

Jersey Employment and Discrimination Tribunal



Annual Report 2021

**This is the seventeenth Annual Report of the Employment and
Discrimination Tribunal and covers the period 1 January 2021 to 31 December 2021**

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Overview

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

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

- the Planning Tribunal;
- the Health and Safety Tribunal;
- the Social Security Tribunal, which is made up of three tribunals, dealing with medical appeals, social security appeals and income support medical appeals;
- the Mental Health Review Tribunal; and
- the Charity Tribunal.

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

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

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

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

Membership of the Employment and Discrimination Tribunal

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

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

Work Related Claims (employment and discrimination)

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

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

Non-Work Related Claims

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

Appointments

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

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

Remuneration of Members

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

Chairman – £736.00

Deputy Chairman – £552.00

Lay Members – £97.00

The members of the EDT in 2021 were:

Chair

Dr Elena Moran (Advocate)

Deputy Chairs

Advocate Ian Jones

Mr Michael Salter (Barrister)

Mrs Hannah Westmacott (Solicitor)

Advocate Fraser Robertson

Advocate Cyril Whelan

Panel members appointed to hear work-related claims

**Members with experience as representatives
of employers**

Marilyn Wetherall

Sue Cuming

Emma Harper

Simon Nash

Michael De La Haye

Roisin Pitman

Scott Hollywood

Claire Bowes

**Members with experience as representatives
of employees**

John Noel

Simon Cross

Clive Holloway

Zannah Le Moignan

Anne Southern

Jennifer Bridge

Patrycja Zakrzewska

Sue Pallot

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

Elizabeth Adams

Thomas Gales

Janet Brotherton

Mandlenkosi Mlambo

Melanie Cavey

Tamburi Muoni

Daria Sawicka

Chair's Foreword

2021 was a relatively quiet year for the EDT. The total number of cases submitted to the Tribunal fell to 144 compared to 211 in the previous year. The reason for the reduction is not known but the level of cases is not significantly below the 2018 figure of 197.

Cases often involve more than one issue. The most common issue raised in 2021 was unfair dismissal with 75 people alleging that their employment was terminated unfairly or that they were unfairly forced to resign as a result of the employer's conduct.

Other common issues were unpaid wages (45 claimants raised this issue), entitlement to annual leave or bank holiday pay (raised by 37 claimants) and notice pay (raised by 41 claimants). The Chairs have noticed that the law relating to bank holiday pay is an issue that continues to be problematic for employers and employees alike.

Employers failing to provide written terms of employment within 28 days of employment and/or failing to provide payslips at the right time continue to give rise to a significant number of claims. A failure to provide a written statement was raised by 28 claimants and breaches of the law on payslips was raised by 34 claimants. The Tribunal can award compensation of up to four weeks' pay for breaches of these rights. To assist parties with conciliating their claims and to ensure consistency in awards the EDT has published guidance on the factors to be considered when assessing such awards.

Conciliation and mediation continue to be key mechanisms for resolving complaints. Before the first hearing all employment related complaints are referred to the Jersey Advisory & Conciliation Service (JACS). Non-work discrimination claims are referred to Citizen's Advice Jersey (CAJ) for mediation. During 2021, 36 cases settled after being referred to JACS and CAJ, prior to the first hearing.

A high volume of cases are withdrawn. 41 cases were withdrawn during 2021 including 12 discrimination cases. Claimants withdrawing cases are not obliged to provide their reasons to the EDT. Anecdotal evidence suggest that some cases are withdrawn because the claimant chooses not to pursue the case. In other cases, withdrawal forms part of a settlement with the Respondent.

During 2021 the EDT focused on the overriding objective of dealing with cases fairly and justly including dealing with cases expeditiously and avoiding unnecessary expense. To this end the EDT remained flexible about allowing parties to participate in hearings via telephone or video link.

The EDT also worked to reduce the number of hearings associated with each case. Most cases involved a single short case management hearing with 96 such hearings taking place during 2021. In 19 cases the EDT sat to determine a preliminary issue such as whether the claim was submitted in time, or whether the Claimant was an employee or self-employed.

There were 35 final hearings in 2021 with cases lasting between half a day and 4 days. The time frame for a final hearing is generally very good with 94% of final hearings taking place less than a year after a claim is lodged. In 57% of cases the final hearing took place less than 6 months after the claim was lodged. Where cases take a long time to resolve it is often because the Claimant is unwell, or the Respondent is insolvent and the proceedings are stayed while the liquidation process is ongoing.

