

Written evidence from Citizens Advice

Introduction

The coronavirus pandemic has put increasing pressure on employment tribunals with the consequences including: a swelling backlog of outstanding claims, prolonged waiting times for hearings, and increased withdrawal rates. In our October report *Tribunal Trouble*¹, we set out the scale of the challenge the employment tribunal system is facing - and why its restricted capacity is damaging for workers' rights at a time of rising demand.

It is encouraging that the government has already recognised this problem exists and announced numerous measures aiming to ensure redress is available to employees in this crisis. These include £5.4 million additional funding for advice charities and law centres, £80 million investment in the courts and tribunal system, and temporary 'Nightingale Courts' to boost capacity. These measures are welcome but they are spread across disparate services and systems. As an example, only four Nightingale Courts are currently hearing employment tribunal cases². In addition to procedural changes announced in September³, targeted funding and concerted action is urgently needed to address the backlog and ensure valid claims make it to tribunal in the pandemic.

Based on our findings in *Tribunal Trouble*, this submission draws on case studies, polling, and tribunal statistics to outline the extent of the pandemic's impact on the employment tribunal system - and how this affects (existing and potential) claimants. It then sets out what measures we are calling for to prevent workers' rights from going unprotected in this crisis, and to ensure effective redress and enforcement of employment rights going forward.

For more detail on our analysis and recommendations, the link to the full *Tribunal Trouble* report can be found in the footnotes.

1. Impact of Covid-19 on employment tribunal capacity

i. Coronavirus-related restrictions meant a backlog of 455,000 claims by the end of June

Going into the pandemic, the employment tribunal system's backlog of outstanding claims stood at over 440,000⁴. By June 2020, it had reached almost 455,000. There were 37,000 outstanding single claims - surpassing the post-2008 financial crisis peak of 36,000.

The increased backlog is a consequence of significantly reduced capacity, including a three month pause on in-person hearings from late March⁵. Between April and June, the number of

¹ Citizens Advice, [Tribunal Trouble](#) (2020)

² HM Courts & Tribunals Service, [Nightingale Courts guidance](#), August 2020

³ UK government, [Government to boost capacity in employment tribunal system](#), September 2020

⁴ Ministry of Justice, [Employment Tribunal Statistics](#)

⁵ [National Employment Tribunal User Group minutes](#), June 2020

claims disposed dropped to an 11-year record low of just over 6,400. In the same quarter, there were over three times the number of claims received at just over 21,500.

ii. Ongoing restrictions and growing demand from pandemic-related workplace problems and redundancies risk a backlog of 500,000

While some capacity has been recovered through video hearings and reopening some tribunal buildings, coronavirus-related restrictions mean that employment tribunals are yet to return to business as usual. For example, before the four Nightingale Courts opened, an estimated half to two-thirds of the total employment tribunal estate was unavailable due to health and safety restrictions⁶. HM Courts & Tribunals Service management information shows that, in the weeks between July and September, the number of single claims disposed was on average just two-thirds (67%) of the number received - compared to the pre-covid baseline of 85%⁷. The result is that the single claim backlog has grown at a rate of around 1% a week throughout the pandemic.

The second national lockdown highlights the pandemic's ongoing impact - including on public health measures and on the economy. For tribunals, this means that "significantly reduced footfall will continue to be necessary"⁸ in its buildings, increasing reliance on remote hearings - and more employment problems arising in the pandemic context.

At the end of June, the President of Employment Tribunals in England and Wales predicted further claim increases relating to health and safety, whistleblowing, and unfair redundancies and dismissals⁹. With redundancies reaching a record high of 314,000 between July and September¹⁰, this prediction is likely to materialise throughout the rest of the year. This has happened before: in 2009/10, the unemployment rate went up to 7.6% compared to 5.3% in 2007/08¹¹ - and redundancy and dismissal tribunal claims rose by over half (57%) to 87,000¹².

