.1674E-10</td><td></td></tr> <tr><td>t Critical one-tail</td><td style="text-align: right;">1.73406361</td><td></td></tr> <tr><td>P(T<=t) two-tail</td><td style="text-align: right;">0.000</td><td></td></tr> <tr><td>t Critical two-tail</td><td style="text-align: right;">2.10092204</td><td></td></tr> </tbody> </table> <p style="text-align: right; color: purple;">JC19 √230126</p>		Variable 1	Variable 2	Mean	133257.053	1025.947368	Variance	2396566162	219460.4971	Observations	19	19	Pearson Correlation	0.51		Hypothesized Mean μ	0		df	18		t Stat	11.8314607		P(T<=t) one-tail	3.1674E-10		t Critical one-tail	1.73406361		P(T<=t) two-tail	0.000		t Critical two-tail	2.10092204	
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Table A6.8 Written statement of reasons for dismissal Jurisdictional Complaint correlation and p-value calculations

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<p>Table A6.8 Written statement of reasons for dismissal vs Multi-Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.74 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>89469.24703</td> <td>1219.923077</td> </tr> <tr> <td>Variance</td> <td>2372638780</td> <td>99120.91026</td> </tr> <tr> <td>Observations</td> <td>13</td> <td>13</td> </tr> <tr> <td>Pearson Correlation</td> <td>-0.74</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>12</td> <td></td> </tr> <tr> <td>t Stat</td> <td>6.501094938</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>1.4659E-05</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.782287556</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.17881283</td> <td></td> </tr> </tbody> </table> <p style="text-align: right;">√230126</p>		Variable 1	Variable 2	Mean	89469.24703	1219.923077	Variance	2372638780	99120.91026	Observations	13	13	Pearson Correlation	-0.74		Hypothesized Mean μ	0		df	12		t Stat	6.501094938		P(T<=t) one-tail	1.4659E-05		t Critical one-tail	1.782287556		P(T<=t) two-tail	0.000		t Critical two-tail	2.17881283		<p>Table A6.8 Written statement of reasons for dismissal vs Multi-Applicant Claims 1999/00 to 2018/19 Negative Correlation 0.15 (p=0.000)</p> <p>t-Test: Paired Two Sample for Means</p> <table border="1"> <thead> <tr> <th></th> <th>Variable 1</th> <th>Variable 2</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>83422.2217</td> <td>913.1578947</td> </tr> <tr> <td>Variance</td> <td>1723608646</td> <td>283847.2515</td> </tr> <tr> <td>Observations</td> <td>19</td> <td>19</td> </tr> <tr> <td>Pearson Correlation</td> <td>-0.15</td> <td></td> </tr> <tr> <td>Hypothesized Mean μ</td> <td>0</td> <td></td> </tr> <tr> <td>df</td> <td>18</td> <td></td> </tr> <tr> <td>t Stat</td> <td>8.64564878</td> <td></td> </tr> <tr> <td>P(T<=t) one-tail</td> <td>3.9879E-08</td> <td></td> </tr> <tr> <td>t Critical one-tail</td> <td>1.73406361</td> <td></td> </tr> <tr> <td>P(T<=t) two-tail</td> <td>0.000</td> <td></td> </tr> <tr> <td>t Critical two-tail</td> <td>2.10092204</td> <td></td> </tr> </tbody> </table> <p>JC20</p> <p style="text-align: right;">√230126</p>		Variable 1	Variable 2	Mean	83422.2217	913.1578947	Variance	1723608646	283847.2515	Observations	19	19	Pearson Correlation	-0.15		Hypothesized Mean μ	0		df	18		t Stat	8.64564878		P(T<=t) one-tail	3.9879E-08		t Critical one-tail	1.73406361		P(T<=t) two-tail	0.000		t Critical two-tail	2.10092204	
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Table A6.26u

Table A6.8 Written statement of Ts and Cs Jurisdictional Complaint correlation and p-value calculations

Table A6.8 Written statement of Ts and Cs vs Total Claims Accepted 1999/00 to 2012/13 Positive Correlation 0.86 (p=0.000)			Table A6.8 Written statement of Ts and Cs vs Total Claims Accepted 1999/00 to 2018/19 Positive Correlation 0.84 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	147602	3459.785714	Mean	131790.95	2810.2
Variance	2304251299	736628.9505	Variance	2313420239	1603738.484
Observations	14	14	Observations	20	20
Pearson Correlation	0.86		Pearson Correlation	0.84	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.40945689		t Stat	12.2610398	
P(T<=t) one-tail	1.90939E-08		P(T<=t) one-tail	8.9991E-11	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230126	JC21		√230126
Table A6.8 Written statement of Ts and Cs vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.19 (p=0.000)			Table A6.8 Written statement of Ts and Cs vs Single Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.74 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	62150.91347	3459.785714	Mean	50879.0894	2810.2
Variance	56640548.98	736628.9505	Variance	371579015	1603738.484
Observations	14	14	Observations	20	20
Pearson Correlation	-0.19		Pearson Correlation	0.74	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	28.37952369		t Stat	11.7086351	
P(T<=t) one-tail	2.21294E-13		P(T<=t) one-tail	1.9598E-10	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230126	JC21		√230126
Table A6.8 Written statement of Ts and Cs vs Multi-Applicant Claims 1999/00 to 2012/13 Positive Correlation 0.87 (p=0.000)			Table A6.8 Written statement of Ts and Cs vs Multi-Applicant Claims 1999/00 to 2018/19 Positive Correlation 0.62 (p=0.000)		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	Variable 1	Variable 2		Variable 1	Variable 2
Mean	85457.15796	3459.785714	Mean	80916.1106	2810.2
Variance	2415484127	736628.9505	Variance	1758504257	1603738.484
Observations	14	14	Observations	20	20
Pearson Correlation	0.87		Pearson Correlation	0.62	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.338061138		t Stat	8.48578232	
P(T<=t) one-tail	1.29197E-05		P(T<=t) one-tail	3.4533E-08	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230126	JC21		√230126

Table A6.26v

Table A6.8 Others Jurisdictional Complaint correlation and p-value calculations

<p>Table A6.8 Others vs Total Claims Accepted 1999/00 to 2012/13 Negative Correlation 0.01 (p=0.000)</p>			<p>Table A6.8 Others vs Total Claims Accepted 1999/00 to 2018/19 Negative Correlation 0.45 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	147602	5885.142857	Mean	131790.95	11389.9
Variance	2304251299	5294397.363	Variance	2313420239	109272538.5
Observations	14	14	Observations	20	20
Pearson Correlation	-0.01		Pearson Correlation	-0.45	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	11.02691037		t Stat	10.0467317	
P(T<=t) one-tail	2.8615E-08		P(T<=t) one-tail	2.441E-09	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230126	JC22		√230126
<p>Table A6.8 Others vs Single Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.01 (p=0.000)</p>			<p>Table A6.8 Others vs Single Applicant Claims 1999/00 to 2018/19 Negative Correlation 0.83 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	62150.91347	5885.142857	Mean	50879.0894	11389.9
Variance	56640548.98	5294397.363	Variance	371579015	109272538.5
Observations	14	14	Observations	20	20
Pearson Correlation	-0.01		Pearson Correlation	-0.83	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	26.67633356		t Stat	6.18042513	
P(T<=t) one-tail	4.88525E-13		P(T<=t) one-tail	3.0674E-06	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230126	JC21		√230126
<p>Table A6.8 Others vs Multi-Applicant Claims 1999/00 to 2012/13 Negative Correlation 0.01 (p=0.000)</p>			<p>Table A6.8 Others vs Multi-Applicant Claims 1999/00 to 2018/19 Negative Correlation 0.13 (p=0.000)</p>		
t-Test: Paired Two Sample for Means			t-Test: Paired Two Sample for Means		
	<i>Variable 1</i>	<i>Variable 2</i>		<i>Variable 1</i>	<i>Variable 2</i>
Mean	85457.15796	5885.142857	Mean	80916.1106	11389.9
Variance	2415484127	5294397.363	Variance	1758504257	109272538.5
Observations	14	14	Observations	20	20
Pearson Correlation	-0.01		Pearson Correlation	-0.13	
Hypothesized Mean μ	0		Hypothesized Mean μ	0	
df	13		df	19	
t Stat	6.048102266		t Stat	6.9843115	
P(T<=t) one-tail	2.05582E-05		P(T<=t) one-tail	5.9179E-07	
t Critical one-tail	1.770933396		t Critical one-tail	1.72913281	
P(T<=t) two-tail	0.000		P(T<=t) two-tail	0.000	
t Critical two-tail	2.160368656		t Critical two-tail	2.09302405	
		√230126	JC21		√230126

Figure A6.1

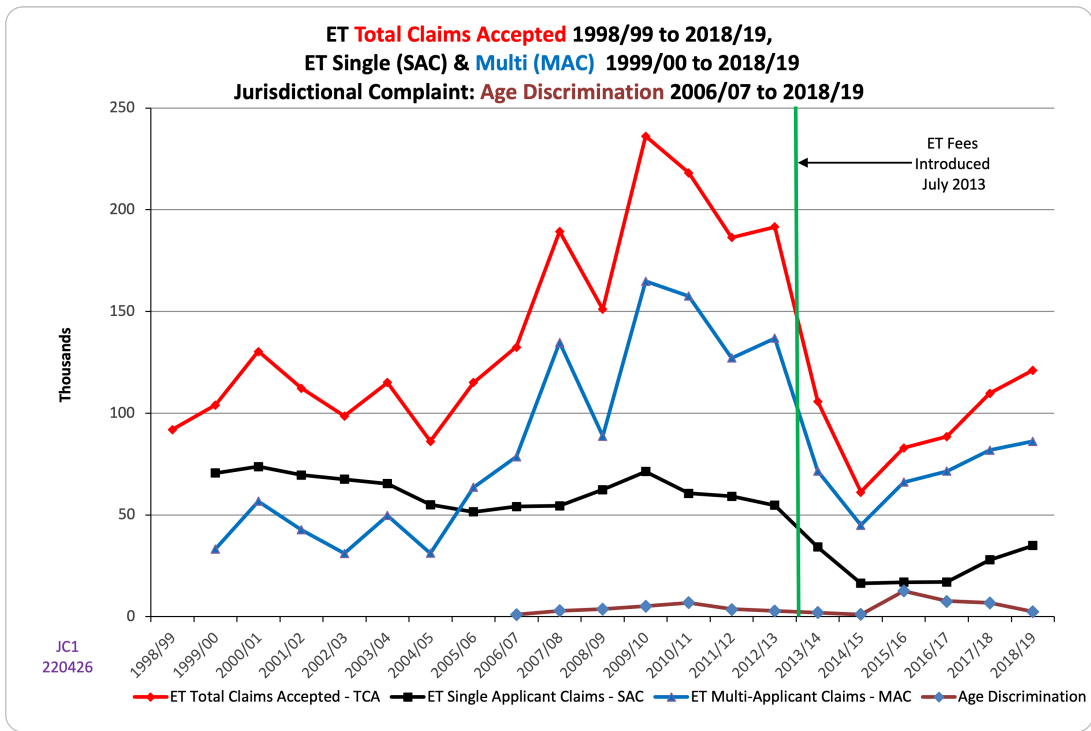


Figure A6.2

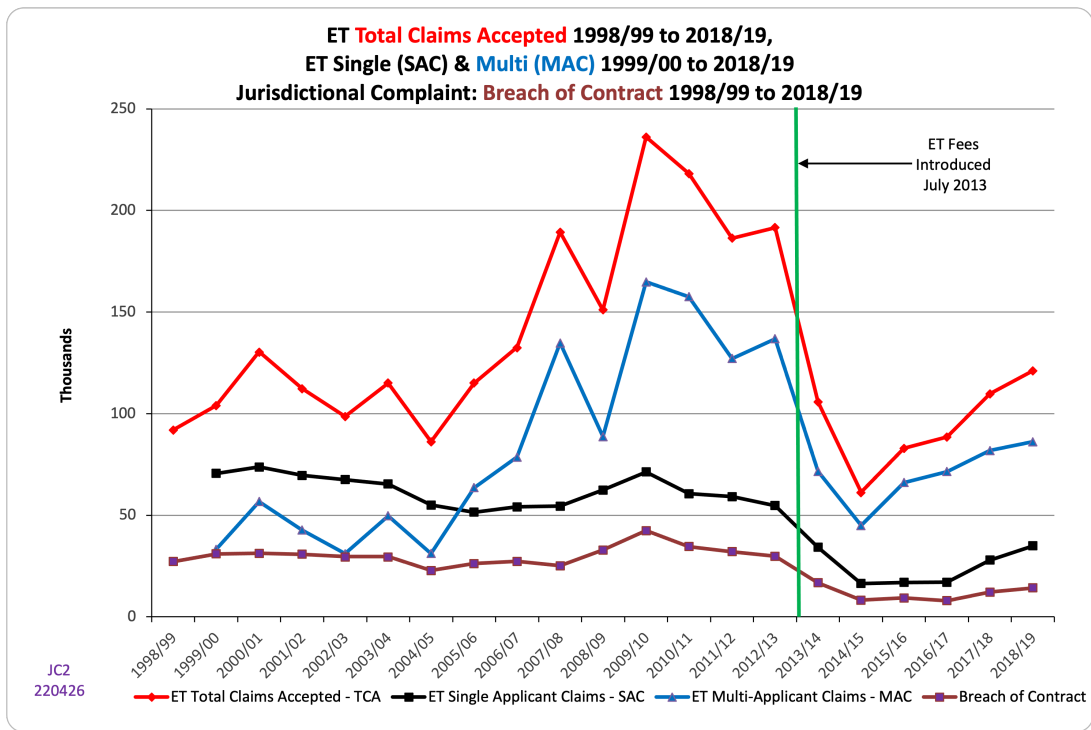


Figure A6.3

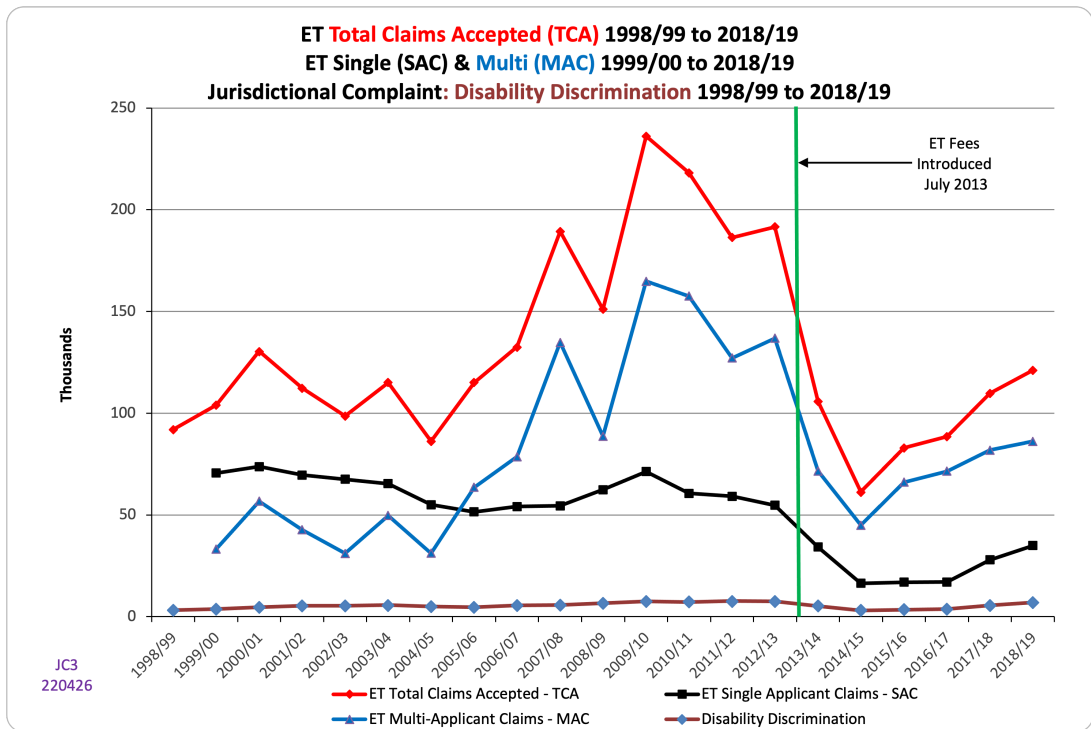


Figure A6.4

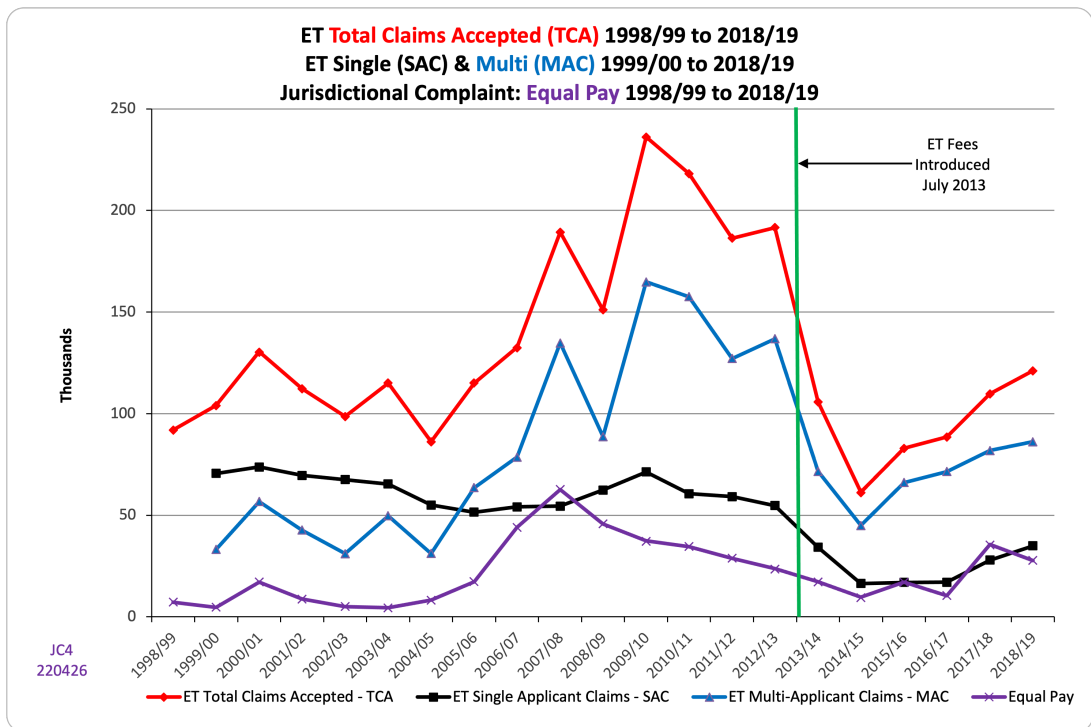


Figure A6.5

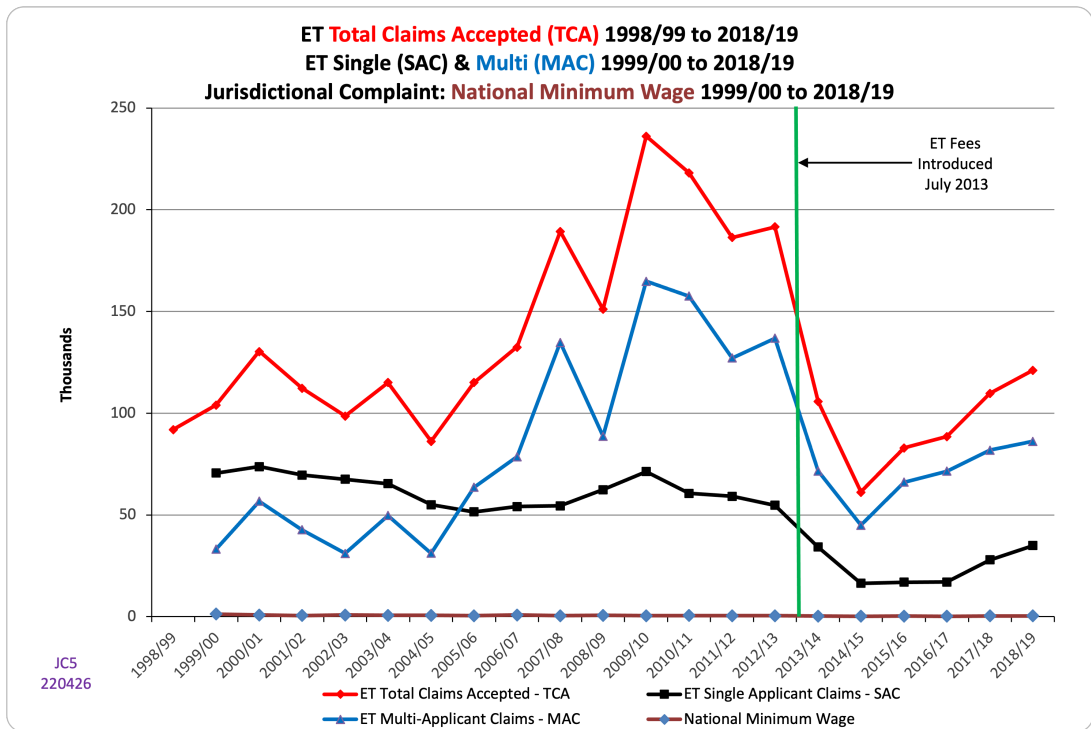


Figure A6.6

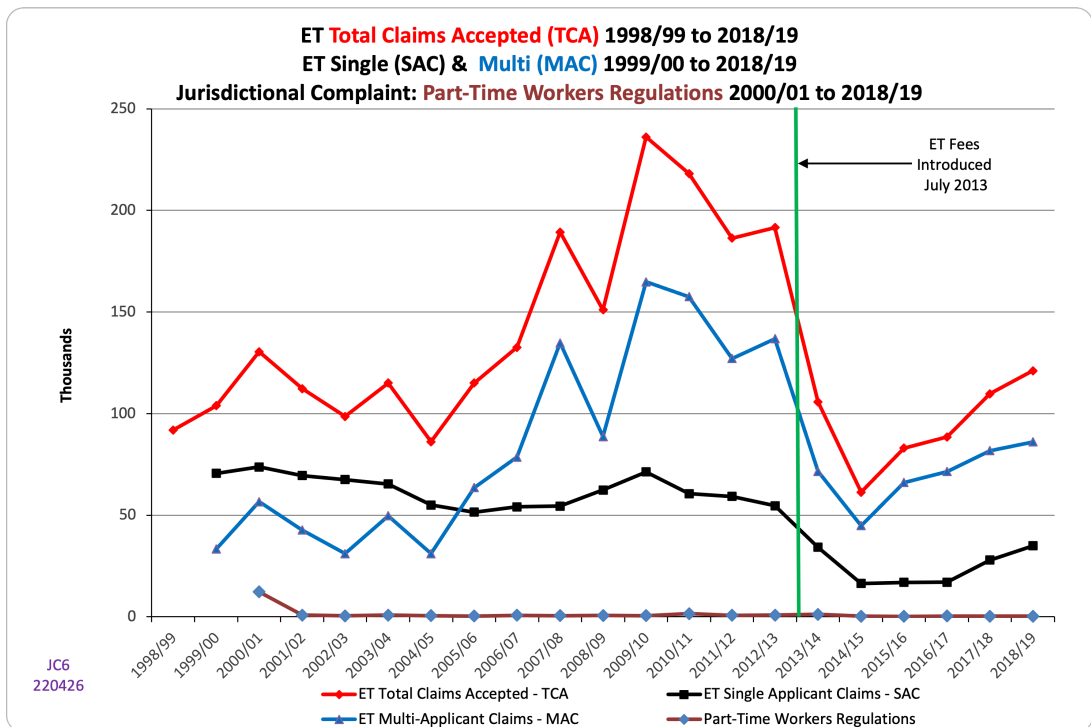


Figure A6.7

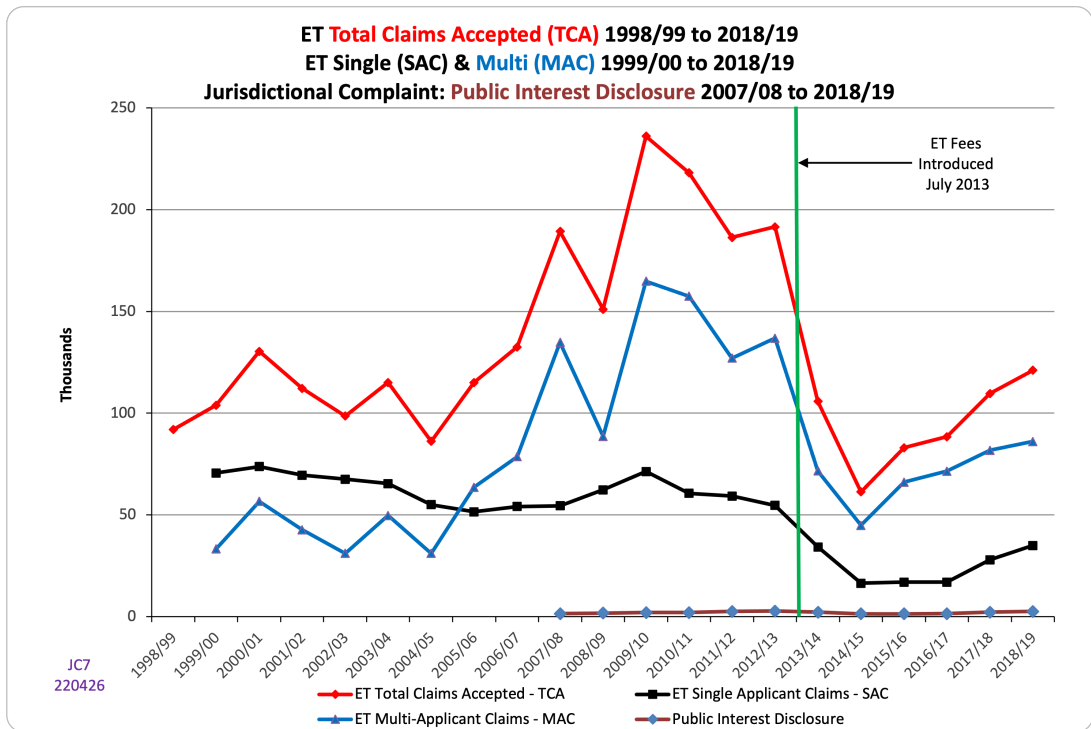


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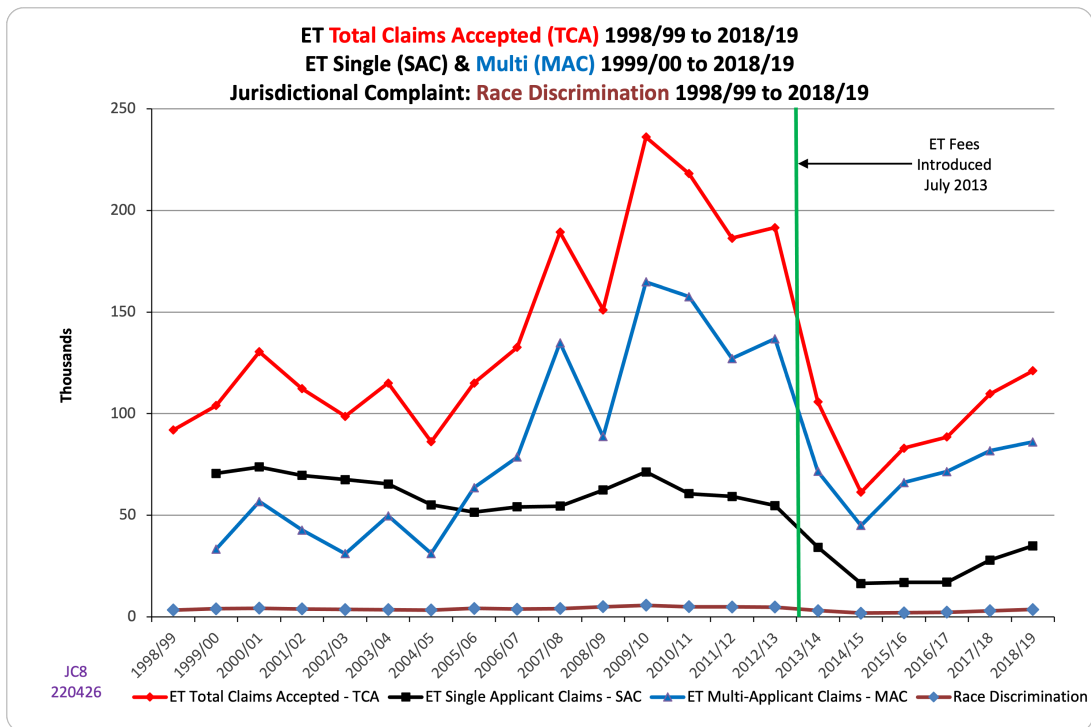


