

Title: <u>Rapid Resolution Service</u>	Impact Assessment (IA)
IA No: <u>BIS0346</u>	Date: 08/05/2012
Lead department or agency: <u>BIS</u>	Stage: Development/Options
Other departments or agencies: <u>HMCTS</u>	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Gail Davis/ Amy

Summary: Intervention and Options**RPC: RPC Opinion Status**

Cost of Preferred (or more likely) Option				
Total Net Present Value £m	Business Net Present Value £m	Net cost to business per year (EANCB on 2009 prices) £m	In scope of One-In, One-Out? No	Measure qualifies as NA

What is the problem under consideration? Why is government intervention necessary?

The costs faced by employers, claimants and the Exchequer for dealing with fast track employment tribunals are currently disproportionate to the value of these claims. Existing Government intervention which ensures the provision of determination on employment tribunal claims, could be made more efficient in the case of fast track claims.

What are the policy objectives and the intended effects?

The intention of this policy option is to support and complement the wider changes being undertaken to the employment tribunal system aimed at increasing the efficiency of the system so that, where parties do need to go to employment tribunal, cases are dealt with more swiftly and efficiently to reduce the costs borne by all parties. We want to introduce a process that allows parties to have their dispute decided without the need to incur significant legal fees, or attend a hearing, where they agree that that is appropriate.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

This option involves taking an enabling power in primary legislation. However, the detail of how the power would be implemented would be the subject of full public consultation. As a result there is limited detail on the option at this stage. Three main options have been considered for how cases will be determined: 1) A panel of arbitrators; 2) Legal officers and 3) County Court. All the options considered involve a regulatory solution; there are already non-regulatory options for resolving disputes (including mediation and compromise agreements). However, where these are not used/not successful, individuals must be able to enforce their rights through a legal process that delivers a binding determination. We have concluded that the best option is to take forward the Legal Officer model, but further work is required to determine how such a process should work, prior to full public consultation.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2016

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)	Large Yes			
Traded: N/A	Non-traded: N/A			

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY.

Date: 15/5/12

Summary: Analysis & Evidence

Policy Option 1

Description: Deliver a new rapid resolution service through the use of a panel of arbitrators to determine cases

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

Exchequer costs: costs of running a new Rapid Resolution Service, involving a panel of arbitrators reviewing cases and making determinations. Arbitrator costs are likely to be similar to judicial fees at £464 per day. Additional administrative costs will be incurred in appointing arbitrators to the list, allocating cases etc, these are additional costs that do not apply to the Legal Officer option . Claimant costs: preparing their case for RRS, RRS fee, time and costs involved in this. Employer costs: time spent responding to RRS

BENEFITS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Exchequer: Savings for dealing with a number of fast track employment tribunal claims in a more efficient way. 16,600 claims per year could be eligible to be heard by RRS, leading to fewer tribunal hearings.

Claimants: time and legal cost savings from having their claim handled by RRS

Employers: time and legal cost savings from responding to claims through RRS relative to the case being resolved through the employment tribunal process

Key assumptions/sensitivities/risks	Discount rate (%)
Claims eligible for RRS is based on HMCTS administrative data on fast track claims over the last five years, with an adjustment to reflect the fact that the introduction of early conciliation (employment tribunal claims going to Acas in the first instance) is expected to reduce employment tribunal claims by 25 per cent.	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence**Policy Option 2**

Description: Deliver a new rapid resolution service through the use of legal officers to determine cases

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional		Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Maximum of 5 lines

Other key non-monetised costs by 'main affected groups'

Exchequer costs: costs of running a new Rapid Resolution Service, involving legal officers reviewing cases and making determinations. The costs for legal officers would be lower than those for a panel of arbitrators, with the daily cost for legal officers equivalent to £270 per day. Claimant costs: preparing their case for RRS, RRS fee, time and costs involved in this. Employer costs: time spent responding to RRS case. All of these costs will be monetised once more is known about the operation of RRS as a result of full public consultation.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional		Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Maximum of 5 lines

Other key non-monetised benefits by 'main affected groups'

Exchequer: Savings for dealing with a number of fast track employment tribunal claims in a more efficient way. 16,600 claims per year could be eligible to be heard by RRS, leading to fewer tribunal hearings.

Claimants: time and legal cost savings from having their claim handled by RRS

Employers: time and legal cost savings from responding to claims through RRS relative to going through the employment tribunal process

Key assumptions/sensitivities/risks	Discount rate (%)
Claims eligible for RRS is based on HMCTS administrative data on fast track claims over the last five years, with an adjustment to reflect the fact that the introduction of early conciliation (employment tribunal claims going to Acas in the first instance) is expected to reduce employment tribunal claims by 25 per cent.	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence**Policy Option 3**

Description: Deliver a new rapid resolution service through the use of the County Court to determine cases

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional	Optional	Optional	
High	Optional		Optional	Optional	Optional	
Best Estimate						
Description and scale of key monetised costs by 'main affected groups' Maximum of 5 lines						
Other key non-monetised costs by 'main affected groups' Exchequer costs: transferring cases into the County Courts for determination. Unlikely to save any costs as process similar to that in the tribunals. Claimant costs: time spent preparing case for RRS. Requirement to engage in mandatory mediation as part of County Court process replicates the Early Conciliation and therefore adds unnecessary time and cost. Employer costs: time spent responding to RRS case. Time and cost of mandatory mediation element.						
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
			Optional	Optional	Optional	
Low	Optional		Optional	Optional	Optional	
High	Optional		Optional	Optional	Optional	
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups' Maximum of 5 lines						
Other key non-monetised benefits by 'main affected groups' Unlikely to deliver significant benefits to parties as an existing legal process is replaced by another.						
Key assumptions/sensitivities/risks Maximum of 5 lines			Discount rate (%)			

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Evidence Base (for summary sheets)

Introduction

This proposal is being taken forward in the context of the wider package of measures to reform the workplace dispute resolution process, as set out in the Government Response to the “Resolving Workplace Disputes” consultation. Those measures involve changes to the employment tribunal process to deliver savings to all parties.

