**Access to justice introduction:**

As Trade Unionists, I’m sure a lot of you will be aware that justice at work is getting harder and harder to access, by design. Whichever side you were on during the Brexit debate, it is crucial to maintain and improve workplace rights. These rights are even more uncertain given that this government have been attacking access to justice for ordinary working people. We now have a billionaire businessman running the USA, who has a history of contempt for Labour rights in his own companies, this doesn’t bode well for Labour rights in the UK. He wants a special relationship with Theresa May and she wants a UK/US trade deal. Needless to say, there will be something required in return for this deal. Traditionally speaking, in the Reagan/Thatcher era, this was to weaken labour rights across Europe, but once the UK is out of Europe, what will be expected of our Prime minister then? Watch this space.

A recent history of access to justice shows a few worrying trends. In the Enterprise and Regulatory Reform Act 2013, tribunal fees were introduced. The government has hidden its report on the impact of tribunal fees, which it said would be released over a year ago. It is still to be published. TUC statistics show that since the implementation of fees there has seen a shocking 73% decline in unfair dismissal cases, a 71% decline in sex discrimination cases, 58% decline in race discrimination and 54% decline in disability discrimination cases. Now The government claims the fees came in to discourage vexatious claims, but 73% of claims can't be vexatious. The government argues the declines are due to more people using ACAS instead of tribunal (as encouraged by ERRA), but 70% of claimants who entered ACAS early conciliation don't reach a formal settlement and employers are counting on them not taking the claim further because of the affordability of fees. Last year, a Select Committee recommended the government substantially reduce fees, but this was ignored in the Employment Tribunal Reform proposals released at the end of last year, which failed to address fees and looked instead at digitalisation. One thing's for sure: None of the proposals in the consultation document will fix the problems with access to justice.

At present only 21% of claimants benefit from fee remission and the exceptional case fund, which exists to prevent barriers to access to justice for those who cannot afford to go to court, it turns down around half of those who apply to it.

UNISON have attempted to overturn tribunal fees in the courts on the grounds that they are discriminatory. At present, they are awaiting for the Supreme Court challenge which will occur in March.

In terms of a small positive precedent, some of you will have seen the Case of Hemdan vs. Ismail 2016. In this case the EAT ruled that deposit orders (which claimants are forced to pay if their claim seems unlikely to succeed), should not be used in such a way that they make it impossible for claimants to access justice, putting one claimant's DO at the cost of £1 per allegation (rather than a possible £1,000 per allegation).

The Scottish government said they would remove fees in 2015 after employment tribunal powers were devolved to them but so far, no word on them making that change. Additionally, it has been floated that there could be a substantial change to the tribunal system in Scotland, with tribunal staff hearing cases instead of judges. So, although we could see a drop in the fee, there could be a downgrading of the tribunal and their powers in Scotland.

Elsewhere, legal aid organisations like the CAB have had their funding cut, so legal aid deserts are appearing across the UK.

There are a number of employment law reviews ongoing. One is on the future world of work and rights of workers, which has now closed, but focused primarily on the so called “gig economy” of low paid and insecure workers. There is one on corporate governance which closes on February 17th. There is a review on electronic balloting, with no consultation as yet. Also, there is an ongoing review on unpaid internships.

The government’s consultation on ET reform closed on Saturday. Unions made submissions around the effects of Tribunal fees, legal aid cuts, digitalisation of tribunals, Online claims, caseworkers making judicial decisions and limiting of non-legal members on tribunal panels. We are yet to hear the final plans for what the government intend to roll out and when.

The government have also ran another consultation under the guise of focusing on 'whiplash' injuries, in which small claims courts will deal with any personal injury worth up to £5,000 (regardless of circumstance, so including accidents and injuries at work), which I’m sure our Thompsons speaker will touch on in more detail.

The IER have realised that we need to do a few things. Firstly, we need to dispel the myths around access to justice which have been used to pave the way for curtailing workplace justice. Our publication ‘Access to justice: Exposing the myths’ by Andrew Morretta is an excellent example of this. It covers how rights have shifted from collective rights, to individual rights which are increasingly less enforceable. Secondly, we need to know what we want. To this end the Institute have produced ‘A manifesto for labour law: towards a comprehensive revision of worker’s rights. Part of this discusses radically overhauling the current system we have in place by having a minister for labour, a labour inspector who could be deployed to stop or reverse an employer’s decision to dismiss workers, as well as a different court system with a labour court, where tribunals would play a part. It also puts collective, sectoral and workplace collective bargaining very much back on the agenda, pointing to examples of where systems like this work very well across the world. Thirdly and most importantly, disseminating the information on both these will be the key to informing the arguments to get workplace rights back on the agenda in a proper and meaningful way.

So without further ado let me introduce our first speaker Stuart Robertson who is the NW regional employment judge. Stuart is going to be talking about surveying the general position in employment tribunals. Stuart, welcome and over to you.