



Citizens Advice response to the Ministry of Justice Review of the introduction of Employment Tribunal Fees September 2015

The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893) introduced the requirement from July 2013 to pay fees in order to issue a claim in the Employment Tribunal (ET) and Employment Appeal Tribunal and to pay a further fee to have the claim heard. This has resulted in a 66% reduction in single case ET applications and, of those, an 80% reduction in discrimination claims.

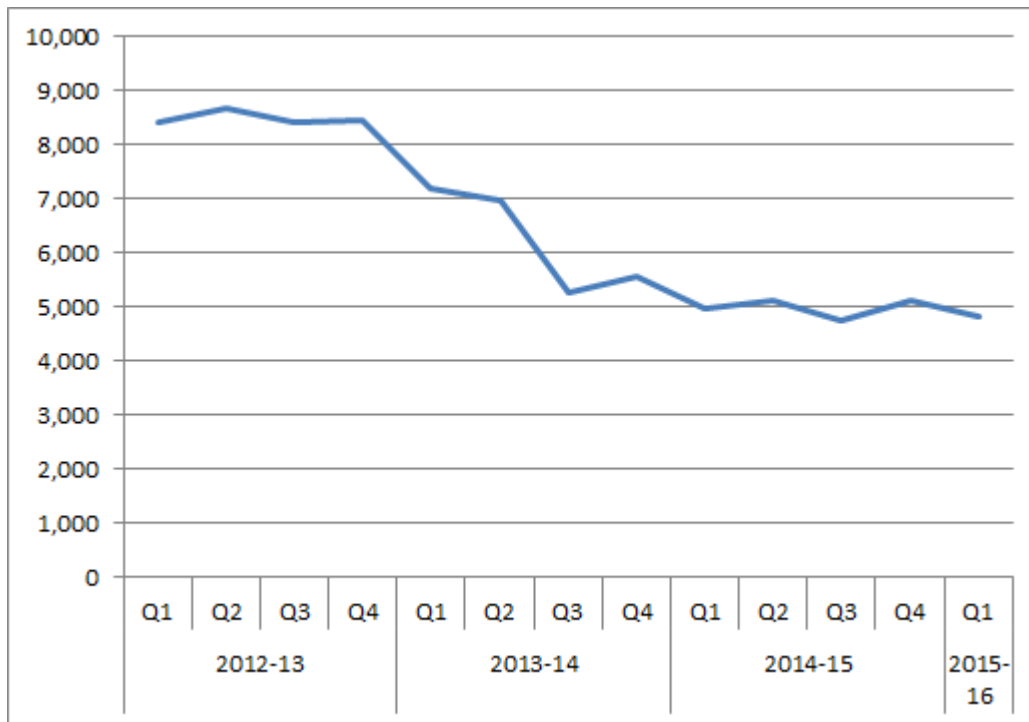
Since July 2013 there has also been a significant drop in the number of people coming to Citizens Advice with enquiries about ET claims. In 2012/13 we supported an average of 8,500 ET claim issues each quarter but this has decreased rapidly and settled at an average of 5,000 per quarter during 2014/15 - a reduction of 41% over two years.

However, it is our view that the reduction in ET claims and the consequential decrease in people seeking advice about them is not because there are less infractions requiring judicial resolution. For example, in 2012 / 2013 there were 3.8 million hits on the employment pages of Citizens Advice public information website www.adviceguide.org.uk rising to 7.1 million hits in 2014 / 2015. We argue that the introduction of employment tribunal fees has created an additional barrier to access to justice for our clients.

We believe there are three particular areas where workers are unable to enforce their employment rights through ETs:

- Low value Type A claims, such as for unlawful deduction of wages, where the fee can be far larger than the amount owed.
- Cases where workers are not entitled to remission because of their household income but also cannot afford the fees, particularly for Type B cases such as unfair dismissal and discrimination claims.
- Cases where workers are eligible for partial remission but still cannot afford the fees.

Employment Tribunal issues raised at Citizens Advice



This fall in enquiries about ET claims would be welcome if it was due to fewer problems at work, an increase in satisfactory earlier settlements, or fewer weak or vexatious claims. Our evidence, however, suggests this is not usually the case and people with strong claims are being put off or priced out by the large fees currently in place. Through a [survey of advisers](#), in July 2014 we found that less than a third of claims with a ‘Very good’, ‘Good’ or ‘50/50’ chance of success were considered likely to be, or were definitely being, taken forward .