Currently, claimants are able to lodge a claim at tribunal without having sought, or received, advice on alternative, non-judicial, methods of resolution, or information on how the process works. Government intends to introduce a requirement for all claimants to submit details of their claim to Acas in the first instance to enable them to be offered the opportunity to conciliate the matter rather than proceed to tribunal. We anticipate that this will reduce the number of claims that are lodged at tribunal by up to 25 per cent. Where a claim is lodged, individuals will at least have received some information on what is involved, both in terms of time and median value of any award in relation to the type of claim they are bringing.

For claims that are lodged, Government is taking forward measures to improve the efficiency of the tribunal system. We intend to take a power in the Enterprise and Regulatory Reform (ERR) Bill, the only available legislative vehicle during the remainder of this Parliament, to provide for the introduction of a Rapid Resolution Service, which will allow for paper-based determination of fast track employment tribunal claims by a non-judicial authority.

The detail of the scheme will be worked up in discussion with stakeholders in 2012/13 and will be introduced via secondary legislation, subject to a full public consultation. It is intended that any new Service will be piloted prior to full introduction; piloting would be expected to begin in April 2013. This impact assessment sets out the initial assessment of the impact the Rapid Resolution Service would have.

Problem under consideration

Where an individual believes their employment rights have been breached by their employer, they can attempt to resolve the matter directly with their employer. If this is unsuccessful, or not appropriate, they can choose to take the matter to an employment tribunal for a judicial determination.

Employers are worried about the prospect of employment tribunal claims being brought against them, and the costs involved in preparing for, and attending, an employment tribunal whether they are successful or not. BIS understands from a number of business organisations that this is sometimes to the extent that the potential risk of claims against them can affect their decision to take on staff. Employment tribunal claimants also face significant cost and stress, whilst the exchequer cost of administering and running the employment tribunals system is also significant. Efficiency and value for taxpayer’s money is an important objective for the end-to-end dispute resolution system.

Government consulted in 2011¹ on proposals to encourage the early resolution of disputes, deliver a more efficient and streamlined employment tribunal system for all users and give employers more confidence to hire new staff. During the consultation phase, a number of stakeholders commented on the time and cost of the tribunal process in relation to low value, more straightforward claims. In the Government Response², we committed to consider whether

¹ “Resolving Workplace Disputes” Consultation – 27 January 2011

² “Resolving Workplace Disputes: Government Response to the Consultation” – 23 November 2011

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and how we could introduce a scheme to provide quicker and cheaper determinations in such “fast track” cases, as an alternative to the current employment tribunal process.

Claims to employment tribunals are of differing levels of complexity. When they enter the tribunal system they are assigned to a level or track. Some of the jurisdictions defined by Her Majesty's Courts and Tribunals Service (HMCTS) as “fast track”, or Level 1, cases are listed at Annex 3.

The average costs to employers, claimants and the exchequer of going through employment tribunals are illustrated in Table 1. These are the average costs by outcome, and individual conciliation refers to the current system where cases are referred to Acas (The conciliation service) for conciliation after an employment tribunal claim has been received. Under RRS, the claim would not go for individual conciliation as parties will already have been offered, or participated in, early conciliation. Further detail on how these figures are arrived at is included at Annex 4.

These calculations exclude any awards paid as a result of a tribunal finding in favour of an employee. The data sources do not allow these figures to be broken down for fast track claims (except for Exchequer costs).

Table 1: Summary of costs incurred per claim throughout employment tribunal process, by outcome

	Employment Tribunal Hearing	Individual Conciliation	Average across ET claim outcome
Employer	£4,200	£3,300	£3,700
Claimant	£1,500	£1,100	£1,300
Exchequer	c£2020*		

Source: BIS estimates from Acas, HMCTS, SETA and ASHE data in 2011 prices. Figures are rounded. *Figure for exchequer costs refers specifically to fast track claims and covers costs for receiving a claim and hearing.

In the financial year 2010-11 there were a total of 218,100 employment tribunal claims accepted, of which 60,600 were single claims (one claimant) and 157,500 were multiple claims (a number of claims against the same employer). The number of multiple claims has risen from 63,100 in 2005-06 to 157,500 in the last financial year. It is important to note that the level of multiple claims can vary significantly year on year due to the varying nature of claims. Recent spikes have involved large numbers of multiple claims in specific industries so it is not clear whether recent increases will be sustained over the longer term.

A Rapid Resolution Service (RRS) would apply to fast track claims, these could be:

- Single jurisdiction, single claims
- Single jurisdiction, multiple claims
- Multiple jurisdiction (but all fast track), single
- Multiple jurisdiction (all fast track), multiple

Fast track cases between 2006/07 and 2010/11 have been reasonably stable with the exception of multiple claims (a number of claims made against the same employer for the same reasons). The median number of fast track claims over this period is just over 22,000 as Table 2 below illustrates.

