

## **Response to consultation on Introducing Fees in the Employment Tribunal**

The Employment Legal Advice Network, set up by Trust for London

22 March 2024

### **The Employment Legal Advice Network**

1. The Employment Legal Advice Network (“ELAN”) was set up in 2014 by Trust for London and brings together over 60 not for profit organisations working with London’s workers who are often vulnerable to exploitation in the workforce, including workers:
  - from sectors where there is higher risk of non-compliance with basic workplace rights, including those in cleaning, hospitality, construction, car washes and nail salons.<sup>1</sup>
  - from migrant communities who face particular challenges with accessing justice in workplace rights. A recent report from the Young Foundation and FLEX, commissioned by the Mayor of London, sets out in detail the risks for migrant workers.<sup>2</sup>
  - on irregular contracts including zero hours contracts, agency contracts, gig economy contracts. Research from FLEX found that 63% of gig economy workers reported being paid below the minimum wage<sup>3</sup>.
  - on certain work visas, particularly where their work is tied to one employer, leaving the worker with a lack of options to challenge labour abuses, creating an environment where exploitation can thrive.<sup>4</sup>

---

<sup>1</sup> Who cares? The experience of social care workers, and the enforcement of employment rights in the sector Nye Cominetti Resolution Foundation January 2023

<sup>2</sup> “Rights and Risks: Migrant labour exploitation in London Research report” Victoria Boelman, Dr Alessandra Radicati, Amelia Clayton, Sophie De Groot and Oliver Fisher June 2023

<sup>3</sup> “THE GIG IS UP: PARTICIPATORY RESEARCH WITH COURIERS IN THE UK APP-BASED DELIVERY SECTOR” Focus on Labor Exploitation 2021

<sup>4</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf> Peter Wieltschnig author

2. ELAN members provide information and advice on employment rights. The sector is lacks funding (no legal aid in most cases) and so all that most organisations can offer is one off advice only. Some, with fixed term grant funding, offer case work and others conduct research and policy work. ELAN is run by a consultant, Director of Network, Victoria Speed, with the support of Steering Group, including the Director of Grants from Trust for London.

### **Executive summary**

3. £55 is not affordable or modest for many as people in low-income jobs struggle to meet basic needs.
4. The Lord Chancellor has a statutory and constitutional duty to protect access to justice but there are already many barriers to accessing justice in employment rights for those workers most vulnerable to exploitation, including:
  - Lack of access to affordable or free advice and support. There is no legal aid available for employment advice and the not-for-profit sector is unable to meet demand. Support is, in most cases, limited to a one-off advice session.
  - Poor knowledge of rights.
  - Poor knowledge of how to enforce those rights and the time limits to act on them.
  - Other barriers, including practical, personal, cultural barriers and fear of the consequences.
  - For workers on some working visas tying them to one employer, there are particular barriers.
5. In addition, ELAN members hear from many successful Claimants who report that their employment tribunal awards were not paid by their employer. Faced with pursuing the money through further legal proceedings, many decide to give up and the employer gets away with not paying. The issue of poor enforcement rates of employment tribunal decisions is a significant risk factor to access to justice in employment rights. This was raised with the Lord Chancellor at the Civil Justice Council National Forum in November 2023.<sup>5</sup>
6. Introducing a fee without proper resolution of the existing barriers and better understanding, through data collection, of the issue of enforcement, risks placing low paid workers in even more financial peril and will further harm access to justice.
7. Any Help with Fees scheme or Lord Chancellor's Exceptions Power will not resolve this barrier as there is such limited supply of free expert support. The application process for either scheme will simply be one process too many to complete within the strict time limits for issuing claims.
8. The Consultation also fails to properly consider the full costs of running a payment regime. At the HMCTS Tribunals Jurisdictional Public Engagement Group Meeting on

---

<sup>5</sup> <https://www.youtube.com/watch?v=ltZuGqWcdAk>

31 January 2023, HMCTS stated that it is “designing a digital system for the employment tribunal to make the system simple, fair and accessible to all users.” HMCTS explained the new digital system for ET1 applications via an online portal for litigants in person. The system, as currently built, does not include any method for collecting fees. HMCTS says a team will need to be allocated to design and implement this function. There is insufficient scrutiny of the estimate provided in the Impact Assessment for the HMCTS “transition costs” and no consideration given to potential for these costs to be significantly greater than those estimated.