Figure A6.9

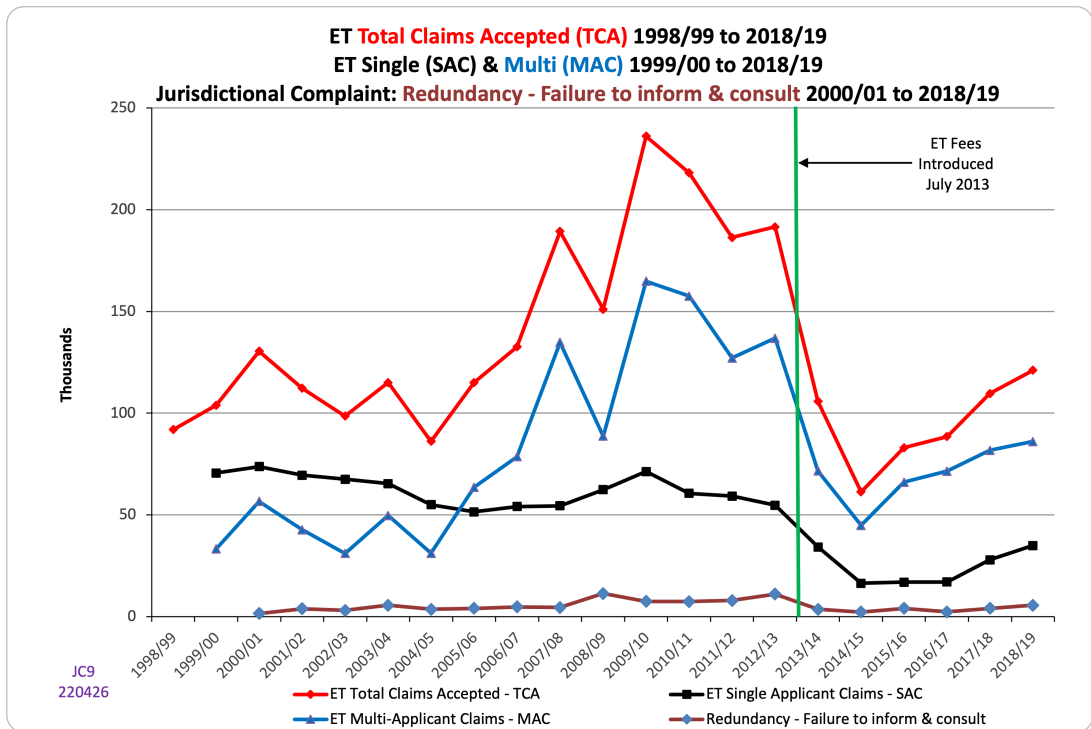


Figure A6.10

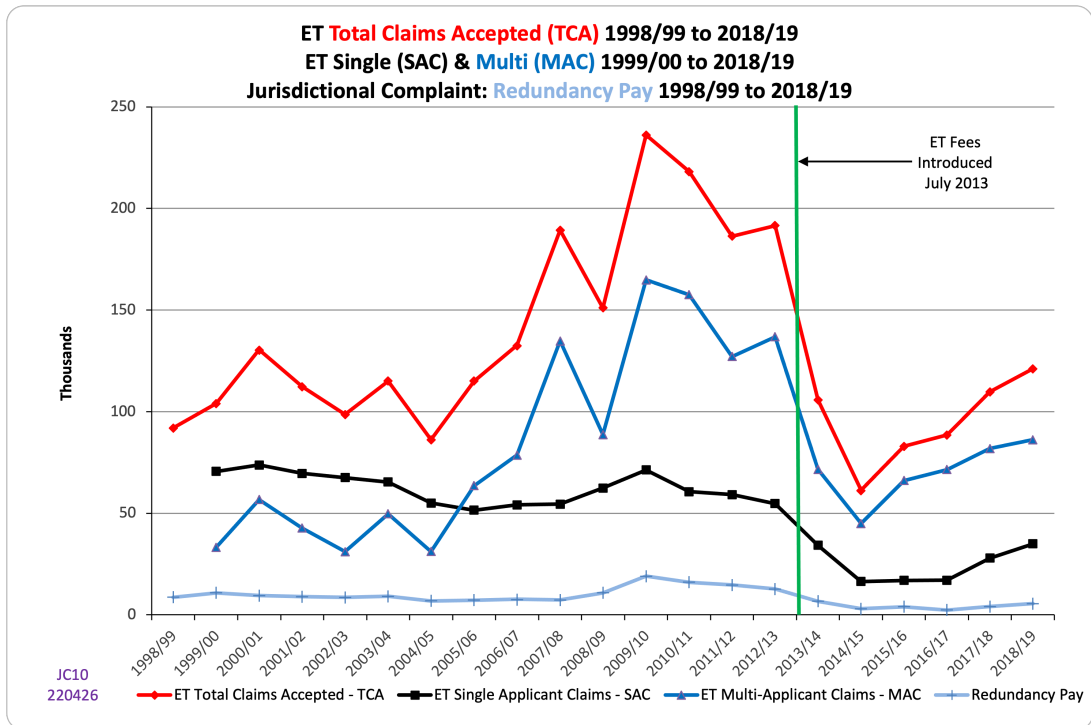


Figure A6.11

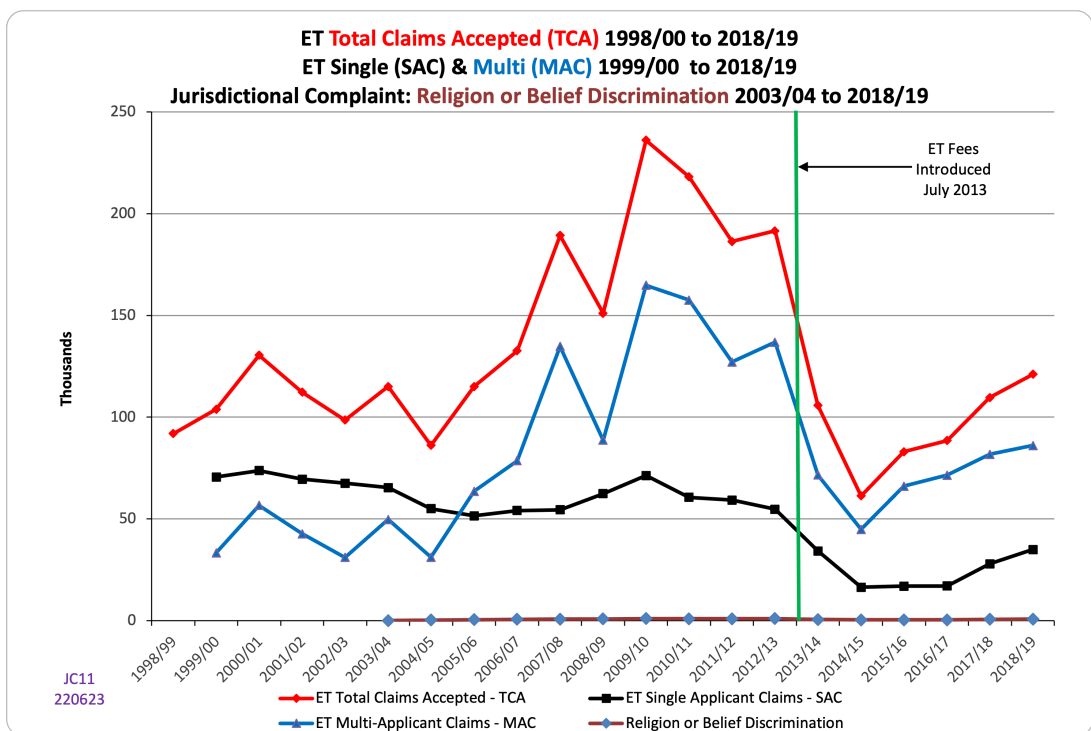


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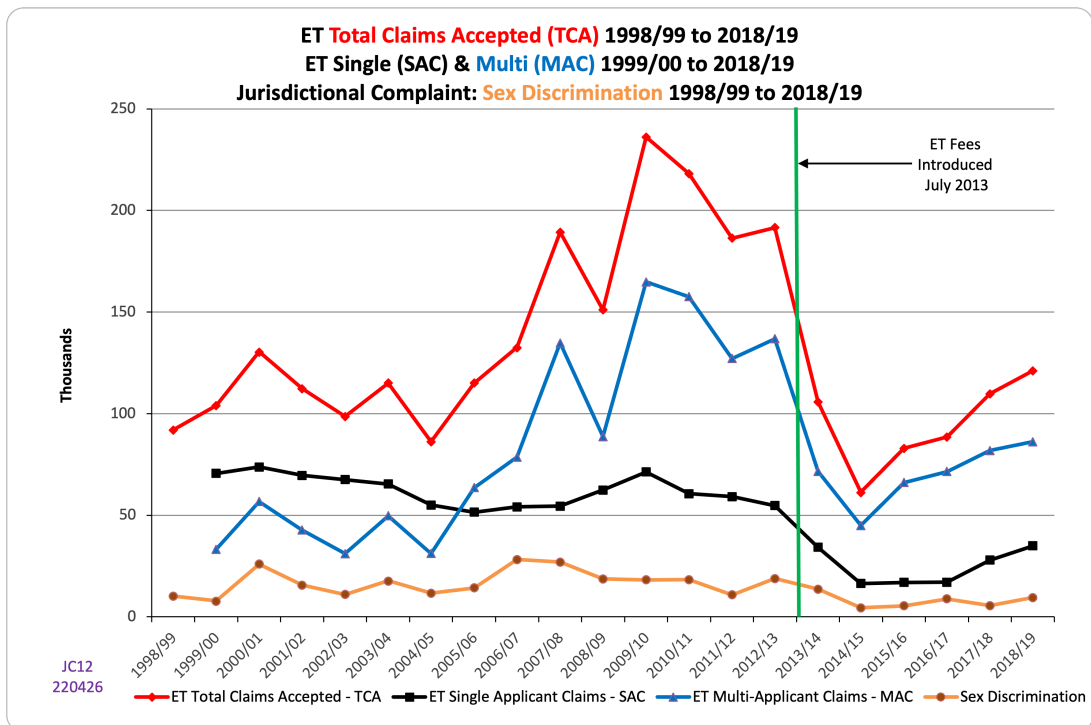


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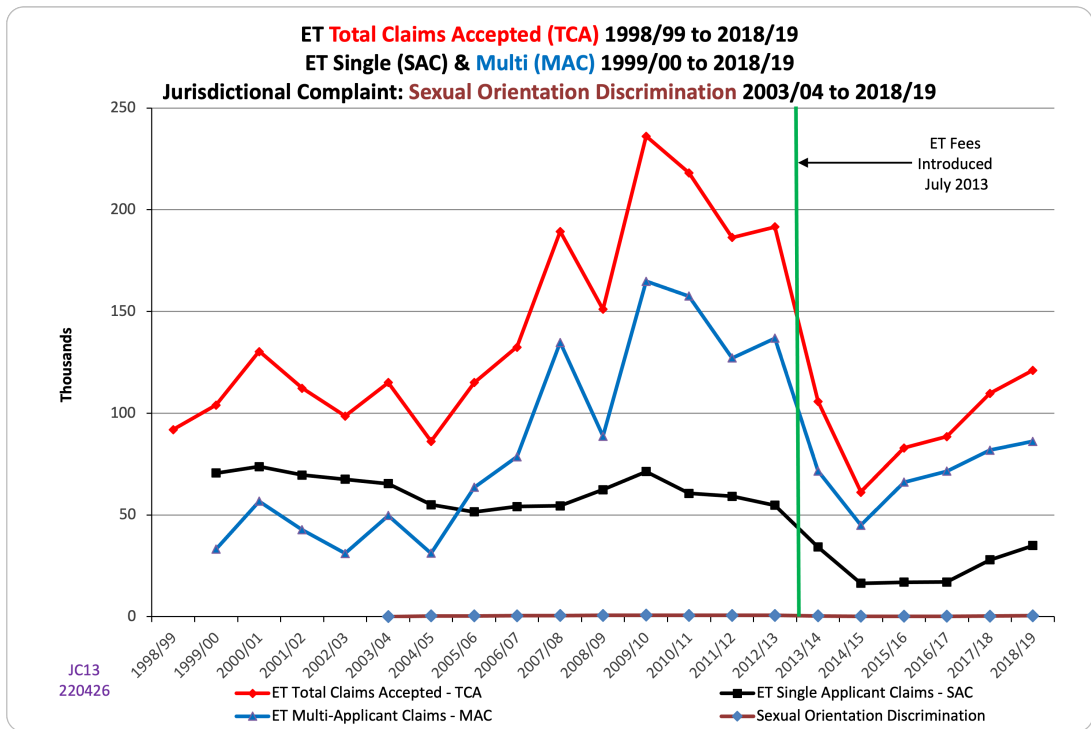


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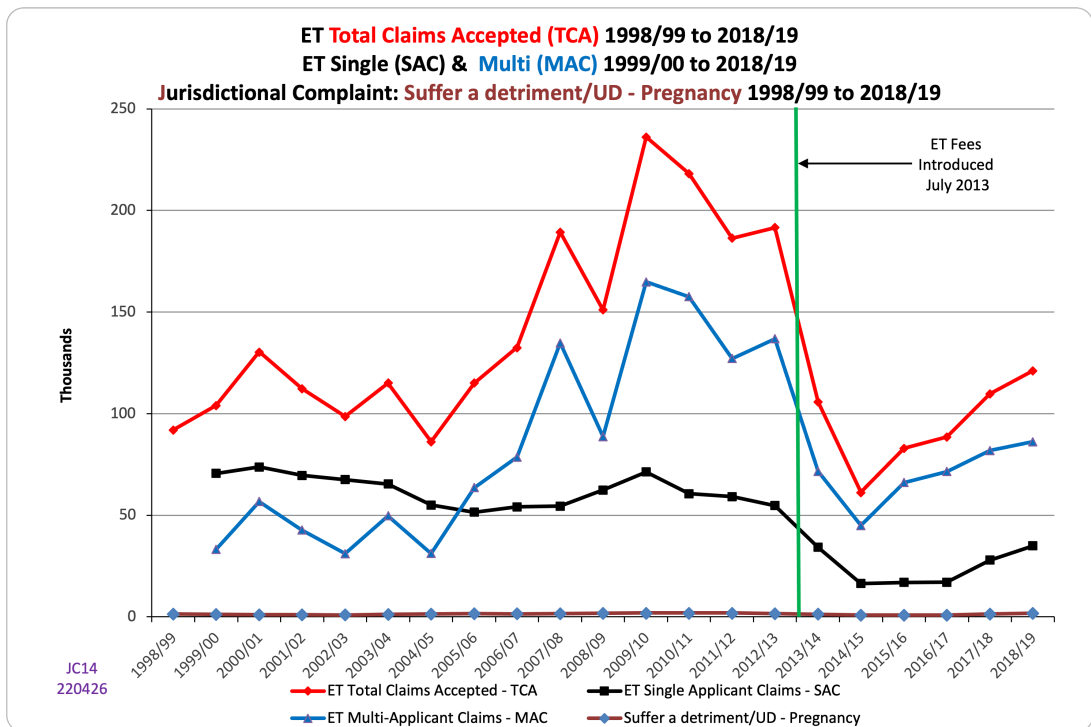


Figure A6.15

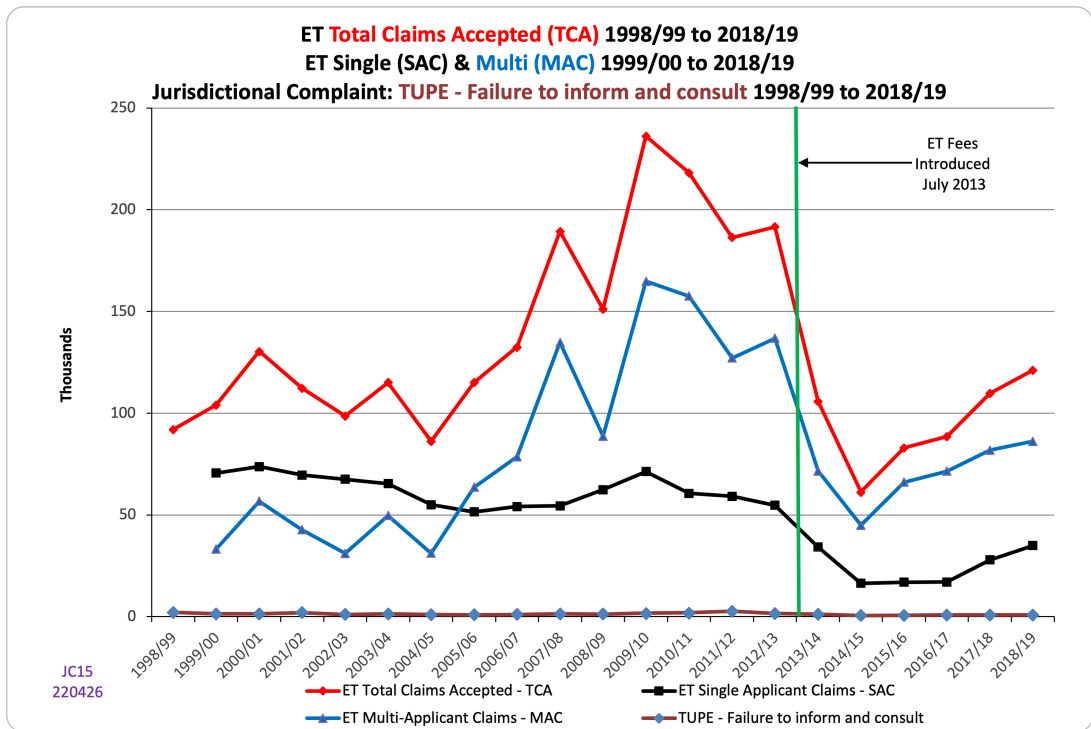


Figure A6.16

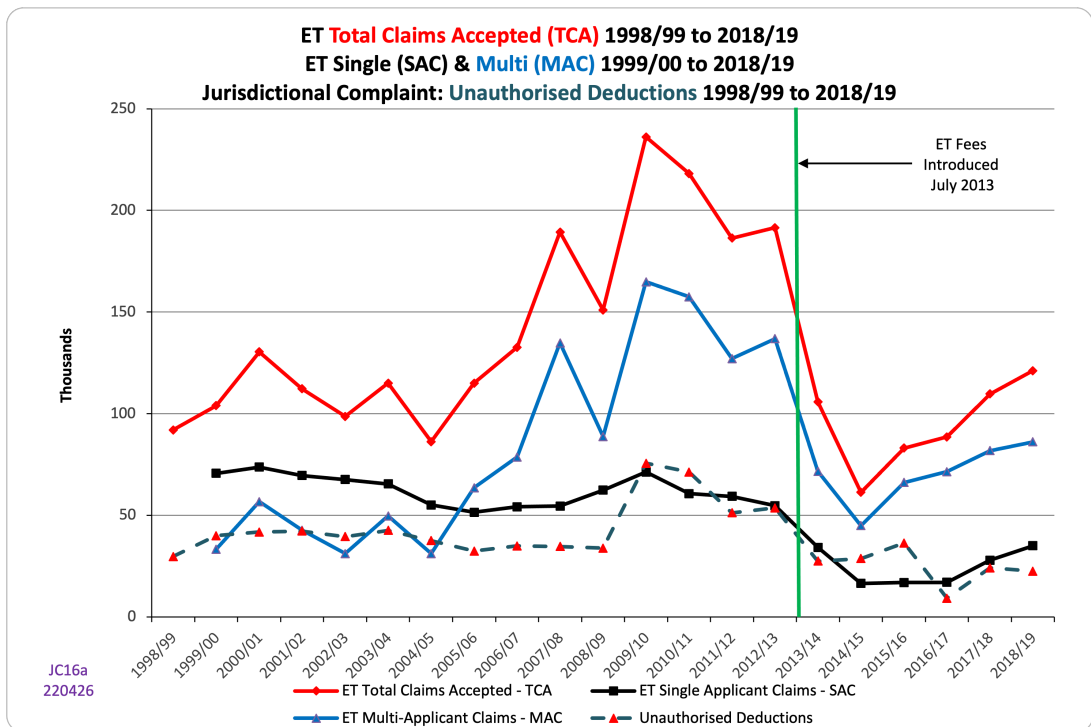


Figure A6.17

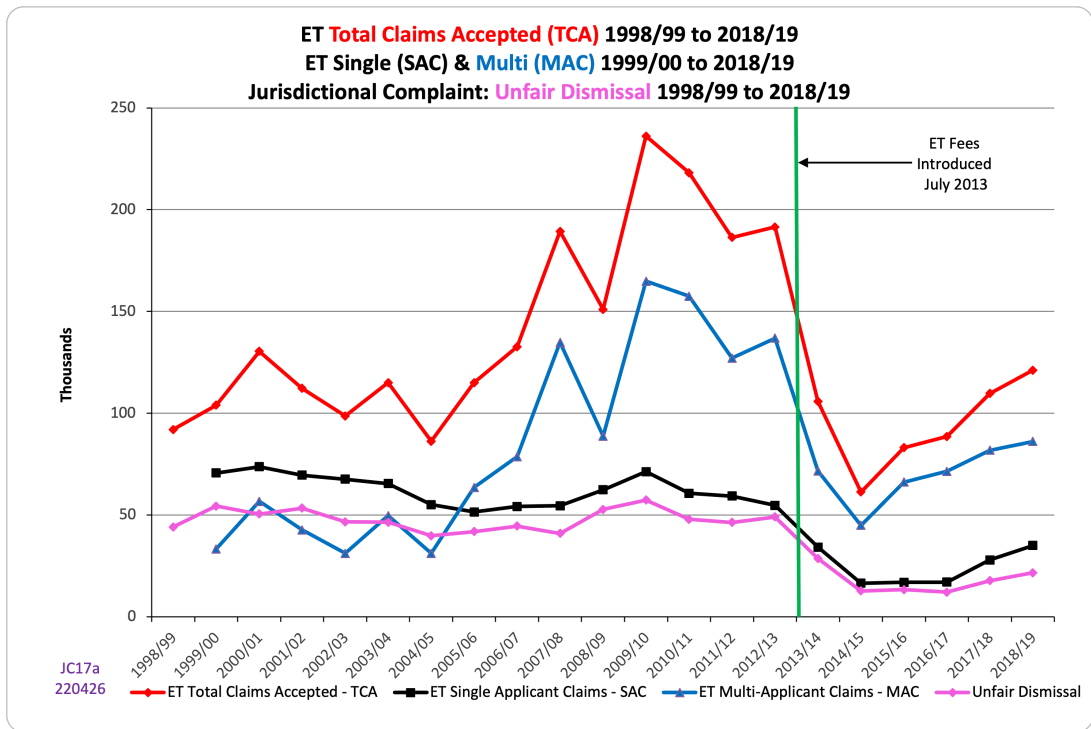


Figure A6.18

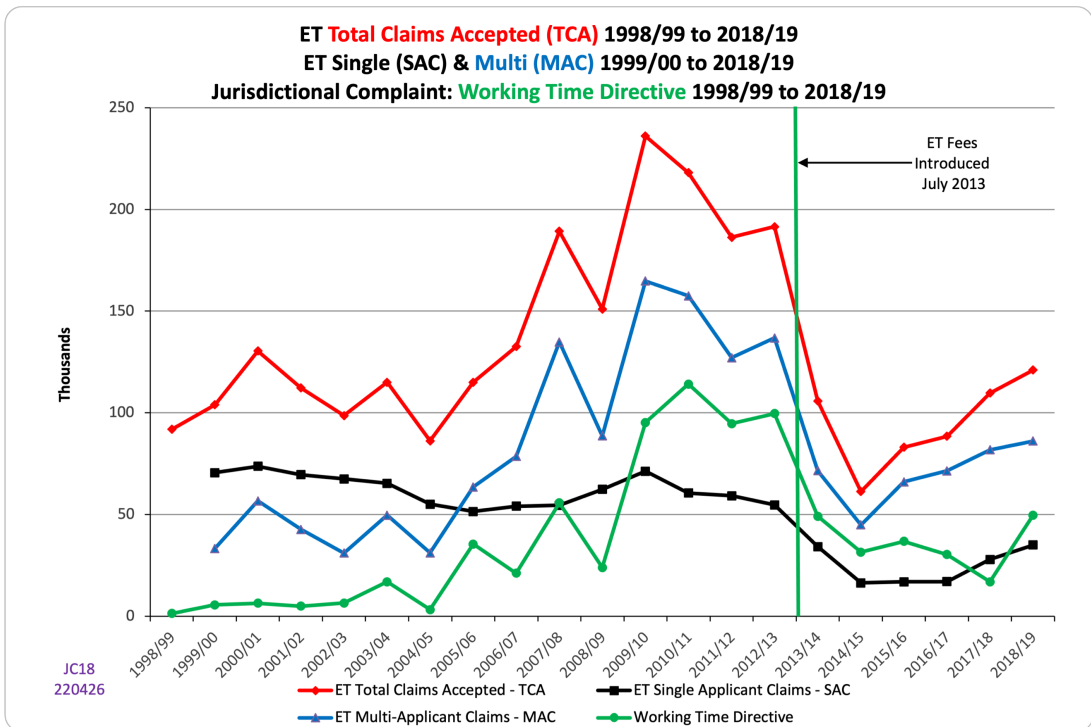


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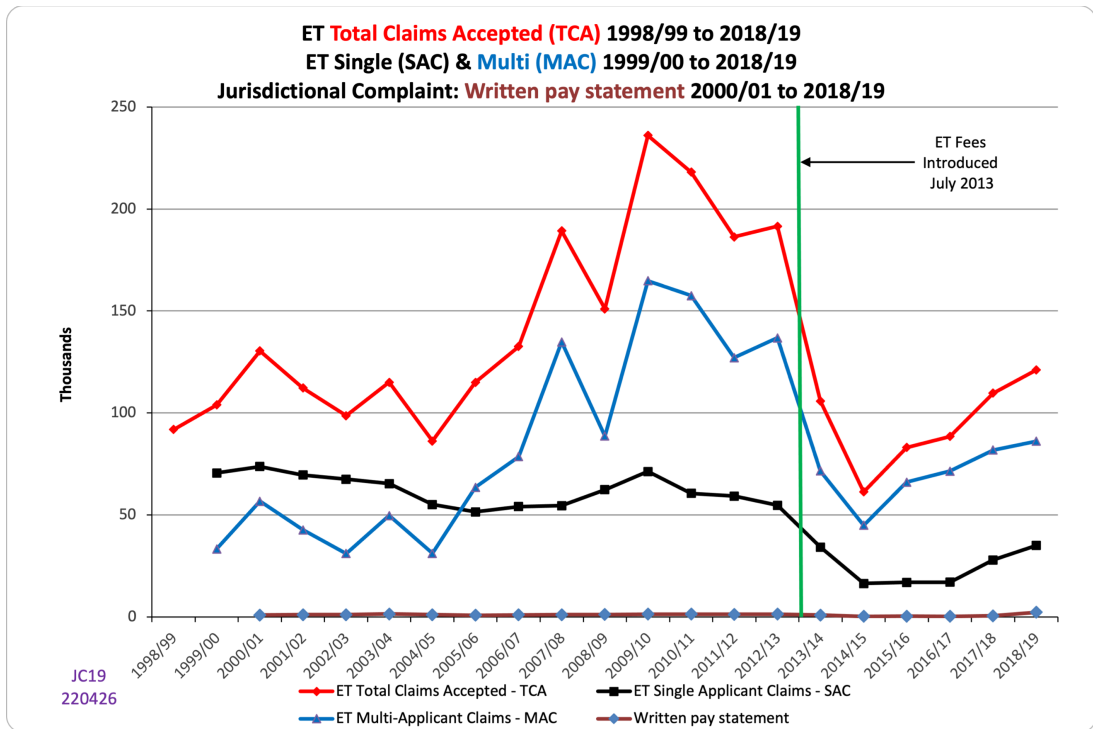


