



Employment & Discrimination Tribunal A Review of 2016

CIPD

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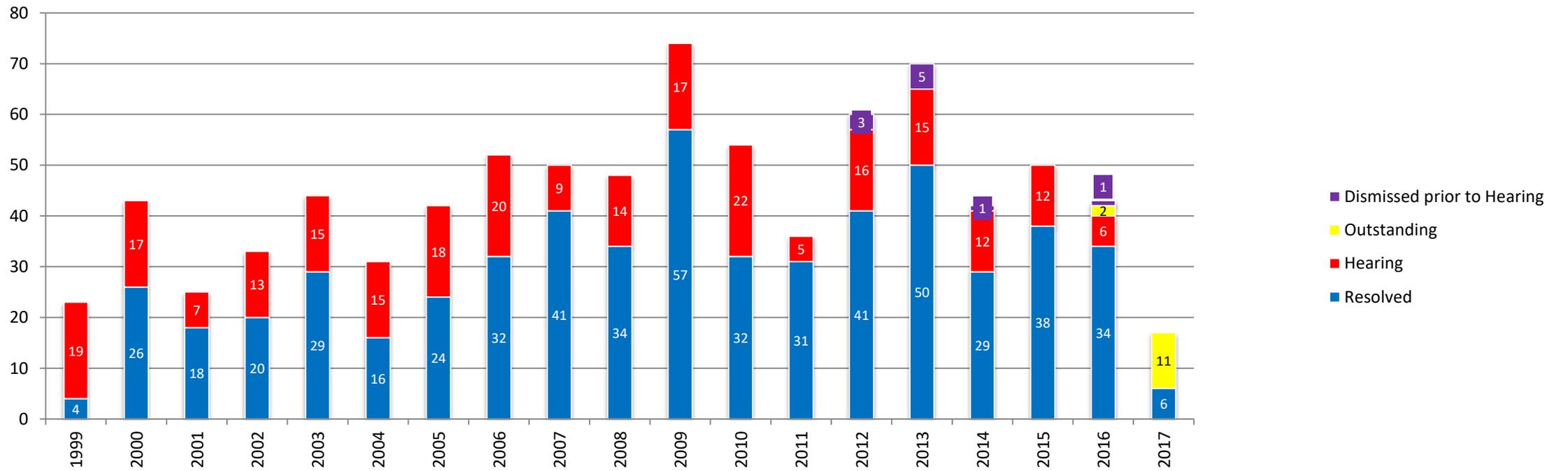
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Further Information

- Telephone: 234567
- E-mail: employmentrelations@.gov.gg
- Website: www.gov.gg/employmentrelations
 - Guidance Notes
 - Employment guides
- Website: <http://www.gov.gg/employmenttribunal>
 - Application forms (ET1) & Response forms (ET2)
 - Decisions

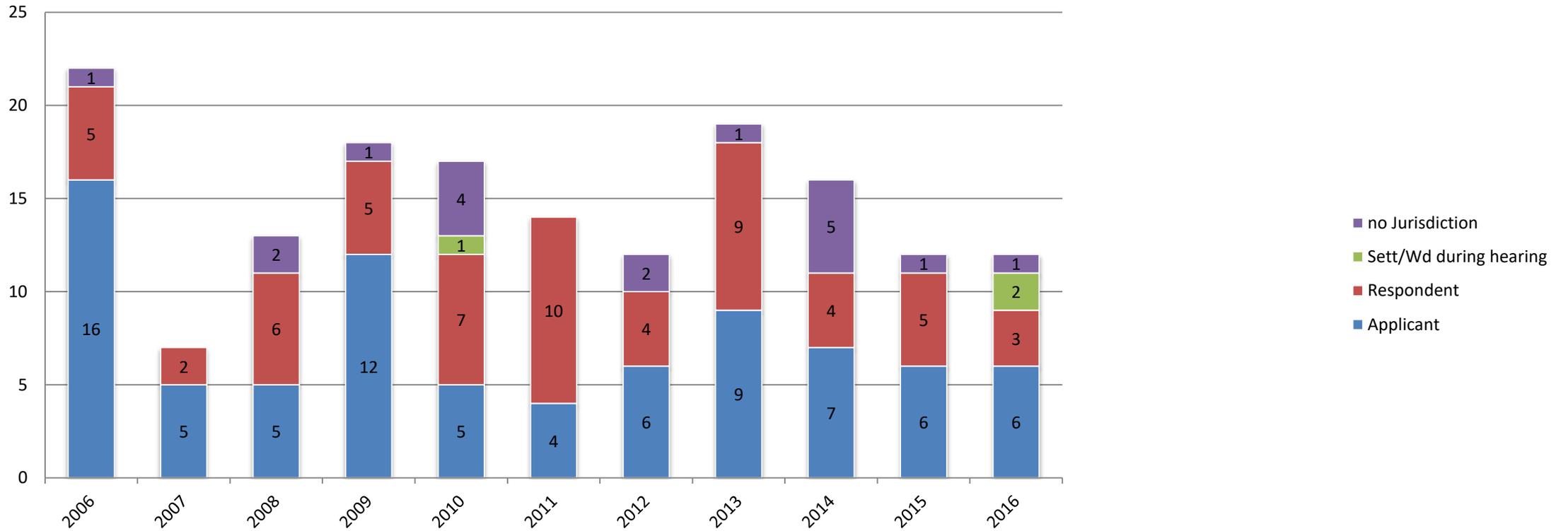
Notified Claims

Number of E&DT Cases by Year



Decisions by Year

Decisions by Year





Tribunal Decisions

- Decisions published at the Greffe
- Decisions can be viewed at www.gov.gg/employmenttribunal



Tribunal Decisions 2016

- **Decisions for Respondent:**

- Jones v H2O Liquid Engineering Limited

- Procedural failings sufficiently minor that dismissal was the decision of a reasonable employer. Size and administrative resources considered a factor.

