

HOUSE OF COMMONS REPORT ON EMPLOYMENT TRIBUNAL FEES

Introduction

The House of Commons Justice Select Committee has now reported their findings about the imposition of courts and tribunal fees. It finds there is an urgent need for major changes to restore an acceptable level of access to justice in the employment tribunals (ETs) system. While the full report deals with the fees in all courts and tribunals, this brief concentrates on the committee's findings in relation to ETs where the introduction of issue fees and hearing fees in July 2013 has led to a substantial drop in cases. (See Reps bulleting EMP/083 and EMP/086 for details of the fees).

Principle of fees

The committee has no objection to the principle of charging fees to court users, arguing that some degree of financial risk is an important discipline for those considering legal action. For them, the question is more about the balance between an acceptable charge and the preservation of access to justice.

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 are

seeking to uphold their rights against their employer and the degree of choice which litigants have in whether to use the ETs 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 litigants should be asked to bear.

Evidence base

The report raises serious general concerns about the quality of the Ministry's research. It shares the view expressed by the senior judiciary and 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 effects of fees as "insignificant" and the President of the Law Society said it was "poor."

Committee chair, Bob Neill, Conservative MP said:

"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

Specifically in relation to ETs the committee noted there had 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 costs 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.

The government has argued the introduction of fees is 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 concurs 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 specifically found 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 and presented to the minister.

Reduction in ET cases

The committee was provided with evidence that the number of ET 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.”

Committee recommendations

The committee recommends that the government should publish immediately the factual information which they have collated as part of their post implementation review of ET fees. The committee says without this

information having been made available to it, its recommendations in relation to ET 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.

The 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
- 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.

Reps action

This bulletin provides a brief summary of the full committee report. Reps may wish to access the full report at www.parliament.uk/justicecttee

Further information on this and other employment rights matters are available from:

- Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- the TSSA Helpdesk – 0800 328 2673

The bulletin has been produced using information provided by the Select Committee Press Release