

Employment Tribunals

Contents

1.	Executive Summary	Page 1
2.	Introduction	Page 2
3.	What are employment tribunals?	Page 2
4.	Time limits	Page 3
5.	Makings a claim	Page 3
6.	Fees	Page 3
7.	Waiting times and the impact of Covid	Page 3
	<ul style="list-style-type: none">• Virtual hearings• Opening new courtrooms• Additional, inexperienced judges help manage the backlog of claims	
8.	Employment issues in East Herts	Page 6
9.	Citizens Advice East Herts support with employment tribunal claims	Page 10
10.	Conclusion	Page 11

Executive Summary

Employment tribunals are used when an employee (“the claimant”) and their employer (“the respondent”) cannot settle an employment matter outside of court. Disputes can range from unfair dismissals, discrimination or even unfair deductions from wages. Once the matter has reached a tribunal, the judge will hear arguments from both sides and decide the outcome of the case.

Prior to Covid, courts and tribunals were already struggling with the workload as a result of the Supreme Court's decision in April 2017 to end tribunal fees, so now a claimant does not need to pay a tribunal fee when bringing a claim. However, they may incur legal costs if seeking legal advice or having legal representation. The pandemic’s impact caused a significant backlog of cases due to courts and tribunals practically grounding to a halt, in addition to a shortage of staff and higher workloads.

At Citizens Advice East Herts (CAEH), Employment Tribunal & Appeal-related issues have remained steady from 2019 until July 2022. This is despite employment issues being at their peak at the start of the pandemic in April 2020 as employees were

furloughed and many were made redundant or dismissed. These issues decreased the following year due to the furlough scheme ending in September 2021, causing employment issues to return to pre-pandemic levels.

Introduction

When an employee (“the claimant”) has a dispute with their employer (“the respondent”) that cannot be resolved, for example, if an employee is unfairly dismissed or discriminated against by their employer, they can go to an employment tribunal to have their case heard before a judge. The employee must ensure they know the time limits to bring a claim.

Before bringing a claim, the claimant must use the early conciliation service provided by the Advisory, Conciliation and Arbitration Service (Acas). If the claimant still cannot resolve the matter, Acas will issue them a certificate they can use to bring a claim.

Before the pandemic, there was already a backlog in cases due to the Supreme Court decision in 2017, calling for an end to employment tribunal fees and resulting in an increase in tribunal claims. However, when Covid hit in March 2020, tribunals practically ground to a halt as the country’s legal system had to think about how it would hear cases despite Covid restrictions. Meanwhile, waiting times grew as high workloads, and a staff shortage further contributed to the delay in hearings.

In 2021, Judge Barry Clark, The President of Employment Tribunals in England and Wales, published a report setting out how employment tribunals have continued to hold hearings despite Covid restrictions to reduce the backlog in claims, including:

- having remote hearings;
- opening new courtrooms in certain cities; and
- using additional, inexperienced judges to manage the backlog of claims.

What are employment tribunals?

Employment tribunals are responsible for hearing claims from people who think someone, such as an employer or potential employer, has treated them unlawfully. The tribunal is independent of the government and will listen to the employee (the ‘claimant’) and the person they are making a claim against (the ‘respondent’) before making a decision. Examples of unlawful treatment claims that a tribunal may hear can include:

- unfair dismissal;
- discrimination; and
- unfair deductions from pay.¹

¹ GOV.UK, [Employment Tribunal - GOV.UK](https://www.gov.uk/employment-tribunal)

Time limits

The claimant has three months less one day of their employment ending or the problem happening to bring a claim, known as the “limitation date”. However, if the claim is about redundancy pay or equal pay, the claim must be made within six months.² The claimant must ensure their claim is brought within the relevant time limit as these are very strict.

Making a claim

The ‘claimant’ must complete an ET1 form and file it with the tribunal office to start their claim.³

Before making a claim, employees must first contact the Advisory, Conciliation and Arbitration Service (Acas) that they intend on making a claim to the tribunal. Acas will offer the employee the chance to settle the claim outside of court using Acas’s free “Early Conciliation” service. If early conciliation does not work, Acas will send the employee an early conciliation certificate with a certificate number requested in the ET1 form.⁴ The number shows the court that the employee has informed Acas of the dispute before making a claim.⁵

Once an early conciliation certificate is issued, a claimant will have a minimum of one calendar month from the date of receipt of the certificate to make a claim to the employment tribunal.⁶

Fees

From 26 July 2017, following the Supreme Court ruling on employment tribunal fees, it is no longer necessary to pay a fee if you want to bring a claim in an Employment Tribunal against your employers. The government has also committed to reimburse fees that have been paid since their introduction in 2013.⁷ However, while there are no fees to bring a claim, parties may incur legal fees, which the claimant should consider before bringing a claim.

