Written evidence from Plumstead Community Law Centre

Introduction

Plumstead Community Law Centre is a tiny law centre based in an extremely deprived area of London. We have only 3.2 caseworkers working for the charity. We specialise in immigration, benefits and employment and equality law. We have only one caseworker working in the field of employment and equality law. As well as providing advice and representation to the people in Greenwich, we also provide advice to people in the surrounding Boroughs where there are no legal advice centres providing such assistance.

Impact of Employment Tribunal Fees on our clients

The stats of people being prevented from taking cases to the Employment Tribunal are well known. Many people cannot afford to pay the fee of £250 to issue and £950 to continue with the case to hearing.

We would like to focus our submission are the wider impact the fees has had on employment and equality practices in the workplace. We run a weekly drop – in, telephone advice session and outreach sessions in employment and equality law. We assist approx. 500 clients with their employment problems per year.

We have seen a significant increase in the number of clients contacting us with cases of substantial bullying and / or discrimination. We have seen a completely different attitude in the way employers deal with correspondence from our employment caseworker. We give you just a few examples to highlight how aggressive the approach of employers has become -

1) MG- This client worked as an office assistant. She was not given a contract of employment and was not given any holiday leave. She came to the Law Centre and we gave her advice on her rights. She spoke to her employer who ignored her concerns. We then wrote a polite grievance letter for her, stating that legally she had a right to a contract of employment and holiday leave. We asked that the employer look into this and respond directly to the client. Two days afterwards, the employer wrote: “The letter that the Law Centre wrote was completely unjustified. Our relationship has broken down and I cannot continue to employ you.”

2) EB – This client worked as a support worker at a large NHS Trust. The client had her assignment terminated by her manager as a complaint allegedly had been made about her. The client was distraught. We wrote to HR of the Trust asking it to set out reasons for the termination of the assignment and for details of the alleged complaint. We chased a response several times but did not receive one. We then wrote a race discrimination grievance, in which we explained that it was illogical not to give us details of the alleged complaint. We questioned whether the client would have been treated this way if it were not for her race (Black African), in that an assumption had been made that she was guilty of misconduct without even given her a chance to respond. We
chased up a response to this grievance but we did not get one. We then started early conciliation and the Trust totally failed to engage in this process. In the end we put in a claim form. The client was actually crying when we put in the form. She wanted to go back to work. She loved her job. She was being forced to take legal action because of a failure to deal with the grievance.

3) AI worked for a large NHS Trust as a care worker. She was warned that her assignment might be terminated because of alleged poor performance. The client is suffering from severe neurological problems and is under medical investigation at the same hospital. We wrote to HR at the Trust and stated that the client was suffering from severe health problems and asked it to make a referral to occupational health. It ignored this request and made a decision to terminate the assignment without a referral. We then e-mailed the HR director with a disability discrimination grievance, stating that the Trust had failed to consider that the client was suffering from health problems, which impacted on her work and with reasonable adjustments she could return to work. The Trust ignored this. We chased a response to this 4 times. The Trust would not respond to the complaint. We then started ACAS early conciliation and the Trust failed to engage. We have a meeting with the client next week to look at pursuing legal action but she will not qualify for remission because her husband’s salary is £22,000, which will bring them above the threshold. The client does not wish to take legal action, which is likely to be stressful and aggravate her health. She just wants to go back to work. Her own income is now £0 so it is very difficult to think how she would have £1,200 to sue.

4) MI- This client worked as a shop assistant for a large retail store. The manager at the store apparently received some negligent advice from the Home Office that the client was working illegally. This was wrong because the client had a right to work full-time in accordance with his immigration status. The client was given 7 days to appeal. We contacted the Home Office and it confirmed in writing that the client did have a right to work in the UK. We appealed within the time limit, sending the appeal recorded delivery with all the relevant documentation. We chased a response to the appeal but did not get a response. We stated early conciliation through ACAS but our requests were ignored. The client and his wife’s immigration status meant that they had ‘no recourse to public funds’, which put them in a severe financial situation. The client’s wife was heavily pregnant at the time. She went to the store several times begging the manager to allow her husband to return to work and insisting that they were not dishonest and were not in the country illegally. The stress of the situation caused his wife to give birth prematurely and their baby daughter Ilma was born but died after just 20 minutes. We are pursuing legal action.

5) IT – This client worked as a driver for a large company. He was racially abused at work by many of his colleagues, including not be addressed by his actual name but called Poppadum and physically assaulted at work. The client is Pakistani. Even though he works for a large company in central London, he was the only non-white British worker in the company. We wrote at grievance. As a consequence of the bullying and constant grievances being ignored, the client is suffering from severe mental health problems. His
GP firmly places the blame for his ill health on bullying in the workplace. We started early conciliation, which was completely ignored.

6) TO – This client worked as a carer. She was sexually harassed in the workplace by a senior manager, including a sexual assault. We raised a grievance and as a consequence, she was dismissed. She is now suffering from severe mental ill health.

We would like the Committee to consider the link between dignity at work and mental ill health. Many of our clients who experience bullying and discrimination at work become very unwell. We do not believe that fees are making a cost reduction to the Treasury. This is because it is allowing a situation of chronic bullying and discrimination to grow in our workplaces and this is making workers unwell and thus unable to work and in need of support from benefit system and the NHS.

We would ask the Committee to consider the wider financial consequences as well as the moral imperative to ensure that our workplaces are places where people can work with dignity.

We understand that Unison have undertaken significant research into the disproportionate impact fees are having on women. We would agree with its submission. We would also note that it has a disproportionate impact on migrant groups who increasing are suffering race discrimination in the workplace.

Whereas the majority of our caseworker’s time used to be spent negotiating and securing settlements for clients, now a significant amount of time is spent at Tribunal.

Whereas when we used to raise internal grievances most matters would be resolved now employers are more likely to ignore or deal very poorly with the grievances.

We have used ACAS early conciliation in all cases. We find this process frustrating. We have submitted over a 100 conciliation claims. 99% have had negative results. It is unnecessarily time consuming and bureaucratic. We feel that employers want to see if someone will pay £250 before they even consider talking.

Once we start cases whereas before the introduction of fees most would settle very early on, now cases will continue and are significantly more likely to go to a full hearing. We feel that employers will wait to see if employees actually have £950 to pay to the Tribunal and thus there is no incentive to settle. Judicial mediation used to very effective but now is too costly and almost completely redundant.

We think that the Committee should consider that enforcement rates have actually gone down also. We have clients who have spent £1,200, won discrimination cases but been unable to enforce. This means effectively they are - £1,200 + enforcement costs.

The Employment Tribunal was set up to be a quick, free and easy way to ensure justice for individuals and help ensure fair employment practices in the workplace. With this change, it would appear to us that for the majority of workers, their rights are illusory and are inaccessible and unenforceable.