Along with ongoing restrictions, this growing demand means there is a significant risk that the gap between claims closed and claims received will persist and the backlog will grow. If the same quarterly increase for single and multiple claims we saw between March and June continues, outstanding claims will surpass 500,000 by spring¹³.

⁶ *ibid*

⁷ HM Courts & Tribunals Service, [Weekly management information during coronavirus](#), March to September 2020

⁸ Courts and Tribunals Judiciary, [Message from the Lord Chief Justice and Senior President of Tribunals: new COVID-19 restrictions for England](#), November 2020

⁹ [National Employment Tribunal User Group minutes](#), June 2020

¹⁰ Office for National Statistics, [Labour market overview](#), UK, November 2020

¹¹ Office for National Statistics, [Unemployment rate \(aged 16 and over, seasonally adjusted\)](#)

¹² Ministry of Justice, [Employment Tribunal Statistics](#)

¹³ Citizens Advice, [Tribunal Trouble](#) (2020)

2. What this means for potential and existing claimants

i. Prolonged waiting times for hearings

The Employment Tribunal President has stressed that the increasing backlog of cases will pose “huge challenges to the ability of the employment tribunal to deliver justice within a reasonable time”¹⁴. This means that - as demand is expected to increase - claimants face protracted waits for a hearing.

Table 1. Mean waiting times (age at clearance) in Q1 2020/21 (April-June)

	Single claims	Multiple claims
All types of claim	32 weeks	55 weeks
Redundancy	25 weeks	34 weeks
Unfair dismissal	34 weeks	40 weeks
Average of all discrimination claims	39 weeks	68 weeks

Table 1 shows the national average age of a claim at clearance between April and June 2020. An average single claim closed on 1 April 2020 would have been submitted in August 2019. A multiple claim closed on the same date would have been submitted over a year before, in March 2019.

Case Study: Richard was made redundant in October 2018. After negotiations through early conciliation fell through, he took his claim for unfair dismissal to an employment tribunal. The preliminary hearing was at the start of February this year with the full hearing scheduled for April. However, due to the pandemic, the hearing was cancelled. 3 months later, the Tribunal Services contacted Richard. They had rescheduled the hearing for November 2020 - over 2 years after Richard was dismissed.

Waits for tribunal were already lengthy - and now the pandemic has significantly exacerbated this: many cases due to be heard when lockdown started have been rescheduled to more than a year into the future. Some have been postponed until 2022¹⁵.

¹⁴ [National Employment Tribunal User Group minutes](#), June 2020

¹⁵ *ibid*

“I didn’t think it could take this long. To think it may be next year before I receive anything.”

Client who first came to Citizens Advice with their employment problem in November 2019, still in the tribunal process in November 2020.

ii. Increased withdrawal rates

Case Study: After working for his employer for over 10 years, Jake was dismissed after a disciplinary hearing. He disputed the reasons for his dismissal and came to Citizens Advice for support with an internal appeal in July 2019. It escalated to the employment tribunal stage and his hearing was due in September 2019. This was then postponed to April 2020 due to staff absence. At the start of lockdown, Jake received an email advising that the employment tribunal had closed. He was later informed that his hearing would be delayed indefinitely due to the pandemic. The earliest he could expect the hearing to take place was December 2020. The uncertainty of the process - along with the stress of having lost his job and the difficulties with finding work - had taken their toll on Jake’s mental health. He has contacted Citizens Advice to ask how he can go about withdrawing his claim.

For many affected workers, the growing queue and waiting times will be enough to deter them from reaching a tribunal hearing. Withdrawals are already increasing. Over 1 in 4 (26%) of all claims closed between April and June were withdrawals compared with 1 in 5 (20%) the previous quarter. This rose to 3 in 10 (29%) for unfair dismissal claims and over 2 in 5 (43%) for redundancy pay claims.

“By the time someone decides to pursue a tribunal they're often already under a huge amount of stress. Then I have to warn them that the earliest they're likely to get a date is this time next year. If it's a complex case regarding discrimination, we're probably talking about 2022.

“The waiting and the complexity can grind people down until they're so scared and exhausted they withdraw their case.”