Waiting times and the impact of Covid

Evidence shows the pandemic impeded the average waiting time for a claim to be heard in the tribunal, in addition to the significant delays already evident before 2020.

In 2019, some employment tribunal claimants were waiting 18 months for their cases to be heard because of the backlog. Waiting times had increased four years in a row

² Acas, [Making a claim to an employment tribunal - Acas](#)

³ Working Families, [Working Families | Writing the tribunal claim \(ET1\) - Working Families](#) (June 2022)

⁴ GOV.UK, [Make a claim to an employment tribunal: When you can claim - GOV.UK \(www.gov.uk\)](#)

⁵ Working Families, [Working Families | Writing the tribunal claim \(ET1\) - Working Families](#) (June 2022)

⁶ Acas, [Making a claim to an employment tribunal - Acas](#)

⁷ Working Families, [Working Families | Employment Tribunal Fees - Working Families](#)

up until this time, as tribunal fees were abolished in 2017, leading to a sharp rise in claims when tribunals already had to cope with restricted government funding.⁸

National Citizens Advice data from April 2020 to June 2020 showed the average waiting time for a single claim to be heard was 32 weeks, 34 weeks for an unfair dismissal claim, and 39 weeks for the six different types of discrimination claims, with a combined average of 38 weeks.⁹ The backlog for individual cases had already surpassed the post-2008 financial crisis record, with 37,000 workers in the queue. An analysis of employment tribunal data by Citizens Advice in October 2020 revealed that if the backlog of claims continued to increase at that rate, outstanding claims could surpass 500,000 by spring 2021. In addition, three in ten unfair dismissal cases were withdrawn as workers faced a 34-week wait for a decision.¹⁰

From 1 April 2020 to 31 March 2021, from receipt of a claim to the first hearing in an employment tribunal, the average waiting time was reported as 51 weeks for single claims and 55 weeks for multiple claims.¹¹

An article published by The Times in July 2021 noted that workers were being pressured to settle employment claims rather than continue with court proceedings as the system is at a “breaking point”.¹² The article emphasised that a long wait and backlogs in the system can lead to unfair settlements for employees. Furthermore, the courts were struggling to deal with a backlog of cases, with some longer trials being listed into 2023.¹³

Dame Clare Moriarty, Chief Executive of Citizens Advice, said in July 2021 that tribunals are essential to protecting workers’ rights, but “sky-high waiting times” are causing some people to withdraw their cases rather than endure months of stress and anxiety in limbo.¹⁴

High workloads and a staff shortage at the London Central employment tribunal had also resulted in telephone hold times stretching for up to five hours for those calling to discuss the scheduling of hearings.¹⁵

As at January 2022, the data confirms that there continues to be extensive delays in processing Employment Tribunal Claims. Before the pandemic, the Tribunals aimed to complete all cases within around 40 weeks and often achieved that. However, the huge number of Claims issued due to the changes in the economy caused by the

⁸ N.a, [Employment tribunal claimants are waiting 18 months before their case is being heard due to backlog, lawyers warn](#) , The Telegraph (July 2019)

⁹ Citizens Advice, [Employment tribunal claims backlog set to pass half a million due to Covid, warns Citizens Advice - Citizens Advice](#) (October 2020)

¹⁰ *Id.*

¹¹ LexisNexis, [Average waiting times for a first hearing in employment tribunal claims | News | LexisNexis](#)

¹² Catherine Baksi ‘Employment tribunals at ‘breaking point’ with six-month delays’ [Employment tribunals at ‘breaking point’ with six-month delays | Law | The Times](#) (July 2021)

¹³ *Id.*

¹⁴ Catherine Baksi, [Employment tribunals at ‘breaking point’ with six-month delays | Law | The Times](#) (July 2021)

¹⁵ Adam McCulloch, [Employment tribunals have 'almost ground to a halt' - Personnel Today](#) (November 2020)

pandemic has caused a very significant backlog, with significant numbers of cases now listed for 2023.¹⁶

As of July 2022, no current data regarding tribunal waiting times has been released for the current year. Nonetheless, employment tribunals are likely to continue managing the significant backlog of cases further exacerbated by the impact of the pandemic.

