

Justice Committee

Select Committee Press Release

18 June 2016

NEW REPORT: COURTS AND TRIBUNALS FEES

Recent changes to courts and tribunals fees damage access to justice, with worst impact on employment tribunals

Major changes are urgently needed to restore an acceptable level of access to the employment tribunals system, says the Justice Committee in a new [report](#) on recent and proposed changes to fees for court users in the civil and family courts and tribunals. The introduction of issue fees and hearing fees for claimants in employment tribunals in July 2013 has led to a drop of almost 70% in the number of cases brought.

Principle of fees

The Committee has no objection to the principle of charging fees to court users: it says that some degree of financial risk is an important discipline for those considering legal action. The question is what is an acceptable amount to charge, taking into account the need to preserve access to justice: this will vary between jurisdictions and different types of cases.

Factors which need to be taken into account include the effectiveness of fee remission, the vulnerability of claimants and their means in comparison with respondents, which may pose particular problems of inequality of arms when individuals or small businesses are seeking to uphold their rights against the state or major companies – and the degree of choice which litigants have in whether to use the courts to resolve their cases and achieve justice. The report argues that there should be a clear and justifiable relationship in the fee system between these factors and the degree of financial risk that litigants should be asked to bear.

The Committee concluded that the introduction of fees set at a level to recover or exceed the full cost of operation of the court requires particular care and strong justification.

Committee Chair Bob Neill MP said:

“Where there is conflict between the objectives of achieving full cost recovery and preserving access to justice, the latter must prevail.”

Evidence base

The report raises serious concerns about the quality of the Ministry's research (see para 49). It shares the view expressed by the senior judiciary and some others who gave evidence that it does not provide a sufficient basis to justify the proposals. Lord Dyson, Master of the Rolls, described it as "[lamentable](#)". The Chair of the Bar Council described the research undertaken in relation to the domestic effects of fees as "insignificant" and the President of the Law Society said it was "poor."

Bob Neill added:

"We understand the financial pressures on Ministers in a Department with unprotected spending. We also understand that the MoJ does not always have the luxury to be as rigorous and meticulous in preparing the ground for controversial policies as it might wish. But it is important that in such circumstances the Ministry is frank about that fact and does not represent the quality of its evidence base to be higher than it is."

Employment tribunal fees

There has been a lengthy delay in the publication of the Government's post-implementation review of the impact of employment tribunal fees, which aims to assess their effect against the three main objectives of transferring some of the cost away from the taxpayer and towards those who can afford to pay; encouraging parties to seek alternative methods of dispute resolution; and maintaining access to justice.

In addition the Government has said that fees are likely to discourage weak and vexatious claims, and this aim received support in evidence to the Committee from the Federation of Small Businesses and Peninsula Business Services. The Committee says that this is a reasonable objective, but notes the comments of the Senior President of Tribunals that it is too soon to say whether this has happened.

The Committee finds it unacceptable that the Government has not reported the results of its review one year after it began and six months after it said it would be completed.

The [number of employment tribunal cases](#) brought by single individuals declined by about 67% to around 4,500 per quarter from October 2014 to June 2015, and the number of cases brought by more than one person (multiple claims) declined by 72% from 1500 per quarter in the year to June 2014 to around 400 per quarter since October 2013.

Statistics provided by the [TUC](#) and [Unison](#) comparing cases brought in the first three months of 2013 and 2015 showed the following reductions in the number of cases for the most common types of claims: Working Time Directive, down 78%; unauthorised deductions from wages, down 56%; unfair dismissal, down 72%; equal pay, down 58%; breach of contract, down 75%, and sex discrimination, down 68%. The Discrimination Law Association argued that reduced access to tribunals had fallen disproportionately on women and those from traditionally disadvantaged groups. Rosalind Bragg of [Maternity Action](#) said

that since fees had been introduced there had been a 40% drop in claims for pregnancy-related detriment or dismissal.

Bob Neill added:

“The Ministry of Justice has argued that changes to employment law and the improving economic situation, as well as the pre-existing downward trend in the number of employment tribunal cases being brought, may account for part of the reduction in the number of cases. These may indeed be facts but the timing and scale of the reduction following immediately from the introduction of fees can leave no doubt that the clear majority of the decline is attributable to fees.”

The Committee recommends that the Government should publish immediately the factual information which they have collated as part of their post implementation review of employment tribunal fees. The Committee says that without this information having been made available to it, its recommendations in relation to employment tribunal fees should be taken as indicating options for achieving the overall magnitude of change necessary to restore an acceptable level of access to justice to the employment tribunals system.

These recommendations include: a substantial reduction in the overall quantum of fees; replacement of the binary Type A/Type B categorisation of claims according to complexity; an increase in disposable capital and monthly income thresholds for fee remission; and further special consideration of the position of women alleging maternity or pregnancy discrimination, for whom, at the least, the time limit of three months for bringing a claim should be reviewed.

Other court and tribunal fees

On matters other than employment tribunal fees, the Committee’s conclusions and recommendations include:

- The Government should review the impact of the April 2015 increase in fees for money claims on the international competitiveness of London as a litigation centre, and should not resurrect its proposal to double the £10,000 cap or remove it altogether, unless such a review has been undertaken;
- The increase in the divorce petition fee, from £410 to £550, should be rescinded;
- It is unwise for the Government to have brought forward proposals for fees set at a level to achieve full cost recovery in the Immigration and Asylum Chamber before having published its review of the impact of implementation of employment tribunal fees;
- A pilot scheme should be set up of a system in which there is a graduated or sequential system of fee payments whenever there are substantial fees payable in total in respect of a case in the civil or family courts or tribunals, allied with the requirement for the respondent to pay a fee;

- The MoJ should take up the Law Society's suggestion that it should introduce a system for regular rerating of remission thresholds to take account of inflation, and that it should conduct a further review of the affordability of civil court fees and the remission system, considering means of simplification, for example through automatic remission for all basic rate taxpayers.

FURTHER INFORMATION:

Committee Membership is as follows:

Robert Neill (*Conservative, Bromley and Chislehurst*) (*Chair*); Richard Arkless (*Scottish National Party, Dumfries and Galloway*); Alex Chalk (*Conservative, Cheltenham*); Alberto Costa (*Conservative, South Leicestershire*); Philip Davies (*Conservative, Shipley*); Chris Elmore (*Labour (Co-op), Ogmore*); Mr David Hanson (*Labour, Delyn*); John Howell (*Conservative, Henley*); Dr Rupa Huq (*Labour, Ealing Central and Acton*); Victoria Prentis (*Conservative, Banbury*), Marie Rimmer (*Labour, St Helens South and Whiston*).

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