

**Reforming the Employment Tribunal system**

**PCS response**

1. The Public and Commercial Services union (PCS) is the largest trade union in the civil service, representing over 190,000 members. We represent workers throughout the civil service and government agencies and also organise widely in the private sector, usually in areas that have been privatised.
2. The consultation paper on Reforming the Employment Tribunal system makes no reference to the impact of the introduction of employment tribunal fees. These have been the main barrier to access to justice in employment tribunals and therefore any serious proposals seeking to improve accessibility would need to address this.
3. Since employment tribunal fees up to £1,200 were introduced in July 2013, the number of claims have dramatically reduced. Overall cases have fallen by 70 per cent with the number of race discrimination hearings down by 50 per cent. The number of sex discrimination cases has also fallen dramatically.
4. PCS remains opposed to the existence of the fees and we are concerned that they have been set at too high a level. Level 1 cases, for example unlawful deductions and non-payment of wages, have an issue fee of £160 and a hearing fee of £230. Claims are often for amounts below the fees set so this is leaving many people having to concede valid claims. This can be a particular issue concerning unpaid wage and holiday pay claims as many of these fall short of the fees charged. There was an 85% drop in such claims in the year after the fees were introduced.
5. Combined fees of £1,200 for higher value claims, such as unfair dismissal and discrimination cases, are also significant sums when compared to the potential awards. In 2014/15 the median award for an unfair dismissal case was £6,995 and for a race case it was £8,025. People seeking to bring these types of cases are often out of work so are unlikely to be able to afford the fees.
6. One of the ways in which fees could change respondent’s opinions is in relation to caseworkers, who it is proposed will have judicial functions delegated to them. The consultation states that a party unhappy with the decision of a caseworker “may apply to the tribunal in writing for the decision to be considered afresh by a judge” but does not state whether the tribunal would charge a fee for this service.
7. The removal of civil legal aid has also led to major inequality in the employment tribunal system. Major employers, including government departments, will come with legal representation to every hearing while claimants will frequently appear as litigants in person. The government needs to look at how to make representation more even-handed, perhaps by not permitting employers to engage legal professionals unless they can mount a reasonable argument as to why they should, for example on the complexity of the issues.
8. Removing the major barrier of employment tribunal fees would be the first step to realising the government’s stated aim of improving accessibility. We would also recommend making legislation simpler in order to make the system easier and more accessible to ordinary people. The move to ‘enabling’ acts and subordinate regulations, some of it masked as parts of other Acts or Regulations, makes it difficult for experienced court operators to understand the law, let alone ordinary citizens. What is needed is a straightforward Codification of employment rights which is kept up to date.
9. Paragraph 16 refers to recognising the specialist expertise and knowledge that “non-legal members” can bring to proceedings. However, they have largely been excluded meaning that there has been an increase in the formality and legal dependence of the tribunals. We recommend re-introducing lay member panels to all hearings rather than only involving non-legal member experts when it is deemed that their expertise is “deployed where circumstances require it” as recommended in paragraph 32.

**Staff concerns**

1. Our members include those who work in Her Majesty’s Courts and Tribunals Service (HMCTS) undertaking all the key duties in the full range of posts necessary for the courts and tribunals to operate. The paper poses more questions than answers as to how the proposed reforms will affect this group of workers and the service they deliver.
2. We would like to know:

* Whether HMCTS is considering closing or relocating any of the current Employment Tribunal Estate;
* Whether there are plans to make redundancies in the Employment Tribunal;
* Whether any jobs will be moved into call centres and administrative centres;
* Whether HMCTS has considered the equality impact of all of the above.

1. Our understanding of HMCTS Reform is that administrative staff will be mainly based in centralised customer service centres and not in a court or tribunal. If the digitalisation of the Employment Tribunal means the staff who process applications and deal with telephone calls or email correspondence will not have the advantage of working in an Employment Tribunal. They will not clerk the Tribunals or see the process from start to finish and gain the

understanding of how Employment Tribunals work that enables existing staff to assist service-users.

1. It is also concerning that the consultation paper suggests that face-to-face support in completing tribunal forms could come from third party organisations. Charities that may have previously helped litigants in person making claims, applications and appeals have suffered enormous funding cuts in the last few years and individuals struggle to obtain advice and assistance. Whilst staff cannot provide advice, there is the scope to offer more face-to-face assistance to those using the Employment Tribunal. Better access to justice would mean face-to-face, telephone and digital communication with the tribunal all being available.
2. HMCTS Reform also involves reducing the number of staff by at least a third. We would like to know how many staff HMCTS expects to be working in the Employment Tribunal by 2022? Reductions in staff numbers over the past few years has been to the detriment of customer service and we are concerned that the key driver of ET reform is “to reduce the costs of the tribunal system to tax payers” and not to improve customer service given the staff cuts projected for HMCTS as a whole. The consultation states that staff will assist parties by telephone and web chat but if there are to be significant job losses this calls into question whether HMCTS will actually provide the services it is proposing.
3. The consultation document gives no indication of what proportion of claims HMCTS expects to continue to receive on paper and how these would be dealt with. We agree that the tribunal should continue to allow hard copy documents to be filed but are concerned that a process based on dealing with service-users digitally would disadvantage those who filed hard copies. This is particularly concerning if we take into account the fact that many of those without access to computers or the internet or do not have the skills to use this technology, are often the people who most need the service we provide.
4. We would want to see a demonstration of the IT solutions proposed as we are concerned that any new IT will not be compatible with, or sustainable, when operating alongside our current IT. None of our current IT interacts with any other part and we are concerned that any attempt to introduce new technology using the “agile” method proposed by HMCTS will created a situation where substantial amounts of extra work is required to work around problems created by the introduction of new technology, especially when it is introduced piecemeal. This has been the experience of staff in other parts of HMCTS. We are also concerned that money allocated by HMCTS for digitalisation is insufficient and that projects may end up half-finished or with a poor quality product due to budget restrictions and possibly after estate has been sold and redundancies made.
5. We can see no evidence to suggest that any claim could be fairly dealt with online. Many litigants in person already struggle to present their cases to the Tribunal verbally and the two-way conversation possible in a hearing allows the Judge and panel members to draw out the points being made so that the claim can be properly considered. Asking litigants in person to present their cases solely in writing does not allow for that two-way conversation and increases the likelihood of miscommunication and therefore the possible wider implications of a claim could much more easily be missed.
6. Another concern we have about the delegation of judicial functions to caseworkers is that whilst the Judiciary will be responsible for deciding what powers are delegated to them, HMCTS will be responsible for grading this role and would need to ensure that the grade accurately reflects the work being done. We would expect PCS to be consulted on such a matter and a proper job evaluation and grading exercise to be performed.

**In summary**

1. We are calling on the government to put forward proposals, including the withdrawal of employment tribunal fees, that address the barriers to access to justice in the employment tribunal system.
2. We are concerned that the proposals as they stand are overly reliant on delivering services through unproven and untested technology and that local, face-to-face access to justice is being cutback to deliver budget cuts. The consequence of which means that access to justice will be unavailable to those that need it most.
3. The proposals pose more questions than answers for the staff currently employed in the employment tribunal estate, and the paper does not address the impact that these proposals will have on future job security and the quality of service that our members are able to deliver.

James Davies

PCS Parliamentary Officer

20 January 2017

Public and Commercial Services union  
160 Falcon Road  
London  
SW11 2LN