GMB, Britain’s General Union, represents over 630,000 members throughout the UK in both the private and public sectors. We have members working in in a variety of different areas including financial, commercial, and professional services, clothing and textiles, construction, furniture manufacturing, energy and utilities, engineering, food and leisure, process industries, public services, and the voluntary & community/third sector.

GMB welcomes the opportunity to make a written submission to the Select Committee. GMB members in all of these areas have experience of the need to enforce employment rights in the employment tribunals. GMB has extensive experience of supporting members in the employment tribunals in both individual and multiple cases.

GMB is, like other trade unions, a not-for-profit-organisation, and exists to protect and support members. GMB is a TUC affiliated union and supports the points made in the TUC response. GMB wishes to highlight the points below.

GMB believes that the purpose of the employment tribunal system is to provide a mechanism for enforcing employment rights for workers, including those on low incomes. The introduction of fees remains inconsistent with the right to a fair trial as provided for in Article 6 of the European Convention on Human Rights.

GMB remains fundamentally opposed to the introduction of fees for employment tribunals and the Employment Appeal Tribunal. These should be abolished now.

There has been a dramatic fall of nearly 70% in the number of cases going to tribunal since July 2013. It is clear that fees, including fees of up to £1,200 for some individual claims, are pricing workers out of justice. GMB believes that workers with meritorious claims are being deterred from accessing justice.

This, together with detrimental changes to workers’ rights in the last five years such as extending the qualifying period for unfair dismissal, has led to the situation where it is easier for rogue employers to sack workers. The opportunity for many workers with meritorious claims to be pursued has been removed.

GMB supports members with meritorious claims, but the introduction of fees has been an additional burden to bear in seeking workplace justice.

The unjustified and heavy regulatory burdens planned against unions in the Trade Union Bill 2015 and the BIS consultations will limit the ability of trade unions to represent members in the workplace. This includes but is not limited to restricting facility time arrangements in the public sector and the impact this will have on the ability of unions to represent members in statutory disciplinary and grievance hearings.

The remission scheme, which it was argued would alleviate the most extreme hardship, has had little effect. The system is means tested at low eligibility levels and as GMB understands it less than a quarter of claimants who have applied have successfully achieved remission. The test is based on household income, so a claimant with a working partner with a low income may not qualify. The system also includes a disposable capital cap of £3,000 which would be likely to exclude many potential claimants.
The system of fees acts as a particular disincentive to claims under the Equality Act 2010 and the Public Interest Disclosure provisions, which are at odds with wider Government policy objectives.

GMB believes that the fees regime acts as a disincentive to settle claims as employers withhold or delay settling claims in the hope that the fees will deter the claimant from proceeding, particularly with regards to the hearing of the claim.

The system does not provide for automatic recovery in a successful case. There is no refund if claims are withdrawn or settled before hearing. Employers will often wait until the hearing fee has been paid, in the hope that the case will not be pursued, before entering into meaningful discussions. This affects union cases as well. Inclusion of fees paid does not have to be agreed by the employer.

The above problems are exacerbated in multiple cases where the complexities of the scheme become acute despite the fact that there may only be one hearing to determine the group of claims.

The Early Conciliation process has, according to ACAS, indicated that 15% of cases are resolved through conciliation, 22% progress to tribunal, and the remainder seem to fall out of the system. GMB believes that the explanation for this is likely to be the fees regime in many instances.

GMB repeats the call for fees for employment tribunal and Employment Appeal Tribunal fees to be abolished.

30 September 2015