Introduction

1. The Equality and Diversity Forum (EDF) is a network of national organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation. Further information about our work is available at [www.edf.org.uk](http://www.edf.org.uk).

2. Our members represent some of the most disadvantaged groups throughout the UK and so we will comment on how the proposed changes may well affect those who must not be forgotten if the government's commitment to a big society is to have meaning.

3. We are responding to the following questions asked by the Select Committee:
   - 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?
   - How will the increases to courts and tribunals fees announced in Cm. 9123, "Court and Tribunal Fees", published on 22 July 2015, and the further proposals for introducing or increasing fees included for consultation in Cm. 9123, affect access to justice?

Employment Tribunal and Employment Appeal Tribunal fees

4. The EDF strongly opposes fees being charged for access to the Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT). These tribunals were set up to prevent industrial unrest and provide an easily accessible method for resolving industrial disputes so as to prevent employees resorting to direct action or taking matters into their own hands. If a fee is to be charged that is not inappropriate we believe that it would have to be set at a purely nominal level, and in that case the cost of collection would barely justify its imposition.

5. The EDF considers that the requirement to pay fees in order to access ETs and EATs does act as a disincentive to applicants. Those who have just lost or are losing their jobs are less likely to be able to afford to pay such fees. The EDF considers that far too little consideration has been given to the consequences that will flow if employees cannot access legal redress reasonably easily.

6. There can be no question but that the introduction of ET fees has radically reduced the number of cases being brought in the ETs (and also consequently in the EAT). We note that the House of Commons library has recently said – In the year to June 2013, employment tribunals received on average just under 13,500 single cases (brought by one person) per quarter. Following the introduction of fees, the number of single cases averaged around 4,500 per quarter between October 2013 and June 2015, a

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1 A list of EDF members is attached as annex 1
decrease of 67%. The average number of multiple cases (brought by two or more people) received per quarter fell from just under 1,500 to fewer than 500, a 69% decrease.²

7. The overall continued decline in employment tribunal receipts is reported in the Ministry of Justice’s Tribunals and Gender Recognition Certificate statistics quarterly: January to March 2015, according to which,

The number of single claims received in January to March 2015 was 4,229 – 25% fewer than in the same period of 2014. Overall, there were 16,456 single claims received in 2014/15, a decrease of 52% on 2013/14.

And

The trend in single claims had been gradually declining for the last five years, but the rate of decline increased in October to December 2013. The fall in receipts for Employment Tribunals seen from October to December 2013 coincides with the introduction of Employment Tribunal fees in July 2013.³

8. In relation to discrimination cases specifically, these have to pay the higher level of fees to access the ETs - £1,200 in total. It is clear that the numbers of discrimination cases have declined following the introduction of fees. For example, by April to June 2014, age discrimination cases were down by 26%, disability discrimination cases by 47%, race discrimination cases by 60%, religion or belief cases by 63%, sex discrimination by 91% and sexual orientation by 60%.⁴

9. We consider that account needs to be taken of the EC Directives⁵ which require Member States to put in place provisions to ensure that ‘judicial procedures for the enforcement of obligations under this directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them...’ The imposition of ET/EAT fees means that this provision is not complied with.

10. Additionally, these same European Directives provide for accessibility of judicial procedures and the need for Member States to make provision for an ‘effective, proportionate and dissuasive’ sanction. Sanctions that are dependent on payment of fees at these levels are unlikely to be considered ‘effective’.

11. Charging a higher fee – or the highest fee – to those who believe they have been discriminated against adds another administrative rule to further marginalise those people who have a protected characteristic and deterring them from using a service. We consider that there can be no justification for

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² http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07081
⁴ See Equal Opportunities Review, issue no 251, September 2014.
imposing higher charges for such cases, particularly given that these cases are often brought by people who have suffered significant harm in the workplace, for example, harassment or sexual abuse. We think that discrimination cases should be exempt from the payment of fees.

12. There are no provisions in place for refunds of ET fees although costs orders can be made which can include refunds of fees; however, we consider that there is good evidence that even if such orders are made there is no guarantee that the claimant will receive payment. The Ministry of Justice Report, ‘Research into enforcement of employment tribunal awards in England and Wales’ showed that a significant proportion of the awards made by the ETs are not paid.  

Role of ACAS

13. It has been suggested that an application to ACAS for early conciliation is an alternative to applying to the ET for a remedy. The figures for April 2014 to March 2015 show that only 15% of those who apply to ACAS achieve a settlement through ACAS before an ET claim is brought and a further 11% after a claim is brought. Their report makes it clear that a significant proportion of potential claimants who are not initially able to agree a settlement are deterred from proceeding with a claim by the cost of ET fees. ACAS provides a useful service but it is not an alternative to an accessible ET system particularly for discrimination claims that typically can be very difficult to resolve.

