WORK RIGHTS CENTRE - EVIDENCE SUBMISSION

MINISTRY OF JUSTICE - INTRODUCING FEES IN THE EMPLOYMENT TRIBUNALS AND THE EMPLOYMENT APPEAL TRIBUNAL

MARCH 2024

ABOUT WORK RIGHTS CENTRE

Work Rights Centre is a registered charity dedicated to supporting migrants to access employment justice and improve their social mobility. We do this by providing free and confidential advice in the areas of employment, immigration, and social security, and by mobilising frontline intelligence to address the systemic causes of migrants' inequality. The charity was founded in 2016. Ever since, we have advised over 6,000 people, helped recover over £280,000 in unpaid wages and fees, and supported hundreds more to make job applications and secure their immigration status.

Our frontline service consists of two multilingual teams of advisers who operate in London (5 days a week) and Manchester (on Saturdays). Together, the advice team assists an average of 20 beneficiaries a week, with issues which range from nonpayment, insecure immigration status, and career advice. You can support their work at https://www.workrightscentre.org/support-us

CONTACT

For any queries or for further information relating to this submission, please contact our research and policy team at research@workrightscentre.org.

SECTION 1 - ABOUT US

OUR INTEREST IN THE PROPOSAL FOR REFORM

The Work Rights Centre's Service Provision team regularly provides clients with advice and assistance on a range of employment matters. Common issues that clients face include non-payment of wages and unlawful deductions, unfair dismissal, discrimination and bullying, breach of Working Time Regulations and much more. In the last three years alone, our team has provided employment assistance to over 3,000 clients, many of whom are migrant workers, and they also receive an average of around 94 new client enquiries every month. The proposals at hand strike at the centre of our clients' ability to meaningfully access employment justice via the Employment Tribunal system and, by extension, our ability as an organisation to provide holistic and useful advice to clients.

SECTION 2 - SUBSTANTIVE QUESTIONS

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.**

We fundamentally disagree with the proposal to impose fees in the Employment Tribunal. In our experience, imposing fees even at a level that seems affordable on the surface, is likely to: (a) prevent vulnerable workers from bringing a claim, entrenching their exclusion from employment justice; and (b) increase pressures facing the third sector, without (c) any evidence that they would alleviate pressures on the tribunal system; and (d) negligible savings for the HMCTS.

a. **Fees are likely to prevent vulnerable workers from bringing a claim**

Firstly, we disagree with the premise that the fee of £55 is 'modest'. This is a subjective term that has been applied in a blanket manner - it ignores the reality faced by many of our clients, most of whom are migrants or racially minoritised British citizens who work in low-income sectors such as cleaning, hospitality, care, construction, or agriculture. These are notoriously low-paid sectors where work schedules are insecure and do not provide clients with the financial means for expenditure beyond the very basic level of living costs. It is also worth bearing in mind how the fee compares to the Universal Credit standard allowance - this is £292.11 per month for single claimants under the age of 25, and £368.74 for those over 25 years of age. A fee of £55 therefore represents 15-19% of the standard rate monthly Universal Credit allowance. Our client management system indicates that the vast majority of our clients (91%) have either no savings whatsoever, or savings that could

only cover up to two months of living expenses. Unfortunately, this is a reflection of the wider, growing phenomenon of in-work poverty affecting workers in the UK.

In our view, imposing fees would have a strongly detrimental effect on low-paid workers' ability to take legal action against their employers. We have already observed this dynamic with regards to the enforcement of judgments, where similar fees apply. If a claimant wins their case, but the respondent refuses to comply with the terms of the judgment, the claimant can instruct a bailiff to help with the recovery of money owed. Bailiffs typically carry fees that range between £47 for the County Court, to £71 for the High Court.[1] In several of our cases, clients felt unable to pay the fee and abandoned the process. Notably, these were all cases where our clients had judgments in their favour, and yet still considered that, on balance, paying the fee was too significant an expense, given the risk that respondents could evade bailiff action. The risk of evading enforcement action is not an abstract one, and many ET awards remain unpaid - indeed, in UNISON v Lord Chancellor [2017], it was noted that the government's own statistics showed that 35% of awards were not paid at all after enforcement action is taken, 16% were paid in part, and only 49% were paid in full (paragraph 36). In addition, last year it was reported that the government had failed to 'name and shame' a single employer who failed to pay an ET award under the Employment Tribunal Naming Scheme, despite receiving over 3,700 notifications of employers not paying successful claimants their awards.[2]

