



At what price justice?

The impact of employment tribunal fees

Introduction

Since July 2013, workers who have been sexually harassed, sacked because of their race, or bullied because of their sexuality have been forced to pay £1,200 for their claim to be heard by an employment tribunal. Those seeking to recover unpaid wages or holiday pay have to pay up to £390.

The TUC believes that the introduction of fees has had devastating implications for working people's access to justice, with the overall number of employment tribunal claims falling by at least 79 per cent (between September and December 2012, and the same period last year).

An analysis of official statistics reveals that women have been the principal losers, while low-paid workers have also been priced out of justice due to the government's restrictive fee remissions scheme.

The introduction of fees means that many workers simply cannot afford to take valid claims to an employment tribunal. They no longer have an effective means of enforcing their rights, allowing rogue employers free to flout the law with impunity, creating unfair competition for law-abiding firms.

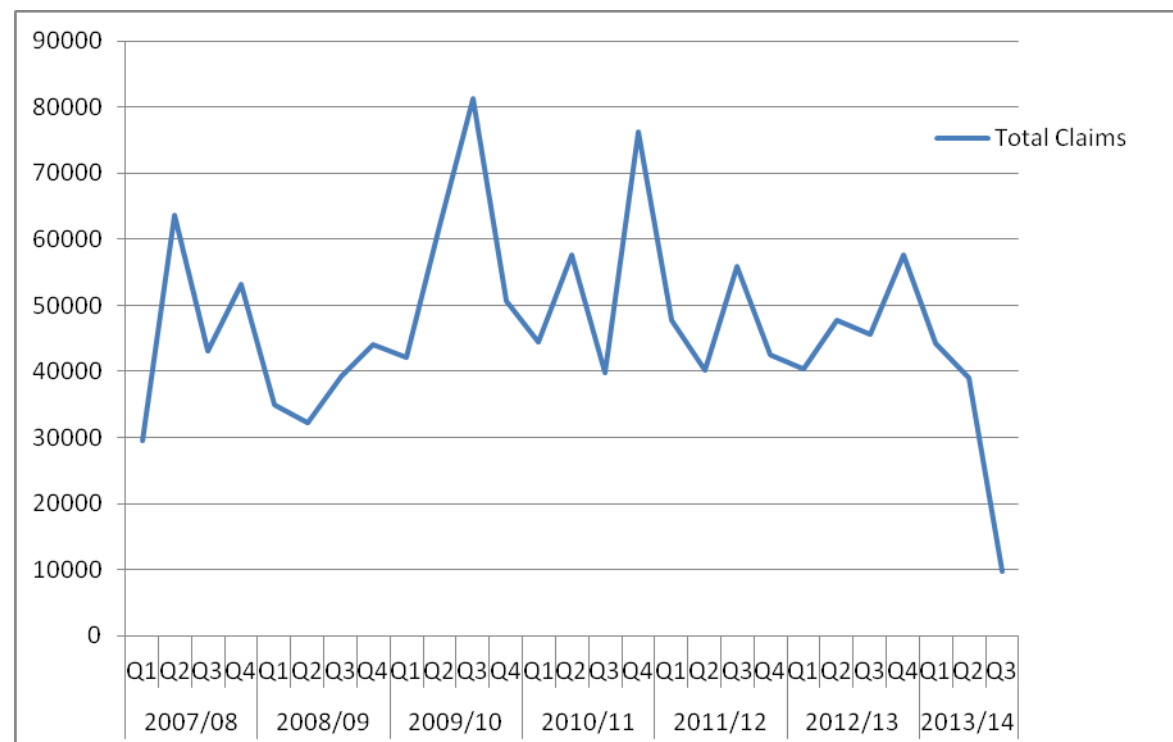
Faced with such dire statistics, the TUC believes that the government should act urgently to abolish fees for employment tribunals. Working people should not have to wait for the government to carry out a review before their rights to justice are restored.