Table 2: Summary of all Fast Track ET Claims

Year	Single Jurisdiction single	Single Jurisdiction Multiple *	Multiple Jurisdiction Single	Multiple Jurisdiction Multiples	Totals
2006/07	7500	5,467	4500	3000	20467
2007/08	7400	4,319	4500	3500	19719
2008/09	7,900	5,368	5600	4700	23568
2009/10	7,700	26,518	7700	22400	64318
2010/11	6,800	8,852			
Median	7500	5467	5050	4100	22117

Source: HMCTS. *Excludes working time regulation multiple cases

Rationale for Intervention

The question of how to minimise the costs, to all parties, of employment disputes is a key part of how the case for government intervention can be framed. The employment tribunal system is itself an existing Government intervention which acts as a last resort for the resolution of disputes but is highly costly to all three parties involved in the transaction (employer, employee and the Exchequer).

If there is a way by which certain disputes could be resolved at a lower cost and without compromising justice then all three parties stand to gain.

Policy objective

The intention of this policy option is to support and complement the wider changes being undertaken to the employment tribunal system aimed at increasing the efficiency of the system so that, where parties do need to go to employment tribunal, cases are dealt with more swiftly and efficiently to reduce the costs borne by all parties.

For low-value, straightforward cases, the cost to parties of using the current tribunal process can be greater than the value of the award, even where the matter does not proceed to a full hearing. We want to introduce a process that allows parties to have their dispute decided without the need to incur significant legal fees, or attend a hearing, where they agree that that is appropriate.

Options

1. Do Nothing

A number of reforms to the employment tribunal system have been proposed by Government to improve the efficiency of the system more broadly. These include all employment tribunal claims going to Acas in the first instance to be offered early conciliation before entering the tribunal system.

If no action is taken to deal differently with fast track cases these cases will still be required to be dealt with in the current system. This consumes expensive judicial resource even where they do not proceed to a full hearing. Parties, especially employers, will continue to seek costly legal advice on preparing their defence, and claimants may have to wait for many weeks for the matter to be resolved (HMCTS policy is that cases are listed for hearing 8 weeks after receipt of

the claim. However, cases are frequently postponed at the request of the parties, and the average length to time taken to determine a Level 1 claim is 20 weeks) .

2. Introduce a Rapid Resolution Service for dealing with fast track claims

Where relevant disputes were not able to be resolved in Early Conciliation, and a claim was subsequently lodged at employment tribunal, parties would be able to agree to have the claim decided through RRS. We considered 3 options for implementing such a scheme:

a) **Panel of Arbitrators** - A panel appointed and facilitated by HMCTS or Acas to make determinations on RRS claims. This option would provide determinations by a legally-qualified person, ensuring credibility for RRS. Arbitrators would be appointed via open competition, and would be allocated to cases on a rota basis. The administration of this system will be more costly than that for Legal Officers as, in addition to the initial set-up costs, there will need to be ongoing re-appointments to the panel, and an ongoing system to allocate cases. Administrative support would continue to be provided by HMCTS staff. However, the cost of arbitrators would not be dissimilar to the cost of judicial resource, with the most likely cost per day of an arbitrator being £464 (the same as a fee-paid judge in the Employment Tribunal) and therefore the possible savings to the Exchequer are lower than under the Legal Officers option. This option is still likely to represent a saving relative to Do Nothing, because there are new additional costs to employing fee paid judges (largely relating to pensions) that would not apply to Arbitrators.

This option is anticipated to be less costly than Do Nothing for claimants and employers responding to claims as there will be less need for legal advice, and time and cost savings for not going to (or preparing for) a hearing.

b) **Legal Officers** – Appointing individuals, again legally qualified, as employees of HMCTS, to make determinations on RRS claims. Administrative support would continue to be provided by HMCTS staff and would be cheaper than the Panel of Arbitrators option. The likely equivalent day rate of those qualified to make these decisions would be £270. There is no anticipated difference in the time taken to make determinations between the Panel of Arbitrators and Legal Officers, and therefore it is anticipated that this option will be at least 40 per cent cheaper than the Panel of Arbitrators for the Exchequer.

This option is anticipated to be less costly than Do Nothing for claimants and employers responding to claims as there will be less need for legal advice, and time and cost savings for not going to (or preparing for) a hearing. These impacts are likely to be similar between the Panel of Arbitrators and the Legal Officers.

c) **County Court** – the costs associated with the resolution of a dispute are the time it takes to resolve the dispute, the administrative costs associated with the process and the cost of the hearing. There is no evidence that the cost of the hearing will be less in the county court than in a tribunal as it too is a judicial process. In fact, as part of the small claims process – which is where the tribunal cases would be diverted – there are extra processes that are additional to the tribunal system. Parties would be required to enter the court's mediation process, when they will have already either declined early conciliation, or failed to achieve settlement.

These extra processes together with the extra administration required to shift the claim from the tribunal system to the county court system would increase the time and cost that it takes until the hearing starts. And the hearing – because it continues to involve judicial determination - is unlikely to save any time or costs. Therefore, this option is almost certainly more costly and time consuming than the Do Nothing option for all parties and is not considered further in this impact assessment

The use of legal officers is expected to be less costly to the Exchequer than the current judicial option. The use of a Panel of Arbitrators is likely to be less costly than the current option but

there will be less of a saving to the Exchequer as set out above. It is likely that the impacts of both options on employers and employees will be similar. Given the straightforward nature of the claims likely to be suitable for determination via the new system, we do not consider that there are any differences in the quality of determination provided by the arbitrator model compared to the Legal Officer model that would justify the difference in cost to the Exchequer.