The EDT Chairs recognise the strain on both parties of preparing for and attending a final hearing and the need for closure once a hearing has finished. A focus for the Chairs in 2021 has been reducing the time taken to issue final judgments. The vast majority of final judgments were issued within 2 weeks of the final hearing taking place. Save in 1 case all final judgments were sent to the parties within 6 weeks of the final hearing.

The 2021 statistics show that that the issues most likely to succeed at a final hearing were unpaid wages, holiday pay, no written terms, and no payslips. Conversely, allegations of unfair dismissal, failure to pay notice pay and discrimination were unlikely to succeed at a final hearing. For example, none of the 9 allegations of discrimination that went to a final hearing during 2021 were successful. This does not mean that Claimants bringing these types of claims are unlikely to obtain any form of redress as many cases settle during the Tribunal process resulting in agreed compensation being paid to a claimant.

The successful operation of the EDT is due in large part to the hard work of the Deputy Chairs and the Registrars. The Registrars are available to support parties through the process, which they do with unflinching professionalism. The Deputy Chairs work behind the scenes to ensure the Tribunal operates smoothly and judgments are delivered quickly. I would like to take this opportunity to thank the Registrars and Deputy Chairs for their commitment and support to the EDT.

Dr Elena Moran, Chairman



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Employment and Discrimination

Tribunal Process

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

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

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

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

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

Where a case does not settle at mediation it is listed for a short **Case Management Hearing** before a Chair to give Orders for the progress of the case.

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

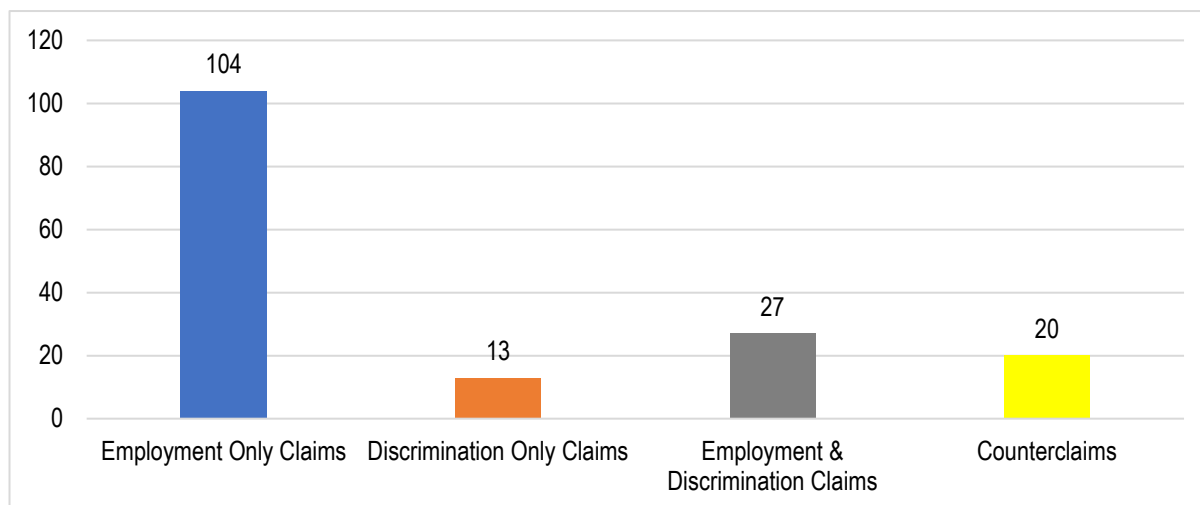
A **Final Hearing** is presided over by a single chair, or a panel of three in cases of constructive dismissal or discrimination.

Normally remedies are determined at the Final Hearing but where this is not possible a separate Remedies Hearing may be arranged.

The Chairs aim to issue the written **Judgment** to the parties within six weeks of the Final Hearing.

Claims Submitted in 2021

Number of claims received by the Employment and Discrimination EDT:



In 2021 a total of 144 Claimants submitted Claim Forms to the EDT.

20 counterclaims were submitted by employers on the Response Form.