Falling off a cliff: Impact on employment tribunal claims

The introduction of fees has had a devastating impact on access to justice, with wronged workers unable to make claims.

Provisional statistics published by the Ministry of Justice (MoJ) in March 2014 revealed that in the first full quarter following the introduction of fees the overall number of employment tribunals fell by 79 per cent. Between October and December 2013 9,801 claims were made to employment tribunals, compared with 45,710 claims submitted in the same period in 2012.

Chart 1: Total employment tribunal claims accepted by quarter



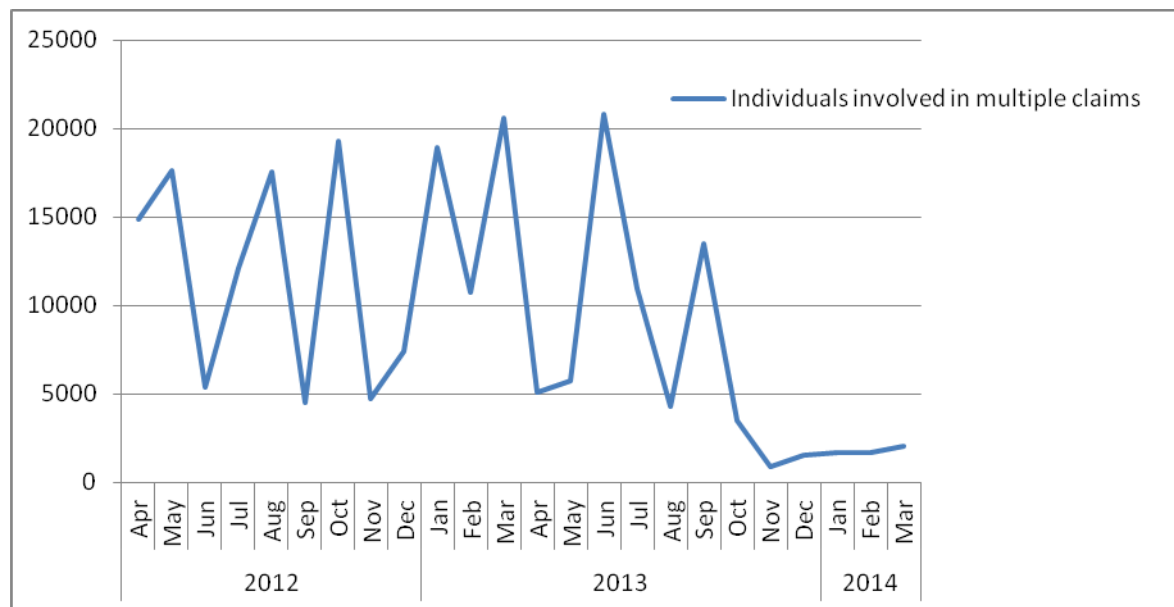
Recent statistics published by the MoJ also confirm that the March 2014 statistics were not just a blip. Figures published earlier this year show that the number of employment tribunal claims has continued to fall.

MoJ statistics for January to March 2014 revealed a 59 per cent fall in claims, compared to the same quarter in 2013. During these three months just 10,967 claims were received by employment tribunals compared to 63,715 for the same quarter in 2013.

The downturn in claims is partly attributable to a drop in the number of individuals involved in multiple claims – which are usually organised by unions on behalf of groups of members. In recent years, unions have organised large equal pay multiple claims in local authorities across the UK.

Other multiple claims have dealt with non-payment of pilots’ holiday pay and collective redundancy issues arising from company insolvencies, particularly in the retail sector.

