Prospect

Prospect is an independent trade union representing over 113,000 members in the public and private sectors. Our members work in a range of jobs in both the public and private sectors in a variety of different areas including in aviation, agriculture, communications, defence, education, energy, environment, heritage, industry, and scientific research.

We welcome the opportunity to make a written submission to the Select Committee. Of the three issues for consideration by the committee, we have limited our response to the issue of the introduction of employment tribunal fees and how this has affected access to justice, as this is where we have the most experience.

Prospect remains fundamentally opposed to fees in the Employment Tribunal and Employment Appeal Tribunal. We firmly believe that this has denied many workers access to the tribunals, and it deters individuals with meritorious claims from seeking a legal resolution.

The impact of fees

1. The introduction of fees has been a drastic departure from the principles on which the tribunal system had operated. Tribunals are sadly no longer the industrial forum offering a free, informal, and accessible means of resolving legal disputes. The fee regime in tribunals has had a detrimental effect on the access to justice for many vulnerable workers.

2. There is very clear evidence of the dramatic fall in the number of employment tribunal claims, which have dropped by almost 70% since fees were introduced in July 2013\(^1\). We have not elaborated on the statistics in this submission, as the

outcome is well documented in the official tribunal statistics. It is evident that excessive fees, of up to £1,200, to bring employment tribunal claims are pricing many workers out of justice.

3. Prospect believes that the fall off in claims has been scandalous and that this has been coupled with a number of seriously detrimental changes to other aspects of employment law, (for example the increase in qualifying period for unfair dismissal to two years, reducing compensation that can be awarded, and the introduction of confidentiality of negotiations before termination). The Government has not only made it easier and cheaper to sack workers through their onslaught on workers’ rights over the last five years, but have also removed the opportunity for many workers to pursue valid claims.

4. The number of claims presented by Prospect for our members has not dropped, as we pay the fees for members where we support the case. This demonstrates just how important union membership is for individual workers. It is though a very significant additional burden and financial cost to the union. When this is placed alongside the new proposed restrictions, reporting requirements, and levies on trade unions identified in the Trade Union Bill 2015, it creates significant further difficulty for unions to engage in collective bargaining and to represent individual members.

5. It is essential that workers have an accessible legal means of asserting their statutory rights, the tribunal fees have removed this ability from many workers. Not only do effective and achievable employment rights help individuals, but we also believe that they will foster improvements in workplaces for both employees and their employers, through a more committed workforce with retention of experienced workers. There also needs to be an effective remedy available to employees to ensure that employers comply with their legal obligations.

6. Prospect believes that the fee regime in employment tribunals has acted as a disincentive to settlement, with employers holding off settling valid claims in the hope that the fees will deter claimants from going through with their case (see below for more on this point).
7. We strongly believe that the Government should abolish fees in Employment Tribunals and the Employment Appeal Tribunal.

Our particular concerns

We have a number of key concerns:

8. The fee levels are extremely high and act as a deterrent to bringing justified claims. For example an unfair dismissal case costs £1,200 (for the issue and hearing fee) and this would need to be found by someone who has recently become unemployed. For someone without union backing this will often be extremely difficult to find.

9. In many cases the fees can outweigh, or be disproportionate to, the value of the claim. For example a low paid worker seeking to enforce the national minimum wage, or recovering unpaid wages, would be required to pay tribunal fees of £390 and this may be more than the amount they are seeking to recover through the tribunal.

10. The remission system, which the Government argued would alleviate the worst of the hardship, has had very limited impact. The remission system is means tested at very low eligibility levels and we understand that less than a quarter of tribunal claimants have successfully applied for remission of their fees\(^2\). The test for remission is based on household income, so someone with a working partner who may have a relatively low income would not qualify. The remission scheme was changed shortly after the introduction of tribunal fees and introduced a test of eligibility based on disposable capital of £3,000 or less, this rules out a very high number of potential claimants. Within our union cases, since the introduction of fees, we have not had a single member successfully applying for remission.

