SUFFOCATED BY TRIBUNALS

BY ALAN HIBBEN
& ROBERT COLVILE

Centre for Policy Studies

About the Centre for Policy Studies

The Centre for Policy Studies is one of the oldest and most influential think tanks in Westminster. With a focus on taxation, business and economic growth, as well as housing, energy and innovation, its mission is to develop policies that widen enterprise, ownership and opportunity.

About the Authors

Alan Hibben is a former Managing Director in the Mergers and Acquisitions Group of RBC Capital Markets and Head, Strategy & Development at RBC Financial Group. Through his advisory and investment company, Shakerhill Partners Ltd., he provides financial and strategic advisory services to governments and private companies, as well as expert witness services.

Robert Colvile is Director of the Centre for Policy Studies and Editor-in-Chief of CapX. He currently writes a weekly column for The Sunday Times and was previously head of comment at the Daily and Sunday Telegraph.

SUFFOCATED BY TRIBUNALS

BY ALAN HIBBEN
& ROBERT COLVILE

Introduction

One of my favourite quotations about Britain comes from Andy Mayer, chief operating officer at the Institute of Economic Affairs (IEA). 'Britain is not a serious country,' he wrote. 'It is a climate cult living in a heritage theme park, governed by anxiety riddled children nannied by lawyers.'[1] But few people truly appreciate how extensive, and expensive, that legal nannying really is.

Over the past three decades, Britain has built a parallel justice system that now rivals the courts in scale and complexity. There are now tribunals and ombudsmen covering more than 80 separate statutory regimes, from employment and immigration to tax, welfare, housing, education, information rights and financial services.[2] This system employs almost 5,000 tribunal members and judges and consumes an ever-increasing amount in terms of public spending, even before you consider the extraordinary cost to the private sector in terms of lawyers, experts and in house compliance.

'Over the past three decades, Britain has built a parallel justice system that now rivals the courts in scale and complexity. There are now tribunals and ombudsmen covering more than 80 separate statutory regimes'

A well-functioning tribunal system should act as an 'escape valve' for an overworked court system, improving effectiveness and efficiency. That is not what has been built. The modern tribunal system is no longer a modest, specialist adjunct to the courts. It is a large, permanent industry in its own right, with its own ecosystem of representative bodies, campaign groups, and claimant intermediaries, most of it operating with very limited cost discipline and on a presumption that more process is always better.

1 Andy Mayer, 'Britain is Not a Serious Country,' *The Telegraph* (August 2025).

2 Arbitration Act 1996, ss.94–96; HMCTS Annual Report and Accounts 2023-24 and 2024-25; *Diversity of the Judiciary 2025* statistics (Ministry of Justice, July 2025).

Tribunals have existed for a long time, but it was not until 2007 that they were organised into a single coherent system by the Tribunals, Courts and Enforcement Act. Previously, tribunals were created by individual pieces of legislation and administered by departments, without any overarching framework.[3]

The 2007 Act creates two levels of tribunals: a First Tier and an Upper Tier. The First-tier Tribunals decide on most of the cases, with the Upper Tier primarily reviewing their decisions and deciding on appeals, in much the same fashion as the higher courts. Within each tier there are different chambers, such as Tax or Immigration and Asylum.

> **‘Britain has convinced itself that the mark of a civilised society is the right to challenge everything, before everyone, at someone else’s expense’**

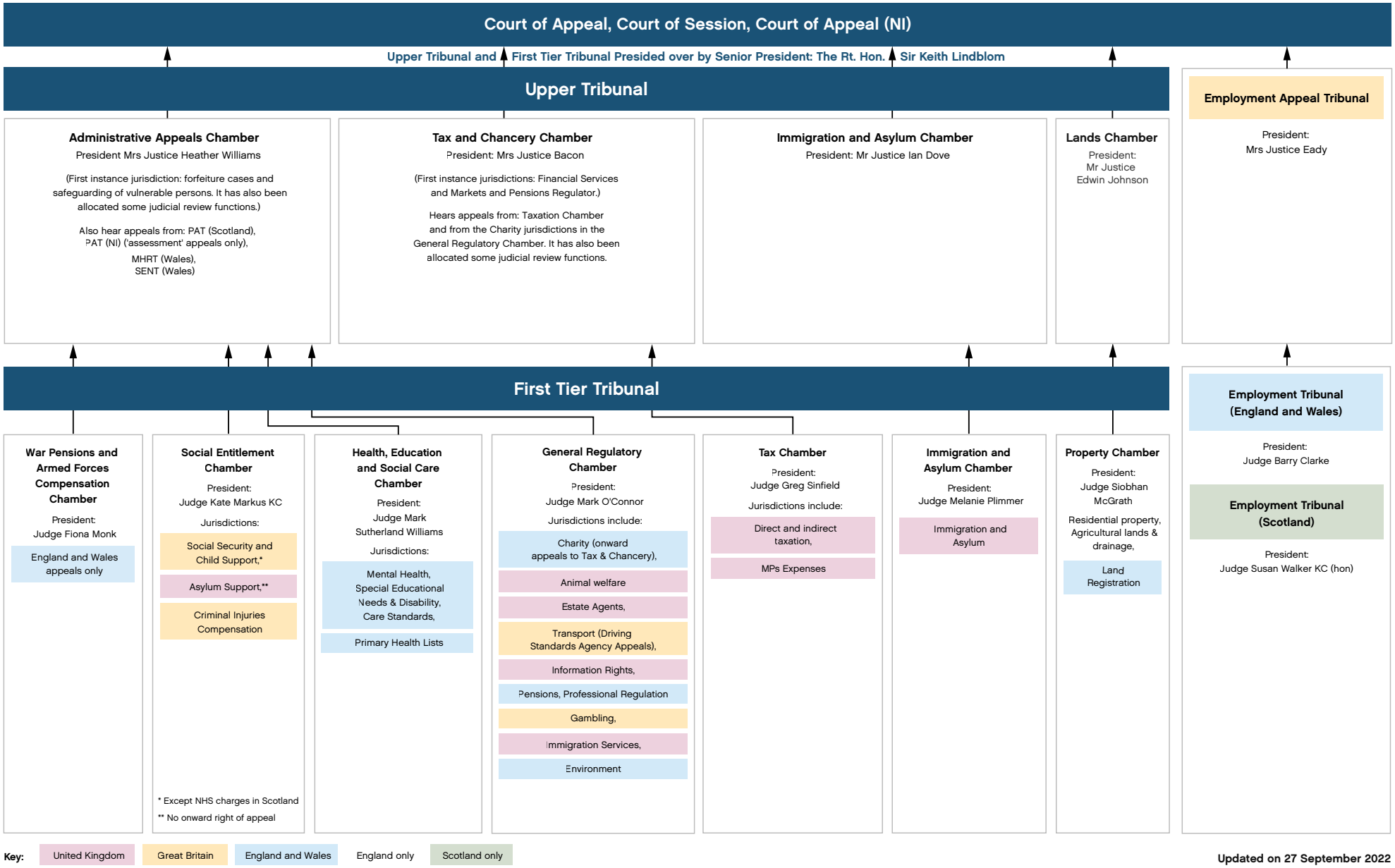
But this simplification of the system has not led to more rational outcomes. Britain has convinced itself that the mark of a civilised society is the right to challenge everything, before everyone, at someone else’s expense. The tribunal system now processes cases under more than 80 statutes that either mandate or create a right of recourse to a tribunal or arbitral body.[4] According to the annual report of HM Courts and Tribunals Service, the tribunals were responsible for 150,000 of the 550,000 sitting days across the courts and tribunal system, dealing with 169,000 hearings and 340,000 cases – and taking up a proportionate amount of HMCTS’s £2.8 billion budget.[5]

