

Fairer fees

Fixing the employment tribunal system



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Executive Summary

The introduction of Employment Tribunal (ET) fees in July 2013 has been followed by a 66% reduction in applications. This is good if it means that problems at work are falling or that more people are resolving issues through other channels. But it is problematic for the labour market if it has occurred because fees are pricing people out of their basic rights at work.

We surveyed 361 Citizens Advice clients who have been having problems at work and, for the first time, captured the experience of those who give up before visiting bureaux in person. We found that the current fee system is making 82% of respondents less likely to claim or deterring them from claiming altogether.

Fees are high in relation to how much many potential claimants earn. Overall 43% of respondents had a household income of less than £46 a week after accounting for essential bills. This includes almost half (47%) of all Type B claimants,¹ who would have to put aside all of their discretionary income for 6 months to save the £1,200 fees.

There is a remissions system in place, but only 29% of respondents were aware of it. The system is not promoted prominently enough and the word itself is confusing for many. Once people do know about remissions, it remains hard to work out whether they are eligible – we found that more than half of those who said they wouldn't apply because they weren't eligible actually were eligible.

These findings suggest that we need a better approach to ET fees. Fixing fees will benefit both employees and the vast majority of decent employers who are being undercut by a minority of unscrupulous employers.

We recognise that some balance of incentives is required, but the current policy has not achieved that. The Government initially set out three justifications for introducing fees:

- Fees “help to transfer some of the cost burden from general taxpayers to those that use the system, or cause the system to be used.”
- Fees “could help to incentivise earlier settlements, and to disincentivise unreasonable behaviour, like pursuing weak or vexatious claims”.
- “The courts have for some time charged fees for family and civil disputes...introducing a fees system will bring the Employment Tribunal and Employment Appeal Tribunal into line with other similar parts of justice system.”²

On all three counts, fees are largely failing.

First, fees only raised £69,000 net in 2013/14, and are projected to only raise £5.4 million this financial year, around 7% of the total ET bill.

Second, there is no evidence that fees have managed to deter weak claims more than good claims. In fact, official records show that fees have deterred more winning claims than losing ones – at hearings, the number of successful claims has *fallen* in relation to unsuccessful ones since fees were introduced. We found that the vast majority of respondents worked hard to avoid resorting to ET: 92% of respondents attempted to resolve their problem directly with their employer, which suggests that very few cases are sprung upon employers.

¹ Type B claims are more complex cases such as unfair dismissal or discrimination.

² Resolving Workplace Disputes: A Consultation, [January 2011](#).

Third, ET fees have not been brought “into line” with other courts. For example, someone seeking a refund on a faulty £200 TV would only have to pay a £50 fee to a county court, whereas someone seeking the same value in unpaid wages would have to pay almost eight times more (£390) at an ET.

We therefore make the following five recommendations to fix the ET system:

1. **ET fees should be reduced and aligned with county court fees to widen access.** This would stop ‘justice tourism’ which has occurred as some of our clients use less appropriate county courts with more affordable fees. It would mean that someone who is owed £250 of unpaid wages would only have to pay £50 rather than the current £390 fee. There is willingness from claimants to make some contribution: 90% of our clients said they would not be put off by a £50 charge.
2. **The Ministry of Justice (MoJ) should do more to promote awareness of the remissions system and should consider renaming it to make its function clearer.** We found that only three in ten people were aware that remissions were available. Remissions should be renamed ‘full and partial fee reductions’ and should be promoted more prominently on government websites.
3. **The MoJ should make it easier for potential claimants to work out whether they are eligible for fee remissions.** Currently claimants must read a 32 page PDF document to check their eligibility. Gov.uk should develop a web tool with around five questions to allow people to check what level of fee reduction they’d be entitled to.
4. **The MoJ and the Department for Business, Innovation and Skills (BIS) should commission research for the first time to both identify the actual quantity of weak and spurious claims and what could be done to deter them.** Currently the system is imbalanced against claimants, and balance cannot be properly struck without knowing what puts off weak and genuine claims. The research should seek to establish what proportion of ET claims can be considered unjustified and what measures could be taken to protect employers from these without deterring legitimate claims.
5. **BIS should relax the strict regulations around providing exact employer names at start of the EC process.** Many of our clients are employed as agency staff or on other casual contracts, so don’t always know who their employer technically is at the start of EC. The current regulations create problems for some clients who complete the EC process and wish to proceed to ET but didn’t have exactly the right name of their employer on their initial form.

Introduction

This is the first in a series of Citizens Advice research projects looking at second choice jobs. As the economy recovers, focus has shifted from *whether* the labour market is growing to *how* it is growing.

More people are in work than ever before and unemployment has fallen below 2 million. But real wages have fallen and in work poverty is now more prevalent than out of work poverty. Many workers are stuck in second choice jobs. In total, more than 8 million people are under particular pressure – one in five of the working age population. This includes people looking for more secure work (such as 600,000 temporary workers seeking permanent jobs) and people who work full time but on low wages (such as the 2.25 million paid less than £15,000). The question we are asking is: how is this new normal working for people?

Last year Citizens Advice Bureaux helped people face-to-face with 387,000 employment issues, and the employment advice pages of our website were viewed 5.4 million times. From these interactions, we have a detailed understanding of how the labour market is changing and what effects this has on different people's lives.

This report is the first piece in our new programme of labour market research designed to understand the experiences of people in second choice jobs. We are starting with the Employment Tribunal system because it underpins the whole labour market as the main mechanism through which disputes are resolved and rights are enforced. It provides protection for many workers in second choice jobs or with second rate bosses. It also protects good employers who are at risk of being undercut by a tiny minority of unscrupulous rivals.

In 2015 we'll build on this report to ask what protections workers need and how the labour market can be adapted to better support businesses and employees. In particular, we'll be looking in more detail at different types of working arrangements ranging from self-employment to agency work. We'll be considering short term policy changes and longer term solutions to make sure that work works for more people.

