Written evidence from Morrish Solicitors LLP

1. How have the increased court fees and the introduction of employment tribunal fees affected access to justice? How have they affected the volume and quality of cases brought?

From a personal injury litigation perspective, the vast increase in the cost of County Court fees is unacceptable and will have a profound impact on access to justice for personal injury Claimants.

To target higher value claims with the justification that these Claimants will be able to afford to pay higher fees is, in our opinion, outrageous. A Claimant with a fractured hip who cannot work during their period of incapacity, a paraplegic or a brain injured Claimant who has little hope of ever working again has no better means of paying a vast Court fee than a Claimant with a short lived soft tissue injury. To suggest otherwise is a nonsense.

From a commercial litigation and debt recovery perspective, the same situation applies. For creditors who engage in high value contracts but where payments are continually made late, the outlay in commencing proceedings for say a £100,000 debt leaps dramatically from £910 to £5,000. It can be appreciated that ultimately this fee will be payable by the debtor, presuming the claim is successful but in the first instance the creditor must find £5,000 when its cash flow may already be in difficulties as a result of the late payment it is trying to chase. In many cases there is concern about the solvency of the debtor. The higher court fee will deter creditors form pursuing cases that should be validly pursued.

Practically, in the past most law firms have often paid disbursements (including Court fees) on behalf of their client until case conclusion. This was already an unacceptable pull on a firm’s cash flow. In a complete turnaround it cannot be unreasonable, with a potential 600% increase in Court fees, for solicitors to now ask clients to place them in funds before issuing a claim. This will discourage people from making valid claims. It will lead to solicitors delaying issuing proceedings in the hope that claims settle prior to issue. It certainly will have a negative effect on the number of cases litigated and will no doubt lead to cases being abandoned rather than issued when a costs/benefit analysis is undertaken.

The attempt by the government to turn Courts into profit centres is tantamount to selling justice and cannot have anything but a negative impact upon access to justice. The effect of such changes will be that the parties will seek to side line the courts. This may be an unspoken aim of the proposals but it is certainly not a legitimate aim. In any civilised society there must be ready access to the law. The proposed increases on top of significant increases that have already taken place over the last few years will inevitably deprive legitimate Claimants from appropriate access to the courts system.

In the employment arena, the impact of employment tribunal (ET) fees is all too self-evident from the dramatic drop in claims (70% down) since the introduction of ET fees. It can be argued that some weak or frivolous claims have been legitimately deterred but no one can properly argue that legitimate claims have not been deterred by such fees –the fact is they have. For example, the ratio or percentage of successful and unsuccessful ET cases has hardly altered since ET fees were introduced in July 2013. If the introduction of ET fees had deterred weak or frivolous claims, the ratio or percentage of successful and unsuccessful cases would have altered – there would be more successful claims post-introduction of ET fees. That has not happened.
Our view is that the introduction of ET fees has massively adversely affected access to justice. They have significantly reduced the volume and types of claims brought. In our experience only the more significant claims are being brought; ‘minor’ claims such as unpaid wages are often no longer being pursued as the ET fees often amount to more than the amount owed. This has, in our experience, had a disproportionately bad impact on those on lower incomes; they often simply don’t have the money to pay the disproportionately high ET fees.

Lastly, in terms of fee remission, statistics support our belief that most applications for remission seem to fail as the procedure is extremely complex and the levels set at only assisting those who live in extreme poverty and not those who are working but on very low incomes.

The questions posed highlight the government’s concern about the potential loss of revenue in international claims. This is a relevant question but it should not be the driving criteria. It is access to justice for the ordinary person that should be of primary concern.

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