Figure A6.20

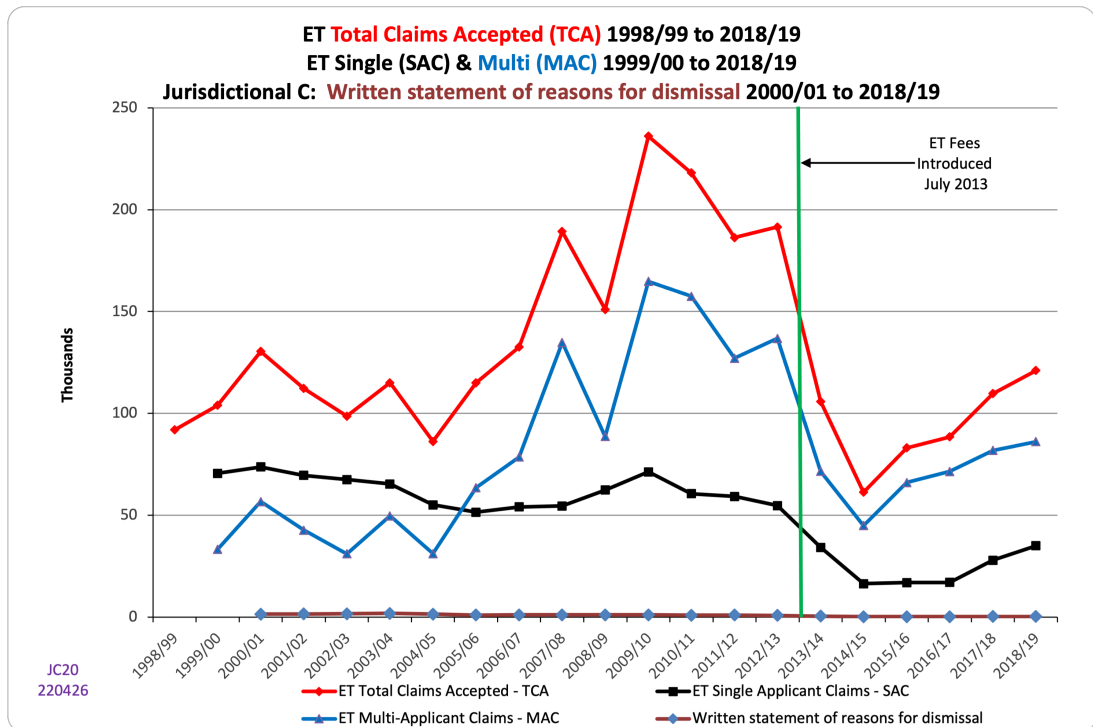


Figure A6.21

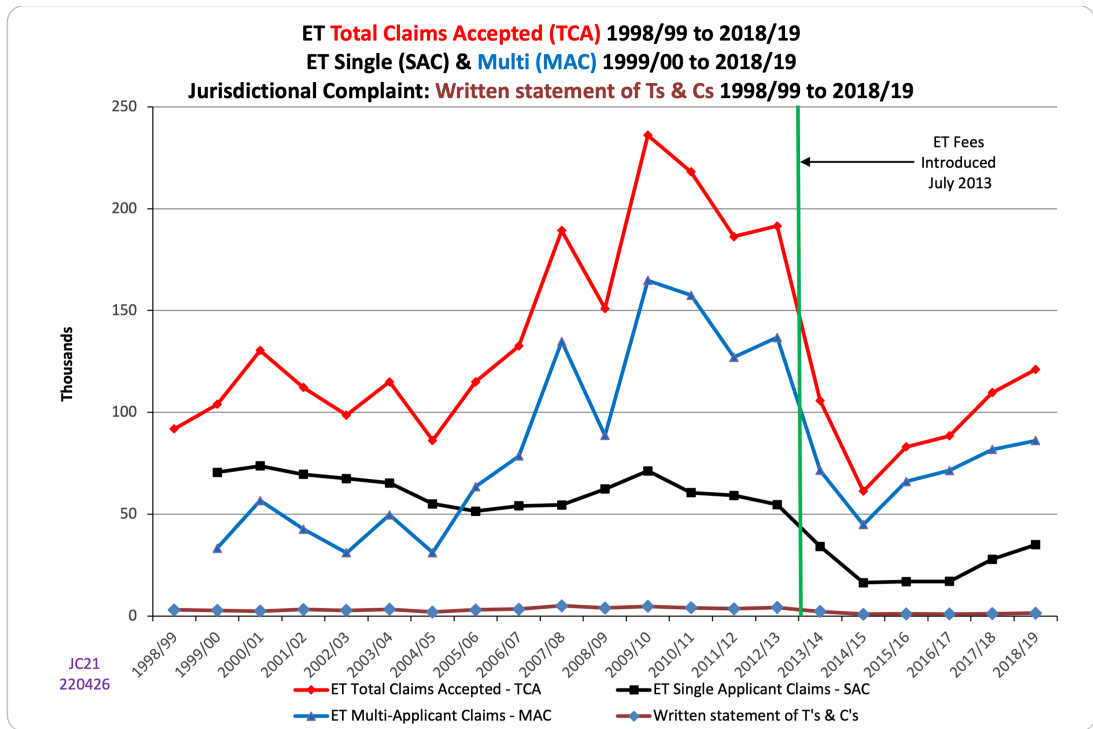
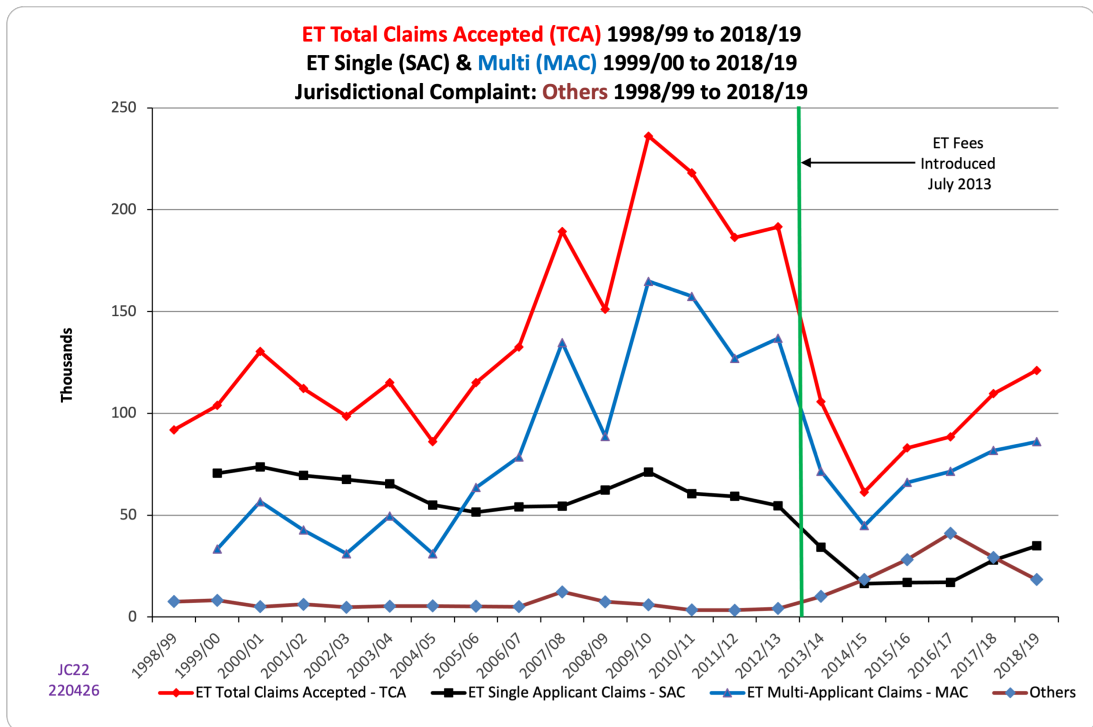


Figure A6.22



Appendix 7

Non-Employment Tribunal Data Series

Table A7.1

**Trade Union Membership
1892 to 2016/17**

Year	Number	Year	Number	Year	Number
1892	1,576,000	1934	4,590,000	1975	11,656,000
1893	1,559,000	1935	4,867,000	1976	12,133,000
1894	1,530,000	1936	5,295,000	1977	12,719,000
1895	1,504,000	1937	5,842,000	1978	13,054,000
1896	1,608,000	1938	6,053,000	1979	13,212,000
1897	1,731,000	1939	6,298,000	1980	12,636,000
1898	1,752,000	1940	6,613,000	1981	12,311,000
1899	1,911,000	1941	7,165,000	1982	11,744,000
1900	2,022,000	1942	7,867,000	1983	11,300,000
1901	2,025,000	1943	8,174,000	1984	10,774,000
1902	2,013,000	1944	8,087,000	1985	10,819,000
1903	1,994,000	1945	7,875,000	1986	10,598,000
1904	1,967,000	1946	8,803,000	1987	10,480,000
1905	1,997,000	1947	9,145,000	1988	10,387,000
1906	2,210,000	1948	9,362,000	1989	10,044,000
1907	2,513,000	1949	9,318,000	1990	9,810,000
1908	2,485,000	1950	9,289,000	1991	9,489,000
1909	2,477,000	1951	9,535,000	1992	8,929,000
1910	2,565,000	1952	9,588,000	1993	8,666,000
1911	3,139,000	1953	9,527,000	1994	8,231,000
1912	3,416,000	1954	9,566,000	1995	8,031,000
1913	4,135,000	1955	9,741,000	1996	7,938,000
1914	4,145,000	1956	9,778,000	1997	7,801,000
1915	4,359,000	1957	9,829,000	1998	7,852,000
1916	4,644,000	1958	9,639,000	1999/00	7,898,000
1917	5,499,000	1959	9,623,000	2000/01	7,779,000
1918	6,533,000	1960	9,835,000	2001/02	7,751,000
1919	7,926,000	1961	9,916,000	2002/03	7,736,000
1920	8,348,000	1962	10,014,000	2003/04	7,559,000
1921	6,633,000	1963	10,067,000	2004/05	7,473,000
1922	5,625,000	1964	10,218,000	2005/06	7,603,000
1923	5,429,000	1965	10,325,000	2006/07	7,628,000
1924	5,544,000	1966	10,259,000	2007/08	7,656,000
1925	5,506,000	1967	10,191,000	2008/09	7,388,000
1926	5,219,000	1968	10,193,000	2009/10	7,329,000
1927	4,919,000	1969	10,472,000	2010/11	7,261,000
1928	4,806,000	1970	11,179,000	2011/12	7,197,000
1929	4,858,000	1971	11,128,000	2012/13	7,086,000
1930	4,842,000	1972	11,350,000	2013/14	7,011,000
1931	4,624,000	1973	11,444,000	2014/15	6,949,000
1932	4,444,000	1974 ^a	11,755,000	2015/16	6,865,000
1933	4,392,000	1974	11,044,000	2016/17	6,875,000

√210709

^a The dataset contains two entries for 1974.

Source:

Department for Business, Energy and Industrial Strategy, 2019, *Trade Union Membership statistics 2018: tables, Tab 1.1*

Table A7.2

**Trade Union Membership as a proportion of employees,
by sector and gender,
1995 to 2018**

Year	All Employees			Private Sector			Public Sector		
	%age Total	%age Male	%age Female	%age Total	%age Male	%age Female	%age Total	%age Male	%age Female
1995	32.4	35.0	29.7	21.4	26.3	15.3	61.3	68.0	57.0
1996	31.4	33.3	29.5	20.5	24.8	15.1	60.7	67.7	56.6
1997	30.7	32.1	29.3	19.8	23.8	14.5	61.2	68.0	57.3
1998	29.9	31.2	28.6	19.5	23.2	14.7	60.4	66.6	56.8
1999	29.7	30.9	28.4	19.0	22.9	13.9	59.9	66.3	56.3
2000	29.8	30.4	29.1	18.8	22.3	14.1	60.3	65.7	57.3
2001	29.3	29.9	28.6	18.4	21.9	13.9	59.7	66.3	56.2
2002	28.8	28.7	29.0	17.8	21.0	13.4	59.8	63.7	57.7
2003	29.3	29.1	29.6	18.2	21.1	14.4	59.4	64.5	56.7
2004	28.8	28.5	29.2	17.3	20.7	12.8	58.8	62.0	57.1
2005	28.6	27.7	29.6	16.9	19.6	13.4	58.2	60.6	56.9
2006	28.3	27.1	29.6	16.6	19.2	13.1	58.7	61.1	57.5
2007	28.0	26.5	29.6	16.1	18.6	12.9	59.0	61.4	57.8
2008	27.5	25.7	29.3	15.6	17.7	12.7	57.2	58.9	56.3
2009	27.4	25.3	29.6	15.1	17.3	12.4	56.7	56.3	56.9
2010	26.6	23.9	29.4	14.2	16.0	11.9	56.4	55.0	57.1
2011	26.0	23.4	28.6	14.2	16.0	11.7	56.6	55.5	57.2
2012	26.1	23.5	28.7	14.4	16.0	12.4	56.4	56.1	56.5
2013	25.6	23.0	28.3	14.4	16.1	12.2	55.5	54.8	55.9
2014	25.0	22.3	27.7	14.2	15.6	12.5	54.3	52.8	55.1
2015	24.7	21.8	27.7	13.9	15.2	12.2	54.9	52.6	56.0
2016	23.5	21.2	26.0	13.4	14.8	11.6	52.8	51.8	53.3
2017	23.3	21.0	25.6	13.5	14.9	11.7	51.9	50.9	52.4
2018	23.4	20.7	26.2	13.2	14.4	11.8	52.5	50.3	53.7

√210710

Source:
Department for Business, Energy and Industrial Strategy, 2019, *Trade Union Membership statistics 2018: tables*

Table A7.3

**Number of People in Employment (UK)^a
(Aged 16 and over, seasonally adjusted)
1972 to 2018/19**

Year	Number	Year	Number	Year	Number
1972	24,579,250	1988/89	26,268,750	2004/05	28,612,500
1973	24,965,000	1989/90	26,826,250	2005/06	28,914,500
1974	25,029,250	1990/91	26,778,750	2006/07	29,174,250
1975	24,933,250	1991/92	25,957,500	2007/08	29,500,500
1976	24,786,000	1992/93	25,433,000	2008/09	29,549,000
1977	24,809,000	1993/94	25,334,250	2009/10	29,067,750
1978	24,939,750	1994/95	25,570,000	2010/11	29,335,500
1979	25,195,250	1995/96	25,893,500	2011/12	29,381,000
1980	25,086,250	1996/97	26,162,500	2012/13	29,793,250
1981	24,430,000	1997/98	26,599,750	2013/14	30,216,500
1982	23,950,750	1998/99	26,884,750	2014/15	30,909,500
1983	23,775,250	1999/00	27,249,250	2015/16	31,388,750
1984/85 ^b	24,382,500	2000/01	27,548,750	2016/17	31,837,000
1985/86	24,631,250	2001/02	27,755,500	2017/18	32,156,250
1986/87	24,810,000	2002/03	28,019,250	2018/19	32,527,750
1987/88	25,456,250	2003/04	28,311,250		
√221118					
Source: Office for National Statistics, 2022, <i>Number of People in Employment (aged 16 and over, seasonally adjusted)</i> , Source dataset: <i>Labour Market Statistics time series dataset (LMS)</i> , Series ID: MGRZ. ^a MGRZ is a UK data series that includes Northern Ireland. ^b As the counting year for ET statistics changed from calendar year to government financial year in April 1984 the NoPiE annual figures from 1984 have been calculated on a similar basis using the NoPiE quarterly figures.					

Table A7.4

**Number of People in Employment (GB)
(Aged 16 and over, seasonally adjusted)
April 1993 to April 2022**

Year	Number	Year	Number	Year	Number
1993	24,651,140	2003	27,387,865	2013	29,086,429
1994	24,844,997	2004	27,723,982	2014	29,825,526
1995	25,076,515	2005	28,011,330	2015	30,305,309
1996	25,321,059	2006	28,321,576	2016	30,761,375
1997	25,752,065	2007	28,433,138	2017	31,128,203
1998	26,027,549	2008	28,903,711	2018	31,545,466
1999	26,349,948	2009	28,512,559	2019	31,881,548
2000	26,730,784	2010	28,264,907	2020	31,922,347
2001	26,965,993	2011	28,642,221	2021	31,350,885
2002	27,141,591	2012	28,695,540	2022	31,855,297
√221201					
Source: Office for National Statistics, 2022d, Nomis, Official Census and Labour Market Statistics, labour force survey – national and regional – headline indicators (seasonally adjusted), specified area: Great Britain.					

Table A7.5

**Variations in Number of People in Employment
between ONS statistics for UK, GB and Acas statistics
and then ET TCA data for the year 2002/03**

Source	Dataset	Year	Number	TCA	%age
			A	B	B/A
ONS ^a	UK	2003	28,019,250	98,617	0.35%
ONS ^b	GB	April 2003	27,387,865	98,617	0.36%
Acas ^c	Unknown	2002	26,000,000	100,000 ^c	0.38%
Gibbons ^d	Acas	2002			0.4%
√221201					
Sources:					
Total Claims Accepted Statistics: See Chapter 3, Table 3.2, Data Sources for Employment Tribunal Claim Statistics 1972 to 2018/19					
^a Office for National Statistics, 2022, <i>Number of People in Employment (aged 16 and over, seasonally adjusted)</i> , Source dataset: <i>Labour Market Statistics time series dataset (LMS)</i> , Series ID: MGRZ - See Table A7.3 above					
^b Office for National Statistics, 2022d, Nomis, Official Census and Labour Market Statistics, labour force survey – national and regional – headline indicators (seasonally adjusted), specified area: Great Britain – See Table A7.4 above					
^c Advisory, Conciliation and Arbitration Service, 2006, p.17					
^d Gibbons, 2007, p.15					

Table A7.6

**Number of People Unemployed (UK)^a
(Aged 16 and over)
1972 to 2018/19**

Year	Number of People Unemployed	Year	Number of People Unemployed	Year	Number of People Unemployed
1972	1,116,250	1988/89	2,336,750	2004/05	1,419,250
1973	946,250	1989/90	2,038,250	2005/06	1,511,250
1974	948,500	1990/91	2,128,750	2006/07	1,695,750
1975	1,173,750	1991/92	2,643,750	2007/08	1,634,500
1976	1,413,500	1992/93	2,882,000	2008/09	1,939,500
1977	1,470,000	1993/94	2,879,750	2009/10	2,475,500
1978	1,453,250	1994/95	2,598,250	2010/11	2,486,000
1979	1,431,500	1995/96	2,393,750	2011/12	2,631,500
1980	1,833,000	1996/97	2,234,750	2012/13	2,547,750
1981	2,609,000	1997/98	1,919,750	2013/14	2,391,750
1982	2,875,250	1998/99	1,780,250	2014/15	1,929,500
1983	3,080,750	1999/00	1,702,750	2015/16	1,746,000
1984/85 ^b	3,225,000	2000/01	1,537,000	2016/17	1,593,250
1985/86	3,143,500	2001/02	1,497,500	2017/18	1,448,500
1986/87	3,151,250	2002/03	1,533,250	2018/19	1,350,000
1987/88	2,815,000	2003/04	1,465,000		
√221120					
Sources:					
Office for National Statistics, 2022a, <i>LFS: Unemployed: UK: All: Aged 16+: 000s: SA: Annual = 4 quarter average</i> , Source dataset: <i>Claimant count and vacancies time series (UNEM)</i> , Series ID: MGSC					
^a MGSC is a UK data series that includes Northern Ireland.					
^b As the counting year for ET statistics changed from calendar year to government financial year in April 1984 the Unemployed annual figures from 1984 have been calculated on a similar basis using the MGSC quarterly figures.					

Table A7.7

**Percentage of People Unemployed (UK)^a
(Aged 16 and over)
1972 to 2018/19**

Year	Percentage of People Unemployed	Year	Percentage of People Unemployed	Year	Percentage of People Unemployed
1972	4.3%	1988	8.6%	2004	4.8%
1973	3.7%	1989	7.2%	2005	4.8%
1974	3.7%	1990	7.1%	2006	5.4%
1975	4.5%	1991	8.9%	2007	5.3%
1976	5.4%	1992	9.9%	2008	5.7%
1977	5.6%	1993	10.4%	2009	7.6%
1978	5.5%	1994	9.5%	2010	7.9%
1979	5.4%	1995	8.6%	2011	8.1%
1980	6.8%	1996	8.1%	2012	8.0%
1981	9.6%	1997	6.9%	2013	7.6%
1982	10.7%	1998	6.2%	2014	6.2%
1983	11.5%	1999	6.0%	2015	5.4%
1984	11.8%	2000	5.4%	2016	4.9%
1985	11.4%	2001	5.1%	2017	4.4%
1986	11.3%	2002	5.2%	2018	4.1%
1987	10.4%	2003	5.0%		
√221120					
Sources: Office for National Statistics, 2022b, Employment rate (aged 16 to 64, seasonally adjusted): %, Source dataset: <i>Labour market statistics time series (LMS)</i> , Series ID: MGSX. ^a MGSX is a UK data series that includes Northern Ireland.					

Table A7.8

**Gross Domestic Product
Year-on-Year Growth Percentage (UK)^a
1972 to 2018/19**

Year	GDP Growth %age	Year	GDP Growth %age
1972	4.3%	1996	1.9%
1973	6.5%	1997	4.5%
1974	-2.5%	1998	3.2%
1975	-1.5%	1999	3.0%
1976	3.0%	2000	4.1%
1977	2.4%	2001	2.2%
1978	4.0%	2002	1.8%
1979	3.6%	2003	3.1%
1980	-2.2%	2004	2.3%
1981	-0.9%	2005	2.7%
1982	1.7%	2006	2.2%
1983	3.9%	2007	2.6%
1984	1.9%	2008	-0.2%
1985	3.7%	2009	-4.5%
1986	2.6%	2010	2.4%
1987	5.2%	2011	1.1%
1988	5.2%	2012	1.4%
1989	2.2%	2013	1.8%
1990	0.6%	2014	3.2%
1991	-1.7%	2015	2.4%
1992	0.0%	2016	2.2%
1993	2.1%	2017	2.4%
1994	3.5%	2018	1.7%
1995	2.1%		
√221119			
Sources: Office for National Statistics, 2022c, <i>Gross Domestic Product: Year on Year growth: CVM SA %</i> , Source dataset: <i>GDP first quarterly estimate time series (PN2)</i> , Series ID: <i>IHYP</i> .			
^a IHYP is a UK data series that includes Northern Ireland.			

Table A7.9

Labour Disputes – Annual Estimates (UK) 1972 to 2018

Year	Number of Stoppages beginning in year	Stoppages in progress in year	Total number of workers involved in year	Total number of working days lost in year
1972	2,497	2,530	1,734,000	23,909,000
1973	2,873	2,902	1,528,000	7,197,000
1974	2,922	2,946	1,626,000	14,750,000
1975	2,282	2,332	809,000	6,012,000
1976	2,016	2,034	668,000	3,284,000
1977	2,703	2,737	1,166,000	10,142,000
1978	2,471	2,498	1,041,000	9,405,000
1979	2,080	2,125	4,608,000	29,474,000
1980	1,330	1,348	834,000	11,964,000
1981	1,338	1,344	1,513,000	4,266,000
1982	1,528	1,538	2,103,000	5,313,000
1983	1,352	1,364	574,000	3,754,000
1984	1,206	1,221	1,464,000	27,135,000
1985	887	903	791,000	6,402,000
1986	1,053	1,074	720,000	1,920,000
1987	1,004	1,016	887,000	3,546,000
1988	770	781	790,000	3,702,000
1989	693	701	727,000	4,128,000
1990	620	630	298,000	1,903,000
1991	357	369	176,000	761,000
1992	240	253	148,000	528,000
1993	203	211	385,000	649,000
1994	203	205	107,000	278,000
1995	232	235	174,000	415,000
1996	230	244	364,000	1,303,000
1997	206	216	130,000	235,000
1998	159	166	93,000	282,000
1999	200	205	141,000	242,000
2000	207	212	183,000	499,000
2001	187	194	180,000	525,000
2002	141	146	943,000	1,323,000
2003	131	133	151,000	499,000
2004	125	130	293,000	905,000
2005	116	116	93,000	157,000
2006	155	158	713,000	755,000
2007	136	142	745,000	1,041,000
2008	141	144	511,000	759,000
2009	97	98	209,000	455,000
2010	90	92	133,000	365,000
2011	139	149	1,530,000	1,390,000
2012	125	131	237,000	249,000
2013	114	114	395,000	444,000
2014	151	155	733,000	788,000
2015	101	106	81,000	170,000
2016	95	101	154,000	322,000
2017	67	79	33,000	276,000
2018	67	81	39,000	273,000
				√210710
Source: Office for National Statistics, 2020, <i>Labour disputes, annual estimates, UK: Annual estimates of stoppages, workers and working days lost from 1891, for the UK</i>				

Table A7.10

**Union/Organisation Details/Mentions from IDS Part-Time Data
1973 to 2002**

Union	Union Details	Private Sector	Public Sector	Mentions	ET Mentions
AEUW	Amalgamated Union of Engineering Workers - Now part of the <i>Unite Union</i>	✓		1	
APEX	Association of Professional, Executive, Clerical and Computer Staff – Now part of the <i>GMB Union</i>	✓		2	
AUT	Association of University Teachers – Now part of the <i>University and College Union</i>		✓	2	1
Bakers	Bakers Union – Now known as <i>Bakers, Food and Allied Workers' Union</i>	✓		3	
BALPA	<i>British Airline Pilots' Association</i>	✓		1	
BGSU	Barclays Group Staff Union – Now part of <i>Unite Union</i>	✓		4	
BIFU	Banking Insurance and Finance Union – Now part of the <i>Unite Union</i>	✓		11	5
CMA	Communication Managers Association – Now part of the <i>Unite Union</i>		✓	1	
CPSA	Civil and Public Services Union – Now part of the <i>Public and Commercial Services Union</i>		✓	1	
CSP	<i>Chartered Society of Physiotherapy</i>		✓	1	
FBU	<i>Fire Brigades Union</i>		✓	2	
GLCSA	Greater London Council Staff Association – Now part of the <i>GMB Union</i>		✓	2	
GMB	General, Municipal, Boilermakers Union	✓	✓	5	2
IRSF	Inland Revenue Staff Association – Now part of the <i>Public and Commercial Services Union</i>		✓	3	
IUHS	Independent Union of Halifax Staff – Now part of the <i>Accord Union</i>	✓		1	1
MSF	Manufacturing, Science and Finance Union – Now part of the <i>Unite Union</i>	✓		7	3
NATFHE	National Association of Teachers in Further and Higher Education - Now part of the <i>University and College Union</i>		✓	7	1
NUPE	National Union of Public Employees – Now part of <i>UNISON</i>		✓	4	2
NUTGW	National Union of Tailors and Garment Workers – Now part of the <i>GMB Union</i>	✓		2	1
RCM	<i>Royal College of Midwives</i>		✓	1	
SOGAT	The Society of Graphical and Allied Trades – Now part of the <i>Unite Union</i>	✓		1	
SCPS	The Society of Civil and Public Servants - Now part of the <i>Public and Commercial Services Union</i>		✓	2	1
TGWU	Transport and General Workers Union - - Now part of the <i>Unite Union</i>	✓	✓	4	1
TUC	<i>Trades Union Congress</i>			5	1
UCW	Union of Communications Workers – Now part of the <i>Communication Workers Union</i>		✓	1	
UNIFI	Union for the Finance Industry – Now part of the <i>Unite Union</i>	✓		1	
UNISON	Unison		✓	5	3
USDAW	Union of Shop, Distributive and Allied Workers	✓		7	
	Union Totals	14	15	88	22
EOC	Equal Opportunities Commission – Now part of the Equality and Human Rights Commission			4	3
NACAB	National Association of Citizens Advice Bureaux			1	
NCCL	National Council for Civil Liberties – Now known as <i>Liberty</i>			1	1
	Finance Sector	Private and Public Sector			

Source: Heery and Conley, 2007a

Appendix 8

List of Jurisdictions and associated Employment Tribunal Fees

Table A8.1

**Common Claim Types as shown in HMCTS leaflet T435:
Employment tribunal fees for individuals**

Claim	Type
Breach of Contract	A
Redundancy pay	A
Unauthorised deductions (Formerly Wages Act)	A
Written pay statement	A
Written statement of reasons for dismissal	A
Written statement of reasons of terms and conditions	A
Transfer of an undertaking – failure to inform and consult (TUPE)	B
Detriment for enforcing national minimum wage	B
Discrimination on ground of Sex	B
Discrimination on grounds of Age	B
Discrimination on grounds of Disability	B
Discrimination on grounds of Race	B
Discrimination on grounds of Religion or Belief	B
Discrimination on grounds of Sexual Orientation	B
Part Time Workers Regulations	B
Redundancy – failure to inform and consult	B
Suffer a detriment/unfair dismissal - pregnancy	B
Unfair Dismissal	B
Source: HMCTS, 2015, <i>Employment tribunal fees for individuals</i> , Ref: T435	