3 Tribunals, Courts and Enforcement Act 2007 Explanatory Notes, para 10. Link

4 Arbitration Act 1996, ss.94–96; HMCTS Annual Report and Accounts 2023-24 and 2024-25; *Diversity of the Judiciary 2025* statistics (Ministry of Justice, July 2025).

5 HM Courts & Tribunal Service, Annual Report and Accounts 2024-5. Link

The following charts show both the structure of the resulting system, and how the caseload has increased over the past decades.



Source: Guide to Tribunal Statistics Quarterly. Link

Case receipts by tribunal

Upper Tribunal	Case receipts, 2024/25	Case receipts, 2019/20	Case receipts, 2014/15
Administrative Appeals Chamber, England & Wales	1,588	3,194	7,371
Administrative Appeals Chamber, Scotland	107	637	858
Tax & Chancery	177	432	398
Immigration and Asylum Chamber	2,359 (2020/21 earliest data)	4,320	9,202
Immigration and Asylum Chamber, Judicial Reviews	3,636	5,679	15,179
Employment Appeal Tribunal	1,805	1,407	1,207
Lands	620	510	685
First Tier			
Social Security and Child Support	132,965	162,101	112,082
Employment	110,845	103,973	61,308
First-tier Tribunal (Immigration and Asylum Chamber)	79,074	42,293	91,627
Mental Health	32,540	33,261	32,101
Special Educational Needs and Disability	23,861	7,694	3,734
Residential Property Tribunals	13,052	9,501	10,005
First-tier Tax Chamber	7,922	9,454	7,417
Asylum Support	2,166	2,589	1,637
Gender Recognition Panel	1,517	443	342
War Pensions and Armed Forces Compensation Chamber	1,292	2,724	2,514
Transport	1,263	909	395
Criminal Injuries Compensation	961	1,382	1,463
Land Registration	642	1,044	959
Information Rights	503	509	374
Pensions Regulation	383	456	-
Care Standards	269	326	160
Agricultural Land and Drainage	84	60	169
Environment	80	35	-
Professional Regulation	80	79	6
Charity	37	19	30
Primary Health Lists	35	43	58
Immigration Services	9	9	13
Welfare of Animals	9	41	-
Gangmasters Licensing Appeals	7	11	24
Community Right To Bid	3	10	22
Food	3	4	-
Estate Agents	2	1	8
Gambling Appeals	1	6	5
Reserve Forces Appeal Tribunals	1	3	6
Claims Management Services	-	1	1
Consumer Credit	-	-	2
Copyright Licensing	-	-	-
Electronic Communications & Postal Services	-	-	-
Examination Board	-	-	-
Financial Services and Markets & Pensions Regulator	-	-	13
Health Service Product Appeals	-	-	-
Individual Electoral Registration	-	-	-
Local Government Standards in England	-	-	-
Nitrates Vulnerable Zones	-	-	-
Special Commissioners (Income Tax)	-	-	-
VAT & Duties	-	-	-
OVERALL	**417,539 (interim total)**	**390,840**	**361,375**

Source: Tribunal Statistics Quarterly. Link

In fairness to those operating the tribunal system, the number of cases did fall substantially in the 2010s, driven by a collapse in particular in the numbers of immigration and asylum cases and claims for social security and child support. But in the last few years, case numbers have been rising. Between 2019/20 and 2024/5 the number of new cases ('case receipts') rose from 390,840 to 417,539. Within that, the number of immigration and asylum cases increased from 42,293 to 79,074. The number of welfare cases increased from 93,303 to 132,965. And as discussed below, the number of special educational needs and disability cases soared from 7,694 to 23,861.