## **ELAN response to Consultation questions**

### **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.*

### **Response to Question 1**

9. We do not agree that a fee of £55 is modest for all single claimants. ELAN members support workers for whom £55 is money they simply do not have. ELAN member, Southeast and East Asian Centre<sup>6</sup>, reports that “99% of service users don't have any money and many have debt. They need food vouchers to survive for the day. As they don't have money, they won't be able to pursue their employers.”
10. Many of those in contact with ELAN members are in situations of in-work poverty. In-work poverty was the subject of a debate in Parliament in June 2023<sup>7</sup> where several examples were provided of constituents who are in work but unable to pay for basic items such as lunch for children. £55 for many is not a modest sum but money to pay for essentials that they are already going without. This consultation is taking place against the backdrop of a cost-of-living crisis, with significant levels of in-work poverty. The latest data shows 14.4 million are in poverty, with 7.8 million (54 per cent) of these living in a working household. The number of people in poverty living in a working household has increased by 1.5 million since 2010.<sup>8</sup>
11. For some, £55 represents almost all they receive for a 24 hour shift at work including David, a South-East Asian care worker. “I'm only getting maybe around £60 [a day] more or less for a 24 hour stay-in job.”<sup>9</sup> For other employees, they do not actually receive any of the money they earn. One live-in care worker interviewed for a recent report for Focus on Labour Exploitation and the Labour Exploitation Advisory Group

---

<sup>6</sup> <https://www.seeac.org.uk/>

<sup>7</sup> <https://hansard.parliament.uk/commons/2023-06-28/debates/891155B9-C8AD-47AC-865F-34A512B7C517/In-WorkPoverty>

<sup>8</sup> CITATION - taken from TUC doc. <https://www.tuc.org.uk/campaigns/dont-reintroduce-tribunal-fees>

<sup>9</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf>

stated that “they were not given their wages directly, with the money being given to the driver to transfer to the worker’s family abroad on their behalf.”<sup>10</sup>

12. ELAN members report that those who use their services are often wholly reliant on every penny of their wages to cover their monthly costs. In the light of the barriers to accessing justice (listed above), it can sometimes take several weeks for an employee to realise they have rights and to know what to do to try to act on them. Frequently employees find out what to do very near to cut off for the time limit for issuing claims. If the next pay day falls after the time limits expire, many will have no money available to pay a fee at that time.
13. The Help With Fees Scheme will not provide a sufficient safety net as there is no proposal to change the time limits and those on low incomes and will find it very difficult to find expert assistance to help them navigate any scheme.
14. ELAN members frequently experience small employers failing to engage at all with either the ACAS process or the Employment Tribunal proceedings. The employers simply ignore any judgement against them knowing that the employee is unlikely to pursue enforcement proceedings either because of the cost or because they cannot manage further legal proceedings. There is no charge planned for Respondents and this creates a further imbalance of power that is likely to most impact access to justice for the low and moderately paid workers who are still in employment. The fee will deter potential claimants from using the Employment Tribunal, with the result being a greater number of businesses failing to comply with their obligations under employment law. It will likely result in further “strategic behaviour”, such as respondents refusing to engage meaningfully in settlement discussions or tribunal proceedings.
15. The proposal is to also charge £55 in cases where there are multiple claimants. This presents no advantage to those who use ELAN member charities and those most at risk of exploitation as they are not usually working in unionised environments and are in work situations that are often isolated such as delivery drivers or cleaners. They are usually unaware of their own rights or the fact that others in similar roles are experiencing the same thing. They are therefore less likely to bring a group claim. Women especially are often working in isolated, invisible work environments, including in domestic care roles in the private sector. Even traditional office roles are now frequently home based and these workers may not know any of their colleagues or have limited opportunity to meet them.
16. One of our members, Hammersmith and Fulham Law Centre asked their clients how the introduction of a £55 for using the Tribunals would impact them. Their views are set out in appendix 1.

---

<sup>10</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf>

## Question 2

We propose introducing a £55 fee payable by the appellant upon bringing an appeal against a decision of the ET, where several ET decisions are being appealed, a £55 fee is payable for each of those decisions.

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

## Response to Question 2

17. There are already significant barriers to litigants in person in appealing to the EAT. It is extremely difficult to access legal advice on the merits of appealing within the timeframe available (42 days). The EAT's own practice direction<sup>11</sup> clause 2.7.1. signposts to other organisations but they are of very limited use to a litigant in person as Support Through Court does not provide assistance in the ET or EAT and the others listed are unlikely to be able to do so in the time available.

18. Fees in EAT are a further barrier to justice which could allow errors of law to pass unchallenged. If the error is an error in judicial decision making, no fee should be paid.

19. £55 will present for many a final barrier that makes attempting to appeal a decision, even where there may be strong merit in doing so on legal grounds, an impossible task. As set out in previous responses to the last consultation on the introduction of fees, it is "contrary to natural justice to have to pay one tribunal to correct the decision of another."<sup>12</sup>

## Question 3

The three principles underpinning this proposal are affordability, proportionality and simplicity. These ensure that the cost of the fee can broadly be met by users; that the value of the fee generally does not exceed the value of the remedy being sought; and that there is clarity around what fees are payable and when.

