



# **Review of Consultation Responses Employment Tribunal Qualifying Periods and Maximum Awards**

**March 2025**

# Introduction



## **Overview of responses**

- This consultation ran from 13 August to 29 November 2024.
- 38 online responses were received via the consultation hub
  - Almost half (45%) of the responses were on behalf of organisations and are likely to represent more than 1 individual
  - The majority of responses were made by employees
- 2 offline responses from representative organisations (one being the Isle of Man Chamber of Commerce on behalf of around 100 individuals/businesses) and an additional response from a member of Tynwald.

In 2024 the Department for Enterprise conducted a number of consultations in relation to employment legislation. This consultation in particular sought views on maximum awards and qualifying periods in relation to Employment Tribunals.

This work continues the Department's commitment to bring forward a number of employment rights changes during the administration as detailed in Our Island Plan which sets out a vision of a secure, vibrant and sustainable island.

Under the Employment Act 2006 employees have a right not to be unfairly dismissed, in some cases subject to certain requirements.

In addition, the Employment and Equality Tribunal has a number of powers to award payments and compensation to employees who have been subject to a breach of employment law. In particular, the Employment Act provides for compensation where the Tribunal determines that an employee has been unfairly dismissed. The Act sets maximum levels of that compensation.

However in the Isle of Man those maximum levels were last set in 2016, whereas in the UK the compensation maximum has increased on an annual basis. Currently in the Isle of Man, in some cases an employee must have been continuously employed by their employer for 'at least one year' before they can make a complaint of unfair dismissal to the Employment and Equality Tribunal.

However even those who have been employed for under one year can claim the right if they allege that their dismissal was automatically unfair for a number of different reasons such as around pregnancy, maternity, paternity and adoption leave, certain kinds of action on health and safety, asserting a right to annual leave or making a protected disclosure.

In addition it is possible, without 1 year's continuous employment to make a complaint of unfair dismissal on the grounds of a protected characteristics under the Equality Act 2017 if the reason for the dismissal would constitute unlawful discrimination under that Act.

The reasoning behind the qualifying period is that employers should have a period at the beginning of the employment relationship in which, if an employee does not 'work out' they can easily be dismissed by the employer without fear that a complaint of unfair dismissal will be made.

# Do you think that the qualifying period for the right not to be unfairly dismissed should be a day one employment right?

| Option       | Total | Percent |
|--------------|-------|---------|
| Yes          | 13    | 34.21%  |
| No           | 23    | 60.53%  |
| Neither      | 1     | 2.63%   |
| Not Answered | 1     | 2.63%   |

## For

The majority of employers that responded disagreed with the proposal with only 1 employer in support. It should be noted that the Department has received continued correspondence in recent years to reduce the qualifying period.

### Misuse of current provisions

- One respondent commented that introducing this proposal could reduce misuse of qualifying periods and employment agreements.

### Impact on the individual

- One respondent noted that regardless of the length of employment, dismissal can have a significant impact on the individual.
- It was noted that the proposal may also provide further protections to those with protected characteristics under the Equality Act 2017.

## Against

Not all of those who responded against the proposal were in favour of the period remaining 12 months, rather a small number of responses noted a probation period should be introduced or the right could come in after a smaller amount of time (e.g. 1 month or 6 months).

Both representative organisations strongly opposed the proposal echoing the sentiment by others responding online and supported probation periods.

It is also suggested that the Department should wait to evaluate the impact of the proposal in the UK.

### Ensuring employee performance

- Respondents stress the important of probation periods for employers to evaluate a new worker and that this may increase productivity across the workforce.

### Employer protection

- It was suggested that the proposal could place an employer at risk and leave them open to manipulation at great expense.
- Many comments referenced the increased cost this may result in due to a higher number of claims of unfair dismissal. It is also queried if the Employment and Equality Tribunal has the capacity to handle an increase in the number of claims.
- It is thought that the current period allows employers to take risks on younger or less experienced members of staff and reducing this might reduce employers' risk appetite to hire such workers.