Background

Employment Tribunals (ETs) are important because they offer workers and employers a legal forum to resolve workplace disputes. The Government introduced ET fees on 29 July 2013. They total £390 for Type A cases (such as unpaid wages or notice pay) and £1,200 for Type B cases (such as unfair dismissal or discrimination).³ There is a system of remissions for claimants who are in receipt of certain benefits or who have low incomes.

Less than a year later, the new mandatory Early Conciliation (EC) process took effect. This means that a claimant cannot proceed to ET without first seeking to resolve their grievance with the help of the Advisory, Conciliation and Arbitration Service (Acas).⁴

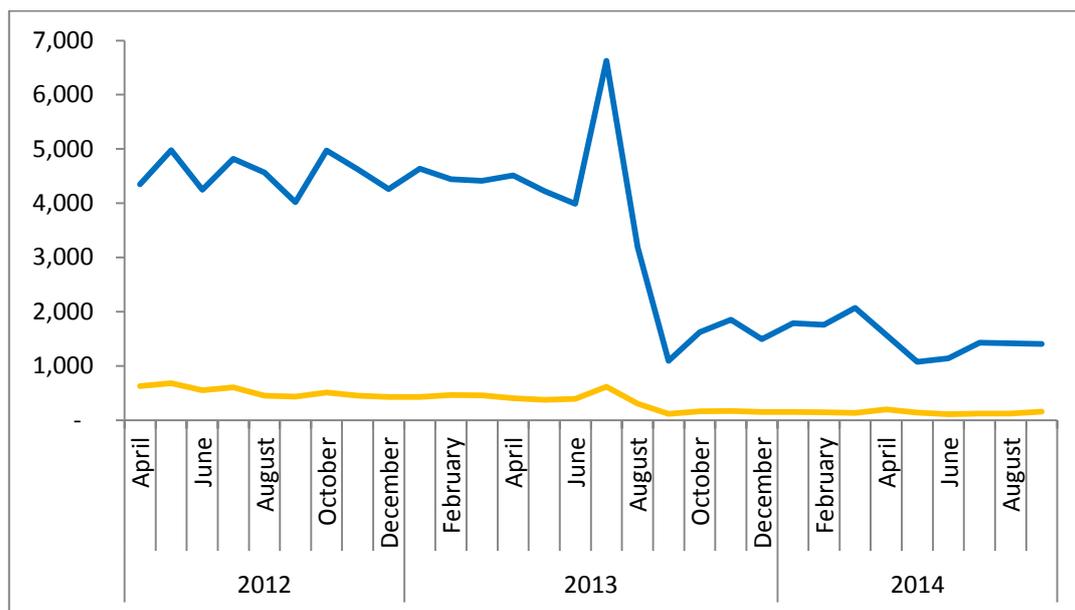
³ Both headline fees include an issue and hearing fee. Claimants must pay the issue fee when they make their submission to the ET, and then pay the hearing fee to go to the actual tribunal. The fees are Type A: £160 (issue), £230 (hearing), Type B: £250 (issue) and £950 (hearing).

⁴ Early Conciliation was launched on 6 April 2014. From 6 May 2014 anyone wanting to make an Employment Tribunal claim must contact Acas first

The impact of fees can be seen clearly in Figure 1 below, with a sudden spike in applications during the month (July 2013) before fees took effect, and a subsequent fall. In three months after June 2013, the number of monthly receipts fell by 75% from 4,000 to 1,000.

The impact of EC (which became mandatory in April 2014) is less clear, partly because the majority of the caseload had already been removed by fees. There was a fall of around 1,000 cases (50%) in the first two months after EC. But since then they have risen again to around 1,500. It is too early to be sure, but it seems that EC has initially led to a further reduction of around 25%.

Figure 1: Single (blue) and multiple claims (yellow) receipts (January 2012 to September 2014).



Source: MoJ Quarterly Tribunal Statistics, [July to September 2014](#).

The introduction of fees was a major change to a system which had previously been free to use for almost half a century. Industrial Tribunals were introduced in 1964 and were initially designed to protect employers from training levies. They gradually grew in scope to provide broader employment resolution services covering issues like unfair dismissal, discrimination and salary rights. Industrial Tribunals were renamed Employment Tribunals in 1998 as part of this evolutionary process.

The new fee regime was justified by the government “*because taxpayers are currently subject to an excessive financial burden as this free service has become increasingly utilised*”.⁵ In essence, fees were introduced as a cost-cutting measure to reduce the £80 million annual expense of running the ET system. Fees were also intended to encourage employers and employees to find earlier and cheaper alternative resolution methods.

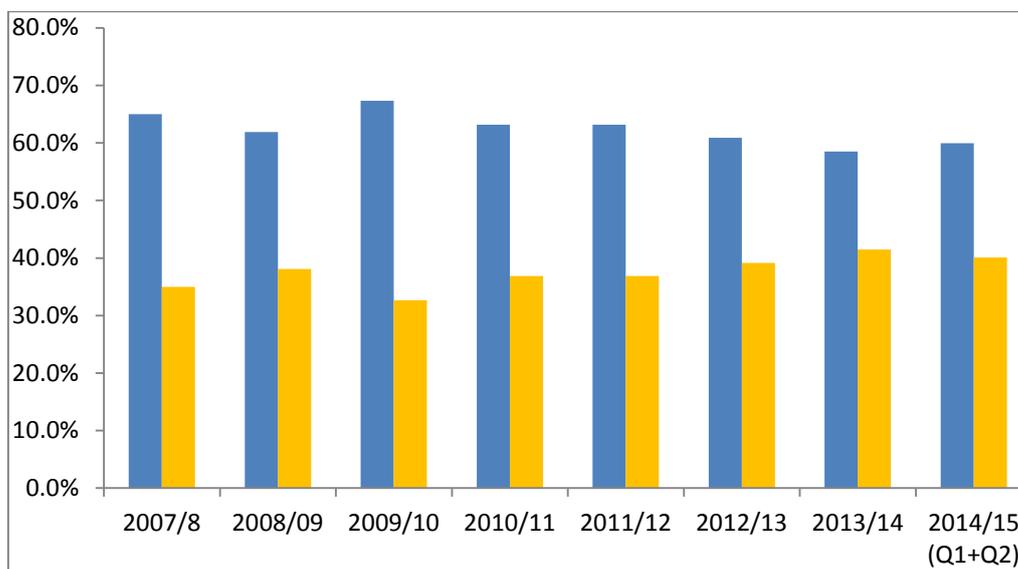
It is important to make clear, however, that the number of ET claims being lodged by individuals was *not* rising. The Ministry of Justice’s own figures show that the individual ET claims falls for each of the three financial years before fees were introduced (from 71,000 in

⁵ MoJ Fee Charging Impact Assessment [May 2012](#).