Table A8.2

Extract from: MoJ: Introducing a fee charging regime into Employment Tribunals and the Employment Appeal Tribunal, Impact Assessment, May 30th 2012, Annex 3 (MoJ, 2012, pp 45-50)

Annex 3: Draft schedule of fee levels to which ET complaints are to be allocated

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffer a detriment and/or dismissal resulting from a failure to allow an employee to be accompanied or to accompany a fellow employee at a disciplinary/grievance hearing	ERelA 1999 s.10–12	Level 2	£250	£950
Application for a declaration that the inclusion of discriminatory terms/rules within certain agreements or rules causes the aforesaid to be invalid	E A 2010 s.145 and 146(1)	Level 1	£160	£230
Application by an employee, their representative or trade union for a protective award as a result of an employer's failure to consult over a redundancy situation	TULR(C)A 1992 s.188–189	Level 2	£250	£950
Breach of Contract	Breach of contract and s.3 ETA 1996 & SI 1994/1623 and (in Scotland) SI 1994/1624	Level 1	£160	£230
Failure of the employer to consult with an employee representative or trade union about a proposed contracting out of a pension scheme	Reg 4 of OPS(CO)R 1996	Level 1	£160	£230
Application or complaint by the EHRC in respect of discriminatory advertisements or instructions or pressure to discriminate (including preliminary action before a claim to the county court)	E A 2010 s.13–14, 19, 26–27 and 120	Level 1	£160	£230
Suffered a detriment, discrimination, including indirect discrimination, harassment or victimisation or discrimination based on association or perception on grounds of age	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, and discrimination based on association or perception, harassment or victimisation and/or dismissal on grounds of disability or failure of employer to make reasonable adjustments	E A 2010 s.13–15, 19 – 21, 26–27, 120 and Schedule 8	Level 2	£250	£950

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffered a detriment and/or dismissal resulting from requiring time off for other (non-work but not Health and Safety) duties, study, training or seeking work	ERA 1996 s.46–48, 102–103, 105, 108 and 111	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of religion or belief	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sexual orientation	E A 2010 s.13–14, 19, 26–27 and 120	Level 2	£250	£950
Application by the Secretary of State for Business, Innovation & Skills to prohibit a person from running an Employment Agency	Employment Agencies Act 1973 s3A and 3C	Level 1	£160	£230
Failure to provide equal pay for equal value work	E A 2010 s.64, 120, 127 and 128	Level 2	£250	£950
Failure of the employer to consult with an employee rep. or trade union about a proposed transfer	TUPE 2006 Reg 13–15	Level 2	£250	£950
Suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure	ERA 1996 s.47E, 80F–80G 94 and 104C FWR 2002	Level 2	£250	£950
Application by an employee that an employer has failed to pay a protected award as ordered by a tribunal	TULR(C)A 1992 s.190 and 192	Level 1	£160	£230
Failure to pay remuneration whilst suspended from work for health and safety reasons whilst pregnant or on mat. leave	ERA 1996 s.67–68D and 70	Level 1	£160	£230
Failure to provide a written statement of terms and conditions and any subsequent changes to those terms	ERA 1996 s.1, 4, 8 and 11	Level 1	£160	£230
Suffered less favourable treatment and/or dismissal as a fixed term employee, than a full time employee or, on becoming permanent, failed to receive a written statement of confirmation from employer	FTE 2002 Regs 3, 6 to 9	Level 2	£250	£950
Failure to allow time off for trade union activities or duties, for ante-natal care or for public duties	TULR(C)A 1992 s.168–170; ERA 1996 s.50, 55 and 56	Level 1	£160	£230
Failure to provide a guarantee payment	ERA 1996 s.28–34	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Failure to pay remuneration whilst suspended for medical reasons	ERA 1996 s.64 and 70	Level 1	£160	£230
Failure to allow time off to seek work during a redundancy situation	ERA 1996 s.52	Level 1	£160	£230
Failure of an employer to comply with an award by a tribunal following a finding that the employer had previously failed to consult about a proposed transfer of an undertaking	TULR(C)A 1992 s.188, 188A, 190 and 192	Level 1	£160	£230
Failure to allow or to pay for time off for care of dependants, union learning representatives duties, pension scheme trustee duties, employee representatives duties, young person studying/training and European Works Council duties	ERA 1996 s 57A to 63C TICER 1999 Reg 25, 26, 27	Level 2	£250	£950
Failure to provide a written pay statement or an adequate pay statement	ERA 1996 s.8, 9 and 11	Level 2	£250	£950
Failure to provide a written statement of reasons for dismissal or the contents of the statement are disputed	ERA 1996 s.92 and 93	Level 2	£250	£950
Appeal against an enforcement, improvement or prohibition notice imposed by the HSE or Environmental Health Inspector, or by the Environment Agency	REACH Regs 2008, reg 21 or HSWA 1974 s.24(2) or COMAH 1999 s.18	Level 1	£160	£230
Failure to pay for or allow time off to carry out Safety Rep duties or undertake training	Health & Safety at Work etc Act 1974 s.48 and 80 SRSC 1977 Reg. 4, 11; HSCE 1996 Reg. 7, Sch. 1	Level 1	£160	£230
Suffer a detriment, dismissal or redundancy for health and safety reasons	ERA 1996 s.44, 48, 94, 100, 105 and 111	Level 2	£250	£950
Application for interim relief	ERA 1996 s.128 or TULR(C)A 1992 s161-167	Level 2	£250	£950
Failure by the SOS to make an insolvency payment in lieu of wages and/or redundancy	ERA 1996 s182 and 188	Level 1	£160	£230
Appeal against the levy assessment of an Industrial Training Board	Relevant Industrial Training Levy Order – either Construction or Engineering Construction Board	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Suffer a detriment and/or dismissal on grounds of pregnancy, child birth or maternity	ERA 1996 s.47C, 48, 94, 99 and 111 MPL 1999 Regs 19-20 PAL Regs 2002 regs 28-29	Level 2	£250	£950
Appeal against an enforcement or penalty notice issued by HMRC	NMWA 1998 s.19C	Level 1	£160	£230
Suffer a detriment and/or dismissal related to failure to pay the minimum wage or allow access to records	ERA 1996 s.94, 104A, 105, and 111 NMWA 1998 s.10, 11 and 23	Level 2	£250	£950
Appeal against an unlawful act on a notice issued by the EHRC	EA 2006 s.21	Level 1	£160	£230
Failure of the employer to comply with a certificate of exemption or to deduct funds from employees pay in order to contribute to a trade union political fund	TULR(C)A 1992 s.86 and 87	Level 2	£250	£950
Failure of the employer to prevent unauthorised or excessive deductions in the form of union subscriptions	TULR(C)A 1992 s.68 and 68A	Level 1	£160	£230
Failure of the Secretary of State to pay unpaid contributions to a pensions scheme following an application for payment to be made	Pensions Schemes Act 1993 s.124 and 126	Level 1	£160	£230
Suffered a detriment and/or dismissal due to exercising rights under the Public Interest Disclosure Act	ERA 1996 s.47B, 48, 94, 103A, 105, and 111	Level 2	£250	£950
Suffer a detriment and/or dismissal due to requesting or taking paternity or adoption leave or time off to assist a dependant	ERA 1996 s.47C, 48, 57A and 80 MPL 1999 Regs 19 PAL Regs 2002 Reg. 28	Level 2	£250	£950
Suffer less favourable treatment and/or dismissal as a result of being a part time employee by comparison to a full time employee	PTW 2000 Regs. 5, 7, 8 ERA 1996 s.105	Level 2	£250	£950
Failure to pay a redundancy payment	ERA 1996 s.135, 163 and 177	Level 1	£160	£230
Failure of the SOS to pay a redundancy payment following an application to the NI fund	ERA 1996 s.166 and 170	Level 1	£160	£230

Descriptor	Originating Legislation	Level	Fees	
			Issue fee	Hearing fee
Unfair dismissal in connection to a lock out, strike or other industrial action	TULR(C)A 1992 s.237-239 ERA 1996 s.94	Level 2	£250	£950
Failure of employer to pay or unauthorised deductions have been made	ERA 1996 s.13 and 23	Level 1	£160	£230
Appeal by a person who has been served with an improvement or prohibition notice under the Working Time Regulations 1998	WTR 1998 Schedule 3, para 6RT(WT) Regs 2005 Schedule 2, para 6	Level 1	£160	£230
Failure to limit weekly or night working time, or to ensure rest breaks	WTR 1998 Regs 4, 6, 10, 12-17 and 30 ERA 1996 Ss 45A, 48, 101A, 105, 108-109 and 111	Level 2	£250	£950
Complaint by a worker that employer has failed to allow them to take or to pay them for statutory annual leave entitlement	WTR 1998 Regs 13, 14 or 16 and 30	Level 1	£160	£230
Appeal by a person who has been served with an improvement notice under the Road Transport (Working Time) Regulations 2005.	RT(WT) Regs 2005 Schedule 2, para 6	Level 1	£160	£230
(a) Suffer a detriment and/or dismissal related to a request for time to train or study. (b) Failure of an employer to follow the correct procedures or reject a request based on incorrect facts.	ERA 1996 s.47A, 47F, 63A to 63I	Level 2	£250	£950

Appendix 9

Employment Tribunal Jurisdiction List

Appendix 9

Downloaded from:
<https://webarchive.nationalarchives.gov.uk/20110206182055/http://www.employmenttribunals.gov.uk/FormsGuidance/jurisdictionList.htm> [accessed 1st February 2020]

Tribunals Service – Employment (Archived 6th February 2011)

Jurisdiction list

Descriptor	Originating Legislation
Suffer a detriment and/or dismissal resulting from a failure to allow an employee to be accompanied or to accompany a fellow employee at a disciplinary/grievance hearing	ERelA Ss 11-12 1999
Application for a declaration that the inclusion of discriminatory terms/rules within certain agreements or rules causes the aforesaid to be invalid	E A 2010 s.120, s.146(1)
Application by an employee, their representative or trade union for a protective award as a result of an employer's failure to consult over a redundancy situation	TULR (C)A 1992 Sec 189
Breach of Contract	ETA Sec 3 1996
Failure of the employer to consult with an employee representative or trade union about a proposed contracting out of a pension scheme	SSPA 1975
Application or complaint by the EHRC in respect of discriminatory advertisements or instructions or pressure to discriminate (including preliminary action before a claim to the county court)	E A 2006 s.54
Suffered a detriment, discrimination, including indirect discrimination, harassment or victimisation or discrimination based on association or perception on grounds of age	E A 2010 s.13, s.14, s.19, s.26, s.27, s.120
Suffered a detriment, discrimination including indirect discrimination, and discrimination based on association or perception, harassment or victimisation and/or dismissal on grounds of disability or failure of employer to make reasonable adjustments	E A 2010 s.13, s.14, s.15, s.19, s.20, s.21, s.26, s.27, s.120, Schedule 8
Suffered a detriment and/or dismissal resulting from requiring time off for other (non-work but not Health and Safety) duties, study, training or seeking work	ERA 1996 Ss 46, 47, 48, 102-103, 105, 108-109 and 111
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of religion or belief	E A 2010 s.13, s.14, s.19, s.26, s.27, s.120

Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sexual orientation	E A 2010 s.13, s.14, s.19, s.26, s.27, s.120
Application by the Secretary of State for Business, Innovation & Skills to prohibit a person from running an Employment Agency	Employment Agencies Act 1973 Ss 3A and 3C
Failure to provide equal pay for equal value work	E A 2010 s.64, s.120, s.127, s.128
Failure of the employer to consult with an employee rep. or trade union about a proposed transfer	TUPE 1981 Regs 11(1) – (4) and (8)
Suffer a detriment and/or dismissal for claiming under the flexible working regulations or be subject to a breach of procedure	ERA 1996 Ss 47E, 80F- 80I and 104C FW (Procedural Requirements) Regs 2002 FW (Eligibility Complaints and Remedies) Regs 2002
Application by an employee that an employer has failed to pay a protected award as ordered by a tribunal	TULR(C)A 1992 Sec 192
Back to top	
Failure to pay remuneration whilst suspended from work for health and safety reasons whilst pregnant or on mat. leave	ERA 1996 Ss 67-68 and 70(1) and (4)
Failure to provide a written statement of terms and conditions and any subsequent changes to those terms	ERA 1996 Sec 11(1)
Suffered less favourable treatment and/or dismissal as a fixed term employee, than a full time employee or, on becoming permanent, failed to receive a written statement of confirmation from employer	FTE Regs 7 and 9 ERA 1996 Sec 105
Failure to allow time off for trade union activities or duties, for ante-natal care or for public duties	TULR (C)A 1992 Sec 168 – 170; ERA 1996 Sec 51 and 57
Failure to provide a guarantee payment	ERA 1996 Sec 34
Failure to pay remuneration whilst suspended for medical reasons	ERA 1996 Ss 64 and 70(1)
Failure to allow time off to seek work during a redundancy situation	ERA 1996 Sec 54
Failure of an employer to comply with an award by a tribunal following a finding that the employer had previously failed to consult about a proposed transfer of an undertaking	TUPE 1981 Sec 11 (5–8)
Failure to allow or to pay for time off for care of dependants, union learning representatives duties, pension scheme trustee duties, employee representatives duties, young person studying/training and European Works Council duties	ERA 1996 Secs 57B, 60, 63 and 63C; TICER 1999 Reg 27

Failure to provide a written pay statement or an adequate pay statement	ERA Sec 11(2)	1996
Failure to provide a written statement of reasons for dismissal or the contents of the statement are disputed	ERA Sec 93	1996
Appeal against an enforcement, improvement or prohibition notice imposed by the HSE or Environmental Health Inspector, or by the Environment Agency	NESE 1994 Reg 6 or HSWA 1974 Sec 24(2) or COMAH 1999 Sec 18	
Failure to pay for or allow time off to carry out Safety Rep duties or undertake training	Health & Safety at Work etc Act 1974 Sec 48 and 80 Safety Representatives & Safety Committees Regs 1977 Reg 11 Health & Safety (Consultation with Employees) Regs 1996 Sch 2	
Suffer a detriment, dismissal or redundancy for health and safety reasons	ERA 1996 Ss 44, 48, 100, 105, 108–109 and 111	
Application for interim relief	ERA 1996 Sec 128 or TULR (C)A 1992 Ss 161-167	
Failure by the SOS to make an insolvency payment in lieu of wages and/or redundancy	ERA Sec 188	1996
Back to top		
Appeal against the levy assessment of an Industrial Training Board	Relevant Industrial Training Levy Order – either Construction or Engineering Construction Board	
Loss of office as a result of the reorganisation of a statutory body	Miscellaneous statutes	
Suffer a detriment and/or dismissal on grounds of pregnancy, child birth or maternity	MERA 1996 Ss 47C, 48, 99, 108–109 and 111 MPL 2002 Regs 19-20 PAL Regs 2002 regs 28–29	
Appeal against an enforcement or penalty notice issued by HMRC	NMWA Ss 19 and 22	1998
Appeal against an enforcement or penalty notice issued by HMRC	NMWA Ss 19 and 22	1998
Suffer a detriment and/or dismissal related to failure to pay the minimum wage or allow access to records	ERA Sec 104A, 105, 108-109 and 111 NMWA 1998 Ss 11	1996
Appeal against an unlawful act on a notice issued by the EHRC	DRC 1999 Sch 3, para 10 or RRA 1976 Ss 59 and 68 or SDA 1975 Ss 68 and 76	

Failure of the employer to comply with a certificate of exemption or to deduct funds from employees pay in order to contribute to a trade union political fund	TULR 1992 Sec 68A	
Failure of the employer to prevent unauthorised or excessive deductions in the form of union subscriptions	TURER Sec 15(68)	1993
Failure of the Secretary of State to pay unpaid contributions to a pensions scheme following an application for payment to be made	Pensions Schemes Act Sec 126	1993
Suffered a detriment and/or dismissal due to exercising rights under the Public Interest Disclosure Act	ERA Ss 47B, 48, 103A, 105, 108–109 and 111	1996
Suffer a detriment and/or dismissal due to requesting or taking paternity or adoption leave or time off to assist a dependant	ERA 1996 Ss 47C, 48, 57 ^a and 80 MPL 1999 Regs 19 PAL 2002 Sec 28	
Suffer less favourable treatment and/or dismissal as a result of being a part time employee by comparison to a full time employee	PTW Reg ERA 1996 Sec 105	2000 8
Failure to pay a redundancy payment	ERA Ss 163 and 177	1996
Failure of the SOS to pay a redundancy payment following an application to the NI fund	ERA Sec 170	1996
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of race or ethnic origin	E A 2010 s.13, s.14, s.19, s.26, s.27, s.120	
Back to top		
Suffer a detriment and/or dismissal for refusing to work on a Sunday	ERA Ss 44, 48, 101, 105, 108-109 and 111	1996
Suffered a detriment, discrimination including indirect discrimination, discrimination based on association or perception, harassment or victimisation on grounds of sex, marriage and civil partnership or gender reassignment	E A 2010 s.13, s.14, s.16, s.19, s.26, s.27, s.120	
Suffered less favourable treatment and/or dismissal as a temp. employee than a full time employee	FTE Regs 2002	
Suffer discrimination in obtaining employment due to membership or not-membership of a trade union; or refused employment or suffered a detriment for reasons related to a blacklist	TULR (C)A Ss 137 and 139 ERA 1999 (Blacklist) Regs 2010	1992 139
Suffer a detriment and/or dismissal relating to being, not being or proposing to become a trade union member	TULR (CA) Ss 145A–145C, 146–147 and 152–160 ERA 1996 Part X	1992
(a) Failure of the employer to consult or report about training in relation to a bargaining unit	TULR (C)A 1992 Ss 70c, Sch A1 paras 156–157	

(b) Suffered a detriment on grounds related to recognition of a trade union for collective bargaining

Suffer discrimination in obtaining the services of an employment agency due to membership or non-membership of a trade union; or refused employment or suffered a detriment for a reason related to a blacklist TULR (C)A 1992 Ss 138 and 139 ERA 1999 (Blacklist) Regs 2010

Suffered a detriment and/or dismissal due to exercising rights under the Tax Credits Act ERA 1996 Ss 47D, 48, 104B, 105, 108–109 and 111

Unfair dismissal after exercising or claiming a statutory right ERA 1996 Ss 104, 105, 108–109 and 111

Unfair dismissal on grounds of capability, conduct or some other general reason including the result of a transfer of an undertaking ERA 1996 Sec 111

Unfair dismissal in connection to a lock out, strike or other industrial action TULR 1992 Ss 237-239 ERA 1996 Sec 105

Failure of employer to pay or unauthorised deductions have been made ERA 1996 Sec 23

Appeal by a person who has been served with an improvement or prohibition notice under the Working Time Regulations 1998 WTR 1998 Sch 3, para 6

Failure to limit weekly or night working time, or to ensure rest breaks WTR 1998 Regs 4, 6, 10, 12–17 ERA 1996 Ss 45A, 48, 101A, 105, 108–109 and 111 WTR 1998 Reg 30 Merchant Shipping (Working Time: Inland Waterways) Regs 2004 Reg 18

Complaint by a worker that employer has failed to allow them to take or to pay them for statutory annual leave entitlement WTR 1998c Regs 13, 14(2) or 16(1)

Appeal by a person who has been served with an improvement notice under the Road Transport (Working Time) Regulations 2005 RT (WT) R 2005, Sch 2, p. 3, 5 and 6

(a) Suffer a detriment and/or dismissal related to a request for time to train or study ERA 1996 Sec 63D
(b) Failure of an employer to follow the correct procedures or reject a request based on incorrect facts

Originating Legislation - Abbreviation and Full Title

CEC 1975 Colleges of Education (Compensation) Regulations 1975

COMAH 1999 Control of Major Accident Hazards Regulations 1999

DCOA 1994 Deregulation and Contracting Out Act 1994

DRC 1999 Disability Rights Commission Act 1999

EA 2006 Equality Act 2006

EA 2010	Equality Act 2010
ERA 1996	Employment Rights Act 1996
EReIA1999	Employment Relations Act 1999
ETA 1996	Employment (Industrial) Tribunals Act 1996
FTE 2002	Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
FWR 2002	Flexible Working (Procedural Requirements) Regulations 2002 and Flexible Working (Eligibility, Complaints and Remedy) Regulations 2002
HSCE 1996	Health and Safety Consultation with Employee Regulations 1996
HSWA 1974	Health and Safety at Work Act 1974
MPL 1999	Maternity and Parental Leave Regulations 1999
MPL 2002	Maternity and Parental Leave (Amendment) Regulations 2002
NESE 1994	Notification of Existing Substances (Enforcement) Regulations 1994
NMWA 1998	National Minimum Wage Act 1998
PAL 2002	Paternity and Adoption Leave Regulations 2002
PIDA 1998	Public Interest Disclosure Act 1998
PTW 2000	Part Time Worker (Prevention of Less Favourable Treatment) Regulations 2000
SRSC 1977	Safety Representatives and Safety Committees Regulations 1977
SSPA 1975	Social Security Pensions Act 1975
STA 1994	Sunday Trading Act 1994
TCA 2002	Tax Credits Act 2002
TULR(C) 1992	Trade Union and Labour Relations (Consolidation) Act 1992
TUPE 1981	Transfer of Undertakings (Protection of Employment) Regulations 1981
TURER 1993	Trade Union Reform and Employment Rights Act 1993
WTR 1998	Working Time Regulations 1998
RT (WT) R 2005	Road Transport (Working Time) Regulations 2005

Art = (Article) Par = (Part) Reg = (Regulation) Sch = (Schedule) Sec = (Section)

Appendix 10

**Freedom of Information
Request**

Table A10.1

**Ministry of Justice (MoJ)
Freedom of Information Request Index**

Sub Appendix	Date	Document	MOJ Response
10a	5 th January 2018	FOI Request submitted to Ministry of Justice re: multi-applicant ET cases	
10b	24 th January 2018	Ministry of Justice response	MoJ holds info but request to wide – denied on basis of cost.
10c	29 th January 2018	Revised FOI Request to Ministry of Justice re: multi-applicant ET cases	
10d	26 th February 2018	Ministry of Justice response	MoJ supplies part of information requested.
10e		Information provided	
10f	13 th June 2018	FOI review request submitted to MoJ	Information supplied by MoJ found to be inconsistent with MoJ's regularly published ET statistics.
10g	6 th July 2018	Ministry of Justice response	Information supplied on 26 th February by MoJ correct.
10h	1 st October 2018	MoJ response following formal complaint filed with Information Commissioner over information inconsistency between information supplied via FOI and MoJ's regularly published ET statistics.	Information requested is not held by MoJ 'in the scope of your request' plus no acknowledgement of query re inconsistency.
10i	11 th December 2018	MoJ response following further discussion with Information Commissioner over information inconsistency between information supplied via FOI and MoJ's regularly published ET statistics.	MOJ confirm it does hold information requested but cite cost limit as reason for not providing it. No acknowledgement of query re inconsistency.

Appendix 10a

FOI Request submitted to Ministry of Justice re: multi-applicant ET cases

17/11/2022, 12:03

FOI request re multi-applicant ET cases

Jonathan Mace

FR 05/10/2016 09:34

To: bob.weston@justice.gov.uk <bob.weston@justice.gov.uk>

Dear Mr Weston

Thank you for sparing the time yesterday to discuss my PhD data request. As you suggested I am submitting a FOI request for the information as this seems to be the most straight forward way of dealing with my request.

I have reproduced below an extract from the current **MOJ Tribunals and gender recognition certificate statistics quarterly – July to September 2017 spreadsheet** and I have listed below the information requested.

Table ET.1 Employment Tribunal - Total number of receipts by jurisdiction, 2007/08 to Q2 2017/18

Financial Year	Quarter	Total Claims Accepted ¹	Single claims	Multiple claim cases	Total cases	Multiple claims	Mean number of claims per multiple case	Total Jurisdictional complaints	Multiple Jurisdictional Complaints	Mean jurisdictional complaints per claim
2007/08		189,303	..	6,582	..	..	..	296,920		1.6
2008/09		151,028	62,370	7,356	69,726	88,658	12	266,542		1.8
2009/10		236,103	71,280	7,339	78,619	164,823	22	392,777		1.7
2010/11		218,096	60,591	5,956	66,547	157,505	26	382,386		1.8
2011/12		196,331	59,247	5,662	64,909	127,084	22	321,836		1.7
2012/13		191,541	54,704	6,278	60,982	136,837	22	332,859		1.7
2013/14		105,803	34,219	3,126	37,345	71,584	23	183,968		1.8
2014/15		61,308	16,420	1,921	18,341	44,888	23	129,966		2.1
2015/16		83,031	16,935	1,295	18,230	66,096	51	178,079		2.1
2016/17		88,476	17,005	1,101	18,106	71,471	65	143,946		1.6

1. Please provide an anonymised list of the multiple cases shown in column E for each year from 2007/08 to 2016/17. If the data is available for the period from 2000/01 to 2006/07 please provide that as well. To clarify – in 2016/17 1,101 cases are shown – so the information requested for 2016/17 is a list of the 1,101 cases showing for each case the number of claims per case.
2. Following on from above could you also provide the jurisdictional complaints associated with each multiple case.
3. Please provide information on resubmissions of the same multiple cases within the data – so for example has a case involving the same 56 claimants been resubmitted in 2015/16 and 2016/17. I have come across references to this happening and would like it clarified please.

So for each year I envisage the spreadsheet looking something like this:

2016/17

Case	Claimants per case	Submitted previously	Jurisdiction 1	Jurisdiction 2	Jurisdiction 3	etc
1	56	2015/16	Equal Pay	Unfair Dismissal		etc
2	12		Unfair Dismissal			etc
3	3		Working Time			etc
4	13		Holiday Pay			etc
5	111		etc			etc
6	2400		etc			etc
7	22		etc			etc
8	11		etc			etc
9	68		etc			etc
10	4		etc			etc
11	3		etc			etc
12	3		etc			etc
13	3		etc			etc
14						
1101	1456		etc	etc	etc	

Thank you for your help.

If you have any queries please contact me.

Regards

Jonathan Mace

PhD Researcher

Cardiff Business School

Appendix 10b

Ministry of Justice response



Jonathan Mace
MaceJP@cardiff.ac.uk

Data Access & Compliance Unit
Ministry of Justice
102 Petty France
London
SW1H 9AJ

data.access@justice.gsi.gov.uk

24 January 2018

Dear Mr Mace

Freedom of Information Act (FOIA) Request – 180105017

Thank you for your request received by the Ministry of Justice (MoJ) on 5 January 2018 in which you asked for the following information:

MOJ Tribunals and gender recognition certificate statistics quarterly July-September 2017

Table ET1 Employment Tribunal - Total number of receipts by jurisdiction, 2007/08 to Q2 2017/18. For

Multiple Claim Cases

Total Jurisdictional Complaints

Multiple Jurisdictional Complaints

- 1. Please provide an anonymised list of the multiple cases shown in column E for each year from 2007/08 to 2016/17. If the data is available for the period from 2000/01 to 2006/07 please provide that as well. To clarify – in 2016/17 1,101 cases are shown – so the information requested for 2016/17 is a list of the 1,101 cases showing for each case the number of claims per case.**
- 2. Following on from above could you also provide the jurisdictional complaints associated with each multiple case.**
- 3. Please provide information on resubmissions of the same multiple cases within the data – so for example has a case involving the same 56 claimants been resubmitted in 2015/16 and 2016/17.**

Your request has been handled under the FOIA.

I can confirm the MoJ holds the information you have requested. However, to provide it as the request currently stands would exceed the cost limit set out in the FOIA.

Section 12(1) of the FOIA means public authorities are not obliged to comply with a request for information if it estimates the cost of complying would exceed the appropriate limit. The appropriate limit for central government is set at £600. This represents the estimated cost of one person spending 3.5 working days determining whether the department holds the information, and locating, retrieving and extracting the information.

Costs can only include locating, retrieving and extracting information, and preparing the response. They do not include redactions, considering whether any information is exempt from disclosure, or overheads such as heating or lighting, or photocopying or postage. However, we do not work up to the cost limit and do not have to make a precise calculation,

only a reasonable estimate. Each FOIA request is considered in its entirety under Section 12(1).

Providing a response to your request will require a considerable amount of time to extract and assure data because you are requesting it on a case-by-case basis and then in a specific format. Undertaking this work will cause us to exceed the appropriate limit. Consequently, we are not obliged to comply with your request.

