written evidence from simpson millar llp

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?

when the government first announced its proposals to introduce employment tribunal fees it argued its purpose was to avoid frivolous and vexatious claims and to encourage individuals to settle without the need to go to tribunal.

however, since the introduction of fees, there has been a very substantial decrease in the number of cases issued in the employment tribunal. according to the house of commons library briefing paper ‘employment tribunals fees’ of 15 september 2015, there has been a 67% decrease in single claims and, a 69% decrease in the number of multiple claims, since june 2013. research conducted by parliament also noted a decline in the number of discrimination claims.

the question is whether settlement before claim or potential claims that would have been frivolous or vexatious account for all, or even most, of that decrease.

in june 2013, the then parliamentary under-secretary of state for justice, helen grant stated that ‘fees will encourage individuals to stop and think about whether a dispute should be settled outside the tribunal system and whether it is really necessary to submit a claim’. in theory, fees may encourage an individual to consider acas however there is nothing to prevent the employer from refusing to enter into settlement. some employers have only paid lip service to early conciliation or have refused to engage with it altogether, confident (or hopeful) that the employee(s) will not be able to, or will be reluctant to, pay the employment fees. this is especially the case for the low paid where the amount lost, although important to the employee given their low income, is disproportionate to the fee and given the risk that, even if an award is eventually made, neither the award, nor the fee will actually be recovered from the employer. for these reasons, very many are denied access to justice.

according to research undertaken by citizens advice, fees or costs were the most common reason for individuals not taking the case forward and they reported a decline in the number of unfair dismissal and unlawful deductions of wages claim.

where an individual has been unfairly dismissed for alleged gross misconduct, being unable to challenge this in an employment tribunal could have serious adverse repercussions for their ability to earn a livelihood in the future by lowering their chances of securing a future job. those dismissed without notice are even more unlikely to have the funds to pay the fee to challenge their dismissal.

as a consistent user of the tribunal service, our own experience is that individuals with good, meritorious claims are being deterred from bringing claims solely because of fees. individuals are seeking advice to see if they have a claim and, what they can do about it. however, once advised, they are deterred from taking it further because they are faced with fees of up to £1,200.00.

the introduction of employment tribunal fees also raises concerns that it is in direct contravention of the european convention on human rights (also enforceable under the human rights act 1998). in particular article 6 provides that there must be real and effective access to a court. it’s clear from the overall 60% decline that this requirement is not being met and has not been met since june 2013, when
employment fees were first introduced. Further, Article 14 makes it clear that there must be no discrimination in the application of any human right in relation to status including ‘any other status’. It can be argue this could include financial status, as only those who have the means can access justice, making it effectively discriminatory against those with limited means.

Moreover, the introduction of employment tribunal fees denies the right to, ‘justice or right’ conferred by the Magna Carta.

The low paid are often working in non unionised industries, so they are even more vulnerable to the exploitation that employment rights are designed to address. Even union members with claims supported by their union, who will have filtered out any unmeritorious claims, may well need to fund the fee themselves, at least at the outset. Some union’s legal aid budgets cannot resource the volume of fees needed to resource all the claims of all their members who need access to Employment Tribunals.

The Government increasingly has appeared to be viewing the justice system as a business, with the aim of making a profit rather than in ensuring that all citizens have an accessible means of seeking and securing justice. The decision to impose tribunal fees was a mistake and must be reversed.

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