2009/10 to 55,000 in 2012/13). So despite a growing workforce, the number of individuals using the free service was dropping.⁶

The Government said that fees would “*disincentivise unreasonable behaviour, like pursuing weak or vexatious claims.*”⁷ But fees have had an indiscriminate effect, deterring all types of claims. Figure 2 shows that the number of successful cases has dropped *more* than unsuccessful cases. 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.

Figure 2: Proportion of ET hearing in which claimants are successful (blue) and unsuccessful (yellow).



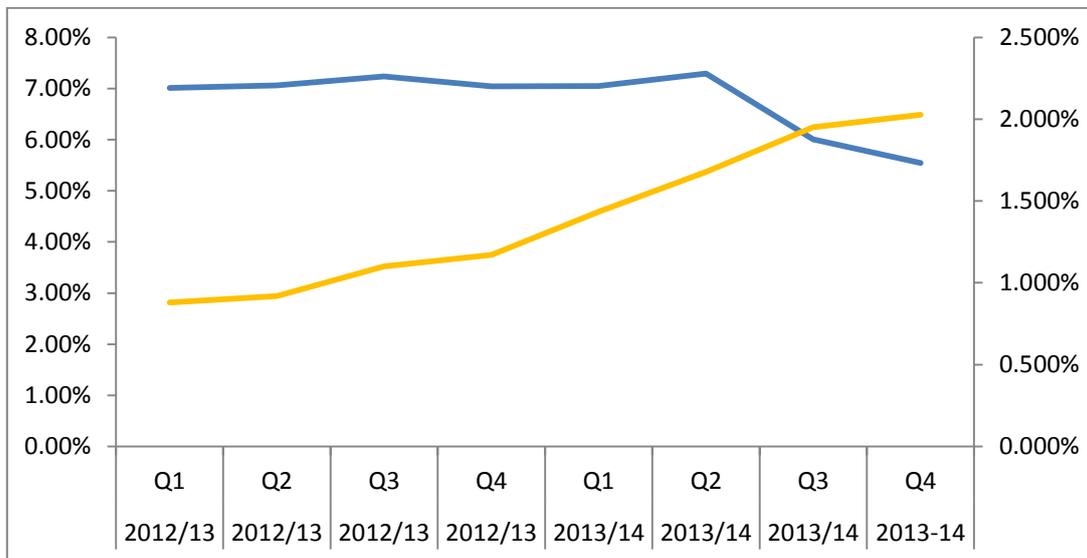
The introduction of a mandatory EC process run by Acas was, like fees, designed to support earlier conciliation. When it works, EC has the dual benefit of providing better workplace outcomes and saving taxpayer money. Citizens Advice supports both of these aims and EC in general but we are concerned that by introducing fees first, the true impact of EC has been disguised. It may have offered a more efficient way of reducing the load on ETs than fees (as they don't need a fee or remissions system) without pricing genuine claimants out of accessing their basic rights at work.

Our evidence suggests that problems at work are not dropping. As Figure 3 shows, since fees were introduced we have seen fewer people face to face about taking problems to ET, but more people are using our website to understand how ETs work. The sudden drop in bureaux visits combined with ongoing website use implies that more people are giving up on their case when they see the ET fees structure.

⁶ Figures from MoJ Quarterly Statistics [July to September 2014](#). The number of multiple claims had increased and fluctuated significantly, but the government has recognised that this was largely due to some major (and anomalous) industrial cases, such as an ongoing Working Time Directive case involving 10,000 airline staff.

⁷ MoJ Fee Charging Impact Assessment May [2012](#).

Figure 3: Employment Tribunal problems raised at Citizens Advice Bureaux (in blue as % of all employment problems) and Citizens Advice online Problems at Work page views (in yellow as % of all traffic).



This isn't the only evidence suggesting that the drop in ET cases does not mean that problems at work are also dropping. Figures from Acas show that almost exactly same number of people are applying for EC (the final part of the ET process that is free for all users) as were applying for ETs when they were free. Between April and June 2014, 17,162 people applied for EC.⁸ Over a year, this scales up to 69,000, just above the levels in the years before fees were introduced (64,146 average per year between 2010/11 and 2012/13). This implies that demand is growing slightly for resolution of workplace disputes, but that many are dropping out when they have to start paying the current level of fees.

We aren't the only organisation concerned by the current fees structure. The Confederation of British Industry has said: "we have never called for the level of fees the Government has introduced" and that it wants fees set "well below current levels". Similarly the Federation of Small Businesses has said "Nobody wants to see excessively high fees prevent a worker from obtaining redress for a genuine grievance."⁹

In July 2014 we published a report based on a survey of CAB advisers, who assessed that 80 per cent of cases they saw had a Very good, Good or 50/50 chance of success at ET. However, less than a third of these claims were considered likely to be, or were definitely being, taken forward. This drop-off was particularly acute for smaller claims, and less than a quarter of strong claims valued below £1,000 were advanced.¹⁰

Partly because of the drop in claims, fees have failed to save as much money as intended. Our analysis suggests that in 2013/14, the introduction of fees saved just £69,000. This is based on the fact that fees raised £4.469 million in 2013/14, while the establishment of the fee and remission system incurred £4.4 million capital costs.¹¹

⁸ Early conciliation update: April – September, Acas: <http://www.acas.org.uk/index.aspx?articleid=5069>.

⁹ Independent, [New fees price thousands out of access to employment tribunals](#), 12 September 2014.