11. We have been extremely concerned that the higher level of fee applies to all cases under the Equality Act, we believe this is entirely unjust and has a

\(^{2}\) [http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140512/text/140512w0004.htm#14051310000256](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140512/text/140512w0004.htm#14051310000256)
disproportionate impact on those with a protected characteristic. This denies many workers the opportunity to bring claims of discrimination on the grounds of race, sex, disability, sexual orientation, religion or belief, age, and maternity and pregnancy.

12. The higher fees also apply to claims brought under the public interest disclosure provisions. We consider this is inconsistent with the wider policy implications behind the protection of those whistle blowing in the public interest.

13. Whilst the intention is that fees will be repaid where the claimant succeeds in their case, this is not automatic and we believe this is unjust. Particularly there are likely to be problems where part of a claim succeeds.

14. The fees can act as a disincentive for the employer to settle. We suspect in many cases employers will wait until the last minute and hope the hearing fee will dissuade the Claimant from proceeding with the case. This is counter-productive to the Government’s stated aim of encouraging early resolution of employment disputes.

15. There is no refund of fees where the case is withdrawn or settled before hearing, as a very large proportion of cases are. This means hearings are ‘paid for’ which are not required. This is unfair to claimants who very reasonably agree to compromise on their claims. Particularly claimants may find that employers wait until after the hearing fee of £950 is paid before entering into any meaningful discussions on settlement, in the hope that the Claimant will drop out. This occurs in union backed cases as well as for unrepresented claimants. And whilst claimants and their advisers may seek to include recovery of fees into a settlement, often this is not agreed by the employer.

16. There are many difficulties with multiple claims and the methods of assessing fees. For example in identifying the number of cases in a multiple, when these are often done one or two at a time and then consolidated and there can be complex issues where some members in the multiple are claiming remission.

17. Particularly it is clearly unfair where there are two cases joined together for hearing, as both cases will incur the full fees, despite the fact that there is only one
hearing and it takes the tribunal no longer to administer or hear the case for one claimant as opposed to two. This has occurred in a Prospect supported claim, where two members were pursuing an age discrimination case that was consolidated and we were required to pay a total of £2,400, even though the ‘cost’ to the tribunal was not double.

18. It became mandatory for prospective claimants to register for early conciliation, less than a year after the introduction of fees. Whilst Prospect strongly supports efforts to resolve cases without recourse to law (and of course this is a key aim for trade union negotiators and representatives), the early conciliation process has created additional complexities for the tribunal process. We understand that statistics from ACAS demonstrate that 15% of cases are resolved through conciliation, 22% progress to tribunal, but the remainder seem to drop out of the system. We believe it is very likely that workers are unable to commit to paying the tribunal fees and are therefore not pursuing valid cases.

19. Despite the fall off in cases there are still serious difficulties with listing cases for hearing. A case, just this week, where Prospect was representing the claimant is a sad example of the difficulties claimants face in seeking justice. The claim was of disability discrimination and unfair dismissal and the claimant suffered from serious depression. He was dismissed in October 2014, and following that Prospect supported his claim to the employment tribunal and paid the issue fee of £250 for his case. At a preliminary hearing in May the case was set down for a full hearing for three days to commence on 28 September. Prospect paid the hearing fee of £950 for the case in August and yet when we attended the tribunal on the first day of the hearing the case was ‘unallocated’ and we were advised at lunchtime that there was not a tribunal to hear the case and it would need to be relisted for January or February next year. So despite having paid the required £1,200 for the hearing (along with the additional costs incurred for Counsel) the case was unable to proceed. This was particularly distressing for the claimant, who now has the case hanging over him for several more months and is likely to impact on his recovery from depression.

For all the reasons above, Prospect fundamentally believes that tribunal fees should be abolished. The tribunal process should be free to users, as it is vital that workers have
effective access to justice. The ‘savings’ to the tribunal service have clearly been achieved at the expense of workers being able to pursue their statutory rights.

30 September 2015