Although we cannot answer your request at the moment, we may be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the time period included in your questions. In addition, you may decide to omit one or more questions eg question three, from any new FOIA request. Also, you may suggest how the data can be provided in an aggregated or summarised form. Please be aware, however, that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit, or that other exemptions will not apply.

For guidance on how to structure successful requests please refer to the ICO website on the following link: [http://ico.org.uk/for the public/official information](http://ico.org.uk/for_the_public/official_information)

http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi_20043244_en.pdf

Outside of the FOIA, and on a discretionary basis, I can tell you that, alternatively, if this is a request for access for an academic research project, then you may consider the 'information for researchers' section of the MoJ pages on Gov.UK via the link below. Detailed guidance on how to proceed is given.

<https://www.gov.uk/guidance/access-to-courts-and-tribunals-for-academic-researchers>

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gsi.gov.uk

Data Access and Compliance Unit, Ministry of Justice, 10.38, 102 Petty France, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Bob Weston, Analysis and Performance Division, Her Majesty's Courts and Tribunals Service (HMCTS).

Appendix 10c

Revised FOI Request to Ministry of Justice re: multi-applicant ET cases

Thursday, November 17, 2022 at 12:11:04 Greenwich Mean Time

Subject: Revised FOI Request re multi-applicant cases
Date: Monday, 29 January 2018 at 10:33:09 Greenwich Mean Time
From: Jonathan Mace
To: bob.weston@justice.gov.uk
Attachments: image001.gif, image002.png, image003.png

Dear Mr Weston

Following your recent rejection on cost grounds of my FOI request of 5th January 2018 I am resubmitting a revised FOI request.

I have reproduced below a modified extract from the current **MOJ Tribunals and gender recognition certificate statistics quarterly – July to September 2017 spreadsheet** and I have listed below it the information requested.

Table ET.1 Employment Tribunal - Total number of receipts by jurisdiction, 2007/08

[Index](#) E H

Financial Year	Total Claims Accepted ¹	Single claims	Multiple claim cases	Total cases	Multiple claims	Mean number of multiple claims
2007/08	189,303	..	6,582	..	..
2008/09	151,028	62,370	7,356	69,726	88,658	
2009/10	236,103	71,280	7,339	78,619	164,823	
2010/11	218,096	60,591	5,956	66,547	157,505	
2011/12	186,331	59,247	5,662	64,909	127,084	
2012/13	191,541	54,704	6,278	60,982	136,837	
2013/14	105,803	34,219	3,126	37,345	71,584	
2014/15	61,308	16,420	1,921	18,341	44,888	
2015/16	83,031	16,935	1,295	18,230	66,096	
2016/17	88,476	17,005	1,101	18,106	71,471	

1. Please provide the annual total multiple jurisdictional complaints associated with the multiple claim cases shown in column E for each year from 2007/08 to 2016/17.
2. Following on from above could you also provide a breakdown of the jurisdictional complaint types associated with each year's multiple claim cases – ie Age Discrimination, Breach of Contract etc.

I envisage the spreadsheet looking something like this:

<i>Existing Information</i>				
Year	Multiple claim cases	Multiple claims	Mean number of claims per multiple case	Total Multi Jurisdictional Complain
2007/08	6582	..		
2008/09	7356	88658	12	
2009/10	7339	164823	22	
2010/11	5956	157505	26	
2011/12	5662	127084	22	
2012/13	6278	136837	22	
2013/14	3126	71584	23	
2014/15	1921	44888	23	
2015/16	1295	66096	51	
2016/17	1101	71471	65	

Thank you for your help.

If you have any queries please contact me.

This has been sent from my personal email address as the University email system doesn't seem to like including spreadsheets in the body of the email.

Regards

Jonathan Mace

PhD Researcher
Cardiff Business School

macejp@cardiff.ac.uk
jpm@hollyree.co.uk

07872 305553

Appendix 10d

Ministry of Justice response



Ministry
of Justice

Jonathan Mace
jpm@hollytree.co.uk

Data Access & Compliance Unit
Ministry of Justice
102 Petty France
London
SW1H 9AJ

data.access@justice.gsi.gov.uk

26 February 2018

Dear Mr Mace

Freedom of Information Act (FOIA) Request – 180129002

Thank you for your request received by the Ministry of Justice (MoJ) on 29 January 2018 in which you asked for the following information:

I have reproduced below a modified extract from the current MOJ Tribunals and gender recognition certificate statistics quarterly – July to September 2017 spreadsheet and I have listed below it the information requested.

Table ET.1 Employment Tribunal - Total number of receipts by jurisdiction, 2007/08 to Q2 2017/18

Financial Year	Total Claims Accepted	Single claims	Multiple claim cases	Total cases	Multiple claims	Mean number of claims per multiple case	Total Jurisdictional complaints	Total Multiple Jurisdictional Complaints	Mean jurisdictional complaints per claim	Type of Jurisdiction Complaint		
										Multiple Claims only		
										Age Discrimination	Breach of contract	Disability Discrimination
2007/08	188,303		6,582				296,102		1.6			
2008/09	151,028	62,370	7,356	69,726	88,658	12	286,542		1.8			
2009/10	236,103	71,282	7,339	78,619	164,623	22	382,777		1.7			
2010/11	218,096	60,591	5,956	66,547	157,505	26	382,386		1.8			
2011/12	186,331	59,247	5,682	64,929	127,394	22	321,836		1.7			
2012/13	191,541	54,704	6,276	60,980	136,837	22	332,959		1.7			
2013/14	105,803	34,219	3,126	37,345	71,564	23	193,969		1.8			
2014/15	61,308	16,420	1,927	18,347	44,888	23	129,966		2.1			
2015/16	83,031	16,935	1,295	18,230	66,296	51	178,279		2.1			
2016/17	88,476	17,305	1,127	18,106	71,471	65	143,346		1.6			

1. Please provide the annual total multiple jurisdictional complaints associated with the multiple claim cases shown in column E for each year from 2007/08 to 2016/17.
2. Following on from above could you also provide a breakdown of the jurisdictional complaint types associated with each year's multiple claim cases – ie Age Discrimination, Breach of Contract etc.

I envisage the spreadsheet looking something like this:

Year	Existing Information			Requested Information				
	Multiple claim cases	Multiple claims	Mean number of claims per multiple case	Total Multiple Jurisdictional Complaints	Type of Jurisdiction Complaint - Multiple Claims Only Age Discrimination	Breach of contract	Disability discrimination	Equal Pay
2007/08	6582				1508	9800	etc	
2008/09	7356	88658	12		etc	etc	etc	
2009/10	7339	164823	22		etc	etc	etc	
2010/11	5956	157505	26		etc	etc	etc	
2011/12	5662	127084	22		etc	etc	etc	
2012/13	6278	136837	22		etc	etc	etc	
2013/14	3126	71584	23		etc	etc	etc	
2014/15	1921	44888	23		etc	etc	etc	
2015/16	1295	66096	51		etc	etc	etc	
2016/17	1101	71471	65		etc	etc	etc	

Your request has been handled under the FOIA.

I can confirm that the MoJ holds some information related to that you have requested and I have provided it in the attached tabulation. However, the data are not for the full period and not in a format which will enable reconciliation with the statistical extracts provided by you.

I should explain that our published statistics are based upon the date that the claim was received. Our Employment Tribunal (ET) Central Database does not have the functionality to analyse that data to the degree of detail required by you. However, it does allow us to analyse multiple claims by jurisdiction and numbers of claims included based upon the acceptance date of the first claim lodged within the multiple claim.

I am providing that information to you, but only for the period 1 April 2014 to 31 March 2017, as the System noted above only holds robust data from 1 April 2014. On that basis, I attach data giving the number of complaints by jurisdiction associated with multiple claims accepted.

Notes regarding the attached data.

- Multiple Claim Cases (MCC) are the groups that were received in the reporting period, based upon the date that the first multiple claim was accepted within that MCC.
- Multiple Claims are the total number of multiple claims accepted within the associated MCC group.
- Total Multiple Jurisdictional Complaints is the number of jurisdictional complaints applied for.
- "Complaints to be Allocated" represent the number of unallocated jurisdictional complaints. This could be due to the fact that the vetting process to allocate the correct jurisdiction had yet to be undertaken or the claim was withdrawn before the vetting process was complete.
- All data was taken from the ET Central Database and as such is management information that is provisional and subject to change.
- Although care is taken when processing and analysing the data, the details are subject to inaccuracies inherent in any large-scale recording system, and is the best data that is available.
- The data has not been checked against files held locally at Hearing Centres.

Outside of the FOIA, and on a discretionary basis, I can tell you that it is my view that if you were to request the published statistics noted by you to be broken down to the level of detail contained in the attached tabulation, the request could be exempt on the grounds of cost (FOIA Section 12) or data held as part of the court record (FOIA Section 32).

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gsi.gov.uk

Disclosure Team, Ministry of Justice, 10.38, 102 Petty France, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Bob Weston, Analysis and Performance Division, Her Majesty's Courts and Tribunals Service (HMCTS).

Appendix 10e

Information provided

EMPLOYMENT EMPLOYMENT TRIBUNAL: THE NUMBER OF MULTIPLE CLAIMS AND JURISDICTIONS ASSOCIATED WITH THE MULTIPLE CLAIM CASES (MCC) ACCEPTED IN THE PERIOD

Year	Multiple claim cases ¹	Multiple multiple claims ²	Mean number of multiple claims per case ³	Total Multiple number of jurisdictional complaints ⁴	Discrimination	Age	Breach of contract	Disability	Equal pay	National minimum wage	Part Time Workers Regulation ⁵	Public Interest Disclosure	Race discrimination	Redundancy – failure to inform and consult
2014/15	1,447	34,320	23.7	76,224										
2015/16	1,233	63,485	51.5	173,989	19,796	3,554	2,089	155	24,730	110	76	135	771	4,566
2016/17	1,086	63,547	58.5	111,857	6,786			212	3,225	105	245	128	542	2,234

¹ This represents the group of multiple claim cases (MCC) that were received in the reporting period. This is based upon the date that the first multiple claim was accepted within that multiple claim group.

² The total number of multiple claims accepted within the associated multiple claim case (MCC) group.

³ The number of jurisdictional complaints applied for (grounds for the claim).

⁴ These figures represent the number of unallocated jurisdictional complaints and is included in the "Other" category of the published statistics. This could be due to the vetting process to allocate the correct jurisdiction based on the grounds of the claim had yet to be undertaken, or the claim was withdrawn before the vetting process was complete and therefore the jurisdiction code was no longer required.

All data was taken from the Employment Tribunals Central database and as such is management information that is provisional and subject to change.

Although care is taken when processing and analysing the data, the details are subject to inaccuracies inherent in any large-scale recording system, and is the best data that is available at the time of publication.

The data has not been checked against files held locally at Hearing Centres.

Year	Type of Jurisdictional Complaint													Others
	Redundancy dismissal	Religion or belief discrimination	Sex discrimination	Sexual Orientation discrimination	Suffer a derogatory dismissal - pregnancy	Transfer of an undertaking failure to inform and consult	Unauthorized deductions (formerly Wages Act)	Unfair dismissal	Working Time Directive statement	Written statement pay dismissal	Written statement of reasons for dismissal	Written statement of terms and conditions	To Be Allocated (TEA) 4	
2014/15	1,499	27	244	18	71	440	1,888	27,400	28	19	155	13,310	220	
2015/16	2,679	30	4,625	23	45	571	3,190	30,727	103	35	255	47,457	598	
2016/17	1,183	20	6,457	15	22	557	1,608	25,876	51	4	194	33,777	375	

Appendix 10f

FOI review request submitted to MoJ

17/11/2022, 12:20

Fw: Freedom of information Act Request 180129002

Jonathan Mace

Wed 13/06/2018 15:42

To: bob.weston@justice.gov.uk <bob.weston@justice.gov.uk>

Cc: Edmund Heery <Heery@cardiff.ac.uk>; Deborah Hann <HannDJ@cardiff.ac.uk>; David Nash <NashD@cardiff.ac.uk>; jpm@hollytree.co.uk <jpm@hollytree.co.uk>

 3 attachments (305 KB)

A Final of FOI 180129002 Mace_.xls; AFinal Response Mace 180129002.doc; Query re FOI Request 180129002.xlsx;

Dear Mr Weston

I have recently begun the process of analysing the Multiple Claims Accepted data that you sent to me following my January 2018 Freedom of Information request.

During the initial analysis I have come across several anomalies which are highlighted below and in the attached spreadsheet.

1. For the year 2015/16 the data from the published tribunal-grc-main-tables-2017-18-q3 downloaded yesterday show a total number Jurisdictional complaints for both single claims & multiple claims of 178,079 whereas the FOI data supplied shows the number of jurisdictional complaints as 173,989 for multiple claims alone. (I have highlighted these two figures in grey.) It seems to me that these two figures are unlikely to both be correct.
2. Following on from above for the year 2015/16 there are 4 separate jurisdictional complaints where the FOI multiple data shows a higher level of claims than the published tribunal-grc-main-tables-2017-18-q3. I have highlighted these in yellow.
3. The same applies to the the jurisdictional data for 2014/15 & 2016/17 but only once in each years data - these are highlighted in green & blue respectively.

In light of the above anomalies in the FOI data could I request a reexamination of the data supplied and either an explanation provided or corrected data supplied.

If you have any queries please contact me.

Employment Tribunals						
	Total Claims Accepted			Multiple Claims Accepted		
	Data from tribunal-grc-main-tables-2017-18-q3			Data from FOI Request 180129002		
Financial Year	2014/15	2015/16	2016/17	2014/15	2015/16	2016/17
Total Claims Accepted	61,308	83,031	88,476			
Single Claims	16,420	16,935	17,044			
Multiple Claims	44,888	66,096	71,471	34320	63485	63547
Mean number of claims per multiple case	23.37	51.04	64.91	23.7	51.5	58.5
Number of Multiple claim cases	1921	1295	1101	1448	1233	1086
Total Jurisdictional complaints ⁴	129,966	178,079	143,946	75224	173989	111857
Mean jurisdictional complaints per claim	2.1199	2.1447	1.6269			
Type of Jurisdictional Complaint						
Age Discrimination	1,087	12,636	7,628	88	19796	6786
Breach of contract	8,250	9,279	7,934	3091	3654	2089
Disability discrimination	3,106	3,470	3,794	163	155	212
Equal pay	9,621	17,063	10,467	674	24730	3225
National minimum wage	161	239	224	53	110	105
Part Time Workers Regulations	304	215	374	38	76	245
Public Interest Disclosure	1,395	1,400	1,497	153	135	128
Race discrimination	1,858	2,002	2,240	218	771	542
Redundancy – failure to inform and consult	2,307	4,085	2,410	3215	4566	2234
Redundancy pay	2,939	3,944	2,317	1499	2679	1183
Religion or belief discrimination	339	340	384	27	30	20
Sex discrimination	4,471	5,380	8,841	244	4625	6457
Sexual Orientation discrimination	189	188	197	18	23	15
Suffer a detriment / unfair dismissal - pregnancy ⁴	790	865	872	71	45	22
Transfer of an undertaking - failure to inform and consult	568	635	811	440	571	557
Unauthorised deductions (formerly Wages Act) ²	28,701	36,362	9,152	22215	29658	26152
Unfair dismissal	12,652	13,302	12,038	1888	3190	1608
Working Time Directive	31,451	36,813	30,313	27400	30727	25876
Written pay statement	282	375	263	25	103	51
Written statement of reasons for dismissal	209	210	159	19	35	4
Written statement of terms and conditions	925	1,023	976	155	255	194
Others	18,361	28,253	41,055	220	598	375
To Be Allocated				13310	47457	33777

Regards

Jonathan Mace

PhD Researcher

Cardiff University

07872 305553

From: Jonathan Mace <jonathan@hollytree.co.uk>

Sent: 13 June 2018 12:16

Appendix 10g

Ministry of Justice response



Mr Jonathan Mace
MaceJP@cardiff.ac.uk

Disclosure Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ

data.access@justice.gov.uk

6 July 2018

Dear Mr Mace

Freedom of Information Act (FOIA) Outcome of Internal Review – 180613020

Thank you for your Internal Review request dated 13 June 2018 regarding FOI request 180129002 in which you asked for the following information from the Ministry of Justice (MoJ):

I have recently begun the process of analysing the Multiple Claims Accepted data that you sent to me following my January 2018 Freedom of Information request. During the initial analysis I have come across several anomalies which are highlighted below and in the attached spreadsheet.

1. For the year 2015/16 the data from the published tribunal-grc-main-tables-2017-18-q3 downloaded yesterday show a total number Jurisdictional complaint for both single claims & multiple claims of 178,079 whereas the FOI data supplied shows the number of jurisdictional complaints as 173,989 for multiple claims alone. (I have highlighted these two figures in grey.) It seems to me that these two figures are unlikely to both be correct.

2. Following on from above for the year 2015/16 there are 4 separate jurisdictional complaints where the FOI multiple data show a higher level of claims than the published tribunal-grc-main-tables-2017-18-q3. I have highlighted these in yellow.

3. The same applies to the jurisdictional data for 2014/15 & 2016/17 but only once in each years data - these are highlighted in green & blue respectively. In light of the above anomalies in the FOI data could I request a re-examination of the data supplied and either an explanation provided or corrected data supplied.

The purpose of an Internal Review is to assess how your FOI request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review: I was not involved in the original decision.

The response to your original request confirmed that MoJ held some of the information requested and provided this information in a tabulation. However, the data provided was not for the full period and not in a format which enabled reconciliation with the statistical extracts

you had provided. After careful consideration I have concluded that this response was compliant with the requirements of the FOIA.

Statutory deadline

The statutory deadline for your request was 26 February 2018 and the response was provided on 26 February 2018. The response was therefore compliant with the requirements of the FOIA.

Outcome

The anomalies that you have uncovered have arisen because the MoJs statistics are not counted using the same criteria that you use and therefore you will not be able to reconcile our figures with the statistical extracts you have provided. This reason was explained to you in the FOIA response dated 26 February 2018 and I have reproduced this below for ease of reference:

'I should explain that our published statistics are based upon the date that the claim was received. Our Employment Tribunal (ET) Central Database does not have the functionality to analyse that data to the degree of detail required by you. However, it does allow us to analyse multiple claims by jurisdiction and numbers of claims included based upon the acceptance date of the first claim lodged within the multiple claim.'

In conclusion I am satisfied that the response you received on 26 February 2018 was correct.

Appeal Rights

If you are not satisfied with this response you have the right to apply to the Information Commissioner's Office (ICO). The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if she considers that we have handled it incorrectly.

You can contact the ICO at the following address:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

<https://ico.org.uk/Global/contact-us>

Yours sincerely

Christopher Cox
North West Regional Support Unit

Appendix 10h

MoJ response following formal complaint filed with Information Commissioner over information inconsistency between information supplied via FOI and MoJ's regularly published ET statistics



Jonathan Mace
jpm@hollytree.co.uk

Data Access & Compliance Unit
Ministry of Justice
102 Petty France
London
SW1H 9AJ

data.access@justice.gsi.gov.uk

1 October 2018

Dear Mr Mace

Freedom of Information Act (FOIA) Request – 180129002

I refer to your request on 24 August 2018 to Ms Hannah Forrester of the Information Commissioner's Office (ICO).

Thank you for your request received by the Ministry of Justice (MoJ) on 29 January 2018 in which you asked for the following information:

I have reproduced below a modified extract from the current MOJ Tribunals and gender recognition certificate statistics quarterly – July to September 2017 spreadsheet and I have listed below it the information requested.

2016/17	88,476	17,005	1,101	18,106	71,471	65	143,946	1.6
---------	--------	--------	-------	--------	--------	----	---------	-----

1. Please provide the annual total multiple jurisdictional complaints associated with the multiple claim cases shown in column E for each year from 2007/08 to 2016/17.
2. Following on from above could you also provide a breakdown of the jurisdictional complaint types associated with each year's multiple claim cases – ie Age Discrimination, Breach of Contract etc.

I envisage the spreadsheet looking something like this:

2016/17	1101	71471	65		etc	etc	etc
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Further to an Information Commissioner's Office investigation I have re-examined your request and can confirm the MoJ does not hold the information in the scope of your request because there is no legal or business requirement for MoJ to do so.

I should explain that that MoJ published statistics are based upon the date that the claim was received. Our Employment Tribunal (ET) Central Database does not have the functionality to analyse that data to the degree of detail required by you. It only allows us to analyse multiple claims by jurisdiction and numbers of claims included based upon the acceptance date of the first claim lodged within the multiple claim. Also, our ET Database only holds robust data from 1 April 2014.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held.

However, outside of FOIA and on a discretionary basis, I have provided you with data (on 26th February 2018) giving the number of complaints by jurisdiction associated with multiple claims accepted. The data are not for the full period and not in a format which will enable reconciliation with the statistical extracts provided by you. It is only for the period 1 April 2014 to 31 March 2017 and is for the number of complaints by jurisdiction associated with multiple claims accepted.

Notes regarding the attached data.

- Multiple Claim Cases (MCC) are the groups that were received in the reporting period, based upon the date that the first multiple claim was accepted within that MCC.
- Multiple Claims are the total number of multiple claims accepted within the associated MCC group.
- Total Multiple Jurisdictional Complaints is the number of jurisdictional complaints applied for.
- "Complaints to be Allocated" represent the number of unallocated jurisdictional complaints. This could be due to the fact that the vetting process to allocate the correct jurisdiction had yet to be undertaken or the claim was withdrawn before the vetting process was complete.
- All data was taken from the ET Central Database and as such is management information that is provisional and subject to change.
- Although care is taken when processing and analysing the data, the details are subject to inaccuracies inherent in any large-scale recording system, and is the best data that is available.
- The data has not been checked against files held locally at Hearing Centres.

Next Steps

Please contact Ms Forrester and/or the ICO with any remaining grounds of complaint. They have been copied in on this revised response.

Yours sincerely

Bob Weston, Analysis and Performance Division, Her Majesty's Courts and Tribunals Service (HMCTS).

Appendix 10i

MoJ response following further discussion with Information Commissioner over information inconsistency between information supplied via FOI and MoJ's regularly published ET statistics



Jonathan Mace
jpm@hollytree.co.uk

Data Access & Compliance Unit
Ministry of Justice
102 Petty France
London
SW1H 9AJ

data.access@justice.gsi.gov.uk

11 December 2018

Dear Mr Mace

Freedom of Information Act (FOIA) Request – 180129002

Thank you for your request received by the Ministry of Justice (MoJ) on 29 January 2018 in which you asked for the following information:

I have reproduced below a modified extract from the current MOJ Tribunals and gender recognition certificate statistics quarterly – July to September 2017 spreadsheet and I have listed below it the information requested.

- 1. Please provide the annual total multiple jurisdictional complaints associated with the multiple claim cases shown in column E for each year from 2007/08 to 2016/17.**
- 2. Following on from above could you also provide a breakdown of the jurisdictional complaint types associated with each year's multiple claim cases – ie Age Discrimination, Breach of Contract etc.**

I envisage the spreadsheet looking something like this:

Your request has been handled under the FOIA.

Further to an Information Commissioner's Office investigation I have re-examined your request and can confirm that the request is exempt from disclosure under the conditions of Section 12(1) of FOIA.

It has been passed to me because I have responsibility for answering requests relating to data in Her Majesty's Courts and Tribunals Service (HMCTS). HMCTS is an executive agency of the MoJ and is responsible for the administration of the magistrates' courts, the Crown Court, the County Court, the Family Court, the High Court, Court of Appeal and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.

I can confirm the MoJ holds the information you have requested. However, to provide it as the request currently stands would exceed the cost limit set out in the FOIA.

Section 12(1) of the FOIA means public authorities are not obliged to comply with a request for information if it estimates the cost of complying would exceed the appropriate limit. The appropriate limit for central government is set at £600. This represents the estimated cost of one person spending 3.5 working days determining whether the department holds the information, and locating, retrieving and extracting the information.

I should explain that multiple claims are where two or more people bring proceedings arising out of the same facts, usually against a common employer. Where claims are grouped as multiples they are processed administratively and managed judicially together as multiple claim cases. A claim can have more than one grounds for complaint (or jurisdiction) such as Unfair Dismissal, Age Discrimination or Race Discrimination as examples.

The Employment Tribunal (ET) case management and management information systems do not have an existing report (or variation of an existing report) which would provide the grounds for the claim or jurisdictional complaint by the multiple claim case groupings. In order to answer your question HMCTS would have to draw up a new system specification; agree that with a third party outside of HMCTS; commission them to produce the data; receive the data and test it.

We believe that the cost of doing that would exceed the appropriate limit. Consequently, we are not obliged to comply with your request.

Although we cannot answer your request at the moment, we may be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the timescale covered by your request. Please be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit, or that other exemptions will not apply.

For guidance on how to structure successful requests please refer to the ICO website on the following link: http://ico.org.uk/for_the_public/official_information

http://www.legislation.gov.uk/uksi/2004/3244/pdfs/uksi_20043244_en.pdf

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.qsi.gov.uk

Disclosure Team, Ministry of Justice, 10.38, 102 Petty France, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Bob Weston, Analysis and Performance Division, Her Majesty's Courts and Tribunals Service (HMCTS).

Appendix 11

Extract from:

Audit Commission: Improving information to support decision making: standards for better quality data. A framework to support improvement in data quality in the public sector

Appendix 11

Extract from:

Audit Commission: *Improving information to support decision making: standards for better quality data. A framework to support improvement in data quality in the public sector*

1. Introduction	
1	Public services need reliable, accurate and timely information to manage services and account for performance. For example, service providers need good information to make judgments about the efficiency, effectiveness and responsiveness of their services. Commissioners need to make often complex decisions about their priorities and the use of resources. Service users and members of the public more widely need accessible information to make informed decisions. Regulators and government departments must satisfy their responsibilities for making judgments about performance and governance.
2	A great deal of time and money is spent on the activities and systems involved in collecting and analysing the data that underlies performance information, yet there remains a lack of confidence in some of this data. As increasing reliance is placed on performance information in performance management and assessment regimes, the need to demonstrate that the underlying data is reliable has become more critical.
3	Good quality data is the essential ingredient for reliable performance and financial information. The data must be fit for purpose, representing in an accurate and timely manner the organisation's activity. At the same time, a balance must be achieved between the importance of the information requirement and the cost of collecting the supporting data with the necessary accuracy, detail and timeliness. To achieve this balance, public bodies need to determine their information priorities and put in place appropriate arrangements to secure the quality of their data.
4	The results of auditors' work on a variety of data quality topics—most recently in the police service, and previously in health, youth offending, and social care services – underline the fundamental importance of data quality in achieving robust and respected performance information frameworks. Successful bodies have recognised data quality as a corporate priority and have taken action to embed strong arrangements for managing the quality of the data they collect and use.
2. Why is data quality important?	
What data do we mean?	
6	Public bodies are accountable for the public money they spend: they must manage competing claims on resources to meet the needs of the communities they serve, and plan for the future. The financial and performance information they use to account for their activities, both internally and externally, to their users, partners, commissioners, government departments and regulators, must be accurate, reliable and timely.
7	The quality of financial information is generally higher than that of performance information, because the underlying data is collected according to professional accounting rules and is subject to strong internal controls and a formal audit regime. The quality of non-financial performance information can be more variable, because internal controls for the recording and preparation of the underlying data are often less developed. There is often also less ownership of performance information by those charged with governance.
8	Producing data that is fit for purpose should not be an end in itself, but an integral part of an organisation's operational, performance management, and governance arrangements. Organisations that put data quality at the heart of their performance management systems are most likely to be actively managing data in all aspects of their day-to-day business, in a way that is proportionate to the cost of collection and turning the data into reliable information.
Responsibility for the quality of data	

9	Ultimate responsibility for ensuring that data is fit for purpose can only rest with public bodies themselves. This responsibility should not be confused with the role of government departments in setting a policy framework, including defining national performance measures and issuing standards and guidelines, or the role of regulators in providing assurance and identifying improvements.
10	The risk in not identifying and addressing weaknesses in data quality, or the arrangements that underpin data collection and reporting activities, is that information may be misleading, decision making may be flawed, resources may be wasted, poor services may not be improved, and policy may be ill-founded. There is also a danger that good performance may not be recognised and rewarded.
11	There are many audiences for the data collected by public services. This in itself can cause problems with the reliability of reported information, because the need to aggregate and analyse raw data in a variety of ways to suit a variety of purposes may not be understood by all those involved in the data collection and reporting processes. Data collected for a specific local purpose may ultimately be used or reported in ways not envisaged, intended or understood by its originators.

Dimensions of data quality:

There are six key characteristics of good quality data.

