1. The Public and Commercial Services union (PCS) is the largest trade union in the civil service. We have over 200,000 members and represent the majority of staff in the Ministry of Justice. Our members work in Her Majesty’s Courts and Tribunals Service (HMCTS) undertaking all the key duties in the full range of posts necessary for the court system to operate.

2. Our members provide services for all courts from magistrates' courts to the appeal courts as well as the Probate service. These range from justices' clerks, delivery directors and cluster managers, legal advisers, court clerks, court managers and administrative staff, court enforcement staff, bailiffs and ushers.

3. We welcome this timely inquiry by the committee into the impact of increased court fees and the introduction of employment tribunal fees have had on access to justice.

4. Our submission focuses primarily on the effect the introduction of employment tribunal fees is having, as well as detailing our concerns about the new criminal courts charge.

Employment tribunal fees

5. The first, important point that PCS would like to make, is that the vast majority of problems that our workplace representatives deal with are resolved without them having to go near the law. We believe that this demonstrates the importance of the role that unions play, and have always played, in acting as mediators and ensuring that tribunals are not overrun with claims. However, the attacks on facility time for our representatives are putting a massive strain on their ability to fulfil this work and, along with the introduction of employment tribunal fees, means that workers are now more exposed to unfair employment practices without the means to redress. Measures contained within the Trade Union Bill to restrict the amount of time reps can spend accompanying individuals in grievance and disciplinary hearings pose of further threat to this work.

6. Before the employment tribunal fees were introduced on 29 July 2013, PCS warned that access to justice would become out of reach of ordinary working people. We were concerned that the fees could dissuade thousands of workers with legitimate grievances from taking action against ruthless employers. The evidence since then has confirmed our worst fears.

7. Since the introduction of the fees the average number of cases going to tribunal each month has fallen by 69%. The first quarter of this year saw a 72% fall in cases. More than 12,563 claims were accepted in quarter one of 2015/16, compared with 44,334 in the quarter one period of 2013/14, just before tribunal fees were introduced. In the five years between 2009 and 2013 (inclusive) there were at least 40,000 claims in every quarter, bar one (when there were more than 39,000).

8. We believe that the main reason for the drop in claims is low and middle income families being put off taking a claim to tribunal because, having lost their jobs, they cannot afford to.
9. A Citizens Advice survey shows just under half of people with an employment issue would have to save for six months to afford tribunal fees of £1,200. It found that:

- More than four in five (82%) said current fees would make them less likely to make a claim.
- Of those people with employment troubles over four in ten (43%) had a household income of less than £46 a week after essential bills.
- Only three in ten (30%) were aware of eligible financial support for those on low incomes.
- Over half (53%) did not know what remedies were available and therefore whether making a claim was worth their while.

10. PCS remains opposed to the existence of the fees and we are concerned that they have been set at too high a level. Level 1 cases, for example unlawful deductions and non-payment of wages, have an issue fee of £160 and a hearing fee of £230. Claims are often for amounts below the fees set so this is leaving many people having to concede valid claims. This can be a particular issue concerning unpaid wage and holiday pay claims as many of these fall short of the fees charged. There was an 85% drop in such claims in the year after the fees were introduced.

11. Combined fees of £1,200 for higher value claims, such as unfair dismissal and discrimination cases, are also significant sums when compared to the potential awards. In 2014/15 the median award for an unfair dismissal case was £6,995 and for a race case it was £8,025. People seeking to bring these types of cases are often out of work so are unlikely to be able to afford the fees.

12. We are concerned about the impact on equality that the implementation of fees has had. As far back as July 2014, the TUC had raised concerns about impact the charges were having on women and people seeking race and disability claims in their report ‘What Price Justice?’. They found that there had been an 80 per cent fall in the number of women pursuing sex discrimination claims. Just 1,222 women took out claims between January and March 2014, compared to 6,017 over the same period in 2013. It also found that the number of women pursuing pregnancy discrimination claims also down by over a quarter (26%).

13. It found that during the first three months of 2014 the number of race discrimination and sexual orientation claims both fell by 60 per cent compared to the same period in 2013. Disability claims experienced a 46% year-on-year reduction.