Virtual hearings

In a 2021 report, Judge Barry Clark, The President of Employment Tribunals in England and Wales, explained how using technology had helped hold effective, remote hearings in high volume despite the restrictions caused by Covid.¹⁷ The President stated, “[W]ithout the embracing of video hearings by the Employment Tribunals...the outstanding caseload would be very much higher than it is.”¹⁸ However, he added that cases “remained static in the first three months of 2021 and there are encouraging signs that it is slowly reducing.”¹⁹ In addition, the flexible use of the judiciary has helped to reduce the caseload as judges do not have to be physically present, and therefore, virtual hearings can be heard in less time.

In the President’s 2021-22 road map for tribunal hearings, Judge Clarke suggested that the format of hearings (e.g. telephone, video, or physical) will remain a decision for the judges based on the relevant rules of law.²⁰ As of July 2022, this remains the case as judges still hold this discretion according to government guidance.²¹

Opening of new courtrooms in London and Birmingham

The legal system has provided new, additional courtrooms to help tackle the backlog of cases. For example, a venue in Barbican in central London provides two courtrooms and hears cases from across the city. This brings the total number of Nightingale courtrooms to 50.²²

The moves form part of a £113m investment to ease pressures on courts and tribunals, including recruiting 1,600 extra staff, further technology, and on-site safety precautions such as plexiglass screens. This is in addition to the £142m being spent to speed up technological improvements and modernise courtrooms.²³ The use of new courtrooms as well as additional funding to help ease the pressure on tribunals had played a great part in managing the backlog of cases in England.

¹⁶ Gary Smith, [Employment Tribunal Waiting Times Update | Nockolds](#) (January 2022)

¹⁷ Tribunals Judiciary, <https://www.judiciary.uk/wp-content/uploads/2021/03/ET-road-map-31-March-2021.pdf> (March 2021)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Ibid* at p 5

²¹ <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing>

²² HM Courts & Tribunals Service, [Six new Nightingale courtrooms to open in London and Birmingham - GOV.UK](#) (March 2021)

²³ *Id.*

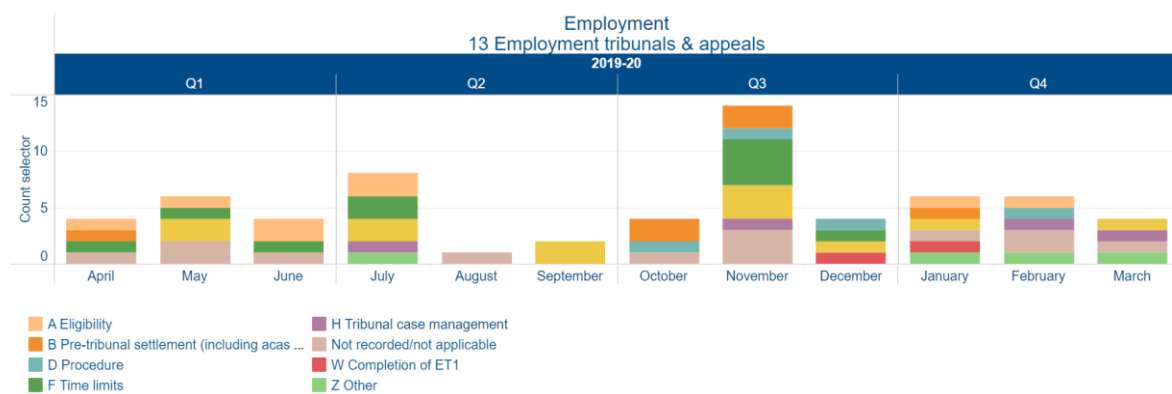
Additional, inexperienced judges help manage the backlog of claims

The courts have brought additional, inexperienced judges who have never heard a case to help clear an avalanche of employment claims from sacked and aggrieved workers. Trade union and town hall lawyers are among 59 new faces judging cases at tribunals, where battles can cost millions in compensation and legal bills. In the biggest simultaneous recruitment of judges for nearly 400 years, appointees are being hired at annual salaries of £113,000. As a result, employment tribunals recruited nearly 70 fee-paid judges and 300 support staff in the last year.²⁴ The pressure the courts are under can be demonstrated by the fact that tribunals have inexperienced judges holding hearings.