¹⁰ [Survey of employment cases brought to Citizens Advice bureaux](#), July 2014.

¹¹ House of Commons, [12 May 2014](#).

For the first complete financial year with the fees system, we estimate that fees will raise £6.7 million.¹² The net saving will be lower when accounting for fee and remission system administration costs, which the Government expects to be around £1.3 million per year. This net saving represents around 7% of the total cost of ETs. It seems disproportionate to deny 66% of previous claimants access to their basic rights for a 7% saving.

This project builds on our earlier research by focusing on the lived experiences of our clients. It seeks to understand the decisions they make as they try to enforce their basic rights at work. The report captures the user experiences of many who drop their claim before visiting a bureaux in person, so would have been excluded from our previous research. We put forward positive solutions to help fix the ET service.

Methodology

Our findings are based on an online survey of 361 Citizens Advice clients. It was available through a sidebar on the ET and employment pages of our Adviceguide website. The survey was open from 28th October to 15th December 2014. It was deliberately not promoted via social media or other channels to ensure that people accessed the survey naturally while they were researching an active employment problem.

The survey included 21 questions about respondents' circumstances, their problems at work and their feelings about the ET system. We asked a number of questions to establish whether people were eligible for fee remissions (their savings and income, what benefits they received, their age and family composition).

Figure 4: Example of survey promotion on Adviceguide.

The screenshot shows the Adviceguide website interface. At the top, there is a navigation bar with links for Accessibility, Help, Privacy and cookies, Contact us, About, and Cymraeg. The main header features the Adviceguide logo and a search bar. Below the header is a secondary navigation bar with categories like Benefits, Work, Debt and money, Consumer, Relationships, Housing, Law and rights, Discrimination, Tax, Healthcare, and Education. The main content area displays a breadcrumb trail: England home > Work > Problems at work > Employment tribunals from 29 July 2013 > What will it cost to make a claim?. The page title is 'Employment tribunals - how much will it cost to make a claim?'. The main content includes an introduction to the fee structure, a table of fees, and a sidebar with a survey promotion.

Fee	Type of claim
Type A fee	For claims, such as: <ul style="list-style-type: none"> unpaid wages redundancy pay holiday pay notice pay equal pay (for claims presented before 6 April 2014).
Type B fee	For claims, such as:

Employment tribunals survey

Are you thinking of taking a case to an employment tribunal? If so, we'd like to hear about your experience.

The tribunal system has changed significantly in the past two years and we want to check whether it is working properly for people in England and Wales.

By filling in this quick survey, you can help us understand how the people are seeking justice for issues at work.

Source: [Adviceguide website](#) accessed 01/12/2014.

¹²We upscaled the results for 8 months from 2013/14. This (£4.469m*3/2) gives us £6.7m from the HM Courts and Tribunal Service [2013/14 annual report](#).

Survey Findings

Claimants and their claims

Respondents came from a broad range of occupations. The most common sectors were food and drink (19%), Administration (16%), retail (14%) and care (10%). They were overwhelmingly employees (88%), with the remainder on casual / zero hours contracts (4.8%), agency contracts (4.3%) and in self-employment (2.8%).

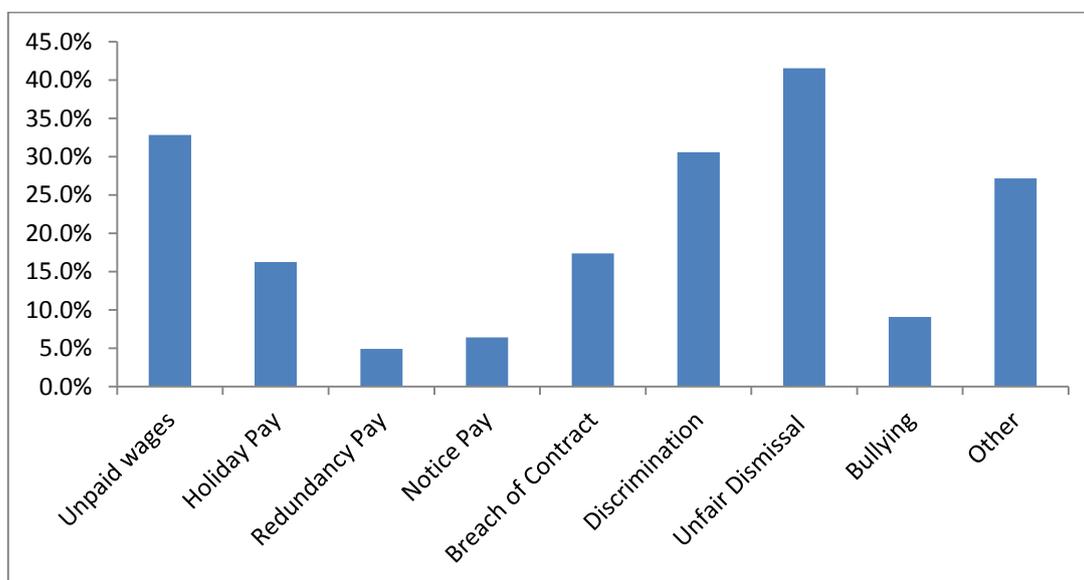
Each respondent had on average 1.9 problems, suggesting that issues at work are often complex. As Figure 5 shows, the most common concern was around unfair dismissal, which was cited by 42% of respondents. After this, 33% had problems with unpaid wages and 31% had problems with discrimination and equal pay.

Our clients have consistently told us that they consider many factors before submitting their case to ET. These include whether they can afford the fees and the time and effort required to advance a claim, what chance they have of winning a case and how much they would be paid if successful.

Potential claimants have a good idea of the fees involved, but many face uncertainty around how much they would get if they won their case. We found that more than half (54%) of respondents did not know how much they were claiming. It is difficult for these people to judge whether they can justify a fixed initial outlay for an uncertain latent output.