Christine Trueman, an employment adviser at Citizens Advice Taunton

iii. Heightened barriers to redress for those affected by the redundancy crisis

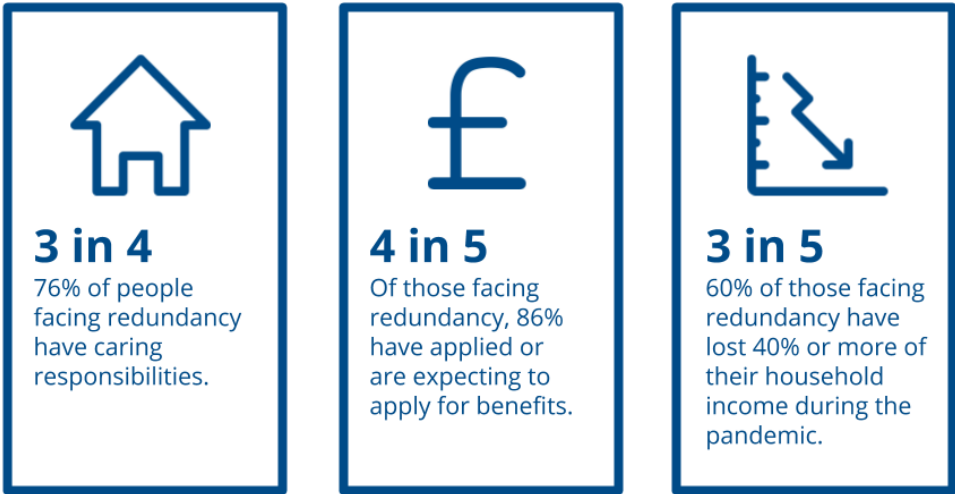
Our findings also indicate that an overloaded tribunal system will pose a heightened barrier to those facing redundancy in this crisis. Enduring prolonged waits for a tribunal hearing requires

time and money - with potential financial costs including loss of earnings, travel and communication expenses, and legal advice and representation.

Case Study: When lockdown started, Caroline had worked for her employer for just over 2 years. After being told to stay home for a few days, her employer arranged a meeting with her. Two minutes in, Caroline was informed she was being made redundant. There was no consultation and she was given no reasons for her selection. She contacted Acas and they said she could appeal the decision but her employer rejected this. If early conciliation is unsuccessful, she'll need to go to an employment tribunal. But losing her job means Caroline doesn't have any income. She's worried because she knows her employer has the means to afford legal representation and defend any action - while she'll have to represent herself.

As Figure 1 highlights, for many people affected by the redundancy crisis, they won't have the means to make and sustain a lengthy employment tribunal claim. This will prove a significant barrier to accessing redress - at a time when many will need it.

Figure 1. Circumstances of potential redundancy claimants¹⁶



Recommendations

Urgent and targeted intervention is needed to ensure employment tribunals have the capacity to deliver redress for those affected by legal workplace problems in the pandemic - and beyond. This requires concerted action that addresses the insufficient resourcing of employment tribunals, as well as the inadequate and confusing enforcement landscape for employment rights.

We're calling on the government to:

- Increase funding for employment tribunals so it has the resource to address the backlog of outstanding claims and manage coronavirus-related restrictions. For example, it could

¹⁶ Poll conducted on behalf of Citizens Advice by Opinium. 'Facing redundancy' is used to refer to people who have already been made redundant, are in a formal redundancy process or who have had informal discussions with their employer about redundancy.

be put towards:

- More temporary tribunals for in-person hearings that meet health and safety standards
 - Extra investment for regions with increasing demand and lacking resource - including targeted increases in staff and temporary physical estate
 - Hardware and software necessary to conduct remote hearings effectively
 - Data monitoring and user research to identify and resolve issues according to claimants' and employers' experiences of the system changes
- Fast-track plans to create a single enforcement body for employment rights and ensure it has the remit and resources to improve redundancy processes. This in turn would relieve the pressure on employment tribunals by reducing the number of workers needing to make claims in the first place.