*Do you believe this proposal meets the three principles set out above? Please give reasons for your answer.*

## Response to Question 3

### Affordability

20. The consultation asks whether £55 meets the principle of affordability, defined as a cost that can be broadly "met by users". The consultation fails to take into account the fact that many people with legal issues falling within the jurisdiction of the employment

---

1. <sup>11</sup> <https://www.judiciary.uk/wp-content/uploads/2023/09/EAT-PRACTICE-DIRECTION-2023.pdf>

<sup>12</sup> <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/employment-tribunal-fees-consultation-response.pdf>

tribunals already choose not to pursue their claims, due to the hidden costs involved. For example:

- many Claimants will need to take time off work to attend the hearings (whether online or in person) and this will often be unpaid leave.
- It takes someone without legal training many hours to prepare for an employment tribunal case and this will take up time that the person could be spending earning an income.
- There are often additional costs involved with attending a hearing including childcare and travel costs.

21. For those on low incomes, the hidden costs are already a prohibitory factor but an additional lump sum will render access to the employment tribunal wholly unaffordable for many.

22. Citizens Advice provides an example of the circumstances of individuals who simply cannot afford fees. “People like Divya and Lakshmi, who came to us because they and their migrant colleagues hadn’t been paid for 2 months, while their British co-workers were paid as normal. They’re falling behind on bills and are worried they’ll end up homeless if they can’t pay rent. Divya has contacted their employer, but has had no response. She’s afraid to complain too much as the employer could dismiss her and her colleagues, leaving them with only 60 days to either find another sponsor or leave the UK. Divya told our adviser: “I feel like we’re being treated as slaves”.<sup>13</sup>

23. Other employees may have recently left employment and although likely to qualify for benefits will not have time to access those benefits before the time limits expire. Many in this position will have insufficient funds to afford the fee.

24. The fees scheme fails to take into account higher living costs for people with disabilities and the impact that may have on their ability to pay fees.

### **Proportionality**

25. The consultation asks whether the fee meets the principle of proportionality - generally does not exceed the value of the remedy being sought. The consultation document itself recognises that the 2018 Survey of Employment Tribunals Applications (SSETA) found that “4% were awarded less than £500... Other claimants however sought non-monetary awards. The consultation states that “it is critical that fees are not set at a level that could render pursuing low value or non-monetary claims irrational and futile.”

26. Low paid workers frequently have low value claims. Many are not provided with a contract of employment or a statement setting out their terms and conditions according to section 1 Employment Rights Act 1996. Establishing the terms of employment and the status of a worker are critical steps in accessing justice. However, there are limited financial rewards to be gained through the tribunal process in these instances. We do

---

<sup>13</sup> <https://www.citizensadvice.org.uk/policy/publications/spotlight-report-no-1-how-work-visa-design-is-driving-exploitation/>

not agree that proportionality has been applied in determining that a fee will apply in all cases.

## **Simplicity**

27. The Consultation paper states that the fee structure is designed “to be simple for users to understand and easy for HMCTS to administer.” However, the HMCTS Tribunals Jurisdictional Public Engagement Group Meeting on 31 January 2023, HMCTS stated that it is “designing a digital system for the employment tribunal to make the system simple, fair and accessible to all users.” HMCTS explained the new digital system for ET1 applications via an online portal for litigants in person. The system, as currently built, does not include any method for collecting fees. HMCTS says a team will need to be allocated to design and implement this function. There is insufficient scrutiny of the estimate provided in the Impact Assessment for the HMCTS “transition costs” and no consideration given to potential for these costs to be significantly greater than those estimated.

28. Without seeing any new system to accept fees, how is it possible to comment on the effectiveness or otherwise of the system to meet the requirement of simplicity?

29. Furthermore, it is not clear what happens if someone is eligible for Help with Fees at the point of issuing the claim but becomes ineligible during the period between issuing the claim and the hearing date, and vice versa? How will this be administered? What will the cost be to the administration of justice to manage these and other scenarios?

## **Question 4**

When charging fees, we seek to recover the full cost of the service provided, where possible. Recognising that the level of fees proposed in this consultation are modest and only seek minimal contribution from users, we would welcome views on the potential to introduce higher levels of ET and EAT fees. This would help increase cost recovery, strengthen our ability to better support an efficient and effective ET service and further reduce the financial burden on taxpayers.

*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.*

## **Response to Question 4**

30. The consultation talks of seeking “minimal contribution from users” but there is no suggestion that Respondents might be charged for using the Employment Tribunals. Our members frequently meet with employees and workers where the employer disregards workplace rights knowing that their workers are unlikely to do anything about it. If fees are to be introduced, there should be consideration given to charging both parties as this might encourage better compliance with workplace rules.