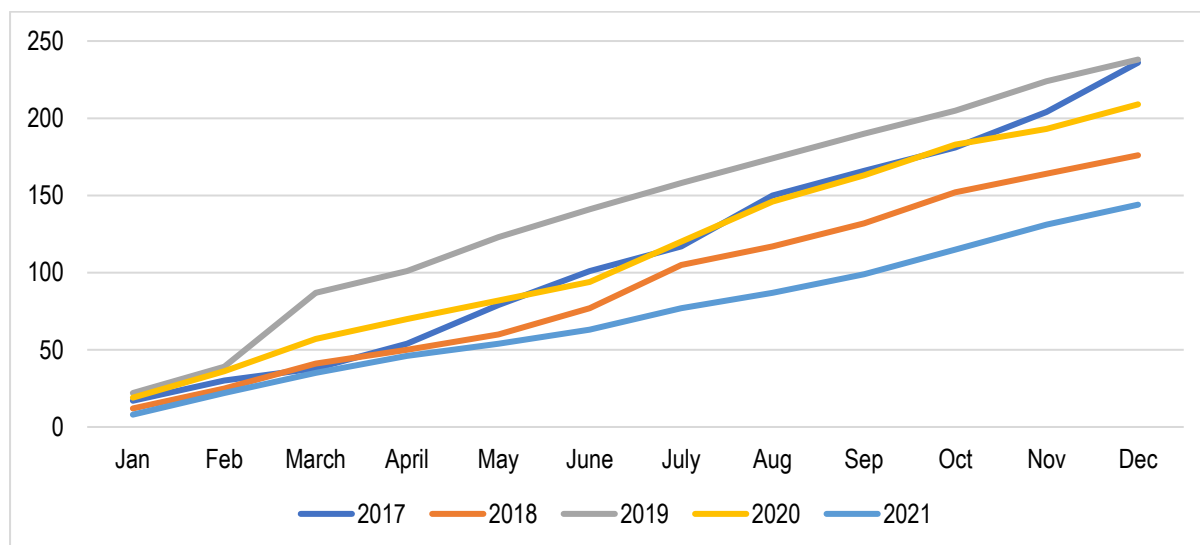
Of the 144 claims, 104 related to issues arising under the Employment (Jersey) Law 2003, and one was initiated by an employer for breach of an employment contract.

13 of the 144 claims related solely to issues arising under the Discrimination (Jersey) Law 2013.

27 of the 144 claims contained issues arising under both the Employment Law and Discrimination Law.

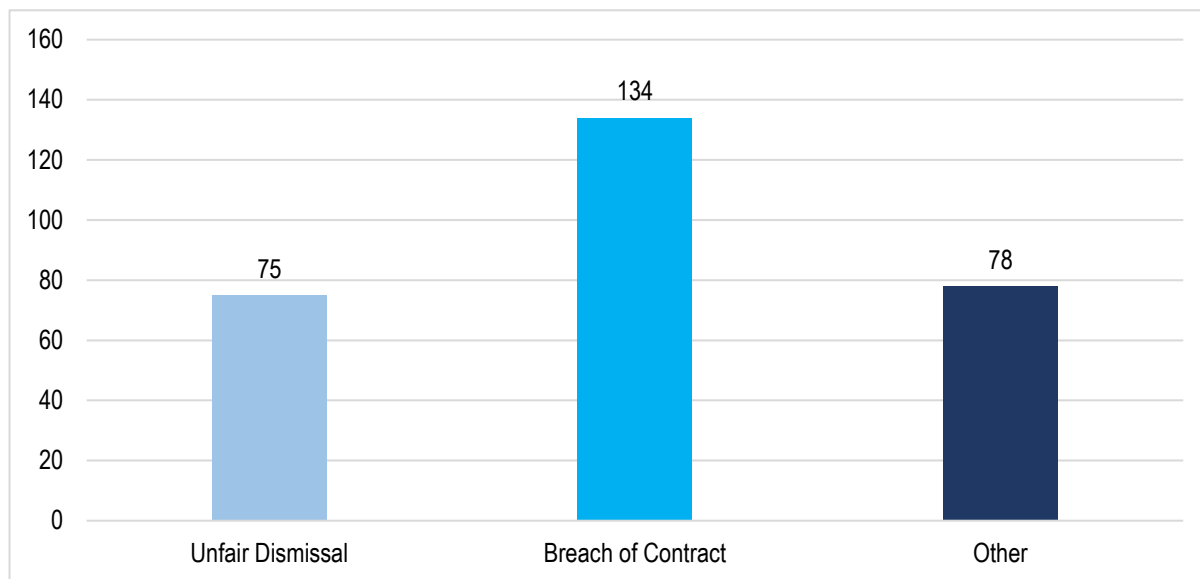
Claims over the years:

The overall number of Claim Forms submitted to the EDT decreased in 2021.