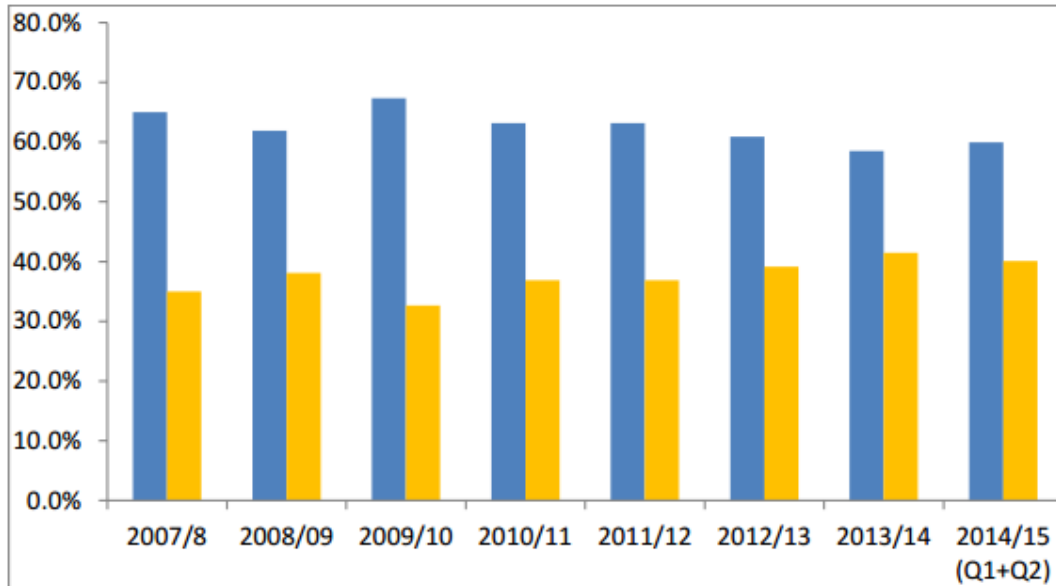
Has the introduction of ET fees met the stated aims of the introduction?

One of the [stated aims](#) of the introduction of fees was to “disincentivise unreasonable behaviour, like pursuing weak or vexatious claims.” But previous statistical research has shown that the proportion of unsuccessful cases did not drop following the introduction of fees¹. For every one of the six years before fees were introduced (in 2013/14), more than 60% of ET hearings found in favour of the claimant. However, in both years since fees were introduced, the number of hearings won by claimants has dropped below 60%. This suggests that fees have deterred more strong cases than they have weak or vexatious ones.

Proportion of ET hearing in which claimants are successful (blue) and unsuccessful (yellow)

¹ table 2.3,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf



Another of the stated aims was to incentivise settlement. This was accompanied by the introduction of mandatory early conciliation in May 2014. An Acas survey of claimants, employers and representatives whose Early Conciliation (‘EC’) cases concluded between September and November 2014 found that, of those claimants whose dispute was not formally settled by EC but who still decided against submitting a claim to ET, 26% said that it was because ET fees were off putting².

Fee levels

Our further research carried out in December 2014 [found](#) that more than four in five (82%) people with a problem at work felt that current fee levels would make them less likely to claim or deter them from claiming altogether. There is, however, willingness from potential claimants to make some contribution: 90% of our clients said they would not be put off by a £50 charge. In the case study below, a client was advised that there was a strong case for a Type B unfair dismissal claim to be brought but she was only able to afford the fees for a cheaper Type A claim which she won:

“The only reason I did not bring an unfair dismissal claim was because of the excessive fee. I had just lost my job and did not have enough money to pay for the £1,200 fee, nor did I want to take the risk considering that I did not know when I would get another job”.

Citizens Advice recommends that, if fees are to be maintained, the level of fees should be reduced, and that a fee level of £50 would allow somebody to reasonably claim £250 of unpaid wages, for example.

Case Study - affordability of Type B claims

Mona worked in a fish and chip restaurant for two years. She had a zero hours term in her contract

² Table 7.4, page 97, <http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>

but it was never exercised and her terms were varied by agreement to 27 hours per week shortly after she started. Mona earned £7 per hour and had a net weekly wage of £180. After two years employment she asked to take her paid annual leave entitlement, was refused, her hours were reduced to 0 and the employer took on other staff to replace her. Mona was not given any work for 5 weeks, following which she resigned.

She was advised that she had strong claims for constructive unfair dismissal (Type B), accrued outstanding holiday pay, notice pay and failure to provide written terms and conditions (all Type A). As Mona's husband was in work, she had a household income that meant she was not entitled to fee remission. However, she could not afford the £1,200 fee to present a Type B claim for unfair dismissal and so brought Type A claims only. This meant that she paid ET fees of £390 rather than £1,200.