We therefore believe that the cost benefit analysis favours the legal officer option as the most effective way of reducing the time and cost that it would take to achieve resolution. And it is considered that the cost of moving away from the full legal expertise of the judicial solution is very small given the straightforward, low-value nature of the claims that it is intended would be dealt with via the service. However, there is necessarily some uncertainty about the exact costs and benefits because the detail of the Rapid Resolution Service has still to be determined.

To allow delivery of this option it is necessary to take a power in primary legislation as, currently, although the use of legal officers is permitted in the employment tribunal system, they are unable to make determinations in respect of claims. As the intention is to support and complement the wider changes being undertaken to the employment tribunal system – some of which are being taken in a forthcoming bill - it is considered efficient to include this power as a clause in the bill so that Parliament can scrutinise the system as a whole.

When the overall structure of the new system is determined, in discussion with key stakeholders, then the detail of how the power would be implemented would be the subject of full public consultation. And, in the unlikely event that it is not possible to find a quicker and cheaper method of resolving specified claims, the power would not be taken up.

This impact assessment considers the effect of the Panel of Arbitrators and Legal Officers options. Although the difference is relevant for Exchequer impacts, we anticipate similar impacts to employers and employees of both options.

While the detail of the RRS process has still to be determined, it is intended that parties will have the choice of using RRS or entering the standard employment tribunal process. If they elect to use RRS, it is envisaged that parties would provide prescribed bundles of documents to the ET containing the information necessary for a decision to be taken on whether the claim was valid. A decision on the claim will be taken by a Legal Officer, a [senior] lawyer employed by HMCTS, based on the papers provided; there will be no oral hearing. By prescribing the information to be provided, parties will understand what is required and it is expected they will therefore need less legal advice. This, together with the removal of the hearing stage, will save parties time and costs. By transferring the decision-making responsibility from the judiciary to a senior lawyer, and by eliminating the need for hearings, there will be savings to the Exchequer.

Monetised and non-monetised benefits and costs

At this stage it is possible to assess the likely number of claims which could be determined by a Rapid Resolution Service (under legal officer or panel of arbitrator determination). However, it is not possible to quantify at this stage the full monetary impacts for claimants, employers and the exchequer. Public consultation will allow this to be assessed.

Baseline

As outlined above, even if the Rapid Resolution Service is not implemented, there will be changes to the way in which employment tribunal claims are dealt with that need to be factored into the baseline.

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All claims that currently go directly to the employment tribunal system will instead go to Acas for early conciliation in the first instance. Through the BIS impact assessment for this change³, a reduction in employment tribunal claims of 25 per cent is anticipated. In estimating the baseline claims affected, this impact assessment therefore draws on the likely impact on employment tribunal claims by applying the 25 per cent reduction.

The other major change to the employment tribunal system in this time will be the introduction of fees for lodging a claim. At this point in time, the mechanism and level of fees has not been decided, and there are no current estimates for changes to claims volumes that may result. However, in considering the impact of RRS, the introduction of fees is taken into consideration, and assumes that any fee for using RRS would be lower than the proposed fees for accessing the current ET process.

Baseline Volume of Claims affected

A Rapid Resolution Service (RRS) would apply to fast track claims, these could be:

- Single jurisdiction, single claims
- Single jurisdiction, multiple claims
- Multiple jurisdiction (but all fast track), single
- Multiple jurisdiction (all fast track), multiple

HMCTS data shows that in the period 2006/07 to 2009/10, median claims (median is taken due to spikes in multiple claims) amounted to just over 22,000 per year.

By the time any RRS is implemented, early conciliation would be in operation and we assume that this leads to a 25 per cent reduction in claims, leaving 5625 potential single jurisdiction, single claims; and 4100 single jurisdiction, multiple claims that could go through RRS.

This is set out in Table 3, and shows that there may be around 16,600 fast track claims per year that would have the choice of being dealt with either through a Rapid Resolution Service or through the employment tribunals as now.

Table 3: Estimates of Number of Claims Affected per year

	Single Jurisdiction single	Single Jurisdiction Multiple	Multiple Jurisdiction Single	Multiple Jurisdiction Multiples	Totals
Current median claims	7500	5467	5050	4100	22117
Expected claims after Early Conciliation is introduced	5625	4100	3788	3075	16588
Source: HMCTS, BIS estimates					

³ Found at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r11-1381-resolving-workplace-disputes-final-impact-assessment.pdf>

Impact of RRS on Fast Track Claims

RRS will not be mandatory, and therefore these claims volumes do not represent the total of what RRS would deal with. There are no obvious parallels to draw on in informing us what percentage of cases might be dealt with through RRS.

Government has committed to undertake a full consultation on the detail of the RRS process. This will enable us to explore the likely take-up of the service based on a fuller understanding by claimants and respondents of the cost of the service, the benefits offered etc. It is anticipated that fees will be charged to use RRS, but at a significantly lower rate than those currently proposed for Employment Tribunals. Therefore we would expect that a large proportion of claims would still go through this service, despite the presence of a fee.

At this stage, therefore, we do not know what proportion of these fast track claims would go into the Rapid Resolution Service and will use public consultation to try to understand the likelihood that the Service will be used.

To *illustrate* the potential magnitude of employment tribunal claims affected, if we assume that 60 per cent of eligible claims do choose the RRS route, then this would represent a total of almost 10,000 claims per year (including those claims made to multiple fast track jurisdictions).