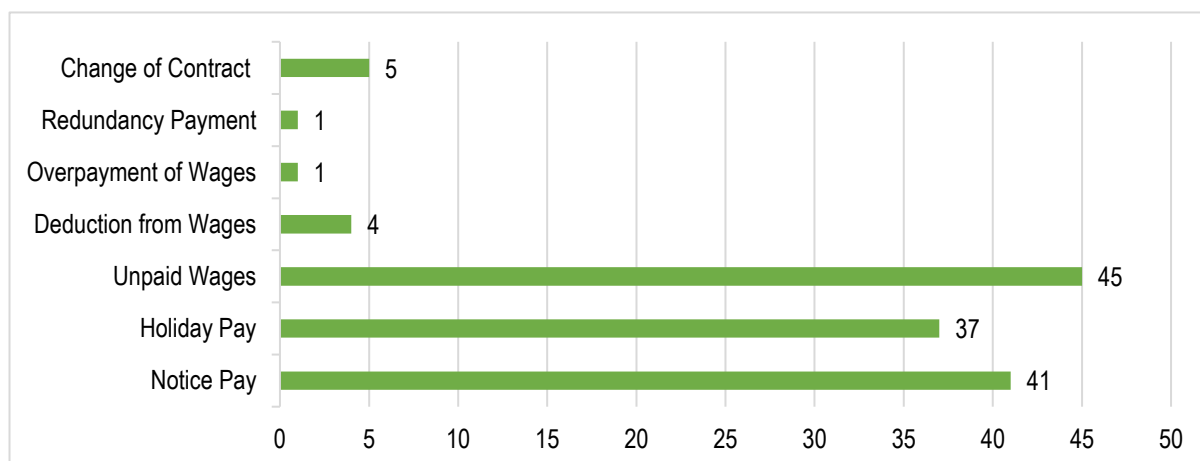


Employment Law Claims

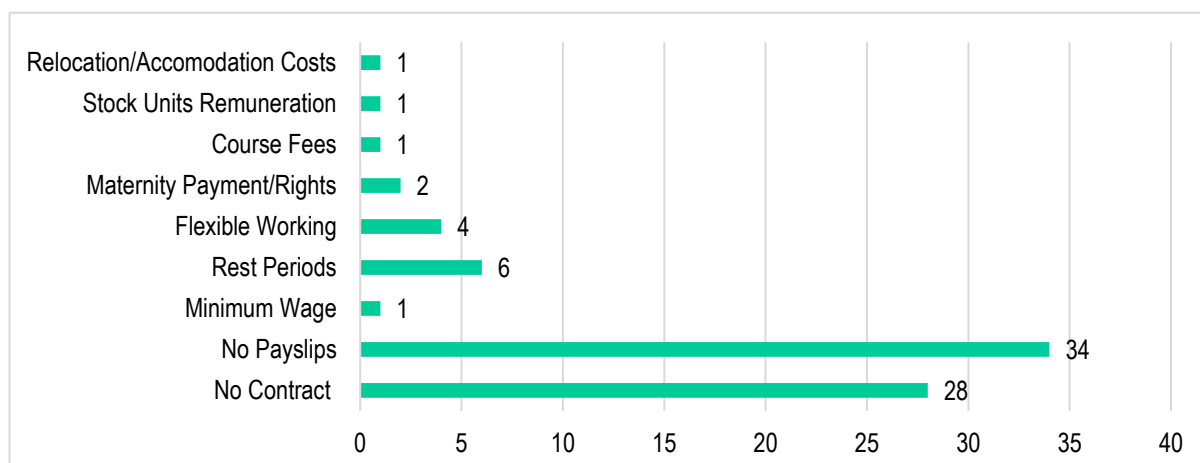
Employment claims often comprise of several different issues at Claim Form submission stage.



