Written evidence from the Yorkshire Employment Tribunal Members’ Association

This written evidence is submitted by the Yorkshire Employment Tribunal Members’ Association (YETMA).

YETMA members come from both sides of the employment relationship and sit routinely at the ET alongside the employment judge, bringing their experience to bear in reaching fair and objective decisions. Our members are therefore well placed to observe and comment upon the changing ET landscape since the introduction of fees.

This submission is based upon the feedback YETMA has had received from its members since fees were introduced in July 2013.

YETMA has 68 members among the 98 Employment Tribunal lay members sitting in the Yorkshire and Humber region of the ET Service. YETMA’s submission is therefore solely in relation to the introduction of fees into the ETS from July 2013.

Executive Summary

The level of ET fees is set so high as to deter a large number of claimants from making an ET claim.

The impact of fees has fallen disproportionately on certain disadvantaged groups in the workplace such as the less well off, women and those wishing to make claims in relation to race and/or sexual orientation discrimination.

The thresholds for qualification for the remission of fees are set so low as to leave a high proportion of poorer claimants still having to pay some or all the fee.

The fall in the number of claims since July 2013 has been much greater than most ET observers/users anticipated.

The dramatic fall in claims by category of claimant supports the view that disadvantaged groups have been worst hit.

How has the introduction of ET fees influenced access to Justice?

There is a common misunderstanding that ET settlements are very high. A small number of well reported high value cases hasn’t helped here. The median level of settlement in 2014 was about £5,000, and many unpaid wages claims are for relatively small sums. (Source TUC . 2014).

The fee to take an unpaid wages claim to court is £390. This clearly makes it uneconomic to make a claim for less than this amount.

Similarly a claimant with a low value unfair dismissal or discrimination claim has to find £1,300 to proceed at ET.

These fees are not automatically refunded if the claim succeeds.

2. Cases reaching the ET in Yorkshire and the Humber region are increasingly more complex and higher value.

3. The entry point for the remission system is set so low as to be unavailable to many potential low income claimants.
For example, a claimant earning the statutory minimum wage, whose partner is also on the SMW does not qualify for remission. Even if such a claimant had no partner but had savings of just £3,000 he/she would not get full remission, and would have to spend up to 43% of his/her savings to pursue a claim.

4. Access to justice in the ETS means access to an industrial jury of employment judge and two lay members in all claims of discrimination at work. The ETS has rightly taken pride in the diversity of its lay member population. However, with fewer cases reaching the ET fewer lay members are required. This has led to a recruitment freeze. There have been no new intakes of lay members since 2010 making it increasingly difficult for the ETS to maintain its diversity.

How has the introduction of ET fees affected the volume of cases being brought?

There has been a 67% drop in claims to the ET since the introduction of fees in July 2013. The average number of claims (single and multiple combined) has dropped from 15,000 cases per quarter (12 months to July’13) to approximately 5,000 per quarter (15 months Oct’13-Jun’15). During October 2014 there were only 1,500 claims submitted to ETs. (Source: House of Commons Library Paper 7081 “Employment Tribunal Fees”.)

2. The Yorkshire and Humber region of the ETS used to regularly have over 1,000 claims per month prior to July’13. During the period October’13 to September’14 the Y and H region of the ETS averaged less than 200 cases per month.

3. Early conciliation by ACAS from April/May 2014 has only marginally contributed to this decline in cases. Only 15% of those parties who agree to use ACAS conciliation settle their claims at this point. (source: ibid).

4. Within these statistics there are variations in respect of the different types of claim. Between Jan-Mar’13 and Jan-Mar’14 sex discrimination claims dropped by 80%. In the Y and H region these claims are overwhelmingly made by women.

In the same period race discrimination and sexual orientation claims fell by 60%

(Source: TUC “What Price Justice” June 2014.)


Conclusion

YETMA believes the evidence clearly demonstrates a causal link between the introduction of fees and the dramatic decline in the numbers of claims being submitted. There is further evidence that those most adversely affected are those on low incomes, women and those wishing to pursue a claim for race and/or sexual orientation discrimination.

The national figures quoted are reflected locally in Yorkshire and the Humber region of the ETS.

YETMA asks the Select Committee to acknowledge that ET lay members are well placed to comment on the current situation in the ETS, and trust that this brief submission assists in your deliberations’

30 September 2015