Her claim was successful at ET and she was awarded the accrued outstanding holiday pay and notice pay as well as 4 weeks pay for failure to provide written terms and conditions. The Employment Tribunal agreed that the zero hours term in her contract had been varied to fixed hours, by agreement, as Mona had asserted.

On the facts as they were determined by the Tribunal, Mona had a strong unfair dismissal claim. However, she did not bring it because she could not afford the additional £810 it would have cost her to pursue a Type A claim rather than a Type B claim.

Remissions

The remissions system is designed to help people on low incomes, but we found that only three in ten people with employment problems were aware of this. The rules about remissions are complex and many falsely believe they will not be eligible for a full or partial reduction in fees. Our research has shown that 51% of those who said they would not claim, because they believed they were ineligible, were in fact eligible to a full or partial fee reduction.

Citizens Advice welcomes the work the government has undertaken to address this issue by making application documents clearer and shorter for applicants. We believe more could be done, such as adding a simple tool on Gov.uk for people to check what level of fee reduction they are entitled to.

There are also cases where people are not eligible for remissions but the fee level puts the claim beyond their financial reach. We found that fees are high in relation to how much potential claimants are likely to earn, with 43% of respondents to our survey with income of less than £46 per week after essential outgoings. This includes almost half (47%) of all Type B claimants, who would have to put aside all of their discretionary income for 6 months to save the £1,200 fees.

Case Study: ineligible for remissions

Sarah, 48, had worked for 12 years as an assistant chef for a company providing meals on wheels to the local authority. She worked for 30 hours a week and receiving £200 a week, but never received

any payslips.

In January this year she was summarily dismissed after the co-owner became abusive to her and her daughter, who was also an employee. The employer physically assaulted her daughter and the police were involved but no charges were brought. Sarah was sacked on the spot with no procedure.

She did not want her job back but sought advice from local Citizens Advice about unfair dismissal. She requested written reasons for dismissal but the employer did not respond.

Sarah was supported through early conciliation which was unsuccessful. She was advised that her claim was worth about £8,000. She sought advice from a solicitor about a 'damages based' agreement but was told this would not be financially viable as solicitor's charges would be up to £6,000. She wasn't confident of recovering any award as the employer - a limited company with 3 employees - could transfer cash and assets to a new company and close the former company down. The company was already in an Individual Voluntary Agreement meaning insolvency was very possible.

Sarah had been living on her mother's property in a caravan and was on a debt management plan. She was on JSA for 5 weeks after losing her job before gaining new employment as a carer. Because her husband earned £400 gross per week she was not entitled to any means tested benefits or to any fee remission. She and her husband had no savings or disposable capital. Both had cars on finance agreements which they needed to keep for their jobs.

Sarah did not feel able to pay the £1,200 needed to take her Type B case. She said that prior to visiting Citizens Advice she didn't know anything about tribunal procedure or fees. When she was told the cost would be £1,200 she was shocked and surprised- she said she thought they might be £200.

The case above shows how some people cannot afford to pay tribunal fees yet their household income can prevent them from entitlement to any kind of fee reduction. There are also cases where people are eligible to partial fee reductions, but these reductions are not enough for them to afford tribunal fees. This is a particularly acute problem for Type B cases.

Case studies: Part remissions aren't always enough

One client came to Citizens Advice after being seriously sexually assaulted and harassed by a colleague who was also her employer's best friend. The client resigned from her employment due to sexual harassment and had a strong claim, but would only be entitled to part remission of her fee. She said that she could not afford to pay the fee and so did not take legal action.

Another client, who was employed from July 2013 as an architect's assistant, has epilepsy which she made her employer aware of before she started employment. She took a period of sick leave due to the medical condition in November 2013 and when she returned to work she was dismissed. The reason given by her employer for her dismissal was that she did not disclose her medical condition

(which she says is untrue) and that her medical condition meant that she was a health and safety risk given the type of work they did. The client had a claim for disability discrimination. She would be entitled to part remission of fee only but said that she could not afford to pay the fee and so did not take legal action.

Conclusions

Citizens Advice carried out research in July 2014 and December 2014 which are referred to in this response and which we would refer the review panel to. They are referred to in this document but for ease of reference, they are also available

Here: https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/et-fees-survey-briefing-final-july-2014--2-.pdf

And here: <https://www.citizensadvice.org.uk/cymraeg/about-us/policy/policy-research-topics/work-policy-research/fairer-fees/>

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