> **'When one side faces low costs and the other faces high, open-ended downside, settlements are driven much more by cost-benefit calculations than the legal merits of the case'**

But it is when you look more closely at how the tribunal system operates that you realise that this is not access to justice in any ordinary sense; it looks much more like the industrialisation of grievance.

If it were clear that the tribunal system provided cheaper and better justice than the courts, there would be a good reason for these 80-odd statutes. But the incentives are deeply asymmetric. As the standard literature on litigation makes clear, when one side faces low costs and the other faces high, open-ended downside, settlements are driven much more by cost-benefit calculations than the legal merits of the case. And that is precisely the system we have erected.

The problem of mismatched incentives

Studying examples of cases in the tribunal system, it is not hard to spot many that should never have come to trial. Often, the presiding judges make the same point – extremely forcefully.

In a First-tier Property Tribunal case that came up in January of this year, a landlord claimed approximately £47,000 from leaseholders in service charges.[6] After full proceedings – surveyors, solicitors, counsel, multiple hearings – the Tribunal decided that these costs should be reduced by just over £400. The Upper Tribunal, reviewing the case, called the reduction 'tiny' and found the landlord had been 'overwhelmingly successful on the real issue'. The combined cost of reaching that conclusion ran to many multiples of the sum corrected.

> **'It is not hard to spot examples of tribunal cases that should never have come to trial. Often, the presiding judges make the same point – extremely forcefully'**

In another property dispute, from 2024, a leaseholder won a service charge refund of approximately £2,500, only to find the landlord's legal fees of approximately £18,000 had been rolled into the following year's service charge schedule.[7] He won his case. He was left substantially worse off. The lawyers, as ever, were fine.

That pales, however, when compared to a dispute over a piece of land in East Grinstead. After almost a year of proceedings – statements, documents, legal argument, the full apparatus – the respondents disclosed a cast iron defence they had possessed throughout.[8] Their opponent withdrew his application for registration of title to the land – but appealed to the Upper Tier Tribunal for his costs, on the grounds that the evidence

6 *Sovereign Network Homes v Leaseholders* (service charge), Upper Tribunal (Lands Chamber), 2026; ICLG, 7 January 2026.

7 'Service charge dispute win ends up costing £18k,' Property118.com (June 2024).

8 *Pilbrow v Glanville & Blount*, Upper Tribunal (Lands Chamber); *Today's Wills and Probate*, 18 January 2026.

disproving his claim (the existence of a trust covering the relevant land) should have been disclosed much earlier.

Finding for him, the judge accepted that the omission was inadvertent – but still decried 'a year wasted on pointless litigation and thousands of pounds in legal costs'. In a separate service charge case, a tribunal described a core part of the extensive process as 'a pointless exercise' that had already consumed the time of surveyors, lawyers and judges.[9]

> **'HMRC pursued penalties where, once the taxpayer's notifications were properly read, the argument had 'no reasonable prospect of success''**

Nor is the taxman immune. In one case in 2024, HMRC pursued penalties where, once the taxpayer's notifications were properly read, the argument had 'no reasonable prospect of success'.[10] The Tribunal said so and awarded costs against the Crown. In another, the Tribunal described the taxpayers as having had a 'lucky strike' – winning reliefs they knew they were not entitled to – and awarded costs of £1, explicitly to avoid 'rewarding what it saw as an opportunistic windfall'.[11] One pound. After a full hearing.

The Freedom of Information system, discussed below, has its own theatre of the absurd. The Information Tribunal described one petitioner's multi-year campaign against a local council as 'a relentless challenge… at great expense and disruption… with negligible tangible results and little prospect of ever attaining them. It is simply pointless and a waste.'[12] Another complainant conducted FOI proceedings over a personal grievance dating to 1992 – involving more than 30 years of requests,

9 First tier Tribunal (Property Chamber), *Flat 7, 154 Gloucester Terrace* (GOV.UK decision, July 2023).

10 *Aftab Ahmed v HMRC*, First tier Tribunal (Tax Chamber); RPC Legal, 19 June 2024.

11 'A Pyrrhic victory for the taxpayer!', *Tax Insider* (December 2025).

12 *Coggins v Information Commissioner; Ahilathirunayagam v ICO & London Metrpolitan University;* ICO Annex of example tribunal decisions (updated November 2024).

investigations, and appeals – before a tribunal found grounds to stop it.[13] The requester paid nothing at any stage.

Then there is the Employment Tribunal. In one hearing, the judge described proceedings as 'an enormous waste of time and money and without merit', remarking that the claimant's conduct was 'the worst that it had ever observed from a party'.[14] They still had to deliver a reasoned judgment before ordering costs. In A v B Local Authority & Anor, the Court of Appeal described the outcome of sustained employment litigation as a 'Pyrrhic victory' – the employee had technically won unfair dismissal, but after Polkey reductions (which apply when an employer failed to follow proper procedure, but the dismissal would have happened anyway) and contributory fault received compensation so diminished as to be symbolic.[15]

'An employer facing even the most marginal discrimination claim must spend between £7,200 and £50,000 in legal fees before the first witness is called'

What is the core problem here? It is not the concept of specialist tribunals. Rather, it is the imbalance of incentives.

In the Employment Tribunal, to give one example, a claimant pays nothing to file, nothing to appear, and almost nothing if they lose. Meanwhile, an employer facing even the most marginal discrimination claim must spend between £7,200 and £50,000 in legal fees before the first witness is called.[16]

---

13 *Coggins v Information Commissioner; Ahilathirunayagam v ICO & London Metropolitan University;* ICO Annex of example tribunal decisions (updated November 2024).