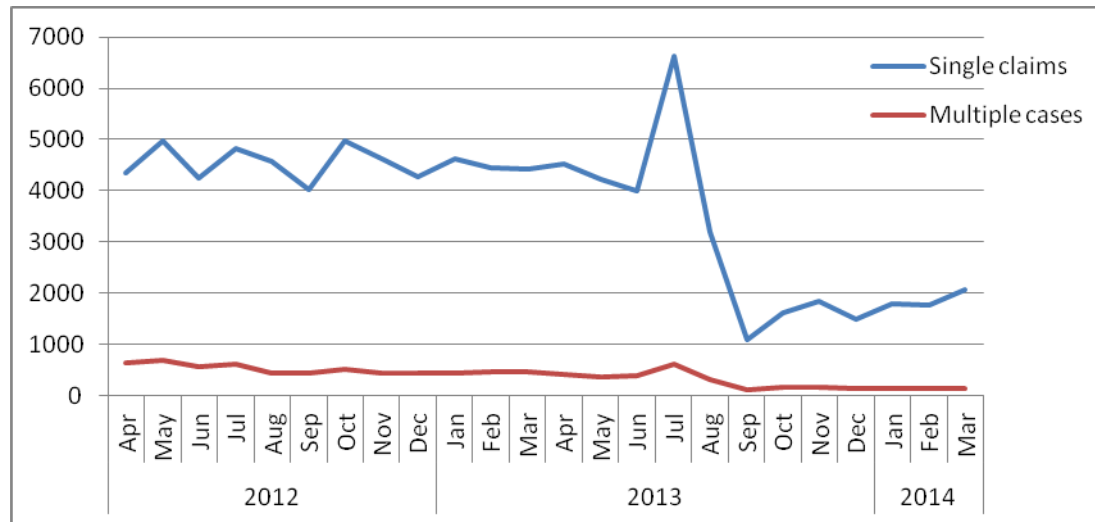
Chart 2: Individuals involved in multiple claims



Source: MoJ Tribunal Statistics (Jan-Mar 2014)

As chart two reveals, the number of individuals involved in multiple claims tends to fluctuate, depending on the nature of the claims and the size of the workforce. However as chart three reveals, the number of multiple cases has remained relatively stable in recent years, with unions continuing to provide representation for their members.

Chart 3: Single claims and multiple cases¹



Source: MoJ Tribunal Statistics (Jan-Mar 2014)

Of greater concern is the major and on-going fall in single claims brought by individual workers, for example for unfair dismissal, unpaid wages and redundancy pay (see chart three).

Between October and December 2013, the number of single claims brought by individual workers in the third quarter of the year fell by 67 per cent compared to the same three months in 2012. This trend continued into the first three months of 2014, which saw a 59 per cent drop in the number of single claims being taken to employment tribunals – from 13,739 in January to March 2013 to 5,619 a year later.

Employment tribunal fees: the deterrent effect

It is clear that the introduction of fees has had a major deterrent effect on individuals who consider taking valid cases to an employment tribunal.

A government survey of tribunal users² last year found that half the claimants (49 per cent) would have reconsidered their claim had they been forced to pay a fee.

Whilst the respondents to this survey were interviewed before fees were introduced, they were asked whether a fee of £250 would have influenced their decision to go ahead with a claim.

The key findings included:

- Young workers aged 20-24 and 25-34 were more likely to be influenced by the requirement to pay a fee than those aged 65 or older.
- Those on temporary contracts (72 per cent) were most likely to say that the

¹ A single claim is one brought by an individual. A multiple case involving more than one individual who have the same or similar complaint against the same employer.

² BIS (2014) Findings from the Survey of Employment Tribunal Applications 2013

requirement to pay a fee would have influenced their decision. This compares to 45 per cent of those in full-time, permanent employment.

- Those on low earnings were also more likely to be deterred from pursuing their claim because of fees. Sixty five per cent of those with a gross annual salary of under £10,000 said the requirement to pay £250 would influence their decision, compared to 24 per cent of those earning £40,000 or more.
- It is also likely that the survey would have reported a much higher deterrent effect had respondents been asked whether being required to pay up to £1,200 would have influenced their decision to go to a tribunal.

These findings almost certainly under-estimate the deterrent impact of fees given that respondents were only asked how paying a £250 fee would influence their decision. However, the findings clearly illustrate that fees have had a disproportionate effect on access to justice for vulnerable, low-paid workers – the very people most in need of protection at work.