Accuracy	Data should be sufficiently accurate for its intended purposes, representing clearly and in sufficient detail the interaction provided at the point of activity. Data should be captured once only, although it may have multiple uses. Accuracy is most likely to be secured if data is captured as close to the point of activity as possible. Reported information that is based on accurate data provides a fair picture of performance and should enable informed decision making. The need for accuracy must be balanced with the importance of the uses for the data, and the costs and effort of collection. For example, it may be appropriate to accept some degree of inaccuracy where timeliness is important. Where compromises have to be made on accuracy, the resulting limitations of the data should be clear to its users.
Validity	Data should be recorded and used in compliance with relevant requirements, including the correct application of any rules or definitions. This will ensure consistency between periods and with similar organisations. Where proxy data is used to compensate for an absence of actual data, organisations must consider how well this data is able to satisfy the intended purpose.
Reliability	Data should reflect stable and consistent data collection processes across collection points and over time, whether using manual or computer-based systems, or a combination. Managers and stakeholders should be confident that progress toward performance targets reflects real changes rather than variations in data collection approaches or methods.
Timeliness	Data should be captured as quickly as possible after the event or activity and must be available for the intended use within a reasonable time period. Data must be available quickly and frequently enough to support information needs and to influence the appropriate level of service or management decisions.
Relevance	Data captured should be relevant to the purposes for which it is used. This entails periodic review of requirements to reflect changing needs. It may be necessary to capture data at the point of activity which is relevant only for other purposes, rather than for the current intervention. Quality assurance and feedback processes are needed to ensure the quality of such data.
Completeness	Data requirements should be clearly specified based on the information needs of the organisation and data collection processes matched to these requirements. Monitoring missing, incomplete, or invalid records can provide an indication of data quality and can also point to problems in the recording of certain data items.

Source: Audit Commission, 2007

Appendix 12

Employment Tribunal Direction of the President 117 and 117a

Appendix 12

Direction 117, 11th December 2014



Judge Brian Doyle
President

EMPLOYMENT TRIBUNALS (England and Wales)

DIRECTION OF THE PRESIDENT

In the matter of claims brought in Employment Tribunals (England and Wales) in respect of the calculation of unpaid holiday pay

HAVING REGARD TO the European Union Working Time Directive (No. 2003/88);

AND having regard to the decisions of the Court of Justice of the European Union in *British Airways plc v Williams* [2012] ICR 847 and in *British Gas Trading Ltd v Lock* [2014] ICR 813;

AND having regard to the decision of the Employment Appeal Tribunal in *Bear Scotland Ltd and others v Fulton and others; Hertel (UK) Ltd v Woods and others; and Amex Group Ltd and others* (4 November 2014);

AND having regard to regulations 13, 13A and 30 of the Working Time Regulations 1998;

AND having regard to Part II and Part XIV (Chapters II and III) of the Employment Rights Act 1996;

AND having regard to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and the Employment Tribunals Rules of Procedure, as set out in Schedule 1 of the Regulations;

AND having regard to the decisions of the Employment Appeal Tribunal in *Okugade v Shaw Trust* (EAT 0172/05) and in *Prakash v Wolverhampton City Council* (EAT 0140/06)

THEN

ACTING in accordance with my powers under regulations 7 and 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and under rules 2 and 29 of the Employment Tribunals Rules of Procedure

IT IS ORDERED THAT


1. A claimant or group of claimants who have previously presented a claim or claims in respect of a complaint of alleged non-payment of holiday pay may, if so advised, apply to amend the claim or claims so presented in order to add a further complaint or complaints of alleged non-payment of holiday pay that have accrued or arisen after the presentation of the original claim and which could not have been included in the original claim or claims.
2. They may do so, if so advised, instead of presenting a new claim to the Tribunal.
3. Any such application shall identify clearly the original claim that is sought to be amended by case number, claimant(s) and respondent(s), and it shall set out the amended particulars of the claim to include the additional dates or periods of alleged non-payment of holiday pay, the basis of the complaint and the amount claimed.

4. Any such application shall be copied to the respondent(s) by the claimant(s) at the same time as making the application. The claimant(s) shall invite the respondent(s) to provide any written comments upon the application to the Tribunal within 7 days.

5. After that period of 7 days the application to amend will then be considered by a judge in accordance with the usual principles for the amendment of a claim.

6. Any party or representative wishing to make representations for the further conduct of such claims should do so upon application to the President.

7. A copy of this Direction shall be sent to ACAS and to all known interested parties, and shall be published on the Justice website: <http://www.justice.gov.uk/tribunals/employment/rules-and-legislation#england>

SIGNED: 
Judge Brian Doyle
President

DATED: 11 December 2014

Source: Courts and Tribunal Judiciary, 2020

Direction 117a, 27th March 2015



EMPLOYMENT TRIBUNALS (England and Wales)

DIRECTION OF THE PRESIDENT

In the matter of claims brought in Employment Tribunals (England and Wales) in respect of the calculation of unpaid holiday pay

HAVING REGARD TO the European Union Working Time Directive (No. 2003/88);

AND having regard to the decisions of the Court of Justice of the European Union in *British Airways plc v Williams* [2012] ICR 847 and in *British Gas Trading Ltd v Lock* [2014] ICR 813;

AND having regard to the decision of the Employment Appeal Tribunal in *Bear Scotland Ltd and others v Fulton and others; Hertel (UK) Ltd v Woods and others; and Amex Group Ltd and others* (4 November 2014);

AND having regard to regulations 13, 13A and 30 of the Working Time Regulations 1998;

AND having regard to Part II and Part XIV (Chapters II and III) of the Employment Rights Act 1996;

AND having regard to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and the Employment Tribunals Rules of Procedure, as set out in Schedule 1 of the Regulations;

AND having regard to the decisions of the Employment Appeal Tribunal in *Okugade v Shaw Trust* (EAT 0172/05) and in *Prakash v Wolverhampton City Council* (EAT 0140/06)

THEN

ACTING in accordance with my powers under regulations 7 and 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and under rules 2 and 29 of the Employment Tribunals Rules of Procedure

IT IS ORDERED THAT

1. A claimant or group of claimants who have previously presented a claim or claims in respect of a complaint of alleged non-payment of holiday pay may, if so advised, apply to amend the claim or claims so presented in order to add a further complaint or complaints of alleged non-payment of holiday pay that have accrued or arisen after the presentation of the original claim and which could not have been included in the original claim or claims.
2. They may do so, if so advised, instead of presenting a new claim to the Tribunal.
3. Any such application shall identify clearly the original claim that is sought to be amended by case number, claimant(s) and respondent(s). It shall also set out the amended particulars of the claim to include the additional dates or periods of alleged non-payment of holiday pay and the basis of the complaint.

4. Any such application shall be copied to the respondent(s) by the claimant(s) at the same time as making the application. The claimant(s) shall invite the respondent(s) to provide any written comments upon the application to the Tribunal within 7 days.


5. After that period of 7 days the application to amend will then be considered by a judge in accordance with the usual principles for the amendment of a claim. In the event that the claim affected is stayed at the time of the application, the stay will be lifted temporarily to allow for such consideration. Accordingly, parties should make such representations in connection with the application as they see fit at this stage.

6. An Employment Judge, if the interests of justice so require, may permit a claim to be amended even if the application to amend does not comply with the terms of this direction but in such a case the application must explain the reason for non compliance and why, nonetheless, it would be in the interests of justice to allow the amendment.

7. Any party or representative wishing to make representations for the further conduct of such claims should do so upon application to the President.

8. A copy of this Direction shall be sent to ACAS and to all known interested parties, and shall be published on the Judiciary website: <https://www.judiciary.gov.uk/publications/directions-employment-tribunals-england-wales/>

9. The Direction of the President dated 11 December 2014 "In the matter of claims brought in Employment Tribunals (England and Wales) in respect of the calculation of unpaid holiday pay" is hereby revoked.

SIGNED: 
Judge Brian Doyle
President

DATED: 27 March 2015

Source: Courts and Tribunal Judiciary, 2020

Appendix 13

Employment Tribunal Outcome/Disposal Data Series

Employment Tribunal Claims Outcome/Disposals

Tables A13.1 to A13.9

Survey of Employment Tribunal Applications Outcome/Disposals

Table A13.10

Appendix 13

**Table A13.1
Total Claim Outcome/Disposal (TCOD) Breakdown - All Jurisdictions 1985/86 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment	Acas Conciliated Settlements	Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued			
		Outcome 1		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1985/86	37,910	5,405	14%			10,190	27%	13,553	36%			810	2%	6,135	16%	1,817	5%				
1986/87	39,404	5,342	14%			11,129	28%	14,149	36%			1,002	3%	6,236	16%	1,546	4%				
1987/88	34,233	4,185	12%			13,018	38%	10,107	30%			644	2%	4,875	14%	1,404	4%				
1988/89	29,317	3,829	13%			8,791	30%	10,636	36%			867	3%	3,941	13%	1,253	4%				
1989/90	31,913	4,598	14%			10,242	32%	10,772	34%			670	2%	4,360	14%	1,271	4%				
1990/91	35,826	5,503	15%			10,197	29%	13,206	37%			993	3%	4,472	12%	1,455	4%				
1991/92	41,768	7,022	17%			11,767	28%	15,279	37%			944	2%	5,474	13%	1,282	3%				
1992/93	53,445	9,351	18%			15,060	28%	18,802	35%			1,747	3%	6,760	13%	1,725	3%				
1993/94	69,612	12,060	17%			18,772	27%	25,279	36%			2,234	3%	8,796	13%	2,471	4%				
1994/95	67,325	10,422	16%			20,313	30%	23,459	35%			1,804	3%	9,300	14%	2,027	3%				
1995/96	73,472	10,219	14%			22,519	31%	26,853	37%			2,616	4%	9,298	13%	1,967	3%				
1996/97																					
Not available ^a																					
1997/98	74,614	9,278	12%			24,904	33%	25,562	34%			4,081	6%	8,563	12%	2,226	3%				
1998/99	74,006	9,282	13%			25,188	34%	25,285	34%			2,609	4%	9,965	14%	1,677	2%				
1999/00	83,409	10,349	12%			32,192	39%	27,536	33%			2,632	3%	7,966	10%	2,734	3%				

Table A13.1, Page 1

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	129,725	19,287	15%			47,536	37%	37,571	29%			9,330	7%	13,429	10%	2,572	2%				
2001/02	139,059	18,271	13%			50,326	36%	42,701	31%			13,828	10%	11,687	8%	2,246	2%				
2002/03	132,492	17,469	13%			51,757	39%	41,402	31%			8,323	6%	11,396	9%	2,145	2%				
2003/04	126,793	17,707	14%			48,108	38%	39,026	31%			9,552	8%	10,376	8%	2,024	2%				
2004/05	146,951	26,472	18%			54,233	37%	43,484	30%			10,456	7%	10,160	7%	2,146	2%				
2005/06	160,557	29,078	18%	5,569	4%	42,301	26%	55,078	34%			16,192	10%	9,820	6%	2,519	2%				
2006/07	176,434	21,816	12%	5,761	3%	42,805	24%	54,271	31%			37,817	21%	11,022	6%	2,942	2%				
2007/08	157,493	20,585	13%	5,995	4%	46,044	29%	52,638	33%			17,606	11%	10,803	7%	3,822	2%				
2008/09	172,944	22,706	13%	7,681	4%	55,199	32%	57,449	33%			12,043	7%	14,456	8%	3,410	2%				
2009/10	226,968	29,506	13%	15,888	7%	70,360	31%	72,630	32%			20,427	9%	13,618	6%	4,539	2%				
2010/11	243,952	29,274	12%	14,637	6%	70,746	29%	78,065	32%			24,395	10%	21,956	9%	4,879	2%				
2011/12	229,968	27,596	12%	13,798	6%	75,889	33%	62,091	27%			29,896	13%	16,098	7%	4,599	2%				
2012/13	225,896	24,849	11%	13,554	6%	74,546	33%	63,251	28%			27,108	12%	15,813	7%	6,777	3%				
2013/14	275,561	19,289	7%	8,267	3%	57,868	21%	132,269	48%	13,778	5%	24,800	9%	13,778	5%	5,511	2%	0	0%	0	0%
2014/15	386,465	11,594	3%	3,865	1%	30,917	8%	61,834	16%	15,459	4%	258,932	67%	7,729	2%	0	0%	0	0%	0	0%
2015/16	102,551	6,153	6%	3,077	3%	31,791	31%	24,612	24%	14,357	14%	14,357	14%	6,153	6%	1,026	1%	0	0%	0	0%
2016/17	88,922	5,335	6%	3,557	4%	24,009	27%	17,784	20%	21,341	24%	9,781	11%	5,335	6%	889	1%	0	0%	0	0%
2017/18	86,664	8,666	10%	3,467	4%	20,799	24%	10,400	12%	20,799	24%	15,600	18%	5,200	6%	867	1%	0	0%	867	1%
2018/19	94,332	8,490	9%	4,717	5%	23,583	25%	22,640	24%	15,093	16%	11,320	12%	5,660	6%	943	1%	0	0%	1887	2%

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Sources:

See Chapter 3, Table 3.3, Data Sources for Employment Tribunal Total Claim Outcome/Disposal (TCOD) Statistics 1985/86 to 2018/19

^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

Table A13.1, Page 2

**Table A13.2
Breach of Contract (BoC) Outcome/Disposal Breakdown 1994/95 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8		9	%	10	%
Statistics 1994/95 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1994/95	597	47	8%			262	44%	221	37%			18	3%	36	6%	13	2%				
1995/96	3,495	535	15%			1,338	38%	1,141	33%			106	3%	319	9%	56	2%				
1996/97																					
Not available ^a																					
1997/98	6,766	929	14%			2,538	38%	2,278	34%			221	3%	661	10%	139	2%				
1998/99	7,724	1,132	15%			3,002	39%	2,396	31%			345	5%	711	9%	138	2%				
1999/00	8,193	1,221	15%			3,453	42%	2,337	29%			319	4%	725	9%	138	2%				
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	20,218	3,282	16%			7,896	39%	5,648	28%			1,019	5%	1,984	10%	389	2%				
2001/02	20,459	3,447	17%			8,133	40%	6,056	30%			855	4%	1,651	8%	317	2%				
2002/03	18,659	2,961	16%			7,482	40%	5,387	29%			920	5%	1,609	9%	300	2%				
2003/04	16,664	2,757	17%			6,791	41%	4,800	29%			733	4%	1,371	8%	212	1%				
2004/05	15,736	2,414	15%			6,409	41%	4,323	27%			1,037	7%	1,336	8%	217	1%				
2005/06	21,444	3,559	17%	1,281	6%	6,563	31%	6,955	32%			1,129	5%	1,585	7%	372	2%				
2006/07	23,504	4,260	18%	1,293	6%	6,693	28%	7,702	33%			1,461	6%	1,674	7%	421	2%				
2007/08	22,516	3,889	17%	1,347	6%	6,711	30%	6,580	29%			1,768	8%	1,705	8%	516	2%				
2008/09	25,252	4,617	18%	1,837	7%	8,251	33%	6,029	24%			1,477	6%	2,615	10%	426	2%				
2009/10	32,053	5,770	18%	3,846	12%	10,257	32%	7,052	22%			2,244	7%	2,244	7%	641	2%				
2010/11	31,838	5,412	17%	3,184	10%	10,188	32%	7,323	23%			2,547	8%	2,229	7%	637	2%				
2011/12	32,198	5,152	16%	2,898	9%	10,303	32%	6,762	21%			4,508	14%	2,254	7%	644	2%				
2012/13	28,700	4,305	15%	2,583	9%	9,184	32%	6,888	24%			2,583	9%	2,296	8%	574	2%				
2013/14	22,309	3,346	15%	1,562	7%	7,139	32%	4,685	21%	892	4%	1,785	8%	1,785	8%	669	3%	0	0%	0	0%
2014/15	12,037	1,685	14%	722	6%	3,491	29%	3,009	25%	722	6%	1,204	10%	843	7%	120	1%	0	0%	0	0%
2015/16	8,657	952	11%	693	8%	2,770	32%	1,472	17%	779	9%	1,299	15%	606	7%	173	2%	0	0%	0	0%
2016/17	8,745	787	9%	700	8%	2,798	32%	2,186	25%	875	10%	612	7%	700	8%	87	1%	0	0%	0	0%
2017/18	9,015	1,713	19%	541	6%	2,795	31%	1,172	13%	1,352	15%	541	6%	631	7%	180	2%	0	0%	90	1%
2018/19	10,733	1,395	13%	859	8%	3,327	31%	1,932	18%	1,181	11%	751	7%	859	8%	215	2%	0	0%	107	1%

Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

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^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

**Table A13.3
Equal Pay (EP) Outcome/Disposal Breakdown 1976 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful																
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued								
		Outcome 1	Outcome 2	Outcome 3	Outcome 4	Outcome 5	Outcome 6	Outcome 7	Outcome 8	Outcome 9	Outcome 10	Outcome 1	Outcome 2	Outcome 3	Outcome 4	Outcome 5	Outcome 6	Outcome 7	Outcome 8	Outcome 9	Outcome 10							
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8		9	%	10	%							
Statistics 1976 to Q1 1985 are from Employment Gazette Equal Pay Summaries																												
1976	1,742	213	12%			106	6%	927	53%					496	29%													
1977	751	91	12%			56	8%	332	44%					272	36%													
1978	343	24	7%			29	9%	234	68%					56	16%													
1979	263	13	5%			29	11%	156	59%					65	25%													
1980	91	4	4%			10	11%	55	60%					22	24%													
1981	54	6	11%			9	17%	18	33%					21	39%													
1982	39	2	5%			8	21%	18	46%					11	28%													
1983	35	9	26%			5	14%	15	43%					6	17%													
1984	70	11	16%			15	21%	31	44%					13	19%													
Q1 1985	65	0	0%			58	89%	5	8%					2	3%													
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																												
1985/86	302	37	12%			84	28%	148	49%			6	2%	26	9%	1	0%											
1986/87	517	44	9%			71	14%	282	55%			3	1%	55	11%	62	12%											
1987/88	1,043	7	1%			89	9%	750	72%			180	17%	14	1%	3	0%											
1988/89	813	14	2%			95	12%	350	43%			305	38%	47	6%	2	0%											
1989/90	397	33	8%			64	16%	210	53%			68	17%	20	5%	2	1%											
1990/91	508	10	2%			64	13%	246	48%			163	32%	19	4%	6	1%											
1991/92	227	5	2%			45	20%	100	44%			1	0%	71	31%	5	2%											
1992/93	240	21	9%			102	43%	83	35%			0	0%	34	14%	0	0%											
1993/94	780	19	2%			50	6%	685	88%			2	0%	14	2%	10	1%											
1994/95	418	8	2%			98	23%	286	68%			9	2%	13	3%	4	1%											
1995/96	694	36	5%			128	18%	456	66%			28	4%	31	5%	15	2%											
1996/97																												
										Not available ^a																		
1997/98	1,483	18	1%			253	17%	1,069	72%			70	5%	67	5%	6	0%											
1998/99	1,530	7	1%			517	34%	650	43%			47	3%	293	19%	16	1%											
1999/00	590	9	2%			229	39%	233	40%			18	3%	75	13%	26	4%											

Table A13.3, Page 1

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8		9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	1,591	18	1%			307	19%	1,056	66%			129	8%	68	4%	13	1%				
2001/02	3,717	161	4%			522	14%	960	26%			1,999	54%	52	1%	23	1%				
2002/03	1,730	59	3%			300	17%	720	42%			577	33%	69	4%	5	0%				
2003/04	2,195	58	3%			780	36%	923	42%			378	17%	45	2%	11	1%				
2004/05	3,943	20	1%			1,559	40%	1,493	38%			778	20%	76	2%	17	0%				
2005/06	11,323	3,722	33%	26	0%	1,441	13%	4,373	39%			1,614	14%	124	1%	23	0%				
2006/07	7,854	126	2%	5	0%	499	6%	4,691	60%			2,390	30%	87	1%	56	1%				
2007/08	9,471	678	7%	5	0%	1,512	16%	4,899	52%			2,189	23%	105	1%	83	1%				
2008/09	20,148	36	0%	4	0%	2,000	10%	16,335	81%			1,629	8%	82	0%	62	0%				
2009/10	20,140	201	1%	0	0%	2,215	11%	14,299	71%			3,222	16%	0	0%	201	1%				
2010/11	25,645	256	1%	0	0%	3,077	12%	15,387	60%			5,385	21%	1,795	7%	0	0%				
2011/12	23,797	0	0%	0	0%	8,805	37%	10,233	43%			4,521	19%	0	0%	0	0%				
2012/13	24,626	0	0%	0	0%	6,649	27%	12,313	50%			5,664	23%	0	0%	0	0%				
2013/14	31,389	0	0%	0	0%	5,022	16%	12,869	41%	5,336	17%	8,161	26%	0	0%	0	0%	0	0%	0	0%
2014/15	25,816	0	0%	0	0%	3,614	14%	10,843	42%	6,970	27%	4,389	17%	0	0%	0	0%	0	0%	0	0%
2015/16	17,858	0	0%	0	0%	5,536	31%	7,322	41%	2,679	15%	2,322	13%	0	0%	0	0%	0	0%	0	0%
2016/17	17,646	0	0%	0	0%	3,176	18%	2,647	15%	9,176	52%	2,470	14%	0	0%	0	0%	0	0%	0	0%
2017/18	10,669	0	0%	0	0%	533	5%	640	6%	5,441	51%	3,948	37%	0	0%	0	0%	107	1%	0	0%
2018/19	4,903	0	0%	0	0%	294	6%	2,108	43%	1,569	32%	834	17%	98	2%	0	0%	0	0%	0	0%

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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

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**Table A13.4
Race Discrimination (RD) Outcome/Disposal Breakdown 1985/86 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8		9	%	10	%
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1985/86	649	60	9%			96	15%	245	38%			43	7%	175	27%	30	5%				
1986/87	672	40	6%			95	14%	256	38%			25	4%	206	31%	50	7%				
1987/88	709	61	9%			135	19%	263	37%			46	6%	173	24%	31	4%				
1988/89	839	54	6%			162	19%	316	38%			37	4%	229	27%	41	5%				
1989/90	939	61	7%			204	22%	350	37%			49	5%	219	23%	56	6%				
1990/91	926	47	5%			185	20%	371	40%			54	6%	202	22%	67	7%				
1991/92	1,032	48	5%			196	19%	460	45%			53	5%	235	23%	40	4%				
1992/93	1,070	69	6%			228	21%	451	42%			46	4%	218	20%	58	5%				
1993/94	1,304	151	12%			272	21%	461	35%			51	4%	323	25%	46	4%				
1994/95	1,365	72	5%			325	24%	507	37%			71	5%	312	23%	78	6%				
1995/96	1,737	109	6%			405	23%	656	38%			114	7%	375	22%	78	5%				
1996/97																					
Not available ^a																					
1997/98	2,194	119	5%			661	30%	727	33%			153	7%	425	19%	109	5%				
1998/99	2,694	131	5%			813	30%	871	32%			173	6%	594	22%	112	4%				
1999/00	2,499	170	7%			913	37%	809	32%			145	6%	372	15%	90	4%				

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Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	3,831	220	6%			1,180	31%	1,292	34%			247	6%	755	20%	137	4%				
2001/02	3,438	129	4%			1,223	36%	1,197	35%			189	6%	615	18%	85	3%				
2002/03	3,390	115	3%			1,287	38%	1,202	36%			176	5%	521	15%	89	3%				
2003/04	3,117	120	4%			1,200	39%	966	31%			190	6%	563	18%	78	3%				
2004/05	3,080	107	4%			1,215	39%	960	31%			195	6%	509	17%	94	3%				
2005/06	3,430	119	4%	10	0%	1,064	31%	1,437	42%			200	6%	471	14%	129	4%				
2006/07	3,117	102	3%	24	1%	1,173	38%	968	31%			224	7%	465	15%	161	5%				
2007/08	3,535	121	3%	15	0%	1,295	37%	1,113	32%			273	8%	517	15%	201	6%				
2008/09	3,970	129	3%	15	0%	1,493	38%	1,110	28%			293	7%	694	18%	236	6%				
2009/10	4,549	136	3%	45	1%	1,729	38%	1,365	30%			318	7%	682	15%	227	5%				
2010/11	4,853	146	3%	49	1%	1,747	36%	1,359	28%			485	10%	776	16%	243	5%				
2011/12	4,740	142	3%	47	1%	1,706	36%	1,422	30%			427	9%	806	17%	237	5%				
2012/13	4,887	147	3%	49	1%	1,662	34%	1,417	29%			586	12%	782	16%	293	6%				
2013/14	4,168	125	3%	0	0%	1,375	33%	1,084	26%	167	4%	375	9%	750	18%	208	5%	0	0%	0	0%
2014/15	2,166	87	4%	0	0%	671	31%	455	21%	152	7%	217	10%	455	21%	87	4%	0	0%	0	0%
2015/16	1,716	69	4%	0	0%	566	33%	360	21%	172	10%	137	8%	326	19%	69	4%	0	0%	0	0%
2016/17	1,656	50	3%	0	0%	596	36%	381	23%	199	12%	99	6%	265	16%	50	3%	0	0%	0	0%
2017/18	1,684	51	3%	0	0%	573	34%	303	18%	253	15%	135	8%	286	17%	34	2%	17	1%	17	1%
2018/19	2,346	70	3%	0	0%	727	31%	610	26%	258	11%	258	11%	305	13%	70	3%	23	1%	23	1%

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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

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**Table A13.5
Redundancy Pay (RP) Outcome/Disposal Breakdown 1985/86 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful								Unsuccessful											
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued					
		Outcome 1		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10					
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%				
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																									
1985/86	5,607	1,549	28%			0	0%	3,224	58%			130	2%	568	10%	136	2%								
1986/87	5,389	1,426	27%			0	0%	3,157	59%			105	2%	574	11%	127	2%								
1987/88	3,403	1,177	35%			0	0%	1,620	48%			57	2%	384	11%	165	5%								
1988/89	3,223	919	29%			0	0%	1,737	54%			66	2%	418	13%	83	3%								
1989/90	3,837	948	25%			0	0%	2,309	60%			102	3%	396	10%	82	2%								
1990/91	5,022	1,273	25%			0	0%	3,044	61%			95	2%	498	10%	112	2%								
1991/92	5,234	1,724	33%			0	0%	2,806	54%			145	3%	446	9%	113	2%								
1992/93	7,084	2,540	36%			0	0%	3,448	49%			225	3%	683	10%	188	3%								
1993/94	8,567	3,193	37%			0	0%	3,752	44%			318	4%	1,050	12%	264	3%								
1994/95	6,926	2,463	36%			0	0%	3,013	44%			268	4%	969	14%	213	3%								
1995/96	6,390	1,863	29%			0	0%	3,443	54%			215	3%	687	11%	182	3%								
1996/97										Not available ^a															
1997/98	4,955	1,637	33%			464	9%	1,863	38%			313	6%	560	11%	118	2%								
1998/99	3,960	1,540	39%			474	12%	1,376	35%			135	3%	370	9%	65	2%								
1999/00	4,854	1,640	34%			1,037	21%	1,528	32%			163	3%	394	8%	92	2%								

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Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	6,460	1,945	30%			1,517	24%	1,953	30%			327	5%	613	10%	105	2%				
2001/02	6,951	2,160	31%			1,640	24%	2,176	31%			339	5%	539	8%	97	1%				
2002/03	6,177	1,832	30%			1,434	23%	1,975	32%			397	6%	486	8%	53	1%				
2003/04	5,719	1,890	33%			1,245	22%	1,778	31%			292	5%	435	8%	79	1%				
2004/05	5,963	1,699	29%			1,501	25%	1,747	29%			552	9%	352	6%	112	2%				
2005/06	5,747	1,609	28%	646	11%	999	17%	1,691	29%			373	7%	350	6%	79	1%				
2006/07	6,643	2,069	31%	682	10%	1,110	17%	1,668	25%			601	9%	427	6%	86	1%				
2007/08	6,559	1,591	24%	803	12%	1,019	16%	1,710	26%			993	15%	330	5%	113	2%				
2008/09	7,388	2,143	29%	1,061	14%	1,369	19%	1,763	24%			565	8%	396	5%	91	1%				
2009/10	12,417	2,980	24%	2,608	21%	2,359	19%	2,732	22%			993	8%	745	6%	124	1%				
2010/11	14,066	3,235	23%	2,251	16%	2,532	18%	3,798	27%			1,407	10%	703	5%	141	1%				
2011/12	13,178	2,899	22%	2,108	16%	2,372	18%	2,767	21%			2,108	16%	659	5%	264	2%				
2012/13	12,023	2,525	21%	2,044	17%	2,405	20%	2,645	22%			1,443	12%	842	7%	240	2%				
2013/14	9,165	1,741	19%	1,283	14%	1,925	21%	1,833	20%	550	6%	1,100	12%	550	6%	183	2%	0	0%	0	0%
2014/15	4,638	974	21%	649	14%	928	20%	1,160	25%	186	4%	510	11%	186	4%	46	1%	0	0%	0	0%
2015/16	3,047	427	14%	609	20%	548	18%	488	16%	274	9%	548	18%	122	4%	30	1%	0	0%	0	0%
2016/17	2,343	305	13%	422	18%	539	23%	422	18%	234	10%	305	13%	94	4%	23	1%	0	0%	0	0%
2017/18	3,505	1,122	32%	315	9%	456	13%	491	14%	526	15%	421	12%	105	3%	35	1%	0	0%	35	1%
2018/19	3,412	682	20%	478	14%	580	17%	614	18%	375	11%	341	10%	205	6%	34	1%	0	0%	68	2%