To summarise, the calculation of the potential employment tribunal claims affected is:

- (A) Median fast track claims (approx 22,000)
- (B) 25 per cent reduction to account for early conciliation
- (C) Take-up of RRS (assumption to be determined)
- A * B * C

There may be a behavioural impact as well. A simpler system for dealing with low value cases may well lead to a group of people that currently do not make claims to employment tribunals deciding to bring these claims.

Exchequer Impact

RRS claims would enter the employment tribunal system in the same way as ET1 forms (the means by which claimants currently lodge an employment tribunal claim), existing administration costs for the receipt and allocation of ET1 forms would still apply for the Exchequer.

There is a saving to the Exchequer from dealing with the claim through the use of legal officers or a panel of arbitrators rather than hearings. We therefore consider how many hearings might be saved as a result of this volume of RRS cases.

HMCTS data shows that between 2006/07 and 2009/10 on average 19 per cent of single jurisdiction single claims in the fast track have resulted in a tribunal hearing.

For single jurisdiction, multiple claims this figure is generally far lower, but is extremely variable. As a result for these multiple claims the median number of claims ending up at a hearing is taken, which is 6 per cent. Taking into account the volumes of single and multiple jurisdictional claims, we estimate from the administrative data that on average 10 per cent of fast track claims currently go to hearing. This means approximately 10 per cent of the cases that would go through the Rapid Resolution Service rather than the employment tribunals, would have led to a hearing.

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To illustrate this, if the RRS were to deal with around 10,000 cases per year, we might expect around 1000 fewer employment tribunal hearings. The calculation will be:

Number of cases dealt with by RRS * proportion of cases that currently go to hearing (10%)

At this stage it is unclear how much the RRS determination by legal officers might cost. From HMCTS and MoJ analysis⁴ we know that a fast track hearing has an average unit cost of £1570. Therefore once we are clearer about what the possible take-up of RRS would be the Exchequer benefit will be calculated as:

Number of hearings saved * (fast track hearing unit cost – cost of determination under RRS)

This will be subject to sensitivity analysis around the number of hearings saved, as even with further investigation, the level of take-up of RRS would remain uncertain until the service is actually in operation.

Difference in cost between Panel of Arbitrators and Legal Officers

The cost of RRS will be determined as the proposal is developed and subject to public consultation. There will be additional savings accruing to the Exchequer even where cases do not proceed to hearing as Legal Officers rather than the judiciary will handle the entire case.

Although we do not know at this stage precisely what the cost of determination under RRS would be, we do have information on the likely costs of Arbitrators and Legal Officers. The closest parallel to the cost of Arbitrators is given by the daily rate of a fee-paid judge in the Employment Tribunal. This currently stands at £464 per day⁵. In reality fee-paid judges also involve further costs (for example because of recent pension decisions) that are not incurred for Arbitrators. For this reason, it is anticipated that Arbitrators would be less costly than the status quo (judicial determination).

Legal Officers are paid at the equivalent of £270 per day, this is based on the average salary of a Grade 7 Government Legal Service member of around £70,000 (including non-wage labour costs). There would be no expected difference in the time taken to make a determination between Arbitrators and Legal Officers and therefore the Legal Officer option is anticipated to be over 40 per cent less costly to the Exchequer.

Applicants will have a right to appeal the decision from RRS on points of law under both options. This is no different to the current position, where a matter is determined by the Judge. However, it is possible that a slightly higher number of appeals will be lodged as a result of non-judicial determination than might otherwise be the case. Notwithstanding the introduction of fees to lodge an appeal at Employment Appeal Tribunal (EAT), if this were to happen, this would result in some exchequer costs for dealing with that appeal, thereby reducing the Exchequer saving. This impact will be explored during public consultation.

Employer and claimant Impact

We know that average costs faced by employers and claimants entering the tribunal system are significant (see Table 1). If RRS succeeds in its design in reducing the extent of time spent on cases as well as legal advice costs, then employers and claimants will benefit similarly under both options. It is too early to be precise about the magnitude of these savings. Once it is clear what the possible time savings are, these impacts will be monetised by comparing the time and

⁴ See Employment Tribunal Fees IA [pg? Insert reference]

⁵ See <http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/2012/judicial-fees-2012-13.pdf> for current fee-paid judge rates

legal advice costs faced through employment tribunals at the moment, with those faced using RRS.

We recognise that there will be some, both claimant and employer, who will opt to pursue the matter through the full tribunal process, regardless of the potential savings in cost and time that might be available through RRS, for the prime purpose of obtaining a judicial determination in their case. There will be those who will regard a decision by a legal officer as being of less value or standing than that of a judge, regardless of the competence of the officer. We do not, however, have any indication at this stage as to the extent of this perception and therefore the impact on the potential number of claims that will go through RRS. We will use the consultation process to gather the relevant data.

Summary of Impact

A rapid resolution service is likely to benefit the Exchequer, as well as claimants and employers involved in fast track employment tribunal claims. It will do so by allowing these claims to be dealt with more quickly and efficiently than in the current situation.

Pursuing the legal officer option will generate more savings to the Exchequer than the Panel of Arbitrators for similar outcomes, as costs for legal officers are typically 40 per cent lower.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

This impact assessment supports taking a power in the EERRR Bill, as the only available legislative vehicle, to introduce a Rapid Resolution Service at a later date, subject to a full public consultation on the underpinning process on how the service would actually operate. The consultation will take place during 2012/13 and will refine our assumptions and make the analysis more detailed. At this stage, not enough is clear about how the service would run and operate to enable precise analysis. As a result the analysis in this IA is necessarily general.