14 Nine Chambers, 'Costs in the Employment Tribunal… a warning' (Feb 2024).

15 *A v B Local Authority & Anor* [EWCA Civ 766].

16 Employment tribunal cost ranges: Custodian Insurance (Jan 2024); DavidsonMorris (Jan 2025); Farleys Solicitors (July 2025); Harper James (May 2025).

The rational response under these circumstances is not to fight but to settle – not because the claim has merit, but because settlement is cheaper than defence. This is why the raw figures on tribunal caseload and settlements vastly underestimate the true cost of the system, because if you have created a system in which attack is cost-free and defence is painfully expensive, the rational solution is to offer no defence.

It is exactly the same dynamic that has proved so damaging when it comes to environmental regulation, where the Aarhus Convention caps the cost of suing over the construction of a road, or railway, or nuclear power station, at £5,000 for individuals or £10,000 for organisations – which has, as the Centre for Policy Studies has repeatedly pointed out, led almost all of our infrastructure projects to become bogged down in asymmetric lawfare.[17]

> **'When Employment Tribunal fees were introduced in 2013, claims fell by 69%. When the Supreme Court struck them down in 2017, claims rose by 39%'**

In the case of the Employment Tribunals, there is even a case study that perfectly proves the point. When Employment Tribunal fees were introduced in 2013, claims fell by 69%.[18] When the Supreme Court struck them down in 2017, claims rose by 39%. The British state looked at that data – as clear a revealed preference experiment as economics can produce – and decided the system was working as intended.

Equal pay and discrimination claims, discussed below, sit in the same architecture.[19] Asda, Tesco, Sainsbury's, Morrisons, the Co-op and Next have all spent the better part of a decade fighting mass equal pay claims on preliminary issues, appeals and test cases, with estimated liabilities in the hundreds of millions and, in Next's case, more than six

17 See S. Hughes, 'Accelerating Infrastructure' (CPS, Oct 2024). Link

18 *R (UNISON) v Lord Chancellor* [UKSC 51]; *People Management* (Jan 2024); UNISON commentary (Feb 2024).

19 Overview of supermarket equal pay claims: Asda, Tesco, Sainsbury's, Morrisons, Co op, Next — press and legal commentary 2021-2025.

years of litigation. Whatever one thinks about the substantive outcome, the structure is familiar: the claimant faces little or no cost in bringing the claim; the employer faces a large, uncertain downside and substantial non-recoverable costs simply for turning up.

> **‘It took 30 years for the state to notice that a system with no downside for the complainant and a fixed charge for the respondent might attract complaints of less than stellar merit’**

Or consider the Financial Ombudsman Service. Of the 220,000 cases investigated in the most recent reporting year, nearly half were submitted by claims management companies on a no win, no fee basis.[20] Of those, 74% were unsuccessful – yet the regulated firm still had to pay a flat fee per case investigated regardless of the outcome. The FOS’s own published commentary acknowledged there had been ‘too little incentive on [claims management companies] to apply any kind of rigour as to whether the complaints they’re advancing have real merit’.[21] A consultation is now under way. Yet it apparently took 30 years for the state to notice that a system with no downside for the complainant and a fixed charge for the respondent might attract complaints of less than stellar merit.[22]

20 Financial Ombudsman Service case fee structure (FOS website, updated 2025); FOS consultation on case fees (March 2026); Pinsent Masons commentary (February 2025).

21 Financial Ombudsman Service case fee structure (FOS website, updated 2025); FOS consultation on case fees (March 2026); Pinsent Masons commentary (February 2025).

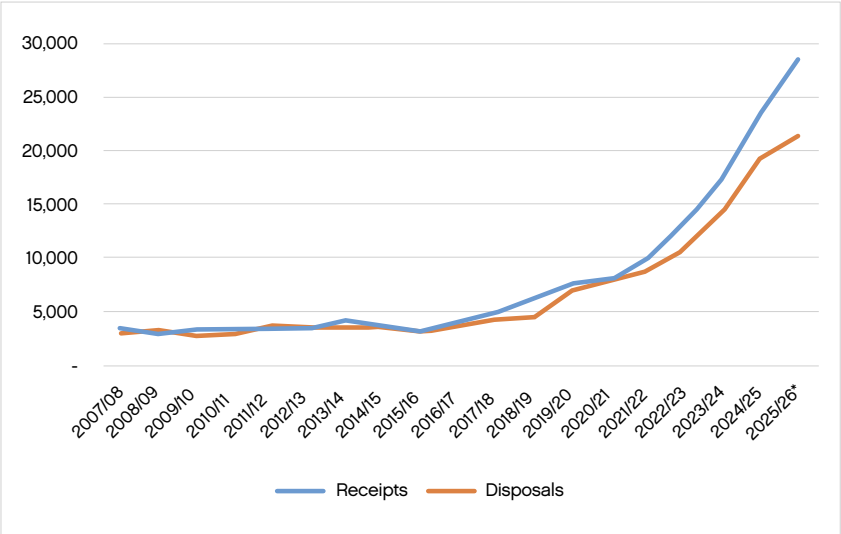
22 Financial Ombudsman Service case fee structure (FOS website, updated 2025); FOS consultation on case fees (March 2026); Pinsent Masons commentary (February 2025).

Bad incentives are made worse by bad laws

As mentioned above, the most striking feature of the tribunal caseload statistics has been the extraordinary surge in applications to the Special Educational Needs and Disability Tribunal. Having held steady at roughly 3,000-4,000 cases a year until 2015/16, the number of cases began to rise vertiginously in the past few years.