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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

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**Table 13.6
Sex Discrimination (SD) Outcome/Disposal Breakdown 1976 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 1976 to Q1 1985 are from Employment Gazette SD Summaries																					
1976	243	24	10%			35	14%	89	37%					95	39%						
1977	229	17	7%			63	28%	89	39%					60	26%						
1978	171	14	8%			29	17%	75	44%					53	31%						
1979	180	16	9%			46	26%	73	41%					45	25%						
1980	181	15	8%			46	25%	65	36%					55	30%						
1981	259	19	7%			53	21%	114	44%					73	28%						
1982	150	24	16%			42	28%	52	35%					32	21%						
1983	265	62	23%			64	24%	85	32%					54	20%						
1984	314	52	17%			102	33%	94	30%					66	21%						
Q1 1985	28	5	18%			10	36%	9	32%					4	14%						
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1985/86	414	39	9%			124	30%	137	33%			3	1%	80	19%	31	8%				
1986/87	612	48	8%			167	27%	231	38%			13	2%	129	21%	24	4%				
1987/88	691	46	7%			200	29%	268	39%			15	2%	142	21%	20	3%				
1988/89	935	78	8%			366	39%	269	29%			50	5%	152	16%	20	2%				
1989/90	1,046	86	8%			384	37%	370	35%			12	1%	176	17%	18	2%				
1990/91	1,078	78	7%			335	31%	424	39%			21	2%	188	17%	32	3%				
1991/92	1,104	90	8%			378	34%	427	39%			31	3%	147	13%	31	3%				
1992/93	1,386	127	9%			504	36%	438	32%			75	5%	208	15%	34	3%				
1993/94	1,969	176	9%			824	42%	632	32%			52	3%	241	12%	44	2%				
1994/95	4,052	340	8%			1,005	25%	2,276	56%			81	2%	298	7%	52	1%				
1995/96	3,677	218	6%			1,464	40%	1,508	41%			131	4%	289	8%	67	2%				
1996/97																					
Not available ^a																					
1997/98	2,839	224	8%			1,005	35%	1,070	38%			88	3%	369	13%	83	3%				
1998/99	4,025	270	7%			1,791	45%	1,334	33%			103	3%	437	11%	90	2%				
1999/00	3,809	233	6%			1,504	40%	1,348	35%			91	2%	542	14%	91	2%				

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Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	5,857	417	7%			2,368	40%	2,003	34%			228	4%	733	13%	108	2%				
2001/02	13,268	368	3%			2,492	19%	3,309	25%			6,331	48%	620	5%	148	1%				
2002/03	9,249	363	4%			2,634	29%	4,238	46%			1,256	14%	672	7%	86	1%				
2003/04	10,254	306	3%			2,661	26%	4,480	44%			2,231	22%	514	5%	62	1%				
2004/05	16,211	299	2%			3,157	20%	9,355	58%			2,623	16%	647	4%	130	1%				
2005/06	24,217	4,068	17%	85	0%	3,031	13%	9,586	40%			6,669	28%	628	3%	150	1%				
2006/07	18,909	463	2%	41	0%	2,302	12%	8,998	48%			6,315	33%	587	3%	203	1%				
2007/08	16,184	469	3%	40	0%	3,100	19%	6,830	42%			4,908	30%	638	4%	199	1%				
2008/09	10,804	341	3%	44	0%	3,653	34%	4,577	42%			1,386	13%	597	6%	206	2%				
2009/10	17,537	351	2%	175	1%	3,507	20%	9,996	57%			2,631	15%	526	3%	175	1%				
2010/11	15,560	311	2%	156	1%	4,357	28%	7,624	49%			2,490	16%	622	4%	156	1%				
2011/12	14,735	295	2%	0	0%	4,421	30%	4,863	33%			4,273	29%	589	4%	147	1%				
2012/13	14,271	285	2%	0	0%	4,139	29%	5,708	40%			3,282	23%	571	4%	143	1%				
2013/14	13,537	271	2%	0	0%	3,114	23%	7,039	52%	948	7%	1,489	11%	541	4%	135	1%	135	1%	0	0%
2014/15	10,231	102	1%	0	0%	2,046	20%	6,139	60%	614	6%	1,023	10%	307	3%	102	1%	0	0%	0	0%
2015/16	8,855	89	1%	0	0%	2,391	27%	4,250	48%	797	9%	1,063	12%	266	3%	0	0%	0	0%	0	0%
2016/17	6,007	60	1%	0	0%	1,021	17%	1,982	33%	1,442	24%	1,261	21%	180	3%	0	0%	0	0%	0	0%
2017/18	6,890	69	1%	0	0%	896	13%	482	7%	2,412	35%	2,687	39%	207	3%	0	0%	69	1%	0	0%
2018/19	4,131	83	2%	41	1%	1,115	27%	1,033	25%	1,157	28%	330	8%	289	7%	41	1%	0	0%	41	1%

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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

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Table A13.7

Unauthorised Deductions (UaD) (Formerly Wages Act) Outcome/Disposal Breakdown 1987/88 to 2018/19

Year	Annual Total	Successful		'Likely' Successful						Unsuccessful											
		Successful at Hearing	Default Judgment	Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued			
		Outcome 1 ^c		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1985/86																					
1986/87																					
1987/88	522	59	11%			186	36%	217	42%			11	2%	36	7%	13	3%				
1988/89	3,244	214	7%			646	20%	2,131	66%			50	2%	113	4%	90	3%				
1989/90	4,878	690	14%			1,687	35%	1,746	36%			98	2%	324	7%	333	7%				
1990/91	6,238	1,107	18%			1,730	28%	2,344	38%			225	4%	483	8%	349	6%				
1991/92	6,518	1,405	22%			1,474	23%	2,488	38%			222	3%	757	12%	172	3%				
1992/93	7,510	1,669	22%			1,587	21%	3,003	40%			465	6%	566	8%	220	3%				
1993/94	11,281	2,082	19%			2,105	19%	5,554	49%			388	3%	721	6%	431	4%				
1994/95	10,119	2,096	21%			2,664	26%	3,950	39%			65	1%	1,128	11%	216	2%				
1995/96	14,391	2,543	18%			3,825	27%	6,118	43%			427	3%	1,222	9%	256	2%				
1996/97	Not available ^a																				
1997/98	14,890	2,486	17%			4,415	30%	5,816	39%			721	5%	1,124	8%	328	2%				
1998/99	13,869	2,479	18%			4,462	32%	5,345	39%			538	4%	886	6%	159	1%				
1999/00	17,953	2,842	16%			6,109	34%	6,817	38%			723	4%	1,217	7%	245	1%				

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Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	28,327	5,715	20%			9,880	35%	8,961	32%			1,182	4%	2,187	8%	402	1%				
2001/02	30,509	5,332	17%			10,405	34%	11,138	37%			1,204	4%	2,065	7%	365	1%				
2002/03	29,117	5,458	19%			10,734	37%	9,525	33%			1,389	5%	1,630	6%	381	1%				
2003/04 ^b	26,250	5,089	19%			9,971	38%	8,110	31%			1,158	4%	1,475	6%	447	2%				
2004/05	29,286	5,314	18%			12,078	41%	8,066	28%			1,622	6%	1,789	6%	417	1%				
2005/06	30,169	8,112	27%	1,793	6%	7,586	25%	9,094	30%			1,638	5%	1,584	5%	362	1%				
2006/07	23,624	4,606	20%	1,594	7%	6,615	28%	7,354	31%			1,330	6%	1,792	8%	333	1%				
2007/08	23,022	3,897	17%	1,763	8%	6,222	27%	7,353	32%			1,805	8%	1,493	7%	489	2%				
2008/09	24,945	4,581	18%	2,239	9%	7,515	30%	6,495	26%			1,298	5%	2,364	9%	453	2%				
2009/10	35,241	4,934	14%	3,877	11%	9,163	26%	10,925	31%			3,172	9%	1,762	5%	705	2%				
2010/11	38,247	5,355	14%	3,442	9%	10,327	27%	12,622	33%			3,442	9%	2,295	6%	765	2%				
2011/12	36,235	5,073	14%	3,261	9%	9,783	27%	9,421	26%			5,073	14%	2,174	6%	1,087	3%				
2012/13	36,323	4,722	13%	3,269	9%	9,807	27%	10,534	29%			4,722	13%	2,179	6%	1,090	3%				
2013/14	51,981	3,119	6%	1,559	3%	7,277	14%	33,268	64%	1,040	2%	2,599	5%	2,079	4%	1,040	2%	0	0%	0	0%
2014/15	28,512	1,426	5%	570	2%	3,707	13%	17,677	62%	1,426	5%	2,566	9%	855	3%	285	1%	0	0%	0	0%
2015/16	19,830	793	4%	595	3%	4,958	25%	4,561	23%	3,569	18%	3,768	19%	1,190	6%	198	1%	0	0%	0	0%
2016/17	13,862	832	6%	832	6%	3,881	28%	2,772	20%	2,911	21%	1,941	14%	554	4%	139	1%	0	0%	0	0%
2017/18	15,660	1,096	7%	940	6%	4,072	26%	1,409	9%	3,289	21%	3,915	25%	783	5%	157	1%	0	0%	157	1%
2018/19	17,766	1,777	10%	1,599	9%	4,264	24%	3,731	21%	3,020	17%	2,132	12%	711	4%	178	1%	0	0%	178	1%

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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

^a 1996/97 Annual Outcome/Disposal Statistics not available – See *Hansard*, 30 October 2003

^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

^c 2003/04 Wages Act Jurisdictional Complaint title changes to Unauthorised deduction of wages – See ET Service Annual Report and Accounts 2003/04, 2004, p.24, footnote 1

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

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**Table A13.8
Unfair Dismissal (UD) Outcome/Disposal Breakdown 1985/86 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful								Unsuccessful							
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^b		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1985/86	27,632	3,229	12%			9,487	34%	7,937	29%			488	2%	4,966	18%	1,525	6%				
1986/87	29,392	3,129	11%			10,459	36%	8,866	30%			780	3%	4,955	17%	1,203	4%				
1987/88	24,916	2,392	10%			11,763	47%	5,567	22%			259	1%	3,838	15%	1,097	4%				
1988/89	17,870	2,166	12%			6,935	39%	4,879	27%			270	2%	2,693	15%	927	5%				
1989/90	18,098	2,276	13%			7,269	40%	4,717	26%			248	1%	2,865	16%	723	4%				
1990/91	19,554	2,530	13%			7,329	38%	5,807	30%			352	2%	2,726	14%	810	4%				
1991/92	25,533	3,407	13%			9,321	37%	7,919	31%			418	2%	3,605	14%	863	3%				
1992/93	33,683	4,554	14%			12,287	37%	10,194	30%			791	2%	4,733	14%	1,124	3%				
1993/94	42,757	5,952	14%			15,249	36%	12,680	30%			1,308	3%	6,142	14%	1,416	3%				
1994/95	40,039	4,829	12%			15,485	39%	11,389	28%			872	2%	6,130	15%	1,334	3%				
1995/96	38,557	4,325	11%			14,682	38%	11,526	30%			968	3%	5,838	15%	1,218	3%				
1996/97																					
1997/98	35,183	3,350	10%			14,174	40%	9,316	27%			2,276	7%	4,745	14%	1,322	4%				
1998/99	32,632	3,246	10%			13,033	40%	8,415	26%			1,045	3%	6,079	19%	814	3%				
1999/00	36,197	3,168	9%			16,251	45%	10,013	28%			998	3%	3,931	11%	1,836	5%				

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Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	46,497	5,294	11%			18,311	39%	11,273	24%			5,348	12%	5,231	11%	1,040	2%				
2001/02	41,258	3,933	10%			18,915	46%	11,191	27%			2,009	5%	4,356	11%	854	2%				
2002/03	43,510	4,158	10%			19,816	46%	11,802	27%			2,436	6%	4,495	10%	803	2%				
2003/04	40,927	4,363	11%			17,973	44%	11,023	27%			2,297	6%	4,480	11%	791	2%				
2004/05	35,482	3,493	10%			16,631	47%	9,274	26%			2,033	6%	3,348	9%	703	2%				
2005/06	35,415	3,425	10%	657	2%	12,484	35%	12,228	35%			2,627	7%	3,098	9%	896	3%				
2006/07	38,376	3,870	10%	608	2%	13,540	35%	12,764	33%			3,049	8%	3,567	9%	978	3%				
2007/08	37,004	3,791	10%	579	2%	13,552	37%	11,870	32%			2,691	7%	3,341	9%	1,180	3%				
2008/09	39,427	3,935	10%	673	2%	16,579	42%	9,914	25%			2,942	8%	4,372	11%	1,012	3%				
2009/10	50,892	5,089	10%	1,527	3%	22,392	44%	12,214	24%			4,071	8%	4,580	9%	1,018	2%				
2010/11	49,649	3,972	8%	993	2%	20,356	41%	12,412	25%			5,461	11%	4,965	10%	1,489	3%				
2011/12	46,107	4,150	9%	1,383	3%	19,365	42%	11,527	25%			4,150	9%	4,611	10%	1,383	3%				
2012/13	43,956	3,516	8%	879	2%	19,341	44%	10,110	23%			3,956	9%	4,835	11%	1,319	3%				
2013/14	37,412	2,993	8%	748	2%	14,591	39%	8,605	23%	1,871	5%	3,367	9%	4,115	11%	1,122	3%	0	0%		
2014/15	18,387	2,023	11%	184	1%	6,619	36%	3,861	21%	1,287	7%	1,839	10%	2,206	12%	368	2%	0	0%		
2015/16	14,549	1,018	7%	145	1%	7,420	51%	2,037	14%	1,164	8%	873	6%	1,600	11%	291	2%	0	0%		
2016/17	11,417	799	7%	228	2%	4,224	37%	2,055	18%	1,484	13%	685	6%	1,370	12%	228	2%	0	0%		
2017/18	13,085	916	7%	131	1%	4,580	35%	1,832	14%	2,094	16%	1,309	10%	1,439	11%	393	3%	0	0%		
2018/19	15,987	1,119	7%	320	2%	5,276	33%	3,197	20%	2,238	14%	1,599	10%	1,599	10%	480	3%	0	0%		
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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals to 2018/19																					
^a 1996/97 Annual Outcome/Disposal Statistics not available – See <i>Hansard</i> , 30 October 2003																					
^b See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10																					
2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)																					
2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)																					

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**Table A13.9
Working Time Directive (WTD) Outcome/Disposal Breakdown 1999/00 to 2018/19**

Year	Annual Total	Successful				'Likely' Successful						Unsuccessful									
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn		Dismissed upon Withdrawal		Struck Out		Unsuccessful at Hearing		Dismissed at Preliminary Hearing		Dismissed Rule 27		Case Discontinued	
		Outcome 1 ^a		Outcome 2		Outcome 3		Outcome 4		Outcome 5		Outcome 6		Outcome 7		Outcome 8		Outcome 9		Outcome 10	
		1	%	2	%	3	%	4	%	5	%	6	%	7	%	8	%	9	%	10	%
Statistics 1985/86 to 1999/00 are based on TOTAL CLAIM Outcome/Disposals (TCOD)																					
1999/00	1,376	119	9%			473	34%	663	48%			31	2%	77	6%	13	1%				
Statistics 2000/01 to 2018/19 are based on JURISDICTIONAL Outcome/Disposals (JCOD)																					
2000/01	3,475	583	17%			1,261	36%	1,175	34%			133	4%	297	9%	26	1%				
2001/02	4,367	521	12%			1,655	38%	1,564	36%			162	4%	422	10%	43	1%				
2002/03	3,497	426	12%			1,468	42%	979	28%			201	6%	369	11%	54	2%				
2003/04	4,099	459	11%			1,942	47%	1,384	34%			95	2%	177	4%	42	1%				
2004/05	12,255	9,249	76%			1,693	14%	747	6%			344	3%	195	2%	27	0%				
2005/06	9,388	1,374	15%	722	8%	3,022	32%	2,989	32%			669	7%	481	5%	131	1%				
2006/07	33,607	2,983	9%	912	3%	3,740	11%	3,742	11%			21,156	63%	835	3%	239	1%				
2007/08	13,263	2,469	19%	1,021	8%	3,975	30%	3,851	29%			906	7%	774	6%	267	2%				
2008/09	14,376	2,862	20%	1,332	9%	4,612	32%	3,548	25%			789	6%	986	7%	247	2%				
2009/10	20,526	3,695	18%	2,874	14%	6,774	33%	4,516	22%			1,232	6%	1,232	6%	205	1%				
2010/11	24,122	4,342	18%	2,653	11%	6,995	29%	6,272	26%			1,930	8%	1,447	6%	482	2%				
2011/12	23,608	4,013	17%	2,597	11%	7,555	32%	5,430	23%			2,125	9%	1,416	6%	472	2%				
2012/13	24,719	3,955	16%	2,225	9%	8,652	35%	5,438	22%			2,225	9%	1,483	6%	494	2%				
2013/14	70,865	2,835	4%	1,417	2%	7,087	10%	54,566	77%	709	1%	2,126	3%	1,417	2%	709	1%	0	0%	0	0%
2014/15	264,340	2,643	1%	0	0%	2,643	1%	13,217	5%	0	0%	245,836	93%	0	0%	0	0%	0	0%	0	0%
2015/16	14,516	726	5%	581	4%	3,048	21%	2,323	16%	3,774	26%	3,629	25%	435	3%	145	1%	0	0%	0	0%
2016/17	12,278	737	6%	614	5%	3,561	29%	2,333	19%	3,561	29%	859	7%	491	4%	123	1%	0	0%	0	0%
2017/18	9,519	857	9%	571	6%	2,761	29%	1,237	13%	2,380	25%	1,142	12%	286	3%	95	1%	0	0%	95	1%
2018/19	13,586	1,223	9%	951	7%	3,125	23%	2,853	21%	2,445	18%	2,174	16%	543	4%	136	1%	0	0%	136	1%

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Sources: See Chapter 3, Table 3.4, Data Sources for Selective ET Jurisdictional Complaints Annual Outcome/Disposals 1972 to 2018/19

^a See Appendix 2, Section A2.4.1 for full terminological definition of Outcomes 1 to 10

2009/10 to 2011/12 ET Outcome/Disposals published data for these years is rounded by ET Service, so %age of Annual Total in MoJ Main Tables used (MoJ, 2019, Tab ET_3)

2012/13 to 2018/19 ET Outcome/Disposals published data is only given as a %age of Annual Total in MoJ Main Tables (MoJ, 2019, Tab ET_3)

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**Table A13.10
Survey of Employment Tribunal Applications (SETA) Outcome Breakdown 1998 to 2018**

SETA	Annual Total	Successful				'Likely' Successful						Unsuccessful ?		Unsuccessful			
		Successful at Hearing		Default Judgment		Acas Conciliated Settlements		Withdrawn ^a Outcome 4				Dismissed upon Withdrawal	Dismissed/Disposed ^b		Unsuccessful at Hearing		
		Outcome S1	Outcome S2	Outcome S3	Outcome S4a	Outcome S4b	Outcome S5	Outcome S8/S6	Outcome S7								
		S1	%	S2	%	S3	%	S4a	%	S4b	%	S5	%	S6&S8	%	S7	%
1998	2,578	337	13%			1,012	39%	375	15%	346	13%			213	8%	295	11%
2003	4,517	452	10%			2,033	45%	678	15%	723	16%			226	5%	407	9%
2008 ^c	4,027	483	12%			1,571	39%	765	19%	604	15%			322	8%	322	8%
2013	3,999	320	8%	240	6%	1,640	41%	520	13%	600	15%			360	9%	320	8%
2018	2,663	186	7%	133	5%	1,065	40%	479	18%	346	13%			186	7%	266	10%
Total	17,784	1,778	10%	373	2%	7,320	41%	2,817	16%	2,619	15%			1,307	7%	1,610	9%
√230222																	
Sources: 1998: Department of Trade and Industry, 2004c, Table 7.1, p.105 2003: Department of Trade and Industry, 2004a, Table 8.1, p.141 2008: Department for Business Innovation and Skills, 2010a, Table 9.1, p.218 2013: Department for Business Innovation and Skills, 2014a, Table 5.1, p.180 2018: Department for Business, Energy and Industrial Strategy, 2020, Table 5.1, p.242 ^a SETA Outcome 4a, Privately Settled and Outcome 4b, Withdrawn, when combined equate to ET Outcome 4, Withdrawn in Tables A13.1 to A13.9. See Appendix 2, Section A2.4.1 for full terminological definition of ET Outcomes 1 to 10 and Section A2.4.2 for matching of ET Outcomes 1 to 10 to SETA Outcome equivalents. ^b SETA Outcome Dismissed/Disposed is a consolidation of ET Outcome 6, Struck Out and ET Outcome 8, Dismissed at Preliminary Hearing. See Appendix 2, Section A2.4.1 for full terminological definition of ET Outcomes 1 to 10 and Section A2.4.2 for matching of ET Outcomes 1 to 10 to SETA Outcome equivalents. ^c In SETA 2008 Table 9.1, total sample shown as 4,027. As individual outcome percentages in SETA 2008 Table 9.1 sum to 101%, shown SETA outcome data sums to 4,067.																	
Table A13.10, Page 1																	

Appendix 14

**Leading Cases on Equal Pay, 1979 to 2013:
claimants, issues, results, liabilities and
associated literature references**

Appendix 14

Table A14.1

Leading Cases on Equal Pay, 1979 to 2013: claimants, issues, results, liabilities and associated literature references

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
1	<i>R. v Central Arbitration Committee, ex parte Hy Mac Ltd</i>	1979	1979	1			'Indirect Discrimination' arising from formally gender-neutral rules or practices but disproportionately benefited workers of one sex over the other held to be outside remit of collective arbitration provisions of 1970 Equal Pay Act (Deakin et al., 2015)			Divisional Court [1979] IRLR 461	Szyszczyk	1985	p.149
											Rowbottom	2007	p.550
											Deakin and Morris	2009	p.635
											Hayes	2014	p.40
											Deakin et al.	2015	p.384
Conley et al.	2018	?											
2	<i>UK v EU Commission</i>		1982				UK found in breach of Council Directive 75/117 requiring UK to incorporate 'equal pay for work of equal value' principle into UK law.			ECJ C-61/81	Szyszczyk	1985	p.139
											Hayes	2014	p.40
											Deakin et al.	2015	p.384
3	<i>Clarke v Eley (I.M.I) Kynoch Ltd</i>		1983		2	National Council for Civil Liberties	T&GWU negotiated redundancy agreement making Part-time workers redundant before Full time workers constituted indirect discrimination (Heery and Conley, 2007)			EAT [1983] ICR 165	Szyszczyk	1985	p.147
											Davies and Freedland	1993	p.384
											Heery and Conley	2007	p.9
											Deakin and Morris	2009	p.496
4	<i>Hayward v Cammell Laird Shipbuilders</i>	1984	1988	4	1	GMB and Equal Opportunities Commission (EOC)	Equal pay for work of equal value	First successful case following 1982 ECJ judgment		HoL [1988] ICR 464 ^a	Jefferson	1985	p.76
											Szyszczyk	1985	p.146
											Heery	1998	p.361
											Colling	2006	p.148
											Deakin and Morris	2009	p.631
											Hayes	2014	p.38
Guillaume	2015	p.373											

Table A14.1, Page 1

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
5	<i>Pickstone v Freemans plc</i>		1988				a 'token man' defence does not defeat a claim		HoL [1988] ICR 697 ^a	Davies and Freedland	1993	p.582	
										Deakin and Morris	2009	p.619	
										Hayes	2014	p.41	
6	<i>Barber v Guardian Royal Exchange Group</i>	1980	1990	10	1		ECJ ruled that Men and Women should have the same occupational pension entitlement ages		ECJ C-262/88	Davies and Freedland	1993	p.582	
										Deakin and Morris	2009	p.177	
7	<i>Enderby v Frenchay Health Authority & Another</i>		1993		1,200 Speech Therapists	MSF	ECJ found Pay discrepancy between Speech Therapists (Mostly Female) and Clinical Psychologists (Mostly Male) was not justified by separate collective bargaining structures (Conley et al., 2018)		ECJ C-127/92	Heery	1998	p.361	
										Colling	2006	p.147	
										Deakin and Morris	2009	p.544	
										Bach	2010	p.163	
										Colling	2010	p.340	
										Conley	2014	p.314	
										Hayes	2014	p.37	
										Deakin et al.	2015	p.384	
										Guillaume	2015	p.373	
Conley et al.	2018	?											
8	<i>Vroege v NCIV</i>		1994				Part-time Pension – contravened EU equal pay laws If exclusion affected more women than men ^b		ECJ C-57/93	Deakin and Morris	2009	p.178	
9	<i>Fisscher v Voorhuis Hengelo BV</i>		1994							ECJ C-128/93			
10	<i>Smith & Ors v Avdel Systems Ltd</i>		1994				Male and Female Pension Age Equalization		Elimination of inequality must be immediate and full (Rowbottom, 2007)	ECJ C-408/92	Rowbottom	2007	p.546
											Deakin and Morris	2009	p.525

Table A14.1, Page 2

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
11	<i>O'Sullivan</i>		?			USDAW	Overturned discriminatory pay structures in supermarket retail to the primary benefit of part-time checkout operatives (Heery and Conley, 2007)				Heery and Conley	2007	p.21
12	<i>Ratcliffe & others v North Yorkshire County Council</i>	1992	1995	3	1,300 School Dinner Workers	NUPE/Unison	TUPE/CCT	Market forces no defence.	£2m in back pay	HoL [1995] IRLR 439 ^a	Branney	1999	p.209
											Thornley	2006	p.353
											Deakin and Morris	2009	p.628
											Colling	2010	p.340
											McLaughlin	2014	p.9
13	<i>Smith v British Coal Corporation</i>		1996		1,200 Canteen Workers and Cleaners ^f	NUM	Terms and conditions must be 'substantially comparable' not identical ^a		HoL [1996] IRLR 404	Deakin and Morris	2009	p.614	
										Hayes	2014	p.42	
										Guillaume	2015	p.373	
14	<i>v Cleveland County Council</i>		1997		1,500 School Dinner Workers	GMB and Unison	TUPE/CCT		£4m for Equal Pay £1m for Sex Disc	Settled out of Court	Branney	1999	p.213
										McLaughlin	2014	p.9	
										Guillaume	2015	p.375	
15	<i>Magorrian & Cunningham v Eastern Health & Social Services Board & Department of Health & Social Services</i>		1997				Part-time Pension	Backdated period of (potential) pension loss to April 1976	ECJ C-246/96	Heery	1998	p.355	
										Deakin and Morris	2009	p.178	
										McLaughlin	2014	p.12	
										Deakin et al.	2015	p.385	

Table A14.1, Page 3

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
16	<i>Levez v T.H. Jennings</i>	1993	1998		1 Betting Shop Manager	EOC	2-year time limit for back pay	Time limit increased to 6 years (5 in Scotland)	Awarded £933.33 in dispute	ECJ C-326/96	Heery	1998	p.355
											Rowbottom	2007	p.546
											Deakin and Morris	2009	p.632
											Hayes	2014	p.42
17	<i>Preston & Others v Wolverhampton Healthcare Trust & Others</i>	1994	2006		60,000 plus claims		Part-time Pension	In 1996 EAT Judgment on 22 test cases ruled vast majority of cases out of time and limited compensation to two years – Finally overturned by ECJ following Magorrian (15) and Levez (16) Judgments	Access to employers pension scheme could be backdated to 8th April 1976 (This case generated substantial further litigation) ^a	ECJ C-78/98	Heery	1998	p.355
											Heery and Conley	2007	p.21
											Deakin and Morris	2009	p.178
											Conley	2014	p.314
											McLaughlin	2014	p.12
18	<i>Allonby v Accrington & Rossendale College</i>		2004			NATFHE	Union attempt to limit casualisation of Lecturing staff brought claim for UD and SD	UD claim successful SD claim failed in court but succeeded in achieving wider goal (Colling, 2006)		ECJ C-256/01	Colling	2006	p.151
											Deakin and Morris	2009	p.148
											Hayes	2014	p.36