Employment issues in East Herts

At Citizens Advice East Herts (CAEH), clients with issues relating to Employment Tribunals & Appeals remained low and steady - at an average of 4% of all employment matters we receive since 2019, it has not been one of our top issues.

Between April 2019 and March 2020, we helped clients with 56 issues on Employment Tribunals & Appeals out of 1,280 employment issues - at 4%, it was not one of our top employment issues over the 12 months.²⁵ Of these 56 issues, the top issues included Early Conciliation (11 issues), Not recorded/ not applicable (11 issues), Time Limits (9 issues) and the remaining 25 issues. In addition, there was a significant increase in the number of issues for quarter three with 22 issues, compared to the other quarters.²⁶



²⁴ Dominic Kennedy, [Tribunal system chaos: No experience necessary to be a judge in hearings free-for-all | News | The Times](#) (February 2021)

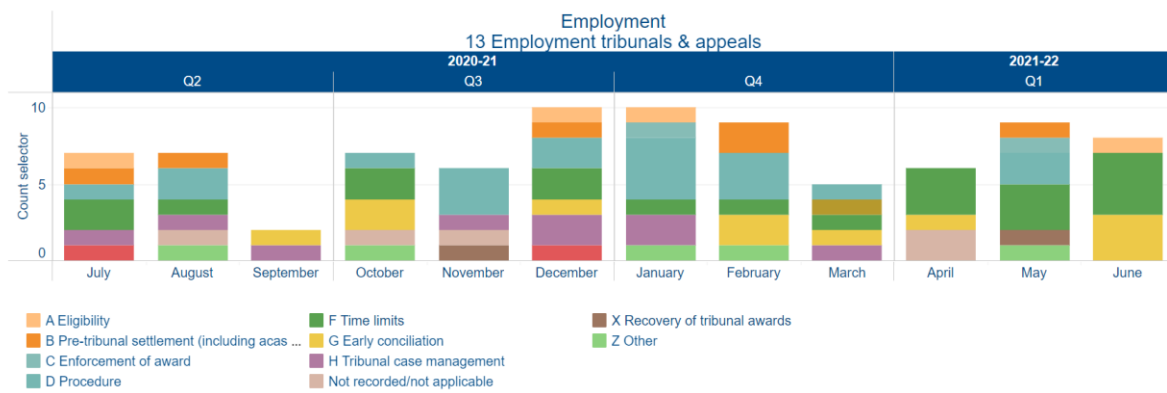
²⁵ Casebook data (C3 report) for 1 April 2019 to 31 March 2020

²⁶ Casebook data (C3 report) for 1 April 2019 to 31 March 2020

Issues (part 1)
 Issues (part 2)
 Issues (part 3)
 Count issues or clients

		2019-20												Grand Total	
		Q1			Q2			Q3			Q4				
		April	May	June	July	August	Septe..	October	Nove..	Dece..	January	Febru..	March		
Employment 13 Employment tribunals & appeals	A Eligibility	1	1	2	2						1	1		7	
	B Pre-tribunal settlement (including acas	1						2	2		1			6	
	D Procedure							1	1	1		1		4	
	F Time limits	1	1	1	2				4	1				9	
	G Early conciliation		2		2		2		3	1	1		1	11	
	H Tribunal case management				1				1				1	1	4
	Not recorded/not applicable	1	2	1		1		1	3			1	2	1	11
	W Completion of ET1									1		1			1
	Z Other				1							1	1	1	3
	Grand Total		4	6	4	8	1	2	4	14	4	6	6	4	56

