Written evidence from Kate Booth, Partner, Eaton Smith LLP

Introduction

My name is Andrea-Kate Booth and I am enrolled with the SRA as such, though I am generally known as Kate. I qualified as a solicitor in September 2007 and hold a current practicing certificate. I have worked exclusively within employment law since March 2007 and have substantial experience in dealing with Employment Tribunal claims acting for both Claimant and Respondent. I am currently a Partner with Eaton Smith LLP and have responsibility for employment law. Prior to joining Eaton Smith LLP, I worked for both Irwin Mitchell and DWF LLP.

This written submission is in response to your queries:

1. How has the introduction of employment tribunal fees affected access to justice?

2. How have they affected the volume and quality of cases brought?

My Views

I agree, absolutely, with the decision to introduce fees into the Employment Tribunal. My concern is that the level at which the fees have been set is too high and has prohibited access to justice.

Prior to the introduction of fees I observed a number of claims against my employer clients, often brought with the involvement of solicitors or claims handlers that could only be described as blackmail. By way of example:

- In one case, I informed a Claimant’s representative that the claim brought was wholly unfounded and tantamount to blackmail and he agreed that it was. He went on to say that he believed my client would rather pay to get rid of the claim instead of having to take time and money out of the business to deal with it. He was right.

- In another case with poor prospects of success, the Claimant’s representative who was a “no win no fee” specialist submitted a poorly prepared claim which had clearly entailed little time and then pushed aggressively for settlement without spending any further time in pursuing the claim. This was possible because, following submission of the claim and prior to exchange of witness statements, the majority of the work falls to the Respondent as they have to disclose documents (the Claimant rarely has any) and prepare the bundle of documents. The Claimant’s representative then ceased acting with effect from the date for exchange of witness statements and the claim was quickly withdrawn. In that scenario, the Claimant was presumably left with an ill-prepared case and no witness statement(s) to exchange as no work had been carried out and the Respondent had incurred costs in defending the claim to the point of withdrawal.
The volume of claims brought prior to the introduction of Employment Tribunal fees was unmanageable for the Employment Tribunal, but also for employers who were often fearful of a claim being brought against them in circumstances where they had dealt with issues as best and as fairly as possible.

Following the introduction of Employment Tribunal fees, the threat of a claim has almost disappeared. The initial relief felt by employers has, in some cases, turned to defiance in that they are more prepared to take risks in dealing with and dismissing employees. It is my view that not only are the Employment Tribunal fees prohibiting access to justice for those employees who wish to enforce their employment rights, but they are also contributing to a culture in which breaches of employment rights are more likely to occur.

It is my view that the Employment Tribunal fees should remain, but at a greatly reduced rate: perhaps around 20% of the current fees. A submission fee of around £50 would represent approximately one and a half day’s pay for an individual working full time at the National Minimum Wage rates and a hearing fee of £200 would represent approximately one week’s pay; both would represent a serious financial commitment for that individual.

This would give individuals with genuine claims the option to pursue them at an affordable level, but should help to discourage disingenuous individuals.

Evidence

Our firm recently took part in a three month trial period of a collective advertising scheme whereby we, and four other firms, paid a fixed contribution towards a joint advertising budget. The queries generated from the advertising were then distributed amongst the five firms on a taxi rank basis so that we each received the same number of queries and had equal chance of receiving quality queries.

The queries generated related to all areas of law, including wills and probate, residential property transactions, family matters, intellectual property, commercial contracts, civil litigation, and employment. The advertising was televisied and national, there was no geographical division of queries and so we took queries from across the whole of England and Wales.

In total, for the period 8 May 2015 to 31 July 2015 inclusive we took 461 queries. Of these, 185 queries related to employment.

Of the 185 employment queries:

- 46 (24.9%) were potentially viable claims, but were discontinued with reasons recorded as “cannot afford to pay” or “refusing to pay legal fees”.

In the vast majority of queries received the individual wished to bring a claim in the Employment Tribunals to enforce employment rights that they felt had been breached. When the discussion moved on to advice about the Employment Tribunal
fees, it quickly became apparent that the individuals were unwilling or, more usually, unable to pay those fees.

Many of the queries came from low paid workers who had either recently lost their employment or had monies taken out of their wages. They were given advice about how to find out about fee remissions, but it is thought that they would be unlikely to qualify as they had some income albeit low and/or were not in receipt of passport benefits.

Accordingly, it is my experience that there is a band of workers who do not have access to justice. These are those who do not qualify for a fee remission but for whom a £250 submission fee is a substantial amount of money and a £950 hearing fee is unthinkable. They simply cannot afford to pay £1,200 to try and enforce their employment rights.

The discussion on fees also included our own charges in most cases, although there were many occasions on which these charges were already irrelevant to the individual as the Employment Tribunal fees had already proved to be an unmanageable hurdle. The individuals were given advice about funding options and the ability to self represent in the Employment Tribunal.

- **73 (39.5%) were recorded as “not responding” or “does not wish to proceed”**.

The queries were initially contacted by phone or by email/ letter if the phone wasn’t answered. In most cases, this initial contact included information about Employment Tribunal fees. For example, my standard email contact included the following paragraph:

*Please note that if you are enquiring about a claim in the Employment Tribunals, the tribunals now charge fees for claims submitted. The standard fee for most claims is £250 to submit a claim and £950 to hold a hearing. You may get these fees back if your claim is successful. You may not be charged the fees if you are in receipt of certain benefits or earn below the income threshold.*

The standard email did not include details of our own charges as these would vary depending on funding options and needed to be discussed.

I believe that it is likely that the individuals who failed to respond following the initial contact or decided not to proceed would have been put off by the Employment Tribunal fees.

- **25 (13.5%) were discontinued with no reason given.**

- **7 (3.8%) went to another solicitor, usually someone more local to them or connected to a trade union or insurance policy.**
• 33 (17.8%) were rejected for case based reasons – including expired limitation, out of jurisdiction, poor prospects on liability, or very low quantum.

• Only 1 (0.5%) of the 185 queries has resulted in a potential claim. We are currently reviewing paperwork for the individual, but there is a willingness to pay the Employment Tribunal fees and to bring a claim for unfair dismissal and discrimination.

I trust that this information is useful in reaching your conclusions.

10 August 2015