- Keisa v 1st Class Cleaning Services Limited

- Whilst full disciplinary process appeared not to be followed, applicant's conduct was so serious that the Respondent's actions were those of a reasonable employer.



Tribunal Decisions 2016

- **Decisions for Respondent:**
- Garnham v St John Ambulance & Rescue Services
 - Claim of Constructive Dismissal - dismissal was fair as applicant failed to establish a repudiatory breach going to the heart of the contract.



Tribunal Decisions 2016

- **Decisions for Applicant:**

- Luxton v Freelance (CI) Limited

- Respondent stated this was a redundancy. Tribunal found it was not a genuine redundancy. Sham procedure as part of an internal restructure. Dismissal unfair.
- **Award: £16,714.65 (no reduction)**

- Renouf v States of Guernsey

- Constructive dismissal and sex discrimination surrounding return from maternity leave. Tribunal found she was being denied the right to return to “her job” basing its decision on the employers own policies to reach that conclusion.
- **Award Unfair Dismissal: £21,635.52**
- **Award Sex Discrimination: £10,817.76**



Tribunal Decisions 2016

- **Decisions for Applicant:**
- Langmead v Scout Association Bailiwick of Guernsey
 - Respondent argued employee resigned and also that there was a genuine redundancy. Tribunal found there was a dismissal and the evidence put before them was around capability not redundancy. The dismissal was unfair.
 - **Award: £7,800 (no reduction)**



- **Decisions for Applicant:**

- Farnham v Graham Scott & Co Limited

- Redundancy – failure to follow a fair procedure. In addition, the statement “part-timers don’t work for us anymore, we need full-time” considered sex discrimination.
- **Award Unfair Dismissal: £5,569.44**
- **Award Sex Discrimination: £2,771.22**



- **Decisions for Applicant:**
- **Davies v Freelance (CI) Limited**
 - Reason for dismissal not proven so dismissal unfair. However, discussions had been attempted with applicant and he had failed to engage so award reduced.
 - **Award: £6,712.50 (50% reduction)**
- **Ribeiro v Sonnic Cleaning (Guernsey) Limited**
 - Substantial failings in respect of the Company's own disciplinary procedure, which was "more than adequate for its needs and provided a correct framework for any disciplinary matters it might have had to deal with."
 - **Award: £12,376.90 (no reduction)**



- **Pre-Hearing Reviews (PHR):**
- **Upson v Netplay TV Limited**
 - PHR to establish whether or not the applicant had sufficient continuous service to bring a complaint.
 - **Decision** – case should proceed as service established
- **Ward v Brecqhou**
 - PHR to determine effective date of termination and therefore whether or not the complaint was “in time.”
 - **Decision** – case should proceed as complaint was “in time”
- Both cases subsequently resolved without further hearings



- **Pre-Hearing Reviews (PHR):**
- Newark v VTSI Limited & Global Jet Luxembourg SA
 - PHR to establish whether or not the Tribunal had jurisdiction to hear the complaint. The Tribunal had to establish where the applicant ordinarily worked.
 - **Decision** – case dismissed as applicant did not ordinarily work in Guernsey



Learning Points

- If dismissal inevitable – identify real reason for dismissal and consider any processes used to-date
 - relying on the “wrong reason” will cause more problems than it solves!
- Failure to follow a fair relevant process is likely to lead to a finding of unfair dismissal
 - However a failure to follow minor aspects of the procedure may be weighted accordingly
 - Contributory fault by the employee may also be considered
 - Size and administrative resources of the employer are fully considered as part of the fair and reasonable test



Learning Points

- Process is key
- Important for HR professionals to ensure:
 - Procedures are established
 - Procedures “health checked” to ensure they remain “fit for purpose”
 - Procedures communicated and easily accessible to all staff
 - Managers trained in effective use of procedures and encouraged to use them!



Learning Points

- Conciliation is a useful tool in dealing with complaints to the Tribunal
- 70 – 80% success rate
- Not all conciliated settlements involve significant financial settlements
 - References
 - Confidentiality undertakings
 - Withdrawal of complaints following involvement of conciliation officer



Learning Points

- Conciliation is available until the close of the hearing
- Early unsuccessful conciliation may be revisited
 - After case management meeting:
 - Chair will outline expectations
 - Parties meet again
 - Formality of process is recognised
 - Days/hours before the hearing
 - Realisation of situation
 - Risk of publicity



Perspective from 2016

- Employed population of c.31,700
- Hundreds of employees will leave or change jobs over the course of a year
- Just 41 felt sufficiently aggrieved to raise a complaint to the Tribunal
- Less than 20% of those raising a complaint required a Tribunal hearing



Final thoughts

- Focus on treating people fairly and reasonably
- Deal with the actual matter in hand – don't make it something its not
- The Tribunal will identify actual facts not what the parties would like the facts to be!
- Know your organisation's contracts, policies and procedures and, if relevant to the matter in hand, abide by them and follow them



Questions



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