Risks and assumptions

An easier route to resolution may increase claims. Rational individuals would currently realise that, for many fast track claims, the cost of pursuing the case can outweigh the gain (not factoring in access to justice). The introduction of RRS may persuade those who would otherwise not have done so to lodge a claim. This impact on claims has not been assessed at this stage.

The lack of judicial involvement in the decision-making process for these claims may mean that there is less take-up of the service than we anticipate, even after taking into account the responses to consultation. To avoid over-resourcing the service, we would propose to pilot RRS before deciding whether to roll-out nationally.

In the event that a decision is taken to charge a fee to use RRS, this will impact the number of cases that use the system, as will any decision not to allow remittances in these claims. No decision on fee charging and remittance has yet been taken, so the impact on claims has not been assessed at this stage.

For some, a decision on a case taken by a non-judicial authority may carry less weight and therefore lead to an increase in appeals. However, given that the decision to use RRS will be voluntary, we would expect that those agreeing to its use will be less likely to challenge an RRS decision. That, together with the proposal to charge fees to lodge an appeal at EAT, should mitigate against a significant increase in the number of appeals. However, the impact on appeals has not been assessed at this stage.

Estimates of the likely volume of employment tribunal claims that will be eligible for RRS are based on existing HMCTS administrative data on the level of fast track claims over recent years. They also assume that fast track claims will be affected by the introduction of early conciliation by Acas before claims enter the tribunal system in the same way as all cases will be (in other words that the estimate of a 25 per cent reduction in tribunal claims applies equally to fast track claims).

Wider impacts

An equality impact assessment is set out at Annex 1, whilst other specific impact tests are set out at Annex 2. Overall we conclude that this measure should not have a disproportionate impact on any particular group. However, it will be important to consider wider impacts and the accessibility of the service through the full public consultation which will follow.

Direct costs and benefits to business calculations (following OIOO methodology)

This measure, although likely to entail direct benefits to business where it is used due to time savings, is not mandatory and therefore is out of scope for one-in-one-out.

Summary and preferred option with description of implementation plan.

Government intends to take a power in the EERRR Bill, the only available legislative vehicle during the remainder of this Parliament, to provide for the introduction of a Rapid Resolution Service, that will allow for paper-based determination of Level 1 claims by a non-judicial authority. The detail of the scheme will be worked up in discussion with stakeholders in 2012/13 and will be introduced via secondary legislation, subject to a full public consultation. It is intended that any new Service will be piloted prior to full introduction; piloting would be expected to begin in April 2013.

Annex 1: Equality impact assessment

The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties set out in the Equality Act 2010. Equality Impact Assessments are an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups.

Proposal

This assessment looks at the impact of introducing a Rapid Resolution Service for dealing with simpler employment tribunal claims.

By making the resolution of simpler claims more straightforward and less costly for all parties, we conclude that this proposal should not have a disproportionate effect on any particular group. Fast track cases do not include any claims for discrimination, which would continue to be dealt with through employment tribunals as they are now.

However, it will be important in the implementation of the RRS to ensure that it is fully accessible to all groups. This will be considered in-depth as the RRS proposal is developed and subject to full public consultation.

Background

The 2008 Survey of Employment Tribunal Applications (SETA) collects information on the personal characteristics of claimants. Results from SETA can be compared against the Labour Force Survey (LFS) for employees to see how the characteristics of claimants differ to the general population of employees. This information is summarised below.

Gender

BIS has published SETA in 2003 and more recently in 2008. In 2008 three-fifths (60 per cent) of claimants were men. This is similar to the proportion found in 2003 (61 per cent) and somewhat higher than the proportion of the employed workforce as a whole (51 per cent), as given in the LFS. Men brought the majority of employment claims across most jurisdictions; however, 82 per cent of sex discrimination cases were brought by women. This pattern closely resembles that found in 2003, where men also brought the majority of employment claims across most jurisdictions. However in 2003, an even higher proportion of sex discrimination cases were brought by women (91 per cent).

Ethnicity

According to SETA 2008 86 per cent of claimants were white, a slightly lower proportion than in 2003 (90 per cent) and lower than the workforce in general (91 per cent). However, the proportion was much lower in race discrimination cases, where only 8 out of the 57 claimants (15 per cent) were white, with 20 black (34 per cent) and 20 Asian (34 per cent). This is a similar pattern to that found in 2003.

Disability

In SETA 2008 22 per cent of claimants had a long-standing illness, disability or infirmity at the time of their employment claim, which is the same as the proportion among employees in general (22 per cent) and is a slightly higher proportion than in 2003 (18 per cent). 15 per cent

had a long-standing illness, disability or infirmity that limited their activities in some way, a higher proportion compared with the workforce as a whole (10 per cent) and in 2003 (10 per cent).

As in 2003, the proportion of claimants who had a long-term disability or limiting long-term disability was, as would be expected, considerably higher in Disability Discrimination Act (DDA) cases (84 per cent and 74 per cent respectively). Looking at primary jurisdictions the proportion of claimants who had a long-term disability was highest in discrimination cases (45 per cent) and lowest in Wages Act cases (10 per cent) and redundancy payment cases (8 per cent).

Age

47% of respondents on the SETA (2008) claimant survey were 45+, compared to 38% of respondents to the Labour Force Survey. This varied by jurisdiction. The highest proportion of people of 45 and over was in Breach of Contract cases (74%) and the lowest was wages act jurisdiction claimants (35%).