We only have data for the first three quarters of 2025/6 so far, but even in those nine months, the total number of cases had hit 21,344 – almost as many as the 23,861 in 2024/5, which was itself a far higher figure than in any previous year. And as this chart shows, the judiciary is struggling to cope with the sheer volume of cases. (For the purpose of this chart, we have included a provisional figure for 2025/6, which assumes that the final quarter will match the average across the first three quarters.)

Special Educational Needs and Disability Tribunal cases



Source: Tribunals statistics quarterly: October to December 2025. Link

Why is this extraordinary surge happening? The reason is simple. Under the Children and Families Act 2014, any parent may appeal – free of charge – any refusal to assess, any aspect of an Education, Health and Care Plan (EHCP), any school named, any amendment, and any cessation.[23] There is no merits filter, no threshold test, no fee at any stage.

Local authorities do contest these cases – but lose between 96% and 99% of them.[24] The result is that the public sector wastes £60-£80 million a year fighting cases it is almost certain to lose – enough, Pro Bono Economics has calculated, to fund nearly 10,000 additional special educational needs places in mainstream schools.[25] Presumably, the reason councils are fighting these cases is not that they believe they will win, but because they want to somehow deter more parents from filing more cases.

‘Local authorities do contest these cases – but lose between 96% and 99% of them’

The whole issue of SEND education is of course deeply contested. Many of the parents lodging these cases passionately believe that their children are being neglected by the system, and need more resources and attention.

But the problem is that it is not just the tribunal incentives that are imbalanced here, but the underlying laws. Essentially, the councils’ duty to provide for these children’s needs – and other statutory duties such as adult and elderly social care – overrides everything else. That is why council budgets, and discretionary services, are being savaged to pay for these duties.

23 Children and Families Act 2014, s.51; Howard League/IPSEA statutory entitlements table (2022).

24 *TES*, ‘SEND appeals hit record high’ (March 2026); *Local Government Lawyer*, ‘Councils accused of wasting £60m’ (Sept 2025).

25 Pro Bono Economics, *Wasting Money, Wasting Potential: The Cost of SEND Tribunals* (Sept 2023); IFS, *Spending on Special Educational Needs in England: Something Has to Change* (Dec 2024).

And in the process, the taxpayer is incurring huge and unreasonable costs. Following the closure of much specialist provision, the independent specialist schools that many EHCPs mandate – entirely free to parents – were, until February 2026's emergency cap, charging in some cases up to £250,000 per year per child.[26] The National Audit Office estimates that the costs of home-to-school transport in England, including the notorious taxi services, rose by 80% between 2015/16 and 2023/24. The NAO projected that by 2024/25, the total SEND cost would reach £10.7 billion, with an estimated 576,000 young people on EHCPs. And it is incredibly hard to argue that this is being driven by medical need: EHCP numbers in England have risen by approximately 71% since 2018, at a rate that runs well ahead of any comparable European country.[27,28]

'The costs of home-to-school transport in England rose by 70% between 2015/16 and 2023/24, to the equivalent of almost £4,500 per child'

This is exactly what economic theory predicts when a binary diagnosis triggers an unlimited, cost-free statutory entitlement. The Institute for Fiscal Studies calls it a system where 'something has to change'.[29] The Schools White Paper of February 2026 concedes the architecture is broken.[30] Yet when the Government attempted to bring in even modest reform, a legal challenge was filed within days.[31]

That legal challenge, however, brings us on to a wider issue – the framework of fundamental laws and duties which underpin the tribunal regime.

---

26 GOV.UK, 'Government ends runaway independent special school fees' (18 Feb 2026); *Schools Week* (20 Feb 2026).

27 Pro Bono Economics, *Wasting Money, Wasting Potential: The Cost of SEND Tribunals* (Sept 2023); IFS, *Spending on Special Educational Needs in England: Something Has to Change* (Dec 2024).

28 Behaviour Matters, 'ADHD and Autism Rising Faster in UK Than in Europe' (Jan 2025).

29 IFS, Spending on Special Educational Needs in England: Something Has to Change (Dec 2024).

30 GOV.UK, 'Radical expansion in rights for children with SEND' (22 Feb 2026).

31 Special Needs Jungle, 'Legal challenge launched against government SEND proposals' (Feb 2026).

The Human Rights Act 1998, which incorporated the European Convention on Human Rights into domestic law, handed lawyers a near inexhaustible toolkit for resisting any rationalisation of state provision.[32] Article 6 (the right to a fair trial), Article 8 (respect for family life), Article 14 (protection from discrimination) and Protocol 1 Article 2 (the right to education) are routinely deployed in SEND, welfare, housing and immigration proceedings to convert policy choices about resource allocation into justiciable rights that no elected government may curtail without first running a gauntlet of judicial review.[33]

In other words, the HRA does not merely guarantee access to justice. It guarantees access to litigation – funded by legal aid, conducted by a specialist bar that has grown wealthy on the proceeds, and resolved by judges required to read legislation compatibly with Convention rights wherever possible, even where Parliament's intention was plainly otherwise.[34]

'The Human Rights Act does not merely guarantee access to justice. It guarantees access to litigation'

The result is a country in which every serious attempt at reform generates its own legal shadow. The 2013 Employment Tribunal fee regulations were struck down not by Parliament but by the Supreme Court on judicial review.[35] The 2026 White Paper on SEND faced a judicial review application before the consultation period had even closed.[36] The Rwanda deportation scheme consumed three years of appellate litigation and produced no deportations.[37]

---

32 Tom Hickman, 'Public Law's Disgrace,' UK Constitutional Law Blog (Feb 2017); wider commentary on HRA driven judicial review and Rwanda litigation.