31. For the reasons set out elsewhere in this document, we do not agree that £55 is “minimal” to many users and, if implemented, will be contrary to the principle of access

to justice. Certainly, any further increase should be subject to significant scrutiny and consultation to ensure that the most vulnerable, low paid workers are not even further restricted from accessing justice.

32. One ELAN member, the Independent Workers of Great Britain, explains that unions like their one would feel pressure to absorb the fees but this would mean moving resources from other access to justice work such as educating workers in precarious working conditions on their rights.

### **Question 5**

As explained above, we propose a fee exemption for certain types of proceedings in relation to National Insurance Fund payments.

*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.*

### **Response to Question 5**

33. Whilst this exemption is welcome, it should not be exclusively applied to National Insurance Fund payment.

34. As many employees are subjected to exploitation in key areas such as non-payment of wages, non-compliance with S1 statement requirements, non-payment of holiday pay, discrimination related to all protected characteristics, unfair dismissal, and infringement of statutory maternity rights, it is difficult to justify exemptions for some and not others. Vulnerable workers should not face financial barriers in challenging unlawful practices that breach their fundamental rights and impact their prospects of reaching financial security.

35. ELAN believes that the workers most likely to be experiencing exploitation in the workplace will, if faced with a fee for some proceedings and not for others, simply bring the proceedings that are accessible without charge. This will create issues for the administration of justice and significant barriers to access to justice.

### **Question 6**

As part of our assessment of the potential demand response, we would be grateful for feedback from consultees on the relative importance of different factors in the decision to take a claim to an Employment Tribunal.

*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.*

36. The issues that affect the decision to make an ET claim are different for every person. A pregnant woman might experience challenges that are different from a single male.



A migrant worker might experience challenges that are different from a UK citizen. The experience of our members is that individuals take the step to bring an ET claim as a litigant in person as an absolute last resort. People like Ana, a Roma East European chef, who reported “I was not paid my salary; I kept calling and leaving messages until I was blocked.”<sup>14</sup> What should Ana do in these circumstances? Even then, certain key factors affect the decision to make an ET claim:

- A person must know they have rights,
- A person should gain a full understanding of their rights within the time limits,
- A person must feel able to bring their claim.

### **Challenges with knowing about workplace rights**

37. There are wide gaps in the public’s knowledge on law in the workplace. This is a particularly acute problem for vulnerable workers including:

- From migrant communities- Many migrants do not recognise that they are being exploited or, if they do, are unaware that they have legal rights and recourse within the UK.<sup>15</sup> Recent research with over 400 Turkish and Kurdish workers showed that 40% of workers were not aware of any employment rights.<sup>16</sup> Even when aware of their rights “this is often quite vague and focused on general concepts”.<sup>17</sup>
- Parents including pregnant women. A 2016 report prepared by IFF Research on behalf of the Department for Business, Innovation and Skills and the Equality and Human Rights Commission found that a lack of knowledge was a barrier to raising complaints.<sup>18</sup>
- From sectors where there is higher risk of non-compliance with basic workplace rights, including those in cleaning, hospitality, domestic work, construction, car washes and nail salons.<sup>19</sup> For example, the 2023 Resolution Foundation research into social care workers found that many were being paid below the minimum wage once travel time was taken into account. Many were not aware of this.<sup>20</sup>
- Those on irregular contracts including zero hours contracts, agency contracts, gig economy contracts.<sup>21</sup>
- Many low paid workers, particularly in the construction industry, cleaning and care are labelled as self-employed by their employer, often incorrectly. They do not have the knowledge or skills to challenge this and do not therefore understand that the employment tribunal might have jurisdiction to determine their claim.

---

<sup>14</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf>

<sup>15</sup> “Rights and Risks: Migrant labour exploitation in London Research report” Victoria Boelman, Dr Alessandra Radicati, Amelia Clayton, Sophie De Groot and Oliver Fisher June 2023

<sup>16</sup> Perspectives of migrant workers from Turkey in London’s labour markets” - Research by the Refugee Workers Cultural Association, funded by Trust For London.

<sup>17</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf> pg 23

<sup>18</sup> “Pregnancy and Maternity Related Discrimination and Disadvantage: Experiences of Mothers” Authors: Lorna Adams, Mark Winterbotham, Katie Oldfield, Jenny McLeish, Alice Large, Alasdair Stuart, Liz Murphy, Helen Rossiter and Sam Selner. 2016 p14

<sup>19</sup> “THE UNHEARD WORKFORCE Experiences of Latin American migrant women in cleaning, hospitality and domestic work” Nahir de la Silva, Lucila Granada and Dolores Modern Latin American Women’s Rights Service July 2019

<sup>20</sup> Who cares? The experience of social care workers, and the enforcement of employment rights in the sector Nye Cominetti Resolution Foundation January 2023