Breach of Contract Issues

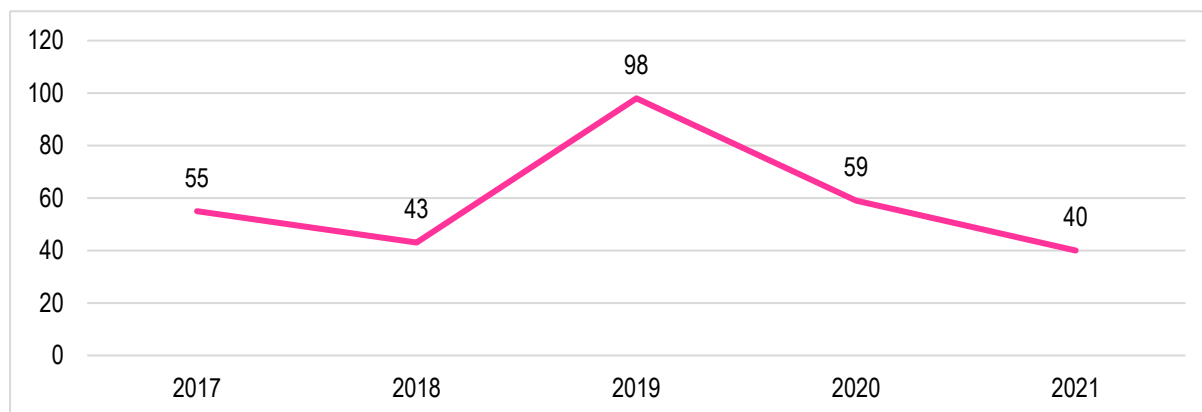


Other Issues



Discrimination Law Claims

There were 40 Discrimination Law claims submitted in 2021.



Work related versus non-work related discrimination claims:

The EDT received 34 work related and 6 non-work related discrimination claims.

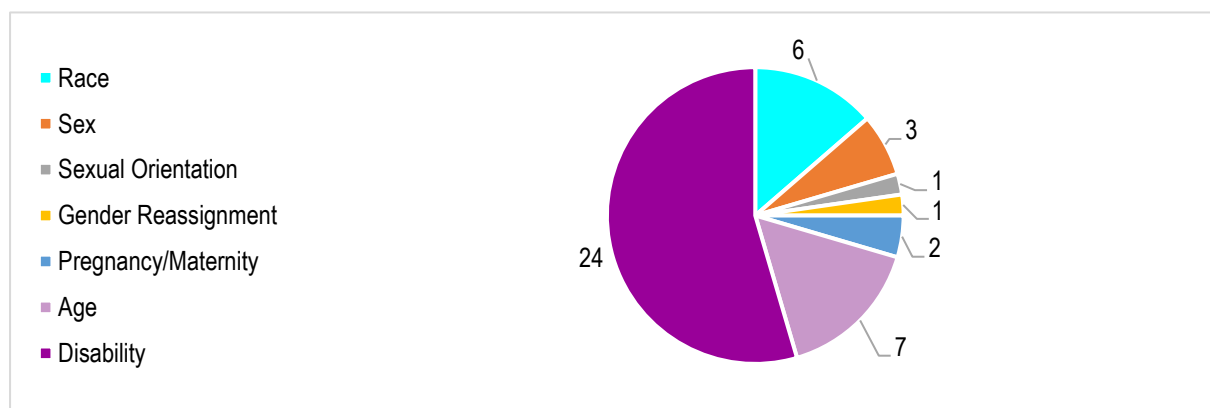
The non-work related claims related to education, the provision of goods, facilities and services and use and management of premises.

Claims by protected characteristics:

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

Sex (and related characteristics) made up 15%, age 16% and race the remaining 14%.

In some cases, Claimants claimed discrimination on the grounds of two different protected characteristics.



