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Fees Policy Team
Ministry of Justice
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By email only: mojfeespolicy@justice.gov.uk

25 March 2024

Dear Sir or Madam

Re: Chartered Society of Physiotherapy response to 'Proposal for reform: Introducing Fees in the Employment Tribunals and the Employment Appeal Tribunal'

The Chartered Society of Physiotherapy ('CSP') is the professional, educational and trade union body for the UK's 65,000 chartered physiotherapists, physiotherapy students and support workers.

Where members have been unfairly or unlawfully treated by their employer we provide support to them in bringing meritorious Employment Tribunal claims and, if necessary, supporting them at the Employment Appeal Tribunal level.

We disagree that fees for Employment Tribunal and Employment Appeal Tribunal claims should be introduced at all. At a time when the UK is in a significant cost of living crisis introducing fees is likely to restrict access to justice. This was the view of the Supreme Court on the previous introduction of fees in 2013.

The proposed levels where claimants would be exempt from fees is very low. For claims of a very modest value, or have no monetary value (such as asking an Employment Tribunal to issue a declaration), claimants will be deterred from issuing meritorious claims. This will further increase the already considerable imbalance between workers and employers. Even the consultation document considers there will be a potential 20% drop in claims with the introduction of fees.

At Employment Tribunal level the proposed fees will only apply to claimants who will not be able to recover fees from respondents if they succeed in their claims (we have assumed that as the consultation wording refers to appellants at the Employment Appeal Tribunal that fees at this level would apply to both claimants and respondents). This adds to the existing issue of employers not paying Employment Tribunal awards. A study carried out by the Department of Business, Innovation and Skills, shortly before the introduction of fees in 2013, found that only 53 per cent of claimants who were successful in the Employment Tribunal were paid even part of the award prior to taking enforcement action ('Payment of Tribunal Awards', 2013).

We note that the consultation refers to third parties, such as trade unions, paying fees on behalf of claimants. When fees were previously in place this was not the case for the majority of trade unions.

We anticipate that if fees are introduced that these will be increased by the government to a significantly higher level than that proposed.

Our response to the specific, somewhat leading, questions in the consultation are below.

Question 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? Please give reasons for your answer.

No. As set out above fees should not be introduced at all.

Question 2: Do you agree with the modest level of the proposed EAT appeal fee? Please give reasons for your answer.

No. As set out above fees should not be introduced at all.

We are also concerned about the lack of clarity on the £55 fee. It appears possible that the fee could apply for each ground of appeal, or that each putative error of law is a relevant “decision” that incurs a separate fee. As most appeals have multiple grounds and multiple alleged errors of law this means appellants might incur a much higher fee than £55, or might be dissuaded from running all arguments because of the fees.

Question 3: Do you believe this proposal meets the three principles set out above [affordability, proportionality and simplicity]? Please give reasons for your answer.

No.

Question 4: Do you consider that a higher level of fees could be charged in the ET and/or the EAT? Please give reasons for your answer.

No. As set out above fees should not be introduced at all.

Question 5: Are there any other types of proceedings where similar considerations apply, and where there may be a case for fee exemptions? Please give reasons for your answer.

No. As set out above fees should not be introduced at all.

Question 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. Please give reasons for your answer.

We support our members in bringing meritorious claims where it has not been possible to do using workplace procedures. They bring claims where they have been treated unfairly or unlawfully by their employer.

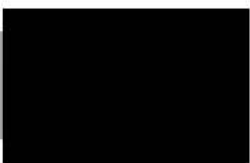
Question 7: Do you agree that we have correctly identified the range and extent of the equalities impacts for the proposed fee introductions set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

We are surprised that despite the Equality Impact identifying that the introduction of a fee will adversely affect individuals from a black, Asian or ethnic minority background, men, those over 45 years of age, and those with a limiting disability, the government feels the introduction of fees can be justified.

Fees will also disproportionately affect others with protected characteristics including single parents (mainly women), insecure workers (BME workers and young people are overrepresented in insecure employment); pregnant women and new mothers and migrant workers.

– Ends –

Yours faithfully



Jim Fahie

Assistant Director, Employment Relations and Union Services