33 Tom Hickman, 'Public Law's Disgrace,' UK Constitutional Law Blog (Feb 2017); wider commentary on HRA driven judicial review and Rwanda litigation.

34 Tom Hickman, 'Public Law's Disgrace,' UK Constitutional Law Blog (Feb 2017); wider commentary on HRA driven judicial review and Rwanda litigation.

35 *R (UNISON) v Lord Chancellor* [UKSC 51]; *People Management* (Jan 2024); UNISON commentary (Feb 2024).

36 Special Needs Jungle, 'Legal challenge launched against government SEND proposals' (Feb 2026).

37 Tom Hickman, 'Public Law's Disgrace,' UK Constitutional Law Blog (Feb 2017); wider commentary on HRA driven judicial review and Rwanda litigation.

In each case, the substantive question – how should a finite state allocate finite resources? – was displaced by a procedural one: has the minister correctly balanced competing Convention rights? And in a legal culture that has internalised the assumption that more rights and more process are always better, the answer is almost always no.

This is the endpoint of a system built on the twin premises that entitlement is sacred and that the state's duty to provide is unlimited. When every benefit, provision and administrative decision is a potential Convention right, the cost of cutting anything becomes not just political but legal – and legal costs in Britain have an extraordinary capacity to exceed the value of what is being fought over. The tribunal system illustrates this quite precisely: the £1 in costs after a full hearing; the £400 payment after proceedings worth many thousands; the decade-plus of complaints and FOI litigation over a personal grievance from 1992.[38, 39]

> **'Legal costs in Britain have an extraordinary capacity to exceed the value of what is being fought over'**

A serious country would ask whether the marginal value of the 10,000th EHCP, the 500th Financial Ombudsman Service complaint in a month, or the 40th employment tribunal claim against the same employer justifies the system cost of adjudicating it. Britain does not ask that question. It has managed to turn asking it into a kind of human rights heresy.

We can see this above all in the immigration system. Indeed, you do not need to agree with any particular immigration policy, or numerical target, to see that the present process is a machine for generating delay and legal work rather than timely, defensible decisions.

---

38 *Sovereign Network Homes v Leaseholders* (service charge), Upper Tribunal (Lands Chamber), 2026; ICLG, 7 January 2026.

39 *Coggins v Information Commissioner; Ahilathirunayagam v ICO & London Metropolitan University;* ICO Annex of example tribunal decisions (updated November 2024).

The problem is that successive governments have layered statutory appeal rights, reconsideration duties, and interim remedies on top of each other, then invited Convention arguments under Articles 3 and 8 every time removal is even contemplated. The result is not a principled settlement of who should stay and who should go. It is a semi-permanent interim, in which individuals wait years in expensive accommodation while lawyers argue about process errors and fresh evidence, and the Home Office cycles through repeated attempts to fix the same decision.

In theory, the Convention allows a state to control its borders and to remove people who have no right to remain, provided that removal does not expose them to inhuman treatment or arbitrary interference with family life. In practice, the current model treats almost any change of circumstance, however marginal, as grounds for reopening a case and for fresh interim relief.

‘The cost of the immigration tribunals is is not just fiscal. It is a loss of any credible link between Parliament’s stated policy and what the courts are prepared to let happen’

A system that was supposed to provide a last-resort safeguard for egregious cases has become a routine part of the policy process. The cost is not just fiscal. It is a loss of any credible link between Parliament’s stated policy and what the immigration tribunals and courts are prepared to let happen in the real world.

Equal pay – the final triumph of the tribunals

In the examples at the start of this paper, the judges were often presented as the voice of common sense, ruing and regretting the waste of public money incurred by the proceedings before them.

But increasingly, in multiple corners of the tribunal system, laws and regulations have emerged that are not common sense, but the very opposite – which interact with the problems identified above, of misaligned incentives and sweeping laws, to produce outcomes which are not only ridiculously expensive but ridiculously unjust. And few exemplify the trend better than the problem of 'equal value'.

> **'The appellants in the Next case could not provide a single example in which an individual woman had been discriminated against in any way'**

When you think of pay discrimination, the obvious example that comes to mind is two people being paid different amounts for doing the same job – usually because one of the two is female, or from an ethnic minority, or the victim of some other form of prejudice.

In 2024, however, the Employment Tribunals delivered a remarkable judgment against the retail firm Next. More than 3,500 employees – represented by the no win, no fee lawyers Leigh Day, who have 90 partners working on similar cases – won £30 million compensation for gender discrimination.

What was remarkable here was, first, that the appellants could not provide, or prove, a single example in which an individual woman had been discriminated against in any way. Rather the firm's crime was to pay higher wages to its warehouse staff (who were 47% female) than its retail workers (77.5% female).

But the even more remarkable thing – to an outside observer – was how the calculation of equal worth was made. The tribunal accepted evidence that, inter alia, there had been a fall in demand of 18% for retail sales consultants and an increase of 23% for warehouse operatives. That the vacancy rate for warehouse posts was double that for retail. That the market price for warehouse operators was higher. That Next had asked its retail employees to move over to warehouse work, and almost none of them had been willing to do so. One of those approached was one of those suing the company, who literally said that she would only have shifted in exchange for a substantial pay rise.[40]

> **'Under our current system of employment law, fair pay is not defined by anything as vulgar as what the market will pay'**

So what was the problem? Under our current system of employment law, built up over decades around the framework provided by the European Convention, fair pay is not defined by anything as vulgar as what the market will pay. Instead, the tribunals have evolved a complex system of 'equal value', in which every job is broken down into its component parts and then assessed by the judiciary.

