

Employment Tribunal fees – back from the dead?

On 29 January 2024, the Ministry of Justice opened a consultation on proposals to introduce fees in the Employment Tribunal and Employment Appeal Tribunal system. In this briefing, we remind you of what went wrong with the old fees regime and outline the new proposals.

Haven't we been here before?

Yes. Fees were charged in the Tribunal system between July 2013 and July 2017 (**the 2013 fees regime**). Under the 2013 fees regime, different fees were charged in the Employment Tribunal for different types of claims. The fees operated as follows:

- **Simple claims:** £160 to issue the claim and £230 to proceed to a hearing (£390 in total); and
- **More complex claims:** £250 to issue the claim and £950 to proceed to a hearing (£1,200 in total).

In the EAT, all appeals attracted a fee of £400 to issue the appeal and a fee of £1,200 to proceed to a hearing (£1,600 in

total).

What happened to the 2013 fees regime?

The 2013 fees regime caused a dramatic fall in the number of claims brought to the ET. Case volumes fell by 53% in the 12 months after the introduction of the regime (from 59,000 cases between July 2012-13 to 28,000 cases between July 2013-14).

In response, the trade union, UNISON, launched judicial review proceedings arguing that the 2013 fees regime:

- represented an unlawful exercise of the Lord Chancellor's powers;
- interfered with the right of access to justice; and
- frustrated employment laws and discriminated unlawfully against women and other protected groups.

On 26 July 2017, the Supreme Court upheld UNISON's challenge, ruling that the fees were unaffordable in practice and rendered non-monetary and low value claims futile – which had the effect of preventing access to justice. It also held that the regime was indirectly discriminatory against women and other individuals with protected characteristics, who were

more likely to bring more complex claims which attracted the higher fees. The Supreme Court quashed the 2013 fees regime with immediate effect and all fees paid under the system had to be refunded. The removal of fees led to a steady increase in claims from 18,000 in 2016-17 up to 33,000 in 2022-23.

What has changed and what is proposed?

The Ministry of Justice says it recognises that the 2013 fees regime *“did not strike the right balance”* between its policy aims and protecting access to justice and that lessons have been learned. In light of this, the Consultation sets out a proposal for a new fees regime. The policy aims are said to be to transfer some of the cost of the Tribunal system from taxpayers to Tribunal users and to incentivise parties to settle their disputes early through Acas, without the need for claims.

In the Employment Tribunal, the proposal is that claimants would pay a £55 “claim issue fee”, which would cover the entire journey of the claim – there would be no separate hearing fee. No fees would be payable by respondent employers. There is also no intention to alter the rules on recovering costs in the Employment Tribunal, meaning that a claimant would only be able to recover the claim issue fee from a respondent in very limited circumstances.

In the EAT, the proposal is that the appellant (which could be either the claimant employee or the respondent employer) would pay a £55 “appeal fee”. The fee would be payable per judgment, decision, direction or order of an ET being appealed. For example, if the Notice of Appeal included appeals against two decisions, the total fee payable would be

£110.

Will all claimants have to pay the claim issue fee?

No. The Consultation proposes that the “Help with Fees” remission which operates in the Court and Tribunal system, will be extended to claimants paying a claim issue fee and appellants paying an appeal fee. A single person with no children would be assessed as follows:

- Gross monthly earnings below £1,420 and disposable capital below £4,250 – **full fee remission.**
- Gross monthly earnings between £1,420 and £1,520 and disposable capital below £4,250 – **partial fee remission.**
- Gross monthly earnings in excess of £1,520 and disposable capital below £4,250 – **no fee remission.**
- Gross monthly earnings of any amount and disposable capital in excess of £4,250 – **no fee remission.**

Further, in cases where there are multiple claimants (e.g. in a group equal pay claim), only a single claim issue fee of £55 would be payable – it would be up to the claimants to decide how they split the cost.

What's next?

It is estimated that the new system could generate between £1.3 million to £1.7 million in fees per year, which seems like a drop in the ocean given the direct running costs of the Employment Tribunal and EAT was around £80 million in 2022-23. It is also estimated that the new system could lead to a 20% reduction in claims to the Employment Tribunal.

The Consultation closes on 25 March 2024, and the intention is that the new fees regime would be implemented by November 2024. However, we are due a General Election before then, and it is hard to imagine a Labour Government taking a fees regime forward.

[Introducing Fees in the Employment Tribunals and the Employment Appeal Tribunal](#)

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.