<sup>21</sup> “THE GIG IS UP: PARTICIPATORY RESEARCH WITH COURIERS IN THE UK APP-BASED DELIVERY SECTOR” Focus on Labor Exploitation 2021

- There is also very low awareness of some areas of law. For example, law protecting whistleblowers (PIDA). In 2021 52% of respondents were either unaware or believed that there was no protection for whistleblowers.<sup>22</sup> The figures were the same in 2023.<sup>23</sup>

38. There is more opportunity to know about rights where there is access to an expert in workplace rights. However:

- Only 22.3% of employees are members of a Trade Union<sup>24</sup>.
- There is no Legal Aid available for common complaints such as unauthorised deductions from wages, holiday pay claims or unfair dismissal and for most discrimination cases where earning above the threshold.
- The not-for-profit sector is unable to meet demand as it is underfunded and under-resourced. There are often long delays in accessing services and they can usually offer no more than a one-off advice call. <sup>25</sup> The third sector relies on grant funding, with lawyers and caseworkers often in precarious employment positions, leading to a deskilling of the sector and attrition of qualified advisors.
- For low paid, non-unionised workers with no resources to pay for legal advice, there is often little option but to navigate the justice system alone.

39. The Consultation document refers to ACAS providing “free and impartial advice” and the gov.uk website states that “ACAS provides free and confidential advice to employers, employees and their representatives on employment rights, best practice and policies, and resolving workplace conflict.”<sup>26</sup> However, ACAS does not provide personalised legal advice and many employees do not find the generic advice helpful to them in determining whether to pursue their claims. ACAS’ advice team signposts to the not-for-profit sector when a person needs individual advice, but most will be unable to source support of any kind in the time available. ELAN has been liaising with ACAS regarding signposting as they frequently signpost to organisations that do not provide advice but also signpost on to other organisations. This wastes time and energy and does not resolve the problem of how to better understand the legal issues of a dispute. This ongoing signposting is an existing barrier to access to justice.

40. In the absence of legal advice, many seek advice from their communities. Migrants are disproportionately represented among NHS workers, carers, construction

---

<sup>22</sup> <https://protect-advice.org.uk/attitudes-to-whistleblowing/> You gov survey

<sup>23</sup> Protect submitted survey results to government review on whistleblowing framework based on Protect and YouGov research carried out in 2023. Total sample size was 2088 adults.

<sup>24</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1158789/Trade\\_Union\\_Membership\\_UK\\_1995-2022\\_Statistical\\_Bulletin.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1158789/Trade_Union_Membership_UK_1995-2022_Statistical_Bulletin.pdf)

<sup>25</sup> “The impact of LASPO on routes to justice” Equality and Human Rights Commission Research report 118 Dr James Organ and Dr Jennifer Sigafoos, University of Liverpool September 2018

<sup>26</sup> <https://www.gov.uk/pay-and-work-rights>

workers, cleaners, delivery drivers and farm workers. Ethnic minorities make up 42 per cent of the London cleaning workforce and migrant workers make up 53 per cent of its cleaning workforce.<sup>27</sup> The third sector is regularly contacted by migrants working in modern slavery conditions, facing discrimination, contract violations, abuse and exploitation, and unsafe working conditions. Many rely on WhatsApp groups with other workers from their countries of origin and share incorrect information from unreliable sources. Many are targeted by so-called “street accountants” who offer assistance for a fee through social media. They often provide incorrect information and the workers end up losing money from the process and losing out on their ability to access justice through employment tribunals.

41. There is no justification for introducing fees in order to deter vexatious or obviously unmeritorious claims. These are quite adequately dealt with by way of existing procedures such as strike out and deposit orders. If the introduction of fees is intended to discourage or prevent unmeritorious, vexatious or speculative claims, one would expect to see a reduction in the proportions of claims failing at ET. However, statistics provided by Citizens Advice the last time that fees were introduced showed that the proportion of successful to unsuccessful claims did not significantly change.<sup>28</sup>

### **Challenges with obtaining a full understanding of rights and acting within time limits**

42. Many individuals are not aware of the strict time limits of three months less one day for most claims. ACAS does not have a policy of telling people about time limits from the moment of their first call. Our members hear from employees who were advised by ACAS to complete the grievance process or seek advice from a charity and there is a deep sense of frustration when these individuals realise that, although they followed the advice given, they find their case is out of time at the point where they try to access the justice system.
43. Our members frequently meet with individuals who, on discovering the time limits, are forced to make a decision to go to an Employment Tribunal very quickly, due to the short time limits, and often in the absence of legal advice about:
- the merits
  - the burden of proof
  - an informed estimate of the potential award in the event of a positive outcome
  - awareness of the possible risk of the employer not paying.
44. Meeting the time limits is particularly challenging for those who are pregnant. As Maternity Action reports<sup>29</sup>: “a woman must contact ACAS within 3 months (less one

---

<sup>27</sup> “If I Could Change Anything About My Work...” Participatory Research With Cleaners In The UK Focus on Labour Exploitation January 2021

<sup>28</sup> <https://committees.parliament.uk/writtenevidence/59436/html/>

<sup>29</sup> <https://maternityaction.org.uk/unsafe-and-unsupported/>

day) from the date of the act or series of acts (or omissions) that she is complaining about. These time limits can often be unrealistic in the late stages of pregnancy and raising a grievance and pursuing a claim against an employer whilst remaining in employment sours the employment relationship further.”