So in the similar case against Asda – which is lurching inexorably towards a payout estimated at £1.2 billion – each job has been broken down, after fierce legal debate, into 11 separate factors, each of which is allocated between 10 and 50 points. These are: physical demands, physical skills, mental demands, emotional demands, communication & customer service, responsibility for health & safety, responsibility for assets, responsibility for others, problem-solving and decision-making, knowledge, and working conditions. Jobs are determined to have 'equal value' if the points match once totted up.[41]

Even if you accept this system on its own merits, it is deeply subjective – and deeply flawed. For one thing, it assumes that all 11 factors are equal in importance. But of course, we should not accept this system on its own merits. Because it is utterly insane.

---

40 Reserved Judgment, Miss M Thandi and others vs Next Retail Limited & Next Distribution Limited, August 2024. Link.

41 See eg Archie Hall, 'Against Equal Value' (Substack, April 2025). Link

Moreover, the economic damage it is doing is quite extraordinary. Equal pay claims revolving around the bonuses paid to dustmen and other workers have helped to bankrupt Birmingham Council, with costs of at least £1.3 billion. The council has had to sell two exhibition centres and two arenas, double council taxes and cut public services.

> **‘Glasgow has been hit for two tranches of claims, totalling another £1.3 billion’**

Glasgow has been hit for two tranches of claims, totalling another £1.3 billion. It has had to sell and lease back the city’s art museum and council chambers, as well as cutting spending and raising taxes. And following the Next judgment, cases against all of the big retail firms are making their way through the courts – landing them not only with a hefty back payment to the staff who were indirectly discriminated against, but higher wage bills going forward.

Again, what has generated this flood of cases is not so much a shift in the fundamental law as a shift in incentives. The amendment to the 1970 Equal Pay Act that introduced the concept of ‘equal value’ dates back to 1983 – driven, inevitably, by European directives. It was in 1988 that a canteen cook at Cammell Laird shipyard successfully won an appeal after being paid less than shipyard painters and joiners, on the grounds that her job – while completely different, and much less valuable according to the market – required comparable levels of skill, effort and responsibility.[42]

It was in 1997 that the NHS lost an equal pay case launched by (predominantly female) speech therapists against (predominantly male) clinical psychologists. This led to the creation of ‘Agenda for Change’, an equally ludicrous system in which every NHS job is evaluated across 16 separate criteria and placed into pay bands. So ‘advanced or high-speed driving of a heavy goods vehicle, ambulance or articulated lorry’ is a level 3a activity within the ‘physical skills’ category — but so are ‘advanced keyboard use’, ‘restraint of patients/clients’ and ‘advanced sensory skills’ such as listening to someone’s speech for language defects.[43]

---

42 Melisa Tourt, ‘Equal pay claims are a fiscal timebomb’ (CapX, May 2025). Link

43 Robert Colvile, ‘Welcome to the weird world of NHS pay, where a 1% rise is a lot more than it seems’ (The Times, March 2021). Link

So the laws have been in place for a while. But as Melisa Tourt of the Centre for Policy Studies has argued, such cases were still complex and costly to pursue. What changed was not the introduction of the Equality Act in 2010 – which largely consolidated previous rulings – but a Supreme Court ruling in 2012, which extended the time limit for claims from six months to six years.

> **‘The GMB union alone has 40,000 claims outstanding across 28 local authorities, and has signalled that it intends to launch a further 10,000 claims across five more councils’**

The result was not just a surge in no win, no fee cases, but a snowball effect, with each successful case establishing precedents for the next. Tourt has found that three advertisers – Fair Pay For All, a trading brand of Maddison Clarke Ltd; KPL Equal Pay, aka KP Law; and Leigh Day itself – are running multiple Facebook campaigns recruiting workers and former workers who feel they might have been discriminated against.

Beyond retail, a parallel wave of claims is targeting the gig economy, with drivers for Veezu, Bolt, FREENOW, Addison Lee and BCA among those subject to contractor reclassification claims, alongside couriers for Just Eat. And local councils face perhaps the most significant exposure: the GMB union alone had 40,000 claims outstanding across 28 local authorities at the end of 2025, and has signalled that it intends to launch a further 10,000 claims across five more councils. Settlements are expected to run into hundreds of millions of pounds.

In short, what was once a complex legal process has turned into an industrialised claims factory.

How to fix the system

So far, we have elaborated at length on the problems with the existing system. But complaining is no use. We need to fix it. And it can be done.

In New Zealand, for example, the centre-right government was facing exactly the same problem as the UK on equal pay: a tidal wave of historic claims, on increasingly flimsy grounds. It brought in, without consultation, a piece of emergency legislation – the Equal Pay Amendment Act 2025 – which raised the threshold for claims; dramatically tightened the definitions of comparable work; and ruled that all existing claims would have to meet the new threshold, resulting in 33 claims having to be dropped and refiled.[44]

In Britain, too, we need to bring the tribunal 'industry' back to its intended purpose of providing rulings with relative efficiency and effectiveness compared to the court system. Here are some initial suggestions.

> **'We need to bring the tribunal 'industry' back to its intended purpose of providing rulings with relative efficiency and effectiveness compared to the court system'**

1. Put a price on initiating cases

The experiment with Employment Tribunal fees showed two things: fees were set too high, and demand is elastic. The obvious conclusion is not 'no fees ever', it is 'small fees, widely applied, with remissions'.

Weak, speculative, and tactical claims fall away when there is any cost to pulling the trigger; meritorious claims remain because the expected value dominates the fee.

