



## Where next for Employment Tribunals?

By **Jon Gilligan** - 31 January 2018

Following the abolition of fees in July 2017, employment tribunals will come under growing pressure from a substantial increase in cases, as is demonstrated by claims for unfair dismissal increasing by 47% to 4,345 over the three months to 30 September 2017\*. Increased budget for the tribunal system is very unlikely. Indeed, the £1.8m of tribunal fee refund payments that have been made since October 2017 have been funded from the MoJ's existing budget.

If it is to be assumed that there will not be any material increase in the budget for the employment tribunals (or any increase at all), more creative solutions need to be explored to ease the strain on tribunals and prevent a new backlog of claims being created. In some cases it is already taking over a year for a case to be listed for a hearing.

One such solution would be to introduce a new compulsory stage in the tribunal process that involves a judge assessing at an early stage what the compensation award would likely be if the employee were to win their claim(s). Once this has been established, both the employer and employee would be informed of this assessment and either of them could make an offer to settle for that value. If the offer is rejected and the parties then go to a full hearing, some of the legal costs may be awarded against the party that has refused the offer if it does not achieve a better result at the full hearing. This could be based on the tried and tested mechanism of Part 36 Offers of the Civil Procedure Rules which are widely used in other civil disputes.

Adding this new stage would build on the optional judicial assessment that already exists to determine the merits of a claim. It would enable the employer and employee to have more realistic settlement discussions and in many more cases agree an early settlement, drastically reducing the number of cases unnecessarily going to a full hearing.

By way of example, the average award for unfair dismissal in 2016/17 was £7,521\*, but employees often believe that awards will be many times higher than this. Often, for purely commercial reasons, regardless of the strength of a claim, employers would prefer to settle, but this misunderstanding encourages many individuals to go to a full tribunal hearing rather than accept an early settlement offer that might be very close to (or possibly more than) the award they receive if they ultimately win their case.

Creating costs risk in the employment tribunals will divide opinion. However, doing nothing is no longer an option.

*\*Ministry of Justice 2017*