45. In the absence of access to free or affordable legal advice, there is increasing reliance on advice from non regulated resources such as social media. For example, over 53,000 members of just one Facebook group called “UK employment law and HR advice” share their thoughts on the employment issues of other members. There is no regulation of the advice shared, even though it can often refer to merits and value of claims. With the void in accessible legal advice, many rely on the opinions of others to make decisions about their workplace issues. Without legal advice, many feel the only way to obtain justice is for a judge to decide the value of the claim.

### **Challenges with feeling able to bring claims**

46. Raising issues at work can be stressful and frightening. Many fear repercussions from their employer. This means that many struggle with raising their workplace issues at the very start of the justice system. A recent Resolution Foundation report on enforcing labour market rights found that one in twenty workers would do nothing if they thought their employer violated their rights, with those in the bottom income quintile more unlikely than those in the top income quintile to take any steps.<sup>30</sup> The 2016 IFF research found that one in four mothers (27%) considered but chose not to go through their employer’s internal grievance procedure, as they said the prospect was too daunting.<sup>31</sup>
47. Many migrant workers are told by their employers that they cannot do anything about the non-payment of wages or the way they are treated at work as raising the issue with the employment tribunal will result in the Home Office sending them home. These threats are common even when unfounded. The lack of clarity on firewalls between the tribunal system and immigration processes leaves many deciding not to pursue an employment tribunal claim. Some are even threatened, as was the case with Colette, a Southeast Asian live-in care worker who explains “I didn’t want to leave at first because my employer threatened me with imprisonment for a long time if I did escape and she would have me deported”.<sup>32</sup>
48. For many employees on certain work visas, there are particular challenges, as explained by Citizens Advice. “People like Ishaan\*, a homecare worker who was promised a full-time salaried job, but in reality, is only being paid for client contact hours. He works 14 hours per day, driving from client to client, but only earns £60 because he’s not paid for travel time or his full fuel costs. Ishaan can barely afford to

---

<sup>30</sup> “Enforce for Good - effectively enforcing labour market rights in the 2020s and beyond” Lindsay Judge & Hannah Slougher April 2023 p57

<sup>31</sup> “Pregnancy and Maternity Related Discrimination and Disadvantage: Experiences of Mothers” Authors: Lorna Adams, Mark Winterbotham, Katie Oldfield, Jenny McLeish, Alice Large, Alasdair Stuart, Liz Murphy, Helen Rossiter and Sam Selner. 2016 p14

<sup>32</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf>

eat - he'd gone 2 days without food before first being referred for help. He's desperately trying to find a new job with a licensed sponsor, but it's not easy. He can't just quit and go home either - he owes £18,000 to the agency that helped recruit him."<sup>33</sup>

49. Although the current absence of any fee for accessing the ET may be seen by some as an incentive to bring a claim, our experience is that many already weigh up the hidden costs cost of bringing a claim. For example, the unpaid time needed to prepare for a case as a litigant in person against time undertaking paid work and unpaid time attending hearings against paid time at work. Many factor in other costs such as childcare and travel. As Maternity Action reports<sup>34</sup>: "Most women are unable to pay for legal advice and representation in order to be able to pursue a pregnancy discrimination claim and this is particularly difficult when having a new baby and a drop in earnings during maternity leave. Pursuing a lengthy and costly employment tribunal claim in order to resolve a health and safety problem that arises in pregnancy is unrealistic for most pregnant women and does not provide any resolution at the time that they need it and in order to maintain their earnings during their pregnancy. In the absence of a swift and effective enforcement mechanism it also enables employers to avoid compliance." Javier, a Latin American construction worker tried to raise his claim with his employer who simply replied that he should do what he wants. The worker described his feelings at this response. "I think he knows deep down, like I mentioned before, if you don't work, you don't earn money, and he knows that [making a complaint] takes too much time. You lose time and money. So he knows very well, but at the same time he doesn't care."<sup>35</sup>

50. Many employees report to ELAN members stating that they cannot face the litigious procedure of an employment tribunal due to their ill health or concerns over mental health and stress levels. For example, Maternity Action provides the following case study<sup>36</sup>. "Janice worked in a nursery school. There was no work available for her to do from home so she asked her employer for a maternity suspension from 28 weeks. Her employer told her to take sick leave but she provided a note from her GP to say that she was fit for work but that adjustments should be made as she was high risk from 28 weeks. Her employer started to pay Statutory Sick Pay and Janice was worried about paying her bills. She called her local authority health and safety officer as her employer was refusing to provide a maternity suspension. The local authority officer contacted her employer but advised that they were taking the steps required to make the workplace covid-secure. Janice didn't feel safe working in close contact with small children and mixing with other staff and parents. She submitted a grievance and contacted ACAS but decided to withdraw a claim against her employer because of the local authority advice and uncertainty about the prospects of a claim. She felt that it was too stressful and she wanted to focus on the upcoming birth and her wellbeing."