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

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

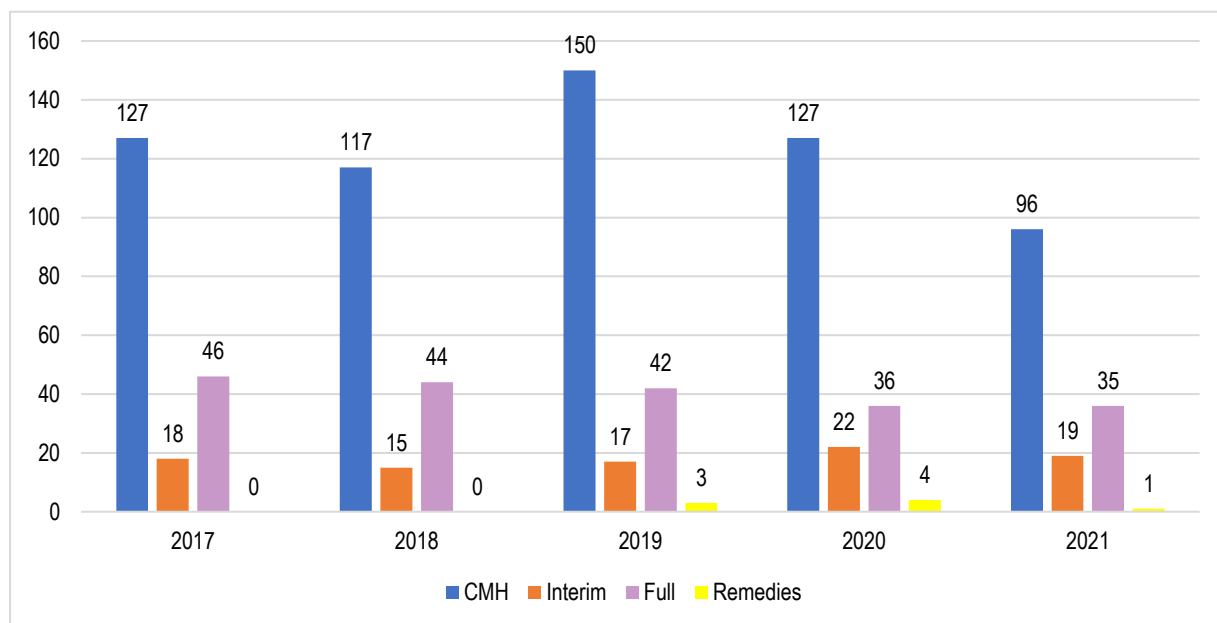
Age – includes a person who is of a particular age group or to a range of ages. Applies to all age groups.

Disability – includes long term physical, mental, intellectual or sensory impairments which can adversely affect ability to engage or participate in activities protected under the Discrimination Law.

Administration of Claims

The EDT conducted 152 hearings during 2021. Many of the hearings were conducted by Starleaf video conferencing to accommodate parties during the Covid-19 Pandemic.

Number of hearings per year since 2017:



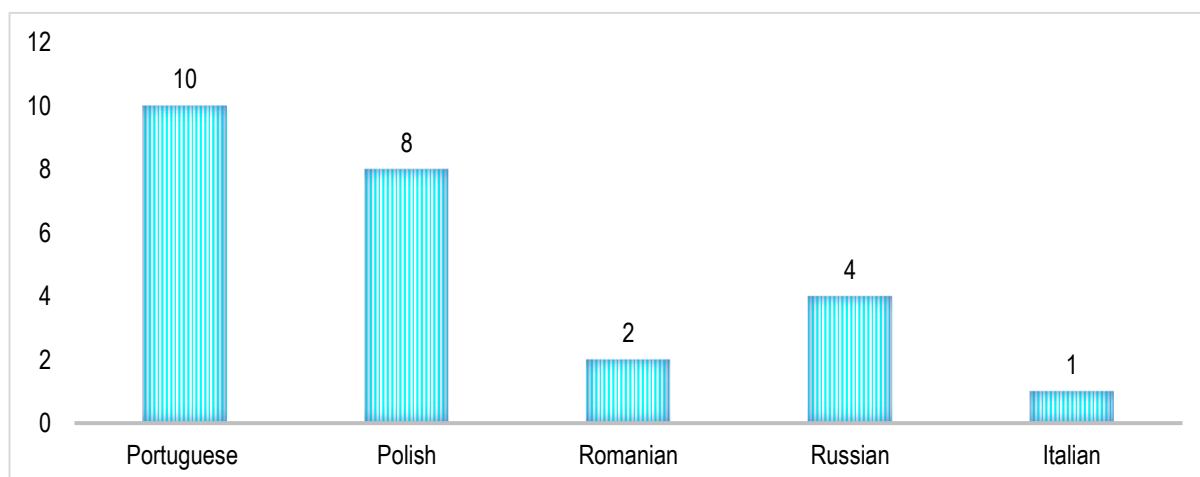
Use of Translators

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

Translators are paid £82 - £224 depending on the length of the hearing.

In 2021 25 parties indicated on their forms that they would require the assistance of a translator. At hearing stage the EDT provided a translator for 15 Case Management Hearings, 2 Interim Hearings and 11 Final Hearings.

Language of translator indicated on the Claim Form:



Length of Claims

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

Of the cases heard in 2021:

- **57% were heard within 6 months of receipt of Claim Form**
- **94% were heard within a year of receipt of Claim Form**

Representation of Parties

Out of 144 cases filed in 2021, 18 Claimants and 53 Respondents engaged representatives to assist them at form submission stage.