We should therefore introduce a modest, means-tested fee for lodging complaints across the main civil tribunals – say £100-£200 in Employment, Property, Tax and SEND appeals – with automatic remission for those on benefits.

44 DLA Piper, 'New Zealand's Equal Pay Amendment Act 2025' (May 2025). Link

2. Make unreasonable litigation actually hurt

All of the horror stories about costs at the start of this piece have one thing in common: someone kept going long after it was obvious they should stop. That is fixable without touching human rights instruments. The rule should be simple, and applied across tribunals:

- If, after a clear merits warning or a realistic settlement offer, you push on and do worse than that offer or lose completely, you pay a defined portion of the other side's costs.

This should be the default, not 'in exceptional circumstances'. *Costs in Tribunals* has been recommending something like this since 2011; it remains largely theoretical.[45] Flip the default, and the economics of pointless litigation change very quickly.

> **'All of the horror stories about costs have one thing in common: someone kept going long after it was obvious they should stop'**

3. Install a hard proportionality gate

No tribunal should be allowed to run a process whose combined public and private cost obviously exceeds the amount in dispute, unless it certifies that there is a wider point at stake.

- Below a monetary threshold – for example: £2,000 for Property, £5,000 for Tax, one month's wages for Employment Tribunal – the default should be paper or online determination with strict word limits and no experts.

- To get a full hearing, a judge must certify that the case raises a point of legal principle or systemic impact (for example, building-wide service charges or recurring HMRC practice).

This would not eliminate absurd outcomes, but it would sharply reduce the number of hours available to generate them.

45 Nine Chambers, 'Costs in the Employment Tribunal… a warning' (Feb 2024)

4. Separate diagnosis from entitlement in SEND

The binary 'EHCP or nothing' model is at the root of England's SEND explosion. Attempts have been made to fix this, not least in Wales.[46] And there is a pretty clear consensus as to what a reform package might look like:

- Reserve EHCPs (with full tribunal rights) for the most severe, clearly defined categories of need.
- Create a robust, funded sub-EHCP tier – perhaps labelled Individual Support Plans – with strong guidance but limited appeal rights.
- Decouple clinical diagnosis from automatic EHCP entitlement. Diagnosis should trigger assessment, not a guaranteed statutory plan.

Do that and you remove the single biggest incentive for marginal cases to chase membership of a very expensive club.

> 'The Human Rights Act has turned too many resource allocation questions into individualised litigation'

5. Put Parliament back in charge of the trade offs

The Human Rights Act has turned too many resource allocation questions into individualised litigation. That can be improved without leaving the Convention or tearing up the rule of law. Two changes in particular would matter:

- Require courts, when interpreting statutes under the HRA, to give 'great weight' to explicit Parliamentary statements about resource allocation and proportionality in the statute or its explanatory notes. The question should become: 'Did the minister do what Parliament told them to?', not 'Does the judge prefer a different balance today?'
- In a handful of hyper-litigated areas – SEND, asylum support, certain welfare benefits – use primary legislation to spell out that beyond a defined minimum, provision is a matter for Parliament, not for incremental judicial expansion through creative readings of Article 8 and Article 14.

46 Robert Colvile, 'The special needs system is broken, but Wales managed to fix it' (The Times, Jan 2026). Link

6. Rationalise immigration appeals within the Convention

Immigration is the one area where ministers talk most loudly about control while presiding over an appeal structure that almost guarantees drift. If you wanted to fix that without leaving the Convention, you would start by drawing a hard line between genuinely irreducible rights claims and everything else. (That is not to say that we should not leave the Convention, as both the Conservatives and Reform are now arguing. But the current Government does not seem likely to do so.)

Serious Article 3 and core Article 8 cases, where there is cogent evidence of a direct risk on return, would keep a right of full merits appeal and access to interim relief. Peripheral Article 8 arguments about general hardship or lifestyle would not. Those could be routed into a single, tightly controlled reconsideration stage with no automatic suspensive effect on removal.

> **‘Immigration is the area where ministers talk most loudly about control while presiding over an appeal structure that almost guarantees drift’**

At the same time, Parliament could do something it has conspicuously failed to do so far: put into primary legislation a clear statement of the weight to be given to democratic immigration targets when tribunals and courts are balancing Convention rights against the public interest. The question for the judge then becomes whether the decision-maker followed the statutory scheme, not whether the judge would have struck a different balance.

None of this would make immigration policy painless or uncontroversial. It would at least restore a sense that when Parliament sets a framework, the tribunals are expected to work within it, rather than treating every removal as an open-ended invitation to experiment with the limits of the Convention.

7. Follow the New Zealand model on equal pay issues

It is increasingly clear that the doctrine of 'equal value' has taken the question of pay far beyond what is rational or sensible – as a chorus of commentators have argued. As mentioned above, the New Zealand reforms involved a combination of raising the threshold for claims; tightening the definitions of comparable work; and ruling that all existing claims would have to meet the new threshold. Ultimately, it might even be the case that Parliament instructs the courts to consider only examples of direct rather than indirect discrimination – though that is a legal change with far more sweeping ramifications.

> **'These changes would still leave the UK with more tribunals than any sane country needs. But they would at least change the gradient of incentives'**

None of these changes would create a Utopia. They would still leave more tribunals than any sane country needs. They would, however, change the gradient of incentives: a bit more thought before filing, a bit more pain for pointless persistence, and much less scope for taxis to school to be treated as a human right. In a country currently governed by anxiety riddled children, nannied by lawyers, that would very definitely be a start.

57 Tufton Street, London, SW1P 3QL
June 2026
ISBN 978-1-914008-70-2