### Economic Considerations

- Respondents noted concerns that day one rights would deter businesses from setting up on the Island and increase unemployment and by maintaining the current position, that the Island would remain business friendly and be competitive against the UK.

### Balance

- It was noted that such provisions require an assessment of the balance between the employer and employee and that this proposal could disrupt this balance.
- A number of respondents noted their support for increasing worker's rights and employers following best practice but urged any change to take into account the balance between supporting workers and supporting employers.
- 2 respondents felt such rights could come into effect from 30 days, rather than as a day one right.

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# Do you have any views as to whether the maximum amount of compensation for unfair dismissal should be increased, and, if so, to what level?

Comments reflected a diverse set of opinions (including those responses from employers) on if the maximum amount should be increased but showed favour in supporting an increase.

Of the representative organisations that responded, the IOM Chamber of Commerce also gathered mixed responses to the proposal with concerns regarding frivolous claims whilst supporting inflation based increases and a general consensus that compensation could be linked to average earnings for fairness or the individual's actual earnings.

On the other hand, the other representative organisation wholly supported the proposed increases.

## **Against**

### **Current limit is sufficient**

- Some argue the current maximum is fair and sustainable and an increase may result in adverse economic impacts.
- Maintaining current limits is seen as beneficial for getting people back to work quickly and an increase may disincentivise this.
- One respondent supported decreasing the amount but did not provide further reasoning.

### **Economic Considerations**

- The main consideration when disagreeing with an increase was the negative financial impact this could have on business.
- Concerns include that increasing compensation limits may lead to higher litigation costs, prolonged tribunal cases, and economic burdens on taxpayers and businesses.

## **For**

### **Annual increase and jurisdictional alignment**

- Some contributors believe the compensatory award should be increased annually and align with average earnings, akin to models in other jurisdictions.
- One respondent suggested that the compensation should at least track UK awards to avoid unfairness.

### **Current rate is insufficient**

- Having a rate that is low may push an employee to make a whistleblowing claim as a means to receive higher compensation and increases risk appetite of employers.
- One respondent noted that the current rate may not reflect the financial and emotional impact of losing employment, particularly for those with long service periods or specialised skills.
- It was suggested that the current amount is particularly insufficient for higher earners.

### **Suggestions**

- Some advocate for updating compensation limits in line with inflation and the cost of living to ensure the rate remain relevant and meaningful.
- One respondent suggests that the rate take into account RPI.
- There is support from multiple respondents for removing maximum limits altogether on compensation to fully reflect the losses experienced by employees and deter unfair dismissal by employers.
- Multiple respondents suggested links be made between the maximum amount and the Island's median earnings as according to the Island's Earnings Survey.
- One respondent suggests a fixed review period on the amount in the future should be introduced.

## Do you have any views as to whether 'the maximum amount of a week's pay' used to calculate the basic award of compensation and redundancy payment should be increased, and if so, to what level?

The majority of comments in response supported an increase of varying amounts. Only one comment was received indicating a preference that the award should not increase.

### Eliminating Caps

- When advocating for the removal of a cap, multiple comments were made that the award should reflect the individual's actual weekly pay at the time of termination.
- One respondent commented similar to the sentiment in the previous question that an increased rate of compensation could provide a deterrent to employer malpractice.

### Suggestions

- One respondent suggested that the mean national wage should be used to calculate awards.
- One suggestion was made that a redundancy award should be 2 weeks pay for every year worked with a 2 year minimum time served.



## Do you think that £732 is a fair level for the maximum amount of a week's pay specified for the purpose of the basic award for unfair dismissal and for the other purposes listed above?

| Option       | Total | Percent |
|--------------|-------|---------|
| Yes          | 19    | 50.00%  |
| No           | 12    | 31.58%  |
| Neither      | 5     | 13.16%  |
| Not Answered | 2     | 5.26%   |

Comments made in support of the rate being fair referenced comments made in support of previous proposals which varied such as this being fair for the average worker (on average wages) but very limited comments were made overall.