Women are the key losers

Analysis of the MoJ statistics suggests that the introduction of fees has had a particularly detrimental impact on disadvantaged groups.

Women are among the biggest losers. Between January and March 2014, just 1,222 sex discrimination claims were made to an employment tribunal, compared to 6,017 in the same quarter in 2013. This represents a fall of 80 per cent.

These findings were highly predictable. Women are more likely to work part-time in lower paid jobs and are therefore less able to afford high level fees. Many women also lose out on fee remissions because of their partner's earnings. This is because eligibility for fee remission is calculated on the basis of household rather than individual income. This approach assumes that in most households resources are pooled and shared. It also means that many women will need to seek the agreement of their partner before taking their employer to a tribunal.

Women have also been penalised by tighter restrictions on eligibility for fee remissions. These changes mean that households with savings of £3,000 or more are no longer entitled to any remission. As a result, many women are forced to make the unenviable choice between using up savings put aside for family holidays, school uniforms or university fees or putting up with discrimination at work.

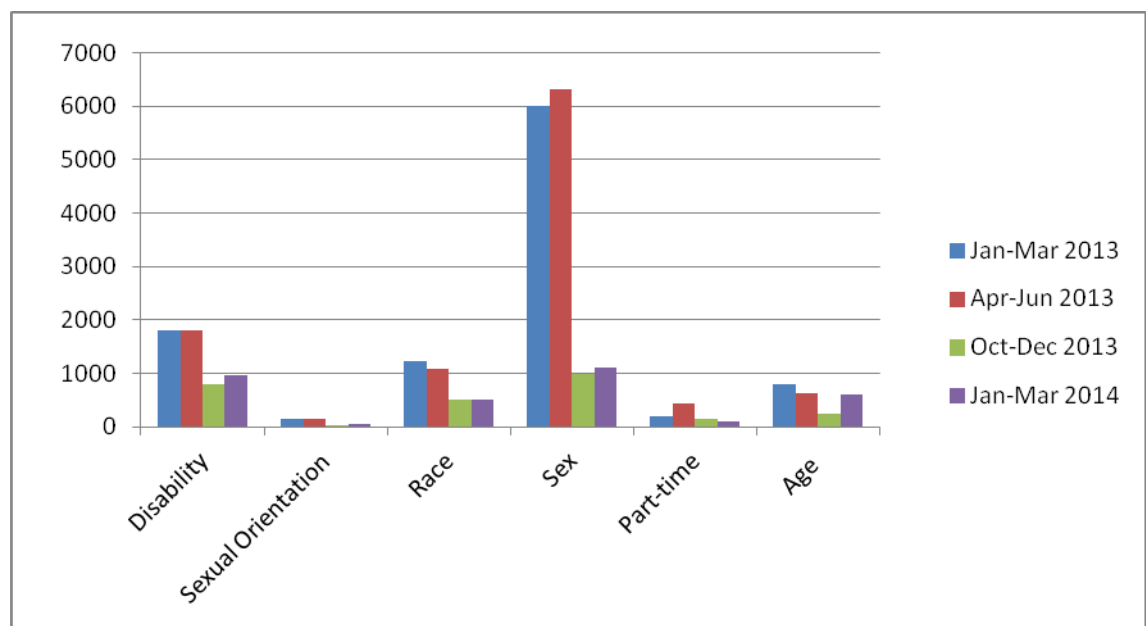
The fall in pregnancy-related claims is also a matter of serious concern, given the evidence of widespread discrimination. Between January and March 2014 just 288 claims for pregnancy-related dismissal or detriment were submitted, compared with 388 in the same quarter in 2013. The Equal Opportunities Commission's landmark study into pregnancy discrimination in 2005 found that nearly half the pregnant women in the UK said that they had experienced discrimination simply for being pregnant or taking maternity leave. Yet the majority of women take little or no action to assert their rights. Around 3 per cent of those who lose their job will attempt to seek financial compensation for their dismissal at an employment tribunal.

