

Response ID ANON-NVB9-NQSP-1

Submitted to Introducing Fees in the Employment Tribunals and the Employment Appeal Tribunal
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About you

a What is your name?

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c What is your organisation?

Organisation:
Scottish Trades Union Congress

Questions

1 Do you agree with the modest level of the proposed claimant issue fee of £55, including where there may be multiple claimants, to ensure a simple fee structure?

No

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We believe that access to justice on employment related issues should be free with no financial barriers. The employment tribunal system provides a process for workers to ensure their employment rights are upheld. Workers already face a number of barriers to access including:

- An under-resourced employment tribunal system leading to significant delays in cases being heard.
- An under-funded labour market enforcement system that doesn't have enough inspectors to proactively enforce employment rights.
- Lack of awareness of key employment rights.
- A complicated process for bringing a claim.
- Difficulty in accessing legal support.
- Strict time limits on filing claims.

We believe the introduction of fees, at any level, provide an unnecessary barrier to workers seeking to access justice. This was evidenced by Ministry of Justice own figures showing a 66% rise in cases from July to October 2017 following the removal of fees.

The SETA report notes that 17% of claimants had their fees paid for by third parties, which shifts the cost of justice to other organisations when they cost should be borne by public funding.

2 Do you agree with the modest level of the proposed EAT appeal fee?

No

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See Q1 response.

3 Do you believe this proposal meets the three principles set out in the consultation document?

No

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The introduction of any fee will act as a barrier to accessing justice, especially to those who have lost their jobs or are on low-incomes. The consultation asks is a higher level of fee could be charged - this question undermines the affordability principle as the consultation investigating the option of a higher level of fees.

Note also, the 2017 judgement noted that income from fees was lower than expected and did not appear to have encouraged settlement of cases. This was evidenced for the previous higher fees charged and if repeated will not meet policy aims to generate income.

4 Do you consider that a higher level of fees could be charged in the ET and/or the EAT?

No

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We do not believe that any fee should be charged and the burden of costs should not be move to those seeking access to the tribunal system to uphold their employment rights and where their employer may have acted unlawfully, While some may argue that the proposal of £55 fee is a nominal amount, any amount will prevent cases going forward, particularly those brought by workers on low-incomes, most likely to be women, BAME workers, disabled workers and migrant workers.

Establishing a fee structure of any level provides the option for future increases in fees. It also re-introduces the issues following the 2013 introduction of fees which were shown in 2017 judgement to be unlawful.

5 Are there any other types of proceedings where similar considerations apply, and where there may be a case for fee exemptions?

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No

6 Are you able to share your feedback on the different factors that affect the decision to make an ET claim, and if so, to what extent? For instance, these could be a tribunal fee, other associated costs, the probability of success, the likelihood of recovering a financial award, any other non-financial motivations such as any prior experience of court or tribunal processes etc

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N/A

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7 Do you agree that we have correctly identified the range and extent of the equalities impacts for the proposed fee introductions set out in this consultation?

No

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The equalities statement notes that the introduction of fees is likely to adversely impact BAME workers, disabled workers and those over 45 with no mitigations. Pregnancy related cases are also disproportionately higher and such claimants are more likely to be impacted.

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