In opposition to the rate being fair, sentiment concentrated on it being dependent on the individual's position at the time of termination. This also aligned some of the comments received by those respondents opting to respond 'Neither'.

# Do you think that £76,128 is a fair level for the maximum compensatory award?

| Option       | Total | Percent |
|--------------|-------|---------|
| Yes          | 14    | 36.84%  |
| No           | 17    | 44.74%  |
| Neither      | 6     | 15.79%  |
| Not Answered | 1     | 2.63%   |

Similar to the previous question, very minimal comments were made by those answering 'Yes' but one comment referenced this being a 'good' amount of money for an individual.

Stronger arguments were made by those answering 'No' including the impact this may have on the risk appetite of an employer and that the award should be linked to inflation. 1 respondent commented that the individual may struggle to find employment due to the more limited employment opportunities available on the Island and given the higher cost of living on Island that this should be increased.

Only one comment was received where the respondent indicated preference for the maximum award to be reduced.

3 of the those responding 'Neither' who justified their answer (4 of the 6) all referenced the individual nature of cases and the claimant's position.

# Do you think that the maximum amounts referred to above should be increased in line with the retail price index as in the UK?

| Option       | Total | Percent |
|--------------|-------|---------|
| Yes          | 18    | 47.37%  |
| No           | 9     | 23.68%  |
| Neither      | 10    | 26.32%  |
| Not Answered | 1     | 2.63%   |

Very minimal comments were made by those responding 'Yes'. Of notable reference was a comment that if a maximum is to be retained then this should be increased by the higher of RPI or average earnings on an annual basis. The IOM Chamber of Commerce expressed caution in supporting the proposal provided it is implemented fairly and that it is periodically reviewed but also emphasised the individual's situation in each case and the context of the Isle of Man. Responses made to the Chamber of Commerce supported a transparent methodology and balanced approach to implementation.

Of those respondents choosing 'No' and 'Neither', additional comments were limited but 2 respondents referenced to having legislation that is bespoke to the Island rather than adopting that of another jurisdiction (such as the UK).



# Do you have any other comments?

- Multiple comments were received throughout the consultation querying how many cases on the Island obtain the maximum award through a tribunal and that this should be considered.
- The cap on damages should be removed for unfair dismissal claims based on protected characteristics as defined in the Equality Act 2017.
- One respondent felt that the qualifying periods for redundancy and unfair dismissal should be different in comparison to one another, advocating for a shorter period for unfair dismissal in comparison to redundancy.
- A company found guilty of unfair dismissal should be charged a fine in addition to paying the compensation with senior management held responsible under the law.
- The pressure to accept settlement terms does not encourage employers to act fairly.
- Some respondents showed dissatisfaction with the current tribunal service including ease of use, fairness, criteria.



# Next Steps

In the course of examining these complex issues, the Department has come to understand the broad spectrum of perspectives that exist on each matter.

Consequently, the Department plans to bring forward updated legislation to increase the maximum amount of awards for compensation in order to bring the Island in line with neighbouring jurisdictions. In doing so, the Department will consider the possibility of aligning these rates with median earnings as one possible option. This work will be completed before the end of the administration in 2026.

The Department has decided not to advance the proposal for granting unfair dismissal protections from day 1 of employment. The Department accepts the view expressed by many respondents that such a move would cause significant issues for employers. As the UK is currently undergoing changes in this area, the Department will monitor the outcomes of these adjustments closely in the meantime.







*\*Approach to assessing consultation responses*

*While quantitative data is valuable in assessing consultation responses, it often does not convey the full narrative or the strength of specific arguments. Therefore, we have presented quantitative data to indicate general sentiment. To complement this, we have performed a thematic analysis, which involves grouping comments that raise similar themes, such as economic competitiveness and flexibility.*

*It is also important to note that not every respondent answers each question or provides additional comments. There is also the potential for discrepancies where the chosen answers and subsequent comments may not necessarily align. Consequently, while quantitative data can be indicative, it should not be wholly relied upon.*