Out of 35 final hearings in 2021, 9 Claimants and 15 Respondents were represented at this stage.

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

The majority of representatives for Respondents were lawyers, either locally qualified or qualified abroad.

Outstanding Claims

- **2016-2018 Claims**

6 claims which were stayed from 2016 and 2018 due to ongoing desastre proceedings of the Respondent are now closed. The bankruptcy of the companies having been dealt with by the Viscounts Department.

2 claims from 2018 remain open with the bankruptcy proceedings due to be complete in March 2022.

- **2019-2020 Claims**

85 claims from 2019 and 2020 that were carried over into 2021 are now closed.

1 claim from 2020 remained open at the end of 2021.

- **2021 Claims**

As at 31 December 2021, of the 144 claims filed that year, 20 remain open.

Outcomes & Awards

Judgments

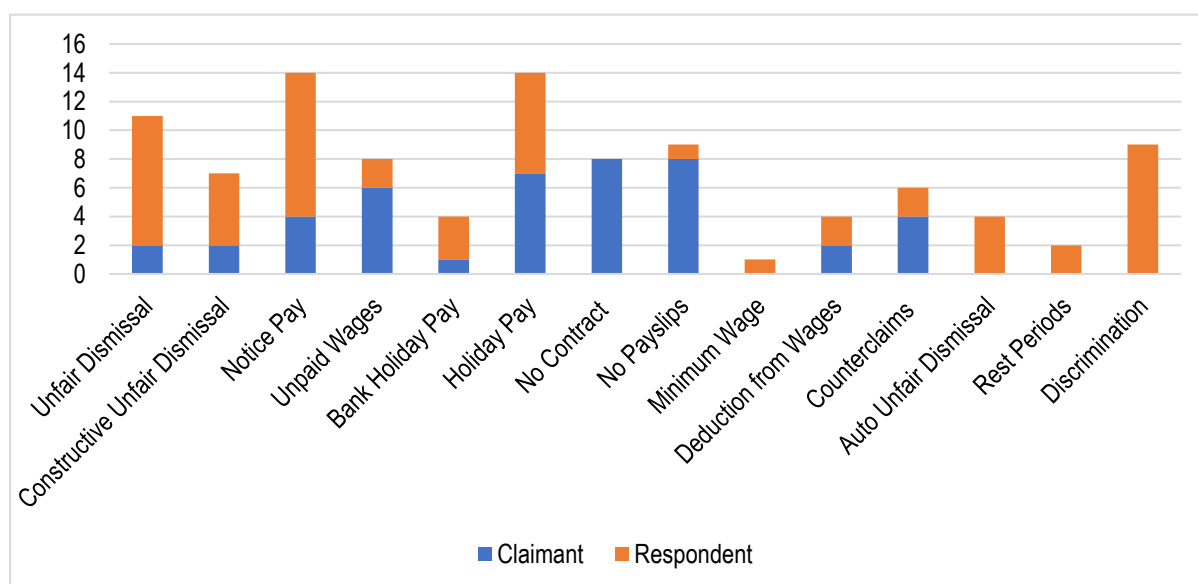
The EDT aims to issue the Judgment to the parties within 6 weeks of the Final Hearing.

There were 35 Final Hearings and save for 1 case all Judgments were sent within this time frame, with the vast majority being issued within two weeks of the Final Hearing.

Outcomes of Final Hearings

35 cases comprising 14 different issues went to Final Hearing in 2021. The cases heard included Claim Forms submitted prior to 2021.

