Written evidence from the Liverpool Law Society Employment Committee

1. This evidence is submitted in relation to the first of the Justice Committee’s questions set out in their invitation to provide views upon the introduction and increase of fees within HMCTS, being:

   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?

2. As a committee comprising practitioners of employment law primarily practising within the employment tribunals, we do not feel we have anything useful to contribute to the other questions raised by the Justice Committee.

Who are we?

3. We are a sub-committee of the Liverpool Law Society, a representative body of solicitors in Liverpool and the surrounding areas. The employment committee comprises approximately 30 solicitors who primarily practice in employment law. Our members are practitioners who represent (i) primarily respondents; or (ii) a mix of respondents and claimants; or (iii) primarily claimants as individuals; or (iv) individuals via their trades union clients.

4. Our members’ clients include individuals, SMEs, public sector clients and large businesses employing thousands of staff. As solicitors we see the impact that the introduction of fees has had upon claimants and their ability or willingness to commence claims under the range of jurisdictions within the employment tribunals. We believe we are able to provide balanced evidence to the Justice Committee on the impact of fees upon access to justice and the volume and quality of cases being brought to the employment tribunal. As the Committee will appreciate, as a committee of members there can be a number of different views but the views expressed in this evidence are those where a consensus has been reached.

Submissions

5. Unsurprisingly all members have seen a steep decline in cases which they are pursuing and/or defending on behalf of client.

6. The composition of claims that are being pursued has changed. Stand-alone claims for outstanding holiday pay or money owed to an employee have all but disappeared. Straightforward claims of unfair dismissal have also reduced dramatically. It seems that the claims that are now being brought and pursued are the more complex claims including discrimination and public interest disclosure, which tend to need multi-day hearings. Our members have experience of these complex claims being ‘tagged on’ to more straightforward claims, often to ensure that a claim can still be brought even though the claimant may not have the necessary two-years’ service to be able to commence a claim for unfair dismissal, and possibly to achieve value for money if they are having to pay a fee.

7. The view of our members is that there is no discernible change in the number of cases which are successful before the Tribunal.

8. The introduction of fees for judicial mediation has resulted in a simple, convenient and often successful route to resolving claims no longer being of interest to respondents.

9. There is a practice amongst some respondents, particularly SME employers to wait to see if the claimant pays the issue and hearing fees before discussing settlement. This does not appear to be the practice amongst larger private or public sector employers. There is also experience of an increase in those claims that are withdrawn before the hearing fee is incurred.
10. Our members’ experience is that potential claimants, most of whom have lost their jobs, are unwilling to risk payment of the fees when they have also lost their regular income. The remission scheme does not assist claimants who either have a partner who is working, as their income is taken into account in assessing their eligibility, or, as is frequently the case, they have been paid a lump sum in respect of notice pay or redundancy payments, which excludes them under the capital provisions. This is a particular problem because of the necessity to issue proceedings in the Employment Tribunal within the short three-month limitation period.

11. Most of our members receive ad hoc enquiries from individuals seeking advice as to whether they have claims which may have merit. The experience of many of our members is that even if the individual has the basis of a good claim, the mention that there are fees of £250 and £950 to be paid to take their case to a Tribunal is a disincentive to commencing a claim when there is uncertainty as to how long they are likely to be unemployed and there is no guarantee of them recovering the fee.

12. The view of our members is that fees, and more specifically the high level of fees, are restricting access to justice for many individuals. The present design of the remission scheme does not achieve the aim of ensuring those who cannot afford to pay the fees can still access the Employment Tribunals. The view of the Committee is that there should be no fees for judicial mediation nor should there be fees for claims in respect of outstanding wages, holiday pay or notice pay, which is an area where in our view access to justice is effectively being denied for many potential claimants.

16 October 2015