Between July 2020 to June 2021, we helped clients with 86 issues on Employment Tribunals & Appeals out of 2,138 employment issues - again, this was at 4%, which was not one of the top issues over the 12 months.²⁷ Of these 86 issues, the top issues included Time limits (20 issues), Procedure (19 issues), Early Conciliation (11 issues) and the remaining 36 issues. Issues around tribunals seemed to be steady over the 12 months, as 16 of these 86 issues occurred in the second quarter for 2020/21 (July 2020 - September 2020) and then remained the same (23-24 issues) for the next three quarters to quarter one 2021/22 (April - June 2021).²⁸ There was a significant increase in employment issues, with top employment issues for this period being Redundancy (345 issues), Pay and Entitlements (310 issues) and Dismissal (241 issues). Employment issues increased by three quarters since the previous data. It is no surprise that the pandemic caused this increase as many workers were put on furlough, with some eventually being made redundant.²⁹ National Citizens Advice data shows that between March 2020 and November 2020, advisers supported more than 31,000 people with one-to-one advice on redundancy.³⁰ Furthermore, Citizens Advice helped one person with a redundancy issue every two minutes for that same period.³¹ Therefore, local data reflects the national picture at the time, involving many workers losing their jobs due to the pandemic.



²⁷ Casebook data (C3 report) for 1 July 2020 to 30 June 2021

²⁸ Casebook data (C3 report) for 1 July 2020 to 30 June 2021

²⁹ Casebook data (C3 report) for 1 July 2020 to 30 June 2021

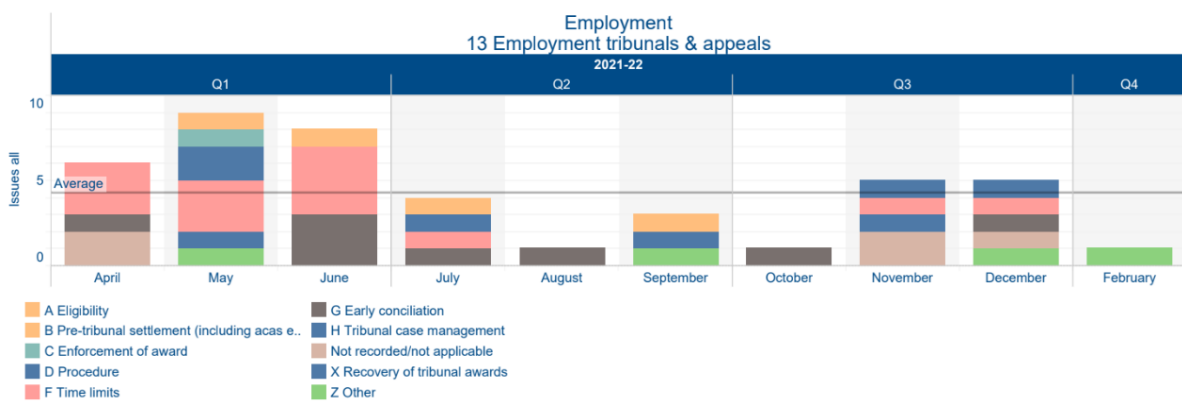
³⁰ Citizens Advice, [Citizens Advice has responded to the latest government announcement on an extension of the furlough scheme - Home](#) (November 2020)

³¹ *Id.*

Issues (part 1)
 Issues (part 2)
 Issues (part 3)
 Count issues or clients

		2020-21												Grand Total
		Q2			Q3			Q4			2021-22 Q1			
		July	August	Sept...	October	Nove..	Dece..	January	Febru..	March	April	May	June	
Employe.	13													
-	Employment tribunals & appeals													
	A Eligibility	1					1	1					1	4
	B Pre-tribunal settlement (including acas	1	1				1		2			1		6
	C Enforcement of award							1				1		2
	D Procedure	1	2		1	3	2	4	3	1		2		19
	E Fees and fee remissions									1				1
	F Time limits	2	1		2		2	1	1	1	3	3	4	20
	G Early conciliation			1	2		1		2	1	1		3	11
	H Tribunal case management	1	1	1		1	2	2		1				9
	Not recorded/not applicable			1	1	1					2			5
	W Completion of ET1	1					1							2
	X Recovery of tribunal awards					1						1		2
	Z Other		1		1			1	1			1		5
Grand Total		7	7	2	7	6	10	10	9	5	6	9	8	86