14. Given that these equality concerns had been raised by the TUC over a year ago, we believe that the government’s announcement that the introduction of fees will now be reviewed is long overdue.

15. We would like to see the review taking a balanced, data-led approach to assessing how the introduction of fees has so far met the policy’s stated aims. For example, whether or not their introduction has reduced the cost to the taxpayer while protecting access to justice for all?

16. Only £4.5 million was recouped in income from fees over the eight month period 29 July 2013 to 31 March 2014 when in 2013 to 2014, £76.4 million was spent by the courts service on employment tribunal business (a recovery of just 6% of the service’s total expenditure). We believe that any honest assessment would conclude that the introduction of fees is hardly making a dent in the taxpayer subsidy. According to the Ministry of Justice accounts, in 2014/15 the net income from fees
was 2014/15 while the total expenditure on the employment tribunal service was £71.4 million. This means the increase in the net income from fees cover 12.5% of running the service at the expense of a 69% drop in cases.

17. If the Government is to claim that the drop in claims is in part due to the onset of early conciliation, which requires applicants to the tribunal to first lodge their claim with Acas and consider settling early, the review should tell us how many claims have gone through early conciliation as an alternative to the tribunal system.

18. We believe that there was too much emphasis on reducing costs when the government was making its case for introducing the fees. We do not subscribe to the assumption that HMCTS should cover all of its costs through fees from users. Rather, access to justice should be seen as a legitimate use of taxpayer funding.

19. PCS believes that the government needs to seriously examine the reasons behind the drop in tribunal claims. If the reasons are that those with legitimate grievances are being priced out of the system, as we strongly suspect they are, we would expect to see the review making a concerted effort to be open about this and seek to analyse why this is the case.

**Criminal courts charge**

**What have been the effects on defendants of the introduction of the criminal courts charge?**

20. PCS believes the criminal courts charge to be one of the most significant changes to the sentencing process to be introduced in more than a generation and we are therefore concerned that there was not an adequate opportunity to debate it before its introduction.

21. Whilst courts have a discretion in the amount of any fine that is imposed, taking into account both the seriousness of the offence and the ability of the offender to pay, and a discretion in the amount of any prosecution costs or compensation that are awarded, we are concerned that there is no discretion either in imposing the criminal courts charge or in the amount charged.

22. Courts are expressly forbidden in legislation from taking into account the obligation to impose the charge when imposing any other financial penalties. The only circumstances where the charge is not imposed is where an absolute discharge or disposal under the Mental Health Act 1983 is imposed.

23. The effect of the charge is to impose a very significant additional mandatory financial penalty on defendants, regardless of the seriousness of the offence or the defendant's financial or personal circumstances.

24. In addition solicitors and barristers report that it has encouraged those without means or on limited means to plead guilty in circumstances where they are innocent, particularly (but not exclusively) where it is one person's word against theirs.

25. For many having a criminal record is seen as a better option to a debt that they simply cannot pay. A guilty plea to a summary offence in a Magistrates' Court attracts a charge of £150; it rises to £520 after a trial. For an either way offence in the
Magistrates' Court it is £180 for a guilty plea rising to £1,000 after a trial. In the Crown court, a conviction on a guilty plea will be charged £900, while those convicted at a trial on indictment will have to pay £1,200. A further £100 in the Magistrates' Court and £150 in the Crown Court is payable if a defendant is convicted of breaching any community order, suspended sentence or post-sentence supervision imposed.

26. The financial threshold at which legal aid in the Magistrates' Court is set is now so high that many are either having to represent themselves or pay a lawyer on top of any financial penalties imposed by the court.

27. Prior to the introduction of the criminal courts charge and the victim surcharge there was a general principle that those who were sent to prison should effectively come out with a clean slate. When they were released from custody every element of their sentence was served.

28. In Magistrates' Courts costs and compensation were generally not awarded unless the court was satisfied that the defendant had the means to pay. There was a recognition that if the court took away someone's ability to earn by imposing a custodial sentence, they should not put them in a position where on release they may be encouraged to commit further offences to pay off a court imposed debt. Defendants are leaving prison with debts that they are unable to pay.