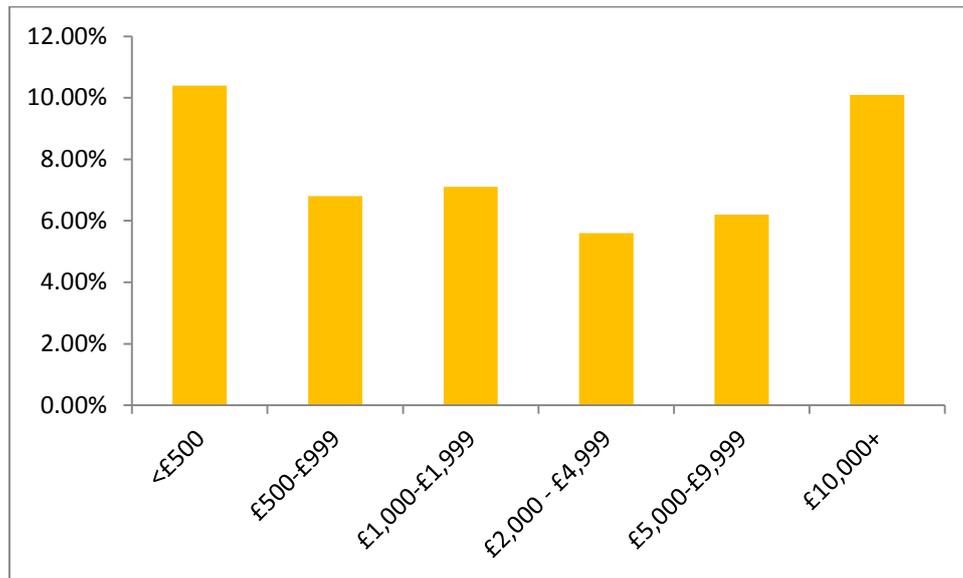
Type B cases are more complicated, so it is not surprising that a higher proportion of people with these cases didn't know what to expect. Overall, 81% of those with Type B cases didn't know the value of their claim.

Figure 5: Respondents' problems at work.



Of those who did know how much they were claiming for, the majority were either claiming less than £2,000 or more than £10,000. This mirrors the overall tribunal caseload. More than half (53%) of those who knew their claim value wanted less than £2,000, including 23% who wanted less than £500. At the higher end, 22% wanted more than £10,000.

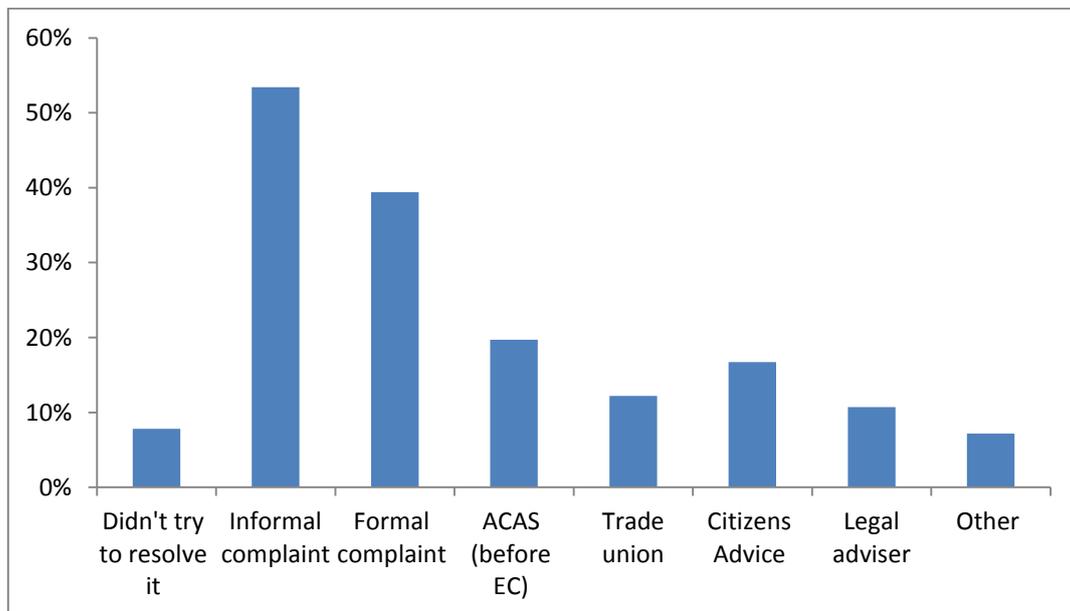
Figure 6: Expected claim value ('not known' excluded from graph but included in percentages).



Attempts to resolve disputes

A concern often raised by employers is that they are vulnerable to employees lodging speculative cases without any warning. This can force them to defend themselves at significant cost, which in turn can act as a disincentive to hiring new staff. The Government appears to have accepted this concern, saying during consultation that fees would “disincentivise unreasonable behaviour, like pursuing weak or vexatious claims.”¹³

Figure 7: What respondents did before approaching ET.



Our findings suggest that such concerns are exaggerated. In fact, the majority of participants had raised their problems with their employer before thinking of approaching an ET. Overall, 92% of respondents made efforts to resolve their problem before approaching an ET. 80% of

¹³ MoJ Fee Charging Impact Assessment May 2012.

people said that they themselves raised concerns directly with their employer in the workplace before taking further action. This includes 39% who had made informal complaints, 25% who'd made formal complaints and 16% who had made both formal and informal complaints. The different channels through which clients attempted to resolve their workplace disputes is presented in Figure 7 above.

Only 8% of respondents said that they had made no effort to resolve their case. Although it seems to accept that some deterrent is needed, the Government has also argued that the harm of unannounced cases being sprung upon employers has been exaggerated by a few exceptional cases:

“Fear of tribunal costs and awards is an issue that has been raised by business stakeholders, particularly in relation to the uncapped nature of discrimination awards. This concern may have been influenced by some of the extremely high figures quoted in the press, which in reality are likely to be exceptions.”¹⁴

Box A: Early resolution

The overwhelming feedback from our clients is that the ET is an extremely stressful and time-consuming process. They, just like employers, would rather resolve a case as early as possible. One client told us:

“It’s a full time job getting all the paperwork ready. It seems to have really dragged on. Early conciliation was in May and the Tribunal date is in February.”