Between April 2021 and March 2022, we helped clients with 43 issues on Employment Tribunals & Appeals out of 1,156 employment matters - 4% of all employment issues advised upon over the 12 months.³² In addition, these 43 issues were divided between Time Limits (13 issues), Early Conciliation (8 issues), Procedure (6 issues), and the remainder of 16. Interestingly, 23 of the 43 issues occurred in the first quarter (April - June 2021), whereas only one issue occurred in quarter four (January - March 2022).³³ We can see that employment matters returned to pre-pandemic levels. A significant decrease in employment matters from the previous data cannot be explained by any new developments regarding employment tribunals. However, this decrease can be explained by the Furlough scheme ending on 30 September 2021.³⁴ Data showed that the top employment issues for this period were Pay and Entitlements (212 issues), Dismissal (176 issues) and Terms and Conditions of Employment (118 issues).³⁵



³² Casebook data (C3 report) for 1 April 2021 to 31 March 2022

³³ Casebook data (C3 report) for 1 April 2021 to 31 March 2022

³⁴ Citizens Advice, [Coronavirus - being furloughed if you can't work - Citizens Advice](#)

³⁵ Casebook data (C3 report) for 1 April 2021 to 31 March 2022

Issues part 3



Issues (part 1) Employment
Issues (part 2) 13 Employment tribunals ...
Issues (part 3) All
Count issues or clients Issues

	2021-22											Grand Total
	Q1			Q2			Q3			Q4		
	April	May	June	July	August	Septem..	October	Novemb..	Decemb..	February		
Employe.. 13 Employment tribunals & appeals			1	1								2
A Eligibility												2
B Pre-tribunal settlement (including acas ear..		1				1						1
C Enforcement of award		1										1
D Procedure		2		1		1			1	1		6
F Time limits	3	3	4	1					1	1		13
G Early conciliation	1		3	1	1			1		1		8
H Tribunal case management									1			1
Not recorded/not applicable	2								2	1		5
X Recovery of tribunal awards		1										1
Z Other		1				1				1	1	4
Grand Total	6	9	8	4	1	3	1	5	5	1	1	43

Between April 2022 and June 2022, we helped clients with 12 issues on Employment Tribunals & Appeals out of 154 employment matters for the first quarter of 2022/23 (April - June 2022).³⁶ The top issues for this quarter were Pre-tribunal settlement (3 issues), Time Limits (3 issues), and Tribunal Case Management (2 issues). At the moment, there is only data available for the first quarter, which ended in June 2022, so we do not have data for the next three quarters, but we should keep an eye out in case there are any new developments which may affect clients in the East Herts area. What is clear is that there has been an increase in issues relating to Employment Tribunals & Appeals in June 2022 with seven issues, but it is not entirely clear what is the reason for this slight increase. The data shows us that the top issues for June were Pre-tribunal settlement (2 issues) and Time Limits (2 issues).³⁷ We should continue to monitor the data for the next quarters to see if there is a pattern.

Issues part 3

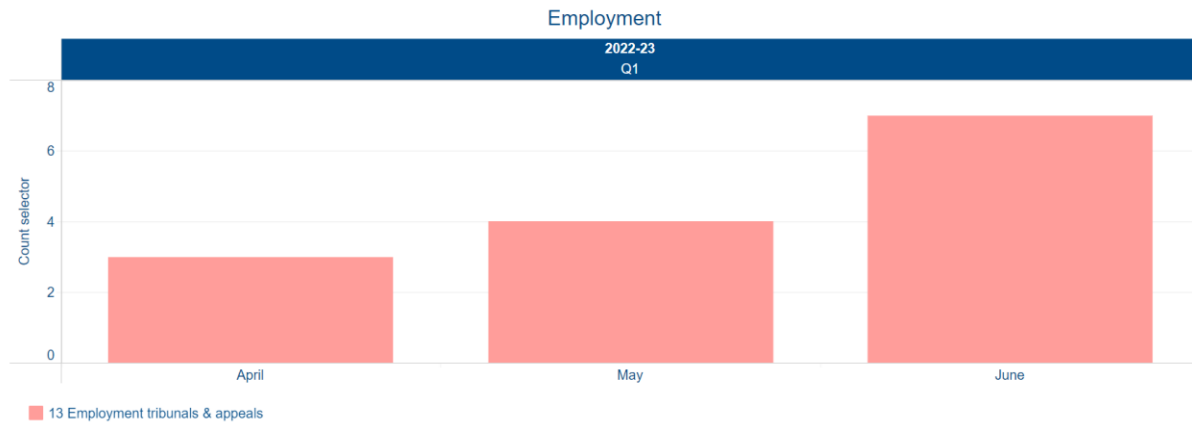


Issues (part 1) Employment
Issues (part 2) 13 Employment tribunals ...
Issues (part 3) (All)
Count issues or clients Issues

