Written evidence from Chris Purnell

1. My interest in this matter, at any rate in the particular matter of Employment Tribunal fees, arises from having worked as an employed barrister dealing with Employment Tribunal cases at Law centres and a Race Equality Council between June 1988 and May 2011, (at various time between those dates in Tottenham, Slough and Plumstead).

I have continued to give voluntary employment law advice at Haringey Law Centre since then.

2. The general statistical evidence is that there has been a great falling off in Employment Tribunal claims since the introduction fees particularly in all types of discrimination claim. No inference can reasonably be drawn that the falling off in claims is concentrated in unmeritorious cases, (although the percentage of discrimination cases, which actually get a hearing, where the claim succeeds, always has been low).

3. My fear is that another type of case where Employment Tribunal fees have deterred meritorious claims is low value claims for wages unpaid in breach of contract (unauthorised deductions under Part II of the Employment rights Act 1996). People with low paid, (and/or fluctuation), employment who are owed a few hundred pounds unpaid wages, (e.g., arrears of holiday pay on termination employment), may well be deterred from claiming by having to pay total fees of £390 to get the case dealt with by the Tribunal (including the hearing). The fact that there is a system of exemption or remission of fees, involving a means test, may not benefit low paid workers who. For example, frequently have to change their jobs, or who have enough small savings to disentitle them from exemption for Tribunal fees.

4. Fees may also deter lower paid workers who suffer racial abuse or harassment at work from claiming compensation for this at an Employment Tribunal. As recently as 2009, or thereabouts, a client of mine at Plumstead Community Law Centre was awarded only £500 by a Tribunal for racial abuse at work (against the fellow employee who had uttered the words of racial abuse, not the employer). This case involved a three day hearing at Ashford Employment Tribunal. [I recall reading a reported case of a Romany who was subjected to racial abuse at about the same time who was also awarded only £500].

5. People who suffer the pain and indignity of racial abuse may, therefore, be deterred from claiming to an Employment Tribunal by fees which, in this category of case, total £1200. The inquiry should bear in mind that while the average award in race discrimination and harassment cases is a good deal higher than £500, small awards do occur and are probably a good deal more frequent than the widely reported really high awards.

6. My suggested remedy to the injustices produced by Employment Tribunal fees, which I recommend to the inquiry, is that the current system of Employment Tribunal fees be abolished completely. This will no doubt lead to an increase in claims to Employment Tribunals some meritorious, some not. However, there will probably not be precipitate increase because of the new system of mandatory ‘early conviction’ contact with the Advisory Conciliation an Arbitration Service (A.C.A.S.) before a claimant can lodge a claim with the Employment Tribunal. This prior step is, perhaps, now enough to deter many unmeritorious claimants although, some, no doubt, will persist. ‘Early conciliation’, in some cases, has the advantage of leading to early settlements.
However, another disadvantage of the present system of fees is that it deters employees and workers with a strong case from settling for higher amounts (which their case merits), because of the disincentive of having to pay Employment Tribunal fees is they reject relatively low early conciliation settlement offers and press ahead to the Employment Tribunal.

7. If the inquiry is not minded to recommend the abolition of Employment Tribunal fees, it should at least consider requiring employers to pay a fee to lodge a response (defence) to the employee/worker’s claim. This would have the advantage of encouraging equity as between employers and employees/workers and deterring some unmeritorious attempts by employers to defend well founded claims against them.

8. I would stress that it is my experience that analysis of the statistics relating to the falls in claims to Tribunals since the introduction of fees does not, bearing in mind the statistics relating to the proportion of cases which are successful at Employment Tribunals before and after the date of the introduction of Tribunal fees, warrant the conclusion that the introduction of Tribunal fees has tended to deter unmeritorious claims (as a proportion of overall claims). The inquiry will no doubt want to explore this point in some depth with the totality of statistical evidence that it receives.

25 August 2015