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

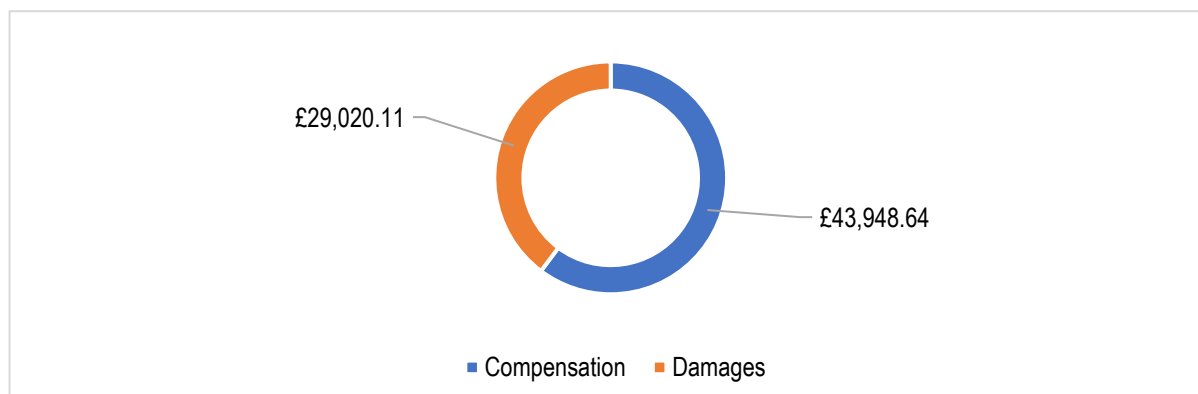


Breakdown of Awards

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

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

During 2021 the total amount awarded in compensation and damages was £72,968.75



Reductions in unfair dismissal awards:

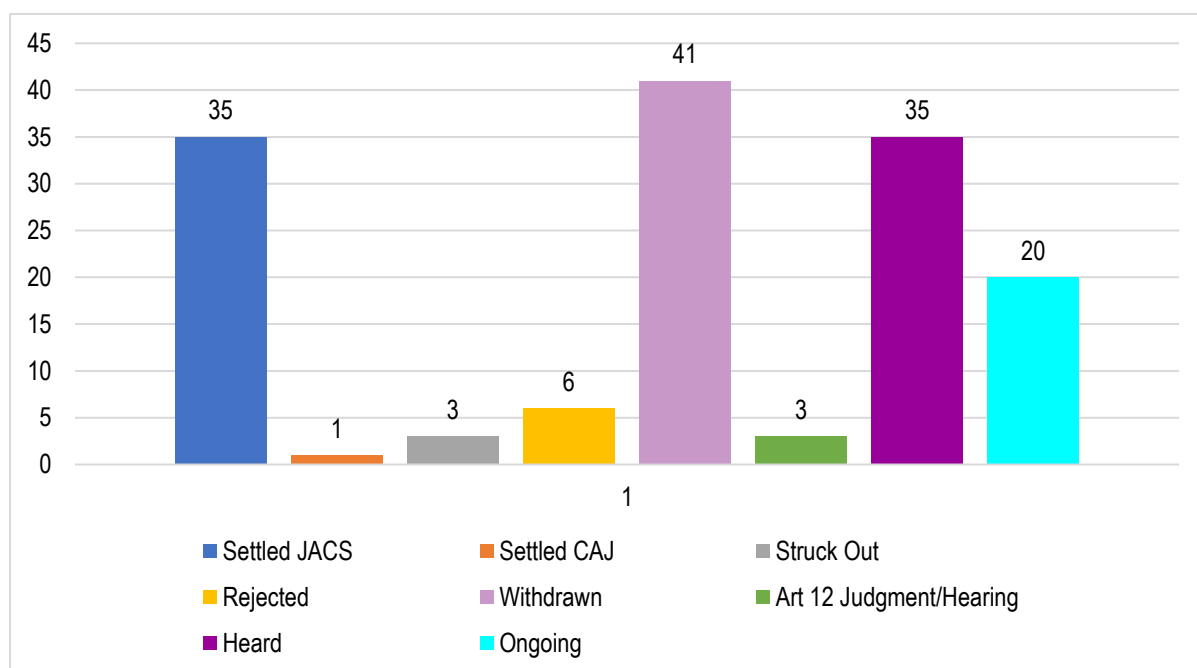
The EDT may in certain circumstances apply a reduction to an award of compensation for unfair dismissal.

In 2021, the EDT applied a reduction in 3 out of the 4 successful unfair dismissal cases, with the awards being reduced by between 30% and 50%.

Outcomes of claims:

Of the 144 claims submitted in 2021 there are 20 that remain ongoing and 35 went to Final Hearing.

The majority of the remainder were either settled or withdrawn.



2022 Court Service Business Plan & Tribunal Aims

The Court Service Business Plan and Tribunal Aims include the following action plans for the year of 2022:

- Improving the skills and competences of translators to assist parties who require help with the English language.
- Working closely with Citizens Advice Jersey to give parties additional support.
- Simplifying Orders to make them more user friendly for litigants in person.
- Improving the Judgments section on the Jersey Law Website to allow parties to search terms specific to their case and read cases of assistance to them.

Contact Details

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Registrar – Janet Smith (Main Responsibility – Mental Health & Social Security)