	2022-23			Grand Total
	Q1			
	April	May	June	
Employe.. 13 Employment tribunals & appeals		1	2	3
B Pre-tribunal settlement (including acas ear..				1
C Enforcement of award			1	1
D Procedure			1	1
F Time limits		1	2	3
H Tribunal case management	1	1	1	2
Not recorded/not applicable	1			1
X Recovery of tribunal awards	1	1		1
Grand Total	3	4	7	12

³⁶ Casebook data (C3 report) for 1 April 2022 to 30 June 2022

³⁷ Casebook data (C3 report) for 1 April 2022 to 30 June 2022



The data shows that clients coming to us with issues regarding Employment Tribunals & Appeals have been steady over the last few years and at an average of 4% of all employment matters raised, and evidently, this is not one of our top issues. Furthermore, our data also shows that top issues over the last few years regarding Employment Tribunals & Appeals were in connection with Time Limits, Procedure and Early Conciliation. Perhaps a reason for this is because many clients already know other organisations that are more specialised in dealing with these matters, e.g. Acas, where clients can start the free early conciliation process with their employer. In addition, given that there are time limits to many employment matters, e.g. three months less one day for unfair dismissal cases and six months for redundancy cases, clients do not have long if they wish to initiate proceedings. We can see from national data that workers are more inclined to settle cases instead of continuing with proceedings due to the significant backlog and long waiting times. This may be the case in the East Herts area, where clients who are eligible to bring a claim do not because they realise they should settle with their employer due to the delays in the tribunals and do not want the stress of dealing with court proceedings.

Citizens Advice East Herts support with employment tribunal claims

Our advisers at CAEH have been working hard to provide advice for clients facing issues on employment tribunals. Here's an example of how we helped one of our clients with an employment matter.

“Scott” worked for his employer for 12 years but had a break in employment in March 2020 for two weeks. He was offered voluntary redundancy in May 2022 and an ex gratia payment. His employer offered him his full 12 years of redundancy and 12 weeks' payment in lieu of notice. He had a solicitor to act on his behalf. The redundancy agreement was signed in June 2022, and he left on the same day.

Subsequently, Scott and his solicitor realised that he was only due two years' redundancy payment (due to his break in employment) and was unsure about his payment in lieu of notice. He informed us that the solicitor threatened him to charge for any further work completed.

Scott wanted to know what he could do if his employer continued to only give him two weeks' notice and not the 12 weeks as originally agreed.

Scott came to us for advice. He was advised that the error was the employer's but as the solicitor knew he had a break in employment, the solicitor should have resolved this. Scott was also advised that he should receive two weeks' statutory redundancy payment and, depending on his contract, two weeks' payment in lieu of notice. The adviser suggested that Scott speak to his solicitor and ask him to sort the matter out. He was advised that as the error was his employer's and the solicitor's, he should ask the solicitor to charge the employer. He was also advised to check his employment contract regarding how much notice he is entitled to receive. If the employer continued to give him two weeks' notice, Scott was given information on raising a formal grievance and making an employment tribunal claim. The adviser informed him that he should talk to Acas first and was informed of the three months' time limit to issue proceedings.

Conclusion

To conclude, employment tribunals are used when an employee has a dispute with their employer which cannot be resolved. The claimant must ensure they bring the claim within the relevant time limit and go through the Acas early conciliation process. There is no longer a fee to bring a claim. However, this factor, amongst other things, has resulted in a backlog of claims. This backlog has been increasing since the pandemic hit in 2020 due to fewer in-person hearings while restrictions were in place, a shortage of staff, and high workloads. The long waiting times resulted in many workers being pressured to settle employment claims rather than continue with court proceedings which were thought to lead to unfair settlements. In 2021, The President of Employment Tribunals in England and Wales set out how tribunals would continue hearings despite restrictions at the time, including holding remote hearings, opening new courtrooms in London, and bringing additional, inexperienced judges to hold hearings which seem to have been successful in reducing the backlog of claims up until this time. At Citizens Advice East Herts, Employment Tribunals & Appeals issues have been steady the last few years. However, employment matters, on the whole, increased during the pandemic, and later, figures returned to their normal pre-Covid levels by 2021.