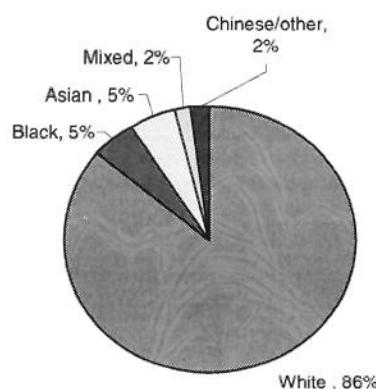
Religion/belief

SETA 2008 results showed that 46 per cent of claimants regarded themselves as belonging to a religion which is in line with the findings from 2003. 40 per cent of all claimants regarded themselves as Christian. 6 per cent of all claimants regarded themselves as belonging to a religion other than Christianity (Muslim 2.4%, Hindu 1.2%, Sikh, Jewish, Buddhist and other answers were all under 1%). This figure was higher among those involved in discrimination cases generally (12%), and higher still (39%, although note that this is from a small sample size of just 57) among those involved in race discrimination cases. Comparisons with LFS cannot be made because of the difference in phrasing of the questions about religion/religious beliefs between the two surveys.

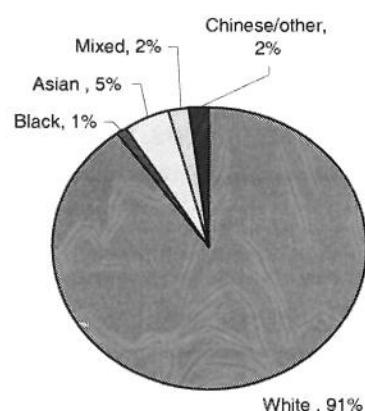
It is not possible to look at employment tribunal claimant characteristics in terms of gender reassignment, marriage and civil partnership, pregnancy and maternity, and sexual orientation.

Chart A2.1. Ethnicity of claimants, compared with employees in GB

SETA 2008



LFS, Q1 2008



Source: SETA 2008 and LFS, Q1 2008

Annex 2: Specific Impact Tests

Competition Assessment

We have fully considered the questions posed in The Office of Fair Trading competition assessment test⁶ and concluded that the proposal outlined in this impact assessment will not hinder the number or range of suppliers or the ability and incentive for businesses to compete in any market.

Table A4.1. Competition assessment.

Question: <i>In any affected market, would the proposal...</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BIS

Small firms impact test

Any enterprise with employees could potentially have a dispute with one of its employees and end up at an employment tribunal. The proposal should benefit employers by simplifying the system for dealing with simpler employment tribunal claims.

The SETA (2008) employers' survey notes that 36 per cent of cases related to organisations with less than 50 employees. BIS SME statistics show that across the whole economy, 37 per cent of employment is in enterprises with less than 50 employees. However, the costs and implications to the business of having to respond to an employment tribunal case are harder to bear for smaller businesses.

The proposal should therefore disproportionately benefit small businesses as they are less likely to have to respond to an employment tribunal claim. Micro-businesses will benefit even more, given how damaging an employment tribunal claim could be to them.

Environmental Impacts

This proposal will not have a significant impact on the greenhouse gas emissions or the environment more widely as they relate to resolution of disputes between employees and employers.

Social Impacts

Health and well-being: This proposal may have a minor effect on health and well-being by reducing the stress involved with pursuing a claim relating to a workplace dispute.

Human rights: Although not relevant to taking the power, the proposals taken forward have been considered in principle against the human rights act in terms of possible implementation and we believe they are compatible.

⁶ http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf

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Justice System: This proposal is expected to reduce the volume of employment tribunal claims that have to be dealt with through the current employment tribunal system. By dealing with smaller claims in a simpler way, there will be a reduction in employment tribunal costs. MoJ and HMCTS have been involved in the development of this proposal.

Rural Proofing: We do not consider that these proposals will have any specific impact on rural communities.

Sustainable Development

This proposal supports the principles of sustainable development reducing the overall costs of the system to all parties.

Annex 3: Details of Fast Track Jurisdictions

Table X: List of Fast Track Jurisdictions

Jurisdiction	Jurisdiction Description
Code	Jurisdiction Description
BOC	Breach of Contract
FML	Failure to pay remuneration whilst suspended from work for health and safety reasons whilst pregnant or on mat. leave
FPA	Application by an employee that an employer has failed to pay a protected award as ordered by a tribunal
FTO	Failure to allow time off for trade union activities or duties, for ante-natal care or for public duties
FTP	Failure to provide a guarantee payment
FTR	Failure to pay remuneration whilst suspended for medical reasons
FTS	Failure to allow time off to seek work during a redundancy situation
FTU	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
PAY	Failure of the employer to prevent unauthorised or excessive deductions in the form of union subscriptions
RPT	Failure to pay a redundancy payment
RTR	Road Traffic
TUR38	Breach of Contract
WA	Failure of employer to pay or unauthorised deductions have been made
	Complaint by a worker that employer has failed to allow them to take or to pay them for statutory annual leave entitlement
WTR(AL)	

Annex 4: estimating costs of employment tribunals to the parties involved

The impact assessment discusses the costs to claimants, employers and the Exchequer of employment tribunal claims. This annex sets out in more detail how unit cost estimates for the claimant, employer and exchequer are calculated.

With the exception of Exchequer costs it is not possible to split these costs according to whether it is a “fast”, “standard” or “open” track case going through employment tribunals. The estimates are built up from a variety of sources, but a key input is the Survey of Employment Tribunal Applicants (undertaken in 2008 and published by BIS). This asks applicants for time spent on a case, as well as money spent on legal advice. The survey questions do not allow a break down between fast track and other questions, nor do they allow a breakdown by tribunal outcome, hence the figures discussed below are averages across type of case and across the tribunal outcome.