The reasons for this are clear. Many women do not want to face the anxiety or stress of taking an employment tribunal claim. Others simply cannot afford the cost at the time when their earnings have been reduced and household expenditure is increasing. The introduction of fees has made these barriers to justice even higher.

Wider equality implications

But women are not the only disadvantaged group affected by the introduction of fees. The MoJ's statistics also reveal a serious drop in other discrimination claims (see chart five)³.

Chart 5: Impact on discrimination claims



Source: MoJ Tribunal Statistics (Jan-Mar 2014)

During the first three months of 2014, the number of race discrimination and sexual orientation claims both fell by 60 per cent when compared with the same period in 2013, whilst disability claims experienced a 46 per cent year on year reduction.

Priced out of justice – the impact on low-paid workers

The statistics published in June 2014 also revealed a marked decline in claims for unpaid wages (down by 85 per cent). These often involve low-value claims brought by low paid workers. Many workers, who are already out of pocket due to the actions of their employers, simply cannot afford to pay £390 in tribunal fees.

³ Chart five illustrates the impact on discrimination claims in the two quarters preceding and following the introduction of fees. The figures for June to September 2013 have not been included as fees were introduced midway through this quarter.

The government has always claimed that the remission scheme which accompanies the fees system would ensure that those who could not afford to pay would still be able to access justice – a belief which has increasingly been found to be misplaced.

The MoJ impact assessment published in June 2013 estimated that 23.9 per cent of all claimants would receive full remission from fees and that a further 53 per cent would benefit from discounts on fees of up to £950. Provisional data provided by the MoJ however shows out of 2,500 applications for remissions between July and December 2013 just 600 received any form of remission, and 1,800 were rejected⁴. Only 24 per cent of individuals applying for remissions had any or all of their fees remitted.

These figures should not be a surprise. A TUC analysis which took place before fees were introduced estimated that more than a third of UK households (36 per cent) with one or more workers earning the national minimum wage would not be entitled to any fee remission but would have to pay £390 for their claim for unpaid wages to be heard. The TUC also estimated that 22 per cent of such households would have to pay the full £1,200 for an unfair dismissal or discrimination claim to be heard.

The decision by the government to introduce a new disposable capital test for assessing eligibility is also likely to have contributed to the low level of successful remissions applications. Under the new rules introduced in October 2013, if an individual or their partner has savings or investments of £3,000 or more they will be ineligible for remissions.

Research commissioned by the TUC reveals that this policy has a particular impact on older workers who have prudently saved for their retirement. According to the Family Resources Survey 2010/11, 58 per cent of households with at least one worker aged between 50 to 60 have savings of £3,000 or more. Similarly 42 per cent of all couples with children who have set aside savings for university fees or family holidays lose out under this policy.

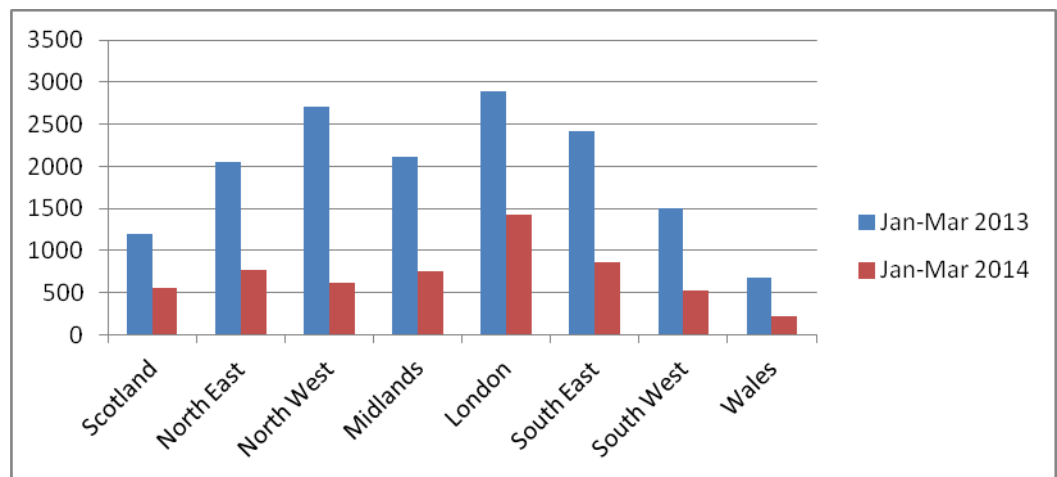
Vulnerable groups, including disabled workers, are also disadvantaged. According to TUC research, more than one in five households with at least one disabled worker has savings of £3,000 or more and therefore would be forced to pay £1,200 in fees in order to challenge discrimination at work.