Mitigation

14. The initial fee has to be paid at the time of an application unless remission of fees has been granted, in other words during the three month period after the act complained of. We think that this gives rise to considerable difficulties for applicants. People already have problems complying with the three month time limit to get in their application if they also have to resolve the application for remission of fees the time limit should be lengthened.

Equality Impact

15. We believe that the payment of ET and EAT fees adversely affect people who have protected characteristics and is likely to be indirectly discriminatory.

16. We do not consider that the remission system provides justification for adverse impact of the imposition of fees on the various ‘equality groups’ identified in the Equality Act 2010. Many claimants, especially those with on-going discrimination claims and who are still employed will not be entitled to any form of remission. Likewise those who have been dismissed or whose employment is at an end may also find it difficult to satisfy the conditions for having fees

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remitted. Time limits for presenting claims are very short; in most cases 3 months from the time of the incident or discrimination in question. Many claimants will not have the means to pay the initial fees whilst they are, for example, waiting to see if they are entitled to state benefits. Other claimants will not be entitled to benefits for some months and therefore will not satisfy the rules on remission of fees before the 3 month time limits expire. This will prevent many worthwhile cases being brought in the ET.

County Court discrimination cases concerning Goods, Facilities and Services

17. So far as we know there are no statistics on the numbers of discrimination cases arising in the County Court and there is certainly no historical record of these. It is therefore impossible to know how much discrimination cases may have decreased in the County Courts as a reaction to the level of fees charged. As with the ET cases we would anticipate that any increase in fees will negatively affect people from protected groups who are more likely to be in the lower income groups. In particular, we would draw attention to the fact that many of these cases will include a claim for injury to feelings which are unlikely to be sufficient to enable a claimant to recover their costs. This will act as a considerable disincentive to bringing a case.

Mental health and the mandatory CLA Gateway

18. Changes to legal aid have made tribunals less accessible for people with mental health problems. Due to a number of factors, but particularly as a result of fees being introduced, the number of claims has reduced significantly. This is compounded by the fact that access legal aid in discrimination claims has only been available through a telephone gateway since April 2013. MIND note that they have heard a number of issues with this new system, including:

- Low levels of awareness of the gateway
- Issues with accessibility, such as the content of the call and the types of questions asked; and communication barriers, including difficulty establishing trust
- Non-legal specialists staffing the phones so incorrect advice given and high turnover of staff leading to loss of developed expertise
- No review of the quality of advice given so limited ability to improve the service

Remission of fees

19. Whilst we welcome the proposal to make the remission scheme more generous by increasing the savings limits and increasing the number of passport benefits we consider that the capital and income limits are still set too low. The process of applying for remission is complex, bureaucratic and difficult to access, this acts as a barrier to accessing the Courts and tribunals (particularly for vulnerable claimants).

20. Additionally, there are the following problems-

- refugee and migrant workers will have difficulties understanding and completing the necessary forms.
- some people with disabilities will have difficulties navigating the process.
• assessment on basis of household income means that remission may not be available to dismissed individuals whose partner is still earning. This can mean, for example, that a woman seeking to bring a sex discrimination case may need to get her partners permission in order to be able to bring a case.

Conclusion

21. The impact of change to the fee charging systems for the Courts and Tribunals has fallen disproportionately on the vulnerable, the low paid and those from traditionally disadvantaged groups. Access to Justice is becoming a right for those with money and legal rights such as those put in place by the Equality Act 2010 are becoming largely theoretical for many whom they were intended to benefit.

30 September 2015
Annex 1: Equality and Diversity Forum Members

Action on Hearing Loss
Age UK
British Humanist Association
British Institute of Human Rights
Children’s Rights Alliance for England (CRAE)
Citizens Advice
Disability Rights UK
 Discrimination Law Association
End Violence Against Women Coalition
Equality Challenge Unit
EREN – The English Regions Equality and Human Rights Network
Fawcett Society
Friends, Families and Travellers
Gender Identity Research and Education Society (GIRES)
Law Centres Network
Mind
National AIDS Trust
National Alliance of Women’s Organisations (NAWO)
Press for Change
Race on the Agenda (ROTA)
RNIB
Runnymede Trust
Scope
Stonewall
Trades Union Congress (TUC)
UKREN (UK Race in Europe Network)
UNISON
Women’s Budget Group
Women’s Resource Centre

Other signatories

Inclusion London