Other clients want to resolve their problems early to protect their jobs.

Terry, a 54 year-old driver from Leeds, has been unable to take any leave or receive pay in lieu of leave for the last year as his employer would not provide a statement of leave accrued. He raised his concerns with his employer, saying that he believed his employer owes him approximately £1,000. Despite clear communication, the employer is unwilling to resolve the issue. Terry is unwilling to take this to tribunal because he cannot afford the fees and risk losing his job for pursuing this issue. He said he wanted to solve the issue informally to save time and maintain a working relationship with his boss.

The impact of fees

The level of fees had a profound impact on people’s propensity to proceed to tribunal. Overall 82% of respondents said that the level of fee they face would make them less likely to, or would deter them entirely from, going to ET. This suggests that a swathe of people are priced out of enforcing their basic rights at work and helps explain why 66% fewer ET cases have been lodged since fees were introduced.

¹⁴ <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-ia.pdf>

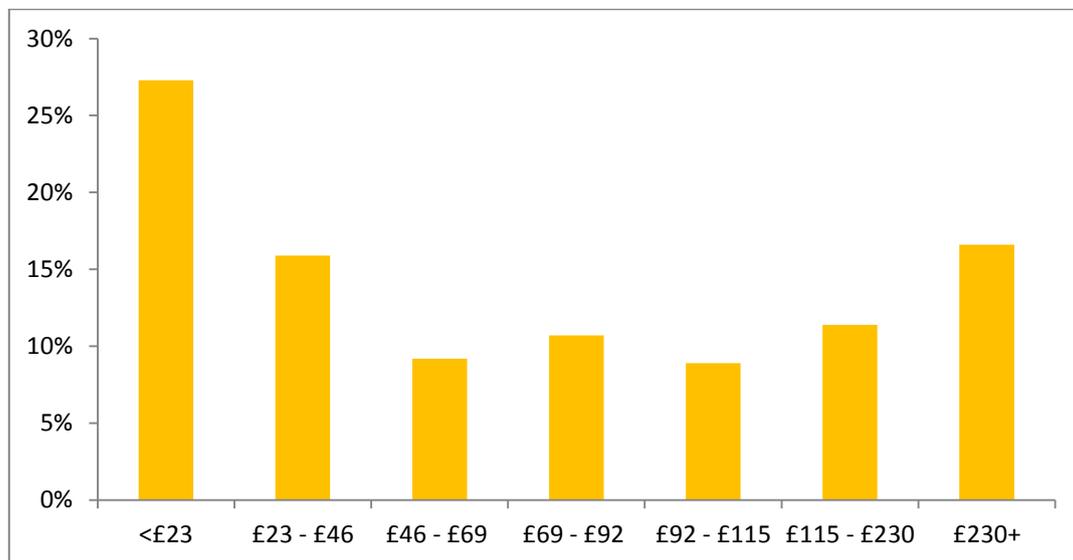
We found that of people with a Type A claims – cases like unpaid wages or redundancy pay, which now have a £390 fee – three in four (75%) said that the fee would make them less likely to claim or definitely not claim.

The deterrent was even stronger for those with Type B cases – unfair dismissal or discrimination with £1,200 fees - and 85% said that the current level of fees would make them less likely to claim or definitely not claim.

The impact of fees depends partly on potential claimants’ incomes and partly on how much they expect to win.

Fees are particularly daunting for people on low incomes. Overall 43% of respondents had a household income of less than £46 a week after accounting for essential bills.¹⁵ We found that 47% of Type B claimants would have to put aside all of their discretionary income for at least 6 months to save the £1,200 fees. Similarly, 40% of Type A claimants would need to save for 8 weeks to get £390.

Figure 8: Discretionary weekly incomes of respondents.



Fees have a different deterrent effect for people with large but unspecified claims than they do for people with specific low value claims. As described above, fees add greater uncertainty for the 55% of people who don’t know how much they want to claim.

For clear but small claims, the current system of fees is particularly punitive. A person owed £130 of unpaid wages would have to spend 300% of their debt to get to ET, and even then would only have a 50/50 chance of getting paid if they won their case (because of deficiencies in the ET award enforcements process). The Department for Business, Innovation and Skills acknowledged this problem back in 2013 before fees were introduced:

“there is an even chance that individuals who receive a monetary award at an employment tribunal will not receive payment of their award without the use of enforcement. This is perhaps a particular concern in light of the forthcoming changes to the Employment Tribunal process where

¹⁵ We defined essential bills as rent or mortgage, council tax, food, electricity, childcare, gas, water, TV license, internet, telephone

individuals will need to pay an “issue fee” to file a case with the Employment Tribunal and a further “hearing fee” if the claim proceeds to a hearing.”¹⁶

Box B: Impact of fees

This situation has had a direct impact on Citizens Advice clients.

Kirsty, a 36 year-old shopworker from Swansea, was owed £330 by her employer as she had not been paid for all of the hours she worked. She contacted her employer to get paid this money but it was refused and no explanation was given as to why she was missing pay. Kirsty was unclear about how tribunals are supposed to help her enforce her rights as her claim is for less than the £390 Tribunal fee required. She feels that her employer knows that she won’t take this case to Tribunal because of the fees and therefore feels he can get away with not paying her.

Fees are also punitive for people who are appealing against unfair dismissal. By definition, many are out of work when they want to lodge a claim. As one client told us:

“obviously by not working I’ve struggled to get the money together. I’ve got £950 to pay and I’m at the end of my savings. It’s a challenge...I think the fee is more governed at the employer than the employee. If you halved it I think more people would bring things to tribunal. I’m quite lucky that I managed to put some money away over the years. People in not such a good position as myself would really really struggle”

As another client who had lost her job said:

“£1,200 is too high. I want to fight my corner but being unemployed at the moment... that is a hefty fee”

All of these findings show how fees are pricing some employees out of using ETs. We asked our clients what impact a nominal £50 fee would have and more than nine in ten said that it would not put them off. This shows that most individuals are prepared to pay some level of fee to take their case to ET. But it is clear that the current fee is above the level that the majority are willing or able to pay.