---

<sup>33</sup> <https://www.citizensadvice.org.uk/policy/publications/spotlight-report-no-1-how-work-visa-design-is-driving-exploitation/>

<sup>34</sup> <https://maternityaction.org.uk/unsafe-and-unsupported/>

<sup>35</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf>

<sup>36</sup> <https://maternityaction.org.uk/unsafe-and-unsupported/>

51. Many are concerned of the imbalance of power between them and their employer and how they might evidence their argument. Andrea, a Latin American cleaner describes “So I started at 10am and finish[ed] around 1:30pm. Around 1[pm] they would say ‘No, don’t worry, I’ll pay you to work until 2[pm].’ So I worked all week covering, supposedly but when pay day came, and it was obvious that the pay for the week I covered was missing, I told them ‘the week I covered isn’t included.’ ‘What week?’ they would say. ‘The week I covered that girl who didn’t come into work, you told me that you would pay me’ and when he said to me ‘no, I am checking, but I can’t see any cover, it doesn’t show you worked extra’.”<sup>37</sup>
52. ELAN members also report clients seeking support after receiving letters from Respondents and Respondent solicitors threatening them with costs orders if they continue to pursue their claims. Even if there is no substance to this threat, many potential claimants do not understand the rules on costs and so feel worried. They withdraw their claims.
53. The very fact that many Respondents have legal representation is enough to dissuade many workers from pursuing their claims. Barbara Drozdowicz, CEO of ELAN member, the East European Resource Centre reports that “This inequity of power alone is enough. Fees to lodge a claim add insult to injury. The playing field is not levelled at the best of times, fees just strengthen the deterrent.”
54. ELAN members also report seeing clients reporting to them with enforcement issues, particularly where the Respondent is not represented. Many individuals are surprised to find that their employer does not pay despite a judgement against them. They are then faced with a situation of having to choose to begin another legal process. There is a lack of knowledge about which regime to use - the penalty regime, the fast-track regime or the county court regime - which one to choose, potential benefits and risks, time and cost. There is no information on the government website to help make the right choice.<sup>38</sup> There are particular challenges for non-English speaking litigants in person in navigating enforcement proceedings. Amongst many communities there is a feeling that there the tribunal system of justice does not work. They share the feeling that the system is not there to help them or protect their rights.
55. The wait for a hearing can also deter people from bringing a claim.

## Question 7

Please refer to the Impact Assessment and Equality Statement published alongside this consultation for the following question.

---

<sup>37</sup> <https://labourexploitation.org/app/uploads/2024/02/The-continuum-of-exploitation-report-2024-.pdf>

<sup>38</sup> <https://www.gov.uk/employment-tribunals/if-you-win-your-case>

*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.*

## **Response to Question 7**

56. The Impact Assessment states that there are 2 options. One is to “do nothing” and the second is to introduce a fee. However, this fails to recognise and consider that there are further policy options. The first is to consider charging Respondents. The other is to gather data on the issue of enforcement of ET decisions. Under the current Department for Business and Trade penalty enforcement scheme, the Government has the potential to gain significant sums from enforcement penalties that could be redirected to fund the ET system.
57. The Impact Assessment states that “it is assumed that the introduction of the fee does not impact demand as the fee is of a low monetary amount and in line with similar costs already faced by claimants.” This fails to consider the significant value of £55 to those in precarious work and most low earners (as described above). It also fails to consider that costs already act as a barrier to accessing the employment tribunal for many in precarious and low-paid work. The fees will particularly impact women, those living with a disability who already incur greater costs, ethnic minorities and migrant workers. These groups will be disproportionately affected as they make up the majority of the workers in the low paid, precarious work sectors.<sup>39</sup>
58. The fee income for introduction of fees has been assessed using ET cases issued volumes for 2022/2023. However, there is no evidence of these figures having been examined to determine the breakdown of claimant groups. For example, there is no analysis provided of how many claims were brought by groups separated by sex or by ethnicity. In the absence of this breakdown, the assessment cannot properly consider the equality implications of introducing fees.
59. The Impact Assessment suggests that there will be “transition costs incurred by HMCTS” estimated at £0.5 million but the digital team currently rolling out the new hub for litigants in person have not been consulted on this. How much reliance can we place on this estimate in the absence of proper financial and resourcing analysis with the department in question? If the cost is much greater than £0.5 million, the anticipated income in year 1 may be far lower than estimated.
60. There is no costing for the administration of justice for example in considering what happens when a Claimant is entitled to Help with Fees but becomes ineligible at some point before the hearing, or vice versa.
61. The Impact Assessment uses the 2018 STA report but fails to take into account the acute cost of living crisis affecting many in 2024.