Table A4.1 summarises these costs.

Table A4.1: Summary of costs incurred throughout employment tribunal process, by outcome

	Employment Tribunal Hearing	Individual Conciliation	Average across ET claim outcome
Employer	£4,200	£3,300	£3,700
Claimant	£1,500	£1,100	£1,300
Exchequer	c£2,020*		

Source: BIS estimates from Acas, HMCTS, SETA and ASHE data in 2011 prices. Figures are rounded. *The Exchequer figure is for fast track hearings and receipt and allocation costs.

These costs represent the total costs incurred by the employer, claimant or exchequer through the whole process. The first column shows these unit costs where the claim ends at an employment tribunal, the second where it ends with individual conciliation and the third is an average across all ET outcomes.

Claimant

Claimant costs incurred from completing an employment tribunal application form onwards consist of:

- Communication costs (for example telephone calls, correspondence)
- Travel (to hearings or to meet with advisers)
- Loss of earnings
- Advice and representation

SETA (2008) asked employment tribunal claimants whether they had incurred these costs. Table A4.2 shows the proportion of respondents that incurred these costs, with Table A4.3 demonstrating this for legal advice and representation costs.

Table A4.2. Proportions of people that incur travel and communication costs and suffer a loss of earnings

Communication costs	37%
Loss of earnings	31%
Travel costs	26%

Source: BIS estimates based on SETA 2008 Table 10.1

Table A4.3. Claimants' and Employers' survey: Free advice and representation

	Claimant	Employer	All
Whether paid for advice			
Paid for all	26%	69%	49%
Paid for some	7%	8%	8%
Paid (paid for all + paid for some)	33%	77%	57%
All free	66%	21%	42%
Don't know	1%	3%	2%
Didn't pay (all free + don't know)	67%	23%	44%

Source: BIS estimates based on SETA 2008 Table 5.20. Not all figures sum due to rounding

For those that do pay, SETA yields estimates for the amount paid which are summarised within SETA Table 10.2. In constructing unit cost estimates, these amounts are adjusted to account for those that do not pay, and hence to provide a figure averaged across all claimants. Furthermore, these figures are adjusted to account for RPI inflation between the survey (2008) and 2011.

Table A4.4 Summary of Costs to a claimant from an employment tribunal

	Tribunal application successful / reached tribunal	All	Acas Settled
Time spent on case	£633	£638	£570
Costs for advice and representation post ET1	£857	£685	£501
Costs incurred for travel, communication	£13	£18	£18
Total cost	£1,503	£1,342	£1,090
Total cost rounded to nearest £100	£1,500	£1,300	£1,100

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Time spent is multiplied by the median wage for all employees. Table A4.5 below sets out the relevant wages. For later consideration of employer costs non-wage labour costs are added at 24 per cent so these are demonstrated here but not incorporated into claimant costs.

Table A4.5 Hourly pay (excluding overtime) in the UK, 2011

	SOC Code	Median	Median, including non-wage labour costs at 24%
All employees			
Personnel, training and industrial relations managers	1135	£11.09 £21.66	£13.75 £26.86
Corporate managers and senior officials	111	£37.63	£46.66
Directors	1,112	£48.85	£60.57

Source: ASHE 2011 **Table 14.6a**

Employer

Employers face costs in terms of time spent by a variety of staff in an organisation on a case. They also face advice and representation costs. Table A4.3 illustrates using SETA findings the proportion of employers who paid advice and representation costs in responding to an employment tribunal claim.

SETA (2008) also establishes the median amounts spent on advice and representation (SETA table 5.24) and the median time spent by different staff members (SETA tables 10.5 and 10.6). The estimates below multiply time spent (this is given in days, but SETA assumes 8 working hours in the day) by the wage rate of the relevant staff (given in Table A5.5). In constructing unit cost estimates, these amounts are adjusted to account for those that do not pay for advice and representation, and hence to provide a figure averaged across all employers. Furthermore, these figures are adjusted to account for RPI inflation between the survey (2008) and 2011.

Table A4.6 Summary of Costs to an employer from an employment tribunal application

	Tribunal application successful / reached tribunal	All	Acas Settled
Time spent on case Directors and senior staff	£1,535	£1,151	£1,151
Time spent on case (other staff)	£442	£442	£442
Costs for advice and representation post ET1	£2,182	£2,101	£1,681

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Total cost	£4,158	£3,694	£3,274
Total cost rounded to nearest £100	£4,200	£3,700	£3,300

Exchequer

In the current system, costs are incurred by Acas in offering individual conciliation, and by HM Courts and Tribunals Service when claims are received and for the different stages within the process.

Unlike with the costs to employers and claimants, these costs can be broken down according to whether the case is “fast track” or not – this impact assessment being about how fast track cases may be dealt with in future.

Table A4.7 below displays HMCTS estimates of unit costs for various stages of the employment tribunal process.

Table A4.7: Unit costs (£) of stages in the employment tribunal process

Track	Fast	Standard	Open
Receipt and allocation	450	410	420
Hearing	1570	4120	6170
Mediation		2610	
Default Judgements	360	360	360
Dismissal after settlement	180	240	210
Written Reasons	470	1050	1380
Review	770	1550	1830

Source: HMCTS/MoJ, expressed in 2011 prices

To look at an average unit cost for a fast track case which goes to a hearing we sum the receipt and allocation costs and hearing costs. This is an underestimate, but other costs are not incurred in all cases. This yields a figure of £2020 for dealing with a fast track case that ends up at a tribunal hearing.