Despite this, there are warning signs that some appetite exists to *increase* fees in future. The latest HM Courts & Tribunals Service Annual Report said that it would continue to recover “the *full* costs of the processes involved less the cost of funding fee remissions”.¹⁷ Fees are currently designed to recoup around one third of the actual cost of each case (where remissions aren’t used), so reaching full cost recovery would require fee income to triple.

¹⁶BIS, Payment of Tribunal Awards, [2013 Study](#).

¹⁷ Italic added for emphasis, from [HM Courts and Tribunal Service Annual Report 2013/14](#).

Fee remissions

The Government introduced fee remissions at the same time as fees to protect the most vulnerable workers. Although the Government expected 31% of claimants to be eligible for remissions, only 7% of claims lodged between August 2013 and June 2014 were awarded remissions.¹⁸ The rules surrounding eligibility are complex, presented in a lengthy 32 page document.¹⁹ In simple terms, people are generally eligible if they are on certain income-related benefits or if they have savings below £3,000 and have a low income. Exact eligibility depends on factors like age, household size, income and savings.

But our evidence suggests that many of our clients are hearing about fees and giving up before visiting a bureau or finding out about remissions. There is a significant lack of awareness both around the *existence* of and *eligibility* for fee remissions.

Awareness of remissions

Overall, fewer than three in ten (29%) were aware that fee remissions were available. A remissions system is of no use to people who don't know about it, so it's vital that it is better promoted. Rather than being explained at the top of the Government's ET fees page or even in the main body of documents, detail of fee remissions is left to the bottom of the 'Detail' section, as shown in Figure 9.

Figure 9: Gov.uk website on ET fees (highlighting of remissions data added).

GOV.UK

Search

Departments Worldwide How government works Get involved
Policies Publications Consultations Statistics Announcements

Form

Employment tribunal fees

From: HM Courts and Tribunals Service
First published: 26 July 2013
Last updated: 31 October 2013, see all updates
Part of: Employment tribunal forms
Applies to: England, Scotland and Wales (see publication for Northern Ireland^(D))

Leaflet on what fees you may have to pay if you're taking a case to an employment tribunal

Documents

- [Employment tribunal fees for individuals](#)
PDF, 193KB
- [Employment tribunal fees for groups and multiples](#)
PDF, 207KB
- [Employment Appeal Tribunal fees](#)
PDF, 164KB

Detail

A separate leaflet explains fees for appealing to the Employment Appeal Tribunal.

You may be able to get [help paying your fees](#) if you can't afford them (eg you're on benefits or a low income).

Published: 26 July 2013

From: HM Courts and Tribunals Service

Source: [Gov.uk](http://gov.uk) accessed 19/12/2014.

¹⁸ In total, 3,912 remissions were awarded and 52, 422 individuals lodged claims to Employment Tribunals.

¹⁹ EX160A: Court and Tribunal Fees - Do I have to pay them?: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-from-07-october-eng.pdf>

Box C: Awareness of remissions

One respondent, who had already applied to Acas for EC, told us:

“I didn’t know that remissions existed. There’s so much literature to read, there’s so much information. Bear in mind that we [claimants] are incredibly frustrated already for the fact that we lost our livelihood. We have to sign on so we have that humiliation on top of everything else. We have to choose stuff left and right.”

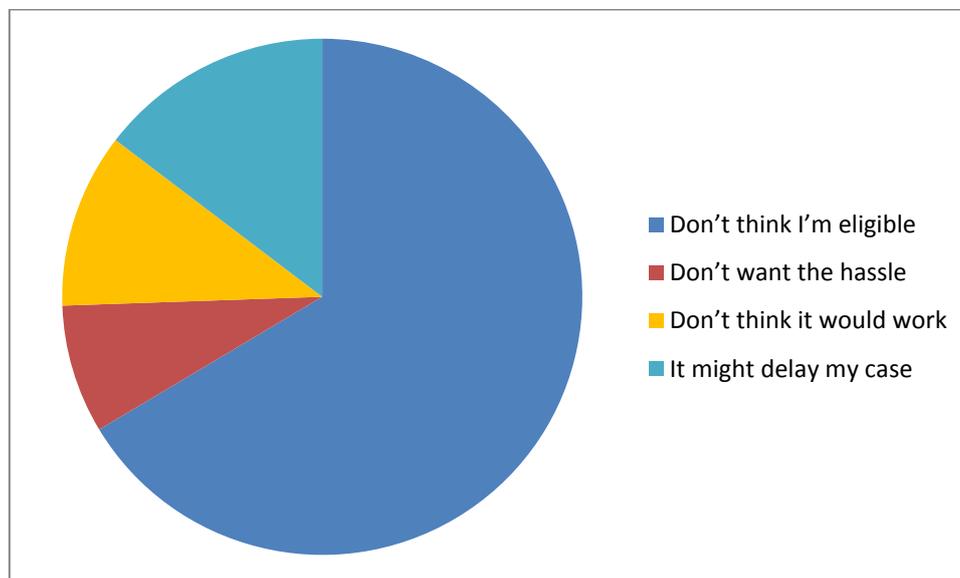
When we asked another client what they thought of the fee remission systems, they said:

“I’m not sure what that word means”

Awareness of remission eligibility

Once we had explained that a system of remissions was available, almost half (45%) of respondents said they would plan to use them. Of the remainder who said they might or they wouldn’t, the main concern was lack of eligibility (67% thought they weren’t eligible and 11% didn’t think that it would work). The remainder thought it would add extra delay to their case (15%) or didn’t want the hassle (8%).

Figure 10: Why respondents wouldn’t use remissions.



Of the respondents who said they thought they weren’t eligible, we found that 51% were in fact entitled to full or partial remissions. This suggests that information about eligibility for remissions is not clear or accessible enough.

Both the lack of awareness of the existence of remissions and the lack of understanding of how eligibility works help to explain why take-up has been so low. As shown in Figure 11, total remissions awarded fluctuated and grew between August and March, but appear to have flattened out at around 600 per month. Although the proportion of remissions increased

significantly in May and June, this was due to a drop in claimants rather than an increase in remission awards.