Table A14.1, Page 4

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
19	<i>Redcar & Cleveland BC v Degnan</i>		2005			Stefan Cross Solicitors (NWNF*)	Landmark no-win, no-fee case. Paved way for 1,000s of women to claim equal pay in relation to bonus payments to which they had not been entitled (Hayes, 2014)			Court of Appeal [2005] EWCA Civ 726 ^c	Deakin and Morris	2009	p.629
											Hayes	2014	p.43
20	<i>Wilson v North Cumbria Acute NHS Trust</i>	1998	2005		1,600 cleaners	Unison/GMB	Scope of comparison	Judgment for claimants on Scope of comparison issue.	£300 million in back pay, some individual claims worth £200,000	Settled out of Court	Christie	2005	p.2
											Thornley	2006	p.354
											Rowbottom	2007	p.547
											Deakin et al.	2015	p.393
											Guillaume	2015	p.375
21	<i>Potter and Others v North Cumbria Acute Hospitals Trust</i>		2009		Further claim now involves 3,300 Claimants		The subject of the claims are the past relative pay rates of the claimants, nurses of various grades, compared with those of a selection of scientific, technical and craft employees (Rowbottom, 2007)		EAT [2009] 0385/08 ^c	Rowbottom	2007	p.547	
22	<i>Cadman v Health & Safety Executive</i>		2006			Prospect EOC ^{g1}	Union argued that seniority-based pay systems in the civil service had a disproportionate and adverse impact on women	ECJ ruled that length of service can be used to determine pay unless employee can provide evidence showing that this is inappropriate	ECJ C-17/05	Colling	2006	p.150	
										Deakin and Morris	2009	p.626	
										Hayes	2014	p.47	

Table A14.1, Page 5

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
23	<i>Allen and Others v GMB</i>	2005	2008	3	5 named claimants, others added later	Stefan Cross Solicitors (NWNF*)	ET ruled GMB Union approach to negotiation with Middlesborough MBC constituted indirect sex discrimination (McLaughlin, 2014). Union found to have concealed information from members and pressured them to settle claims. (Deakin et al., 2015)		Press reports compensation of £100 million, figures disputed by unions	Court of Appeal [2008] EWCA Civ 810 ^c	Deakin and Morris	2009	p.630
											Conley	2014	p.314
											Hayes	2014	p.44
											McLaughlin	2014	p.13
											Oliver et al.	2014	p.240
Deakin et al.	2015	p.391											
24	<i>Redcar & Cleveland Borough Council v Bainbridge and Others (Bainbridge 1), Middlesborough BC v Surtees</i>		2008		Small number of test cases, >2,000 affected workers;	Stefan Cross Solicitors (NWNF*) EOC ^{g2}	Pay Protection	No automatic justification for pay protection; employer must consider historical context	Press reports of legal costs of £292,000 in 2008-9 by Cleveland BC. Council's summary of accounts 2007-08 shows capitalisation of equal pay costs as £2.9 million	Court of Appeal [2008] EWCA Civ 885 ^a	Deakin and Morris	2009	p.629
											Hayes	2014	p.43
											Deakin et al.	2015	p.393

Table A14.1, Page 6

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
25	<i>Slack and Others v Cumbria County Council</i>		2009		3,000 claims;	Stefan Cross (NWNF*) representing 70% EHRC ^h	Time limits	Court gives broad reading to 'stable employment' test	Council offer to settle for £40 million, £21 million in claims settled by 2009. Council accounts in 2009-10 made provision for a further £4.677 million in back pay. In 2013 ongoing schools claims alone estimated to amount to £2.436 million	Court of Appeal [2009] EWCA Civ 293 ^c	Deakin and Morris	2009	p.634
											Deakin et al.	2015	p.393
26	<i>Hartley v Northumbria NHS Trust</i>		2009		10,500 claimants	Stefan Cross Solicitors (NWNF*)	Job Evaluation Scheme (JES) under Agenda for Change; pay protection	ET upholds JES and union negotiation strategy	NHS Trust reported to have spent £3.3 million on litigation	ET 2507033 2007 ^d	Deakin et al.	2015	p.393
27	<i>Nicholls & Others v Coventry City Council</i>		2009		643 Claims	500 represented by Unison	Material factor defence	EAT rejected union liability, stressed pay a matter for the employer	Press reports estimate compensation as £64 million	EAT [2009] 0388/08 ^c	Oliver et al.	2014	p.239
											Hayes	2014	p.51
											Deakin et al.	2015	p.393

Table A14.1, Page 7

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
28	<i>Bridges v Bury MBC (joined with Brennan v Sunderland at Court of Appeal level)</i>		2012		1,200 claimants		Bonus scheme; pay protection	Bonus scheme failed, pay protection upheld	Council criticised for spending £662,000 on external legal fees, threatens job cuts. Claims started in 2007, settled in 2012.		Deakin et al.	2015	p.394
29	<i>Barker and Others v Birmingham City Council</i>		2010		4,000 claimants	Stefan Cross Solicitors (NWNF*), Thompsons Solicitors	Bonus scheme; material factor defence	Bonus scheme failed due to lack of transparency, material factor defence failed	Liabilities of £1billion reported. In 2014 council contemplating asset sales to meet costs of claims.	EAT [2010] 0037-43, 0045-48, 0053-59 10/MW ^c	Deakin et al.	2015	p.394
30	<i>Abdulla & Others v Birmingham City Council</i>		2013			Leigh, Day & Co (NWNF*)		Claims can be brought in the county court 6 years after termination of employment		Supreme Court [2012] UKSC 47 ^e	Deakin et al.	2015	p.394
31	<i>South Lanarkshire Council v Russell & Others</i>		2012		2,400 claimants	Fox Cross Solicitors, Action 4 Equality Scotland (NWNF*)	Red Book, council opting out of national JES	Council failed to show justification for route involving opting out of national scheme	Press reports suggest overall liabilities of over £100 million	EAT [2010] 0067/09/BI ^c	Deakin et al.	2015	p.394

Table A14.1, Page 8

No	Case	Year Started	Year Concluded	Total Years	Claimants	Union/NGO/ Law Firm	Legal Issue	Result	Liabilities and Costs	Final Court and Case Reference	Literature References		
32	<i>Brennan & Others v Sunderland City Council</i>		2012		Around 1,200 claimants	Stefan Cross Solicitors (NWNF*)	Bonuses, JES, union role in negotiation collective agreement	Bonuses not clearly enough linked to productivity	Press reports estimate compensation of £30 million for claimants	Court of Appeal [2012] 2503297/06	Hayes	2014	p.44
											McLaughlin	2014	p.14
											Deakin et al.	2015	p.394
*NWNF = No-Win, No-Fee Lawyers													
Sources:													
^a Swarb.co.uk, 2020 ^b Courts and Tribunal Judiciary, 2013 ^c bailii.org, 2020 ^d Cloisters.com, 2020					^e Supreme Court, 2012 ^f Croner-i, 2020 ^g Equal Opportunities Commission, ^{g1} 2007, ^{g2} 2008 ^h Equality and Human Rights Commission, 2020			Information from literature reference highlighted. Court of the European Union, 2020 Deakin et al. 2015					
Table A14.1, Page 9													

Appendix 15

**GB Employment (thousands) 2017
by
Companies House SIC Code**

Appendix 15

Table A15.1

GB Employment (thousands) 2017 by Companies House SIC Code

Companies House SIC Sections		Full Time Employees			Part Time Employees			Total Employees				
		Public	Private	All	Public	Private	All	Public	Private		All	
		A	B	C	D	E	F	G	H	I	J	K
									%		%	
A	Agriculture, Forestry and Fishing	0.0	137.1	152.7	0.00	0.00	62.5	0.00	195.2	1.2%	215.3	0.7%
B	Mining and Quarrying	0.0	28.7	46.8	0.00	0.00	2.0	0.00	30.1	0.2%	48.8	0.2%
C	Manufacturing	0.3	759.5	2,193.1	0.0	71.6	207.5	0.3	831.0	5.3%	2,400.4	8.1%
D	Electricity, gas, steam and air conditioning supply	0.0	0.0	121.6	0.0	0.0	12.9	0.0	0.0	0.0%	134.4	0.5%
E	Water supply, sewerage, waste management and remediation activities	28.3	149.1	187.0	3.0	13.7	17.6	31.4	162.8	1.0%	204.6	0.7%
F	Construction	24.1	1,189.1	1,213.2	5.6	201.2	207.0	29.8	1,390.2	8.8%	1,420.2	4.8%
G	Wholesale and retail trade; repair of motor vehicles and motorcycles	5.0	2,579.3	2,584.2	1.8	1,863.1	1,865.0	6.8	4,442.4	28.1%	4,449.2	15.06%
H	Transportation and storage	85.9	1,084.2	1,170.2	10.4	216.0	226.3	96.3	1,299.9	8.2%	1,396.3	4.7%
I	Accommodation and food service activities	6.8	928.4	935.2	12.1	1,242.8	1,254.8	18.7	2,171.2	13.7%	2,190.0	7.4%
J	Information and communication	25.4	725.8	1,104.5	3.5	125.0	175.2	29.0	850.5	5.4%	1,279.6	4.3%
K	Financial and insurance activities	0.0	0.0	874.2	0.0	0.0	151.2	0.0	0.0	0.0%	1,025.4	3.5%
L	Real estate activities	16.1	347.5	363.6	3.5	118.7	122.2	19.6	466.2	3.0%	485.8	1.6%
M	Professional, scientific and technical activities	9.0	499.3	1,991.9	4.3	148.8	499.5	13.3	648.1	4.1%	2,491.2	8.4%
N	Administrative and support service activities	0.0	0.0	1,757.7	0.0	0.0	925.2	0.0	0.0	0.0%	2,682.7	9.1%
O	Public administration and defence; compulsory social security	941.3	6.4	947.7	305.8	2.9	308.7	1,247.1	9.3	0.1%	1,256.4	4.3%
P	Education	717.8	681.3	1,399.1	774.1	451.5	1,225.6	1,491.9	1,132.8	7.2%	2,624.7	8.9%
Q	Human health and social work activities	1,108.7	1,111.2	2,220.0	694.8	985.1	1,680.0	1,803.6	2,096.3	13.3%	3,900.0	13.2%
R	Arts, entertainment and recreation	1.4	48.0	334.5	2.2	29.3	416.9	3.6	77.2	0.5%	751.4	2.5%
S	Other service activities	0.0	0.0	347.3	0.0	0.0	239.4	0.0	0.0	0.0%	586.6	2.0%
T	Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0%	0.0	0.0%
U	Activities of extraterritorial organisations and bodies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0%	0.0	0.0%
Totals		2,970.1	10,274.9	19,944.5	1,821.1	5,529.2	9,599.5	4,791.4	15,803.2	100%	29,543.0	100.0%

Source:
Office for National Statistics, 2021, *Industry (2, 3 and 5 - digit SIC) - Business Register and Employment Survey (BRES): Table 2*
Data highlighted are the SIC codes where all public and private sector numbers are available and sum to their respective totals

Appendix 16

Results of Word Searches
For
'Tribunal', 'Multi', 'Burden', 'SETA' or 'Survey'

Appendix 16

Table A16.1
Results of Word Searches for ‘Tribunal’, ‘Multi’, ‘Burden’, ‘SETA’ or ‘Survey’ in Books

Author(s)	Year	Book Title	No of Chapters	Search Terms					
				Tribunal	Multi	Burden	‘SETA’	‘Survey’	
Dickens	1985	Dismissed	9	1190	-	1	-	6 ^a	
Towers and Brown, Eds	2000	Employment Relations in Britain: 25 Years of ACAS	8	249	1	2	-	1	
Shackleton	2002	Employment Tribunals ~ Their Growth and the Case for Radical Reform	8	372	-	2		8	
Dickens and Neal, Eds	2006	The Changing Face of British Industrial Relations	12	294	1	1	-	-	
Davies and Freedland	2007	Towards a Flexible Labour Market - Labour Legislation and Regulation since the 1990s	5	26	-	8	-	-	
Brown, Bryson, Forth and Whitfield, Eds	2009	The Evolution of the Modern Workplace	15	33	12	6	2	2	
Colling and Terry, Eds	2010	Industrial Relations Theory and Practice	18	23	3	8	-	-	
Blyton, Heery and Turnbull, Eds	2011	Reassessing the Employment Relationship	18	-	-	4	-	-	
Deakin and Morris	2012	Labour Law 6th Ed Ch 1 and 2	2	20	2	5	-	3	
Dickens, Ed	2012	Making Employment Rights Effective	11	155	7	19 ^b	3	3	
Renton	2012	Struck Out - Why ETs Fail Workers and What Can be Done	10	540	-	1	-	-	
Heery	2016	Framing Work ~ Unitary, Pluralist, and Critical Perspectives in the 21st C	9	2	-	1	-	-	
Williams and Scott, Eds	2016	Employment Relations under Coalition Government ~ The UK Experience 2010-15	13	96	-	28	-	-	
Summary									
<i>Total Number of Books</i>					<i>No of Books Using Terms</i>				
13					12	6	13	2	6
<i>Total Number of Chapters</i>					<i>No of Chapters Using Terms</i>				
138					75	10	31	2	14
					<i>Number of Times used in Total</i>				
					3,000	26	86	5	23
^a 6 IRRU Surveys									
^b 13 Employment Law Burdens on Business + 6 Health and Safety Burdens on Business									

Table A16.2

Results of Word Searches for ‘Tribunal’, ‘Multi’, ‘Burden’, ‘SETA’ or ‘Survey’ in Journal Articles or Book Chapters

Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Dickens	1978	Unfair dismissal applications and the industrial tribunal system	IRJ	Search Failure				
Williams	1983	Unfair Dismissal - Myths and Statistics	ILJ	42	-	-	-	-
Sloane and Jain	1990	Use of equal opportunities legislation and earnings differentials ~ a comparative study	IRJ	Search Failure				
Galanter	1992	Law Abounding - Legislation Around the North Atlantic	MLR	2	-	-	-	-
Purcell	1993	The End of Institutional Industrial Relations		Search Failure				
Dickens	1994	Comparative Systems of Unjust Dismissal - The British Case	The Annals of AAPS	18	-	4	-	-
Gilbert and Secker	1995	Generating Equality? Equal Pay, Decentralization and the Electricity Supply Industry	BJIR	27	1	-	-	-
Hyman	1997	The Future of Employee Representation	BJIR	-	-	-	-	-
Shavell	1997	The Fundamental Divergence between the Private and the Social Motive to Use the Legal System	LS	-	-	-	-	-
Streeck	1997	Beneficial Constraints ~ On the Economic Limits of Rational Voluntarism, (Ch 6 in Contemporary Capitalism ~ The Embeddedness of Institutions)	Hollingsworth and Boyer	-	-	-	-	-
Waddington and Whitson	1997	Why Do People Join Unions in a Period of Membership Decline?	BJIR	-	-	-	-	-
Colling and Dickens	1998	Selling the Case for Gender Equality - Deregulation and Equality Bargaining	BJIR	-	-	-	-	-
Dobbin and Sutton	1998	The Strength of a Weak State - The Rights Revolution and the Rise of Human Resources Management Divisions	AJS	-	-	-	-	-
Heery	1998	Campaigning for Part-Time Workers	WES	Search Failure				

Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Branney, Howes and Hegewisch	1999	Union Strategies in Pursuit of Pay Equity ~ the Role of UNISON (Ch 14 in Women, Work and Inequality ~ The Challenge of Equal Pay in a Deregulated Labour Market)	Eds: Gregory, Sales and Hege-wisch	3	-	-	-	-
Dickens	1999	Beyond the business case - a three pronged approach to equality action	HRMJ	1	-	1	-	-
MacMillan	1999	Employment Tribunals - Philosophies and Practicalities	ILJ	119	-	-	-	-
Brown et al.	2000	The Employment Contract - From Collective Procedures to Individual Rights	WP171	4	-	-	-	-
Davies and Freedland	2000	Labour Markets, Welfare and the Personal Scope of Employment Law	OREP	2	-	-	-	-
Dickens	2000	Chapter 3, Doing More with Less - ACAS and individual conciliation	Towers and Brown	114	1	1	-	1
Hepple	2001	Equality and Empowerment for decent work	ILR	-	-	-	-	-
Ackers	2002	Reframing employment relations: the case for neo-pluralism	IRJ	-	-	-	-	-
Dickens	2002	Individual statutory employment rights since 1997 constrained expansion	ER	55	-	6	-	-
Heery	2002	Partnership vs organising - alternative futures for British Trade Unionism	IRJ	1	-	-	-	-
Hepple and Morris	2002	The Employment Act 2002 and the Crisis of Individual Employment Rights	ILJ	55	-	1	7	5
Parker	2002	Women's Groups in British Unions	BJIR	-	-	-	-	-
Dickens and Hall	2003	Labour Law and Industrial Relations - A New Settlement? (Ch 6 in Industrial Relations - Theory and Practice, 2nd Ed)	Ed: Paul Edwards	23	-	7	-	-
Colling	2004	No Claim, No Pain? The Privatization of Dispute Resolution in Britain	EID	105	-	-	1	1
Dickens	2004	Problems of Fit - Changing Employment and Labour Regulation	BJIR	-	-	1	-	-
Howell	2004	Is There a Third Way for Industrial Relations?	BJIR	10	-	2	-	-

Table A16.2, Page 2

Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Wilthagen and Tros	2004	The concept of 'flexicurity' - a new approach to regulating employment and labour markets	TERLR	-	-	2	-	-
Bryson	2005	Union effects on employee relations in Britain	HR	Search Failure				
Christie and Barber	2005	Win or No-Win - Union Legal Services Are No-Fee	Labour Research	4	-	-	-	-
Ewing	2005	The Function of Trade Unions	ILJ	2	-	-	-	-
Pollert	2005	The Unorganised Worker - The Decline in Collectivism and New Hurdles to Individual Employment Rights	ILJ	76	1	1	4	6
Colling	2006	What Spaces for Unions on the Floor of Rights? Trade Unions and the enforcement of Statutory Individual Employment Rights	ILJ	62	-	-	-	2
Dickens	2006	Equality and Work-Life Balance - What's Happening at the Workplace	ILJ	-	-	-	-	-
Dickens and Hall	2006	Fairness-up to a point. Assessing the impact of New Labour's employment legislation	HRMJ	4	-	3	-	-
Heery	2006	Equality Bargaining - Where, Who, Why?	GW&O	-	-	-	-	-
Thornley	2006	Unequal and low pay in the public sector	ILJ	1	1	-	-	-
Dickens	2007	The Road is Long- Thirty Years of Equality Legislation in Britain	BJIR	30	1	5	-	-
Heery and Conley	2007	Frame Extension in a Mature Social Movement - British Trade Unions and Part-time work, 1967-2002	JIR	3	-	1	-	-
Latreille et al.	2007	Employment Tribunals and Acas evidence from a survey of representatives	ILJ	48	-	-	7	28
Mulheron	2007	Justice Enhanced ~ Framing an Opt-out Class Action for England	MLR	1	- ^a	-	-	-
Pollert	2007	Britain and Individual Employment Rights ' Paper Tigers, Fierce in Appearance but Missing in Tooth and Claw	EID	63	1	-	3	2
Rowbottom	2007	Rediscovering the collective application of the Equal Pay Act	EOI	16	2	-	-	-

Table A16.2, Page 3

Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Weil and Mallo	2007	Regulating Labour Standards via Supply Chains - Combining Public/Private Interventions to Improve Workplace Compliance	BJIR	-	-	-	-	-
Willman and Bryson	2007	Union Organization in Great Britain	CEP	-	-	-	-	-
Dickens	2008	Legal regulation, institutions and industrial relations	WP89	27	1	3	-	-
Dix et al.	2008	Conflict at Work - The pattern of disputes in Britain since 1980	NIESR	34	9	-	2	2
Gall and Hebdon	2008	Conflict at Work	Blyton et al.	-	-	-	-	-
Jaffe, McKenna and Venner	2008	Equal Pay, Privatisation and Procurement	IER	18	2	-	-	-
Kessler and Dickens	2008	Dispute Resolution and the Modernisation of the Public Services in Britain - The Case of the Local Government Pay Commission	JIR	-	-	-	-	-
McKenna	2008	The Union perspective on equal pay	EOR	8	2	-	-	-
Moorhead and Cumming	2008	Damage-Based Contingency Fees in Employment Cases	Cardiff Law School	155	9	-	17	3
Colling	2009	Court in a trap? Legal Mobilisation by Trade Unions in the UK	WP91	19	-	-	-	-
Hand	2010	The Compensation Culture - Cliche or Cause for Concern?	JLS	30	1	-	-	-
Heery	2010	Debating Employment Law - Responses to Juridification, (Chapter 4 in Reassessing the Employment Relationship Blyton et al.)	Blyton et al.	6	-	2	-	1
Moorhead	2010	An American Future? Contingency Fees, Claims Explosions and Evidence from Employment Tribunals	MLR	69	3	-	12	9
Pollert	2010	The Lived Experience of Isolation for Vulnerable Workers Facing Workplace Grievances in 21st-Century Britain	EID	17	-	-	-	-
Collins	2011	Theories of Rights as Justifications for Labour Law (Ch 9 in The Idea of Labour Law)	Eds: Davidov and Langille	-	2	-	-	-

Table A16.2, Page 4

Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Fredman	2011	The Public Sector Equality Duty	ILJ	5	-	-	-	-
Hepple	2011	Enforcing Equality Law ~ Two Steps Forward and Two Steps Backwards for Reflexive Regulation	ILJ	4	1	-	-	-
Howell and Givan	2011	Rethinking Institutions and Institutional Change in European IR	BJIR	9	-	-	-	-
Simms	2011	Imagined solidarities- Where is class in union organising?	C&C	-	-	-	-	-
Bacon and Hoque	2012	The Role and Impact of Trade Union Equality Representatives in Britain	BJIR	-	-	-	-	-
Burgess, Corby and Latreille	2012	Varieties of Tribunals - Employment disputes resolution, legal origins and national business systems	ESRC?	7	-	-	-	-
Buscha et al.	2012	Representation in Employment Tribunals - analysis of the 2003 and 2008 SETA Ref 05/12	ACAS	67	3	-	42	20
Corby and Latreille	2012	ETs and Civil Courts - Isomorphism Exemplified	ILJ	98	-	1	2	3
Ewing and Hendy	2012	Unfair Dismissal Law Changes – Unfair?	ILJ	25	-	3	-	-
Macey	2012	Book Review of Struck Out-Why ETs Fail Workers and What Can Be Done, Renton	ILJ	20	-	-	-	-
Grady	2013	Trade Unions and the pension crisis ~ defending member interests in a neoliberal world	ER	-	-	-	-	-
Mangan	2013	Employment Tribunal Reforms to Boost the Economy	ILJ	53	-	1	-	-
Conley	2014	Trade Unions, equal pay and the law in the UK	EID	5	-	-	-	-
Hauptmeier and Heery	2014	Ideas at work	IJHRM	-	-	-	-	-
Hayes	2014	'Women's Voice' and Equal Pay (Ch2 in Voices at Work ~ Continuity and Change in the Common Law World)	Bogg and Novitz	8	-	-	-	-
Hayes and Novitz	2014	Trade Unions and economic inequality	IER	7	-	-	-	-
Hyman	2014	What do Unions do? and how do they do it?	LH	-	-	-	-	-

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Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Maconachie and Goodwin	2014	Making Employment Rights Effective ~ Issues of Enforcement and Compliance, L Dickens Ed, Book Review	JIR	1	-	-	-	-
McLaughlin	2014	Equal Pay, Litigation and Reflexive Regulation-The Case of the UK LA Sector	ILJ	12	-	-	-	-
Oliver, Stewart and Tomlinson	2014	Equal pay bargaining in the UK local government sector	JIR	8	5	-	-	-
Saundry and Dix	2014	Conflict Resolution in the UK, (Ch22 The Oxford Handbook of Conflict Management in Organisations, (Print copy))	Roche, Teague and Colvin	41	1	1	2	2
Chamberlain	2015	Bending over Backwards - Flexibility, Freedom and Domination in Contemporary Work	Constellations	-	-	-	-	-
Corby	2015	British employment tribunals from the side lines to centre stage	LH	202	-	-	-	3
Deakin, Fraser Butlin, McLaughlin and Polanska	2015	Are litigation and collective bargaining complements or substitutes for achieving gender equality? A study of the British Equal Pay Act	GJR	44	-	-	-	-
Dukes	2015	Wedderburn and the Theory of Labour Law - Building on Kahn-Freund	ILJ	-	-	-	-	-
Emmott	2015	Employment relations over the last 50 years ~ confrontation, consensus or neglect?	ER	3	-	-	-	-
Guillaume	2015	Understanding the variations of unions' litigation strategies to promote equal pay: reflection on the British case	CJE	24	5	-	-	-
Lyddon	2015	The changing pattern of UK strikes, 1964-2014	ER	-	-	-	-	-
Noack, Vosko and Grundy	2015	Measuring Employment Standards Violations, Evasion and Erosion - Using a Telephone Survey,	RI	-	-	-	-	-
O'Sullivan et al.	2015	Is Individual Employment Law Displacing the Role of Trade Unions?	ILJ	9	1	-	-	-
Williams, Abbott and Heery	2015	Civil Governance in Work and Employment Relations ~ How Civil Society Organizations Contribute to Systems of Labour Governance	JBE	-	-	1	-	-

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Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Hann, Nash and Heery	2016	Workplace conflict resolution in Wales The unexpected prevalence of alternative dispute resolution	EID	21	-	-	-	-
Heery	2016	British industrial relations pluralism in the era of neoliberalism	JIR	3	-	1	-	-
Adams and Prassl	2017	Vexatious Claims - Challenging the Case for ET Fees	MLR	163	4	-	12	6
Adams and Prassl	2017	Vexatious Claims - Access to Justice, Judicial Scrutiny and the Economics of the Rule of Law	MLR	13	-	-	-	-
Bryson et al.	2017	The Twin Track Model of Employee Voice: An Anglo-American Perspective on Union Decline and the Rise of Alternative Forms of Voice	ILE	13	1	-	-	-
Gumbrell-McCormick and Hyman	2017	What about the workers? The implications of Brexit for British and European labour	C&C	1	-	1	-	-
Kirk and Busby	2017	Led up the Tribunal Path - Employment Disputes, Legal Consciousness and Trust in the Protection of the Law	OSS	49	-	-	-	-
Mulheron	2017	The United Kingdom's New Opt-Out Class Action	OJLS	1	-	-	-	-
Simms	2017	Unions and Job Quality in the UK - Extending Interest Representation Within Regulation Institutions	W&O	-	-	-	-	-
Vosko et al.	2017	The Compliance model of employment standards enforcement an evidence-based assessment of its efficacy in instances of wage theft	IRJ	1	-	-	-	-
Bruff and Starnes	2018	Framing the neoliberal canon - resisting the market myth via literary enquiry	Globalizations	-	-	-	-	-
Conley and Page	2018	The Good, the Not So Good and the Ugly - Gender Equality, Equal Pay and Austerity in English Local Government	WES	4	-	-	-	-
Corby, William and Richard	2018	Combatting disability discrimination - A comparison of France and Great Britain	EJIR	15	-	-	-	-

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Author(s)	Year	Article Title	Journal	Search Terms				
				Tribunal	Multi	Burden	SETA	Survey
Heery	2018	Fusion or replacement? Labour and the 'new' social movements	EID	-	-	-	-	-
Kirk	2018	The 'Problem' with the Employment Tribunal System - Reform, Rhetoric, and Realities for the Clients of CABs	WES	41	1	3	-	-
Manfredi, Vickers and Clayton-Hathaway	2018	The Public Sector Equality Duty ~ Enforcing Equality Rights Through Second Generation Regulation	ILJ	2	-	-	-	-
Rubery and Hebson	2018	Applying a gender lens to employment relations - Revitalisation, resistance and risks	JIR	-	-	-	-	-
Summary								
		<i>No of Journal Articles or Individual Chapters</i>	<i>Search Failures</i>	<i>No of Articles/Chapters Using Terms</i>				
		109	5	72	24	23	12	16
				<i>No of Times used in Total</i>				
				2253	59	52	111	94
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