---

<sup>39</sup> <https://www.livingwage.org.uk/news/why-low-pay-racial-justice-issue>

## Appendix 1

### Views from employment advice clients of Hammersmith & Fulham Law Centre (a member of the Employment Legal Advice Network) on the introduction of a £55 fee.

Client 1

"I'm currently suffering serious depression from work, having dark thoughts and can barely sleep or get up everyday, I have no income, only SSP which its only £109.40 per week, it's not going to cover my rent, not even half of it as I live in zone 2 London. Plus the company keep emailing me, but not responding to what it needs to, ACAS might take up to 4 weeks to response....all the stress giving me no time to rest and tried to heal my mental health, and a private therapist it's minimum £50 an hour, so I literally cannot afford any other cost for the tribunal. "

Client 2

"I am sad to hear that the government is getting ready to introduce fees of £55 to bring employment tribunal claims. I think those fees could discourage lower income people or unknowledgeable people of their rights to pursue employment claims when they have valid claims against the employers. These £55 can go towards one week of London travel or food shopping trip at Tesco. I truly think that this will only benefit the employers, especially if they know that their employee is not in a moderate or higher income bracket and/or is not knowledgeable of their rights, as a struggling person would see this cost as a reason to drop their claim. If they want to introduce fees, I do not consider £55 as a modest charge."

Client 3

"As was the case in 2017 when the fees were ruled unlawful, I believe a similar situation would be in place today as many people are struggling with the cost of living crisis and then to have problems at your place of work and then for example, not receiving your pay and then being asked to pay to bring the case will be off putting for them. I can see this bringing another reduction in the amount of cases each year as people may not be confident they will be funded and then that in turn gives employers more flexibility to make Work practices and issues even harder as they will know the employees may not take the matter further. I personally would have to decide if I can pay for my Gas bill or what to have for an evening meal right now... [The consultation] says this is trying to protect the access to justice but, in this time of financial crisis, I believe this will be a hindrance to those of us looking for justice."

Client 4



“[Payment of the fee] would be almost impossible, for most in a position like mine right now. I think it’s highly unusual for them to think that, considering you are trying to bring a clam and not working.”

Client 5

“I would like to say that with the current cost of living crisis, it would be unfair to ask people to make these contributions. It is already difficult to decide where cuts can be made to household bills and other expenses. At present I only put my heating on for as long as it takes to heat my home in order that I can have a shower.”

Client 6

I've been following the updates on the proposed introduction of the £55 employment tribunal fee with a growing sense of dismay. My views: In our current economic climate, where every penny counts more than ever, the imposition of this fee feels not just substantial, but burdensome—particularly for those of us grappling with unemployment due to unfair dismissal. For me, this fee isn't modest; it's a mountain to scale at a time when my financial landscape is already fraught with valleys. Facing this fee would force me into a position where I must consider which essentials I can afford to forego. It is not hyperbolic to say that utility bills, which ensure a basic quality of life, would be at risk. The warmth of my home, the light by which I prepare for interviews, and even the connection to the world through the internet—these could all be casualties of a fee that is supposed to grant access to justice. Moreover, the lack of legal aid compounds the weight of this proposition. It feels as though the scales of justice are tipped against those of us seeking reparation; we are caught in a paradox where seeking redress could deepen our financial strife. I believe it is critical that our collective voice reflects the hardship that such fees would impose on individuals striving to correct a wrong they've endured.”

ENDS

For further information, please contact

Victoria Speed, Director of Network (Consultant)

[Victoria@trustforlondon.org.uk](mailto:Victoria@trustforlondon.org.uk)

or

Klara Skrivankova Director of Grants, Trust for London

[Kskrivankova@trustforlondon.org.uk](mailto:Kskrivankova@trustforlondon.org.uk)

**List of member signatories:**

Protect

Maternity Action

Work Rights Centre  
East European Resources Centre  
IWGB Union  
Latin American Women's Rights Service (LAWRS)  
Southeast and East Asian Women's Association  
Legal Action Group  
South West London Law Centres  
Your Employment Settlement Service  
Focus on Labour Exploitation (FLEX)  
Refugee Workers Cultural Association (RWCA)  
Hammersmith & Fulham Law Centre  
Free Representation Unit  
Advice Services Alliance  
Advice UK