Figure 11: Remissions granted and total ET receipts.

Month	Remission Volumes	Total claimants	Remissions to claims
Aug-13	92	7,509	1.2%
Sep-13	107	14,584	0.7%
Oct-13	261	5,111	5.1%
Nov-13	193	2,705	7.1%
Dec-13	144	3,026	4.8%
Jan-14	379	3,464	10.9%
Feb-14	114	3,402	3.4%
Mar-14	753	4,101	18.4%
Apr-14	503	3,716	13.5%
May-14	754	2,828	26.7%
Jun-14	612	1,996	30.7%
Total	3,912	52,442	7.5%

Source: Tribunal quarterly statistics and parliamentary [written answer](#).

Recommendations

This is the first survey to capture the user experiences of all people considering going to ET, including those who give up before seeking formal help. The main finding has been that fees are pricing people out of their basic rights at work. Overall, 82% of respondents said that the present fees would make them either less likely to claim or dissuade them from claiming altogether. Our research suggests that six important changes are necessary:

1. ET fees should be reduced and at least aligned with county court fees.

This would make ETs more accessible and would remove the current incentive for justice tourism towards less appropriate county courts to resolve workplace disputes. Reducing the fees would, of course, cost the government some revenue. However, with a net annual saving of around £5.4 million (or 7% of the overall cost of ETs), the costs will be relatively small.

Figure 12 shows how the new ET fees system could look to ensure that people do not have to pay more than they would for the county court. In our survey, 90% of clients said they would not be put off by a £50 fee. Although this would only be applied to cases worth less than £300, it shows that there is a willingness amongst employees to pay some costs towards the ET.

This fee system would make prices more reasonable for all claimants. For example, someone claiming £250 of unpaid wages would only have to pay £50, saving them £340 (or 87% of current fees). Someone claiming for £10,000 due to unfair dismissal would pay £745 in total, saving £455 compared to the current system.

Figure 12: Proposed new fee structure and savings compared to current system.

Proposed Fees Type B				Proposed Fees Type B			
	Proposed total fee	Current total fee	Saving		Proposed total fee	Current total fee	Saving
Up to £300	£50	£390	£340	Up to £300	£50	£1,200	£1,150
£300 - £500	£90	£390	£300	£300 - £500	£90	£1,200	£1,110
£500 - £1,000	£140	£390	£250	£500 - £1,000	£140	£1,200	£1,060
£1,000 - £1,500	£185	£390	£205	£1,000 - £1,500	£185	£1,200	£1,015
£1,500 - £3,000	£275	£390	£115	£1,500 - £3,000	£275	£1,200	£925
£3,000 - £5,000	£275*	£390	£115	£3,000 - £5,000	£520	£1,200	£680
£5,000 - £15,000	£275*	£390	£115	£5,000 - £15,000	£745	£1,200	£455
£15,000+	£275*	£390	£115	£15,000+	£885	£1,200	£315

* The fee for Type A claims above £3,000 (which are rare) has been capped at £275 to ensure that nobody would pay more than they do under the current system.

2. The MoJ should make fee remissions clearer by renaming them ‘fee discounts’ and presenting them alongside Type A and B fee levels.

We found that only 29% of respondents knew about the existence of remissions. This is not helped by the fact that remissions are only featured at the bottom of the government webpage about ET fees in the ‘Detail’ section’.

The MoJ should therefore promote awareness of the existence of remissions. On a basic level, the word ‘remission’ is not easy for people to understand, and would be better described as a ‘fee discount’. We suggest that people would therefore be able to apply for a full discount or a partial discount. Fee levels should be made clear at the top of the government webpage, alongside prominent information about fee reductions.

3. The MoJ should make it easier for people to understand whether they are eligible for fee discounts by designing a clear, accurate and intuitive online tool.

Of respondents who said they wouldn’t use remissions as they thought they weren’t eligible, more than half would have actually been entitled to full or partial remissions. This helps explain why the number of remissions (7% between August 2013 and June 2014) has been so far below the Government’s initial expectation (31%).

The HM Courts and Tribunals Service (HMCTS) information guide ‘EX160A: Court and Tribunal Fees – Do I have to pay them?’ is detailed but also very long and complex.²⁰ At 32 pages, it is daunting for many claimants who want to quickly check whether they are eligible.

The MoJ should develop an online tool for claimants and advisers to offer clear guidance over whether people are eligible. This would involve answering around five questions, rather than having to read a 32 page document. It would give a clear indication of what level of reductions (if any) a user was entitled to.

4. The MoJ should commission a study to determine the extent of claimants lodging weak, spurious or vexatious claims. It should identify how to protect employers from weak claims without excluding genuine cases.

It is vital that fee levels strike the right balance between deterring weak claims and not discouraging legitimate claims. At the moment this balance is not being struck.

To fix the ET fee system and get the balance right for both businesses and employees, the government needs to know how common weak cases actually are. It should both conduct analysis of ET cases to establish what proportion of cases taken to tribunal actually are very weak or vexatious.

In addition, qualitative analysis of weak claimants is required to understand what could be done to prevent these cases reaching hearings. The current system is filtering out too many good claims and a more targeted mechanism is needed.

²⁰ EX160A: [Court and Tribunal Fees - Do I have to pay them?](#)

Once evidence has been established about the quantity and type of weak claims, the existing mechanism for removing weak claims can be re-evaluated. But without this evidence, policymaking risks adopting a haphazard approach rather than finding the optimal solution for both employers and employees.

5. BIS should relax the strict regulations around providing exact employer names at start of the EC process.

Many of our clients are employed as agency staff or on other casual contracts, so don't always know who their employer technically is at the start of the EC process. The current regulations create problems for some clients who complete EC and wish to proceed to ET but didn't have exactly the right name of their employer on their initial form.

The regulations should be relaxed to allow details to be updated during the EC process without the need for a new claim to be submitted. This would remove a barrier for claimants and reduce pressure on Acas resources.

Our aims

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people's lives.

Our principles

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. We value diversity, promote equality and challenge discrimination.



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