29. Many offences arise out of poverty. Many offenders who have had benefit sanctions commit theft to feed themselves or to provide for their families. The Howard League of Penal Reform has collated a number of examples of cases where people are stealing because they cannot afford to eat. Saddling such people with a further debt that they cannot afford to pay helps no one and comes not only with a financial cost but a human one as well.

30. Researchers have concluded the likelihood of having a mental health problem is three times higher among people who have debt. Depression, anxiety disorders and psychotic disorders were among the common mental illnesses people in debt experienced. And the is an even higher link between suicide and debt. Additionally, people in debt are more likely to experience problem drinking and drug dependence.

Has the criminal courts charge been set at a reasonable and proportionate level?

31. There is no logic for the sums that have been imposed or the differentials between the sums payable on conviction on a guilty plea or after a trial. For example a defendant who is found guilty after a four day trial where large numbers of witnesses have been called pays the same as a defendant whose trial take an hour and the only evidence that is heard comes from the defendant.

32. We do not believe that it is reasonable that a defendant whose guilty plea 'hearing' takes less than 5 minutes and is considered outside of a courtroom by a single justice on the papers pays the same as the defendant who comes to court and whose sentencing hearing on a guilty plea takes an hour.
Is the imposition and collection of the charge practicable and, if not, how could that be rectified?

33. The mandatory nature of both the charge and the amount thereof is such that many of those ordered to pay cannot do so.

34. It is concerning that Magistrates have already resigned citing the lack of discretion regarding the charge as the reason.

35. The majority of those who are brought back before the courts for non payment of financial penalties simply cannot afford to pay them. Very few who can afford to pay, refuse to do so.

36. It is worrying that the legislation that brought in the charge also makes provision for interest to accrue on an unpaid criminal courts charge. This provision is currently not in force.

37. The MoJ are currently proposing to outsource the collection of all court imposed financial penalties. At present where collection is put into the hands of private bailiffs, the bailiffs make their profits from the work by passing on their charges to the defendant. If this privatisation goes ahead we are concerned that it will put already indigent people in even greater debt.

38. The ultimate sanction for non payment of any financial penalty is prison but to imprison defaulters will cost tax payers substantially more in the long run than the original hearing costs. Non payment of up to £200 attracts a committal to prison of 7 days. In 2012 it was estimated that to keep someone in prison for a week cost approximately £1,200.

39. It will also place an additional burden on a prison system that is already operating well in excess of capacity. Week ending the 4 September 2015 there were 85,781 people in prisons and young offender institutions in England and Wales, 340 more people compared to this time last year. It is also 8,338 people in excess of the Certified Normal Accommodation Level which is the prison service’s own measure of how many prisoners can be held in decent and safe accommodation.

40. The only way that collection would be in any way practical would be to give courts discretion in the circumstances in which it should be imposed and in relation to the amount.

Conclusions

41. We believe that the government needs to scrap the employment tribunal fees as their introduction has meant that we are in danger of turning justice into the sole province of the very wealthy or those poor enough to trigger remissions, leaving a huge swathe of people who are above remission threshold but do not really have the disposable income to fund litigation.

42. The modest amount of revenue retrieved by the MoJ since the introduction of the employment tribunal fees pales in comparison to the numbers of people now excluded from the system.
43. The assumption that access to justice should be funded only by those that want to access it is wrong. It is a legitimate use of public expenditure, especially for those who would otherwise be unable to afford to access it. Confidence in a fair justice system accessible to all citizens is central to promoting social cohesion and confidence in government.

44. The disproportionate and unfair criminal courts charge adds debt to those already suffering from financial hardship, increases the risk of offending and is not in the interest of justice being served. We believe that an urgent review is needed.

30 September 2015

---

1 Citizens Advice - Fairer fees: Fixing the employment tribunal system, 5 January 2015
2 TUC – At What Price Justice? The impact of Employment Tribunal Fees, June 2014
3 Ministry of Justice - Employment Tribunal Fees Post Implementation Review, 11 June 2015