Regional impact

The MoJ's statistics, also suggest that the introduction of fees has had a disparate effect in different parts of the UK.

⁴ These statistics were released by the Ministry of Justice in response to a Parliamentary Question: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140512/text/140512w0004.htm#14051310000256>

Chart 6 Regional effect of fees



Source: MoJ Tribunal Statistics (Jan-Mar 2014)

Whilst all regions have experienced a significant fall in employment tribunal claims, in more prosperous areas fees have had a less damaging impact on the number of employment tribunal claims (chart six). For example, in London the overall number of employment tribunal claims fell by just 51 per cent in January to March 2014 compared to the same three months in 2013. In contrast in Wales the number of claims fell by 67 per cent, and the South West experienced a 66 per cent fall in claims.

Cost effective?

The MoJ consultation document on the introduction of fees stated that government's main objective for their fees policy was to transfer the cost of running tribunals from the taxpayer to the users of the system.⁵ At the time, the government estimated that by introducing fees they could recoup 33 per cent of the total cost of running the employment tribunal system.⁶

The recently published Annual Report and Accounts for the HM Courts Tribunal Service reveal that in the eight months between July 2013 and March 2014 the gross income from employment tribunal fees was £5.149m, of which £0.680m (13.2 per cent) was paid out in fee remission. This represents a 'cost recovery' of just 6.7 per cent of the tribunal system's total cost of £76.364m, well below the MoJ's original target.

⁵ Ministry of Justice (2011) Charging Fees in the Employment Tribunal and Employment Appeal Tribunal: Consultation Paper available at: https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/supporting_documents/chargingfeesinetandea1.pdf

⁶ Introducing a Fee Charging Regime into Employment Tribunals and Employment Appeal Tribunals: MoJ Impact Assessment, published on 30/5/2012. Available at: <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-ia.pdf>

In practice, the income generated in 2013/14 only just covered the £4.4m costs incurred by the MoJ when setting up the IT system needed to support the fees and remission system within employment tribunals.⁷

Projecting these figures forward, it is possible that in future years the government may generate an annual income of £6.7 million from fees – a figure which is at the bottom end of previous government forecasts.⁸ The evidence suggests that such income targets can only be achieved in one of two ways. Either the number of employment tribunal claims needs to rise significantly – which according to recent MoJ statistics appears unlikely – or entitlement to fee remissions must continue to be severely limited. In which case, the main losers will continue to be low-paid workers.

Conclusion

The requirement to pay unaffordable fees is stifling access to justice, leaving working people with no effective means of enforcing their workplace rights. As a result, rogue employers appear to be able to break the law with impunity.

The government needs to act urgently to abolish fees for employment tribunals. Working people should not have to wait for the government to carry out a review before their rights to justice are restored.

⁷<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140512/text/140512w0004.htm#14051310000256>

⁸ Introducing a Fee Charging Regime into Employment Tribunals and Employment Appeal Tribunals: MoJ Impact Assessment, published on 30/5/2012. Available at: <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-ia.pdf>