The effects of fees on vulnerable workers' ability to take action are likely to be considerably more pronounced, if fees are imposed at the point of bringing a claim to the Employment Tribunal, where the prospects of success are significantly less certain, and where the risks for the workers are higher. This is particularly likely to affect workers who cannot afford private legal advice, and who lack access to free legal advice or support from a union. In practice, this is likely to include workers who struggle with low incomes and precarious employment, workers who live in rural areas characterised by advice deserts, migrant workers who already face other barriers to justice (e.g: English, IT literacy, and an insecure immigration status), and those working in sectors with very low rates of unionisation.

In our experience, it is typically respondents that do not engage with the ACAS early conciliation process or fail to make realistic efforts to settle a dispute. Indeed, many do not make a real effort to settle until and unless the claimant files a claim at the ET. Our observations are supported by evidence from ACAS and by Employment Tribunals statistics. In 2015, shortly after the MoJ first introduced fees in the Employment Tribunal, ACAS published the results of a survey of a representative sample of claimants ("Evaluation of Acas Early Conciliation 2015"). The survey found that, for claimants who were unable to resolve employment disputes through conciliation, but did not go on to issue ET

[1] Guidance Civil court fees (EX50) https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-main-fees-ex50/civil-court-fees-ex50#civil-enforcement-proceedings

[2] Daniel Lavelle, 'UK's rogue boss name and shame register still blank after four years', The Guardian, 23 April 2023, available at: https://www.theguardian.com/global-development/2023/apr/23/uks-rogue-boss-name-and-shame-register-still-blank-after-four-years

proceedings, the most frequently mentioned reason for not submitting an ET claim was that the fees were off-putting. More than two thirds of the claimants who gave that reason said that they could not afford the fees.[3]

Separately, Employment Tribunal statistics show that the number of cases accepted by the ET plummeted from over 14,000 a quarter, before fees were first introduced (see 2013, Q1), to 4,000 after fees were introduced (see 2014, Q1). This is a 71% reduction.

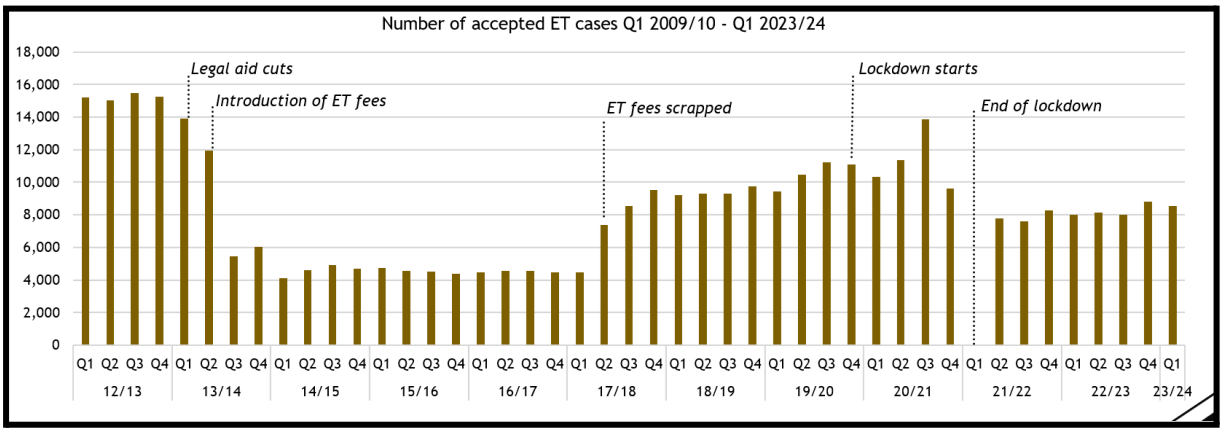

Fig 1: Number of accepted ET cases, Q1 200910 - Q1 2023/24

Simultaneously, the makeup of representation changed, with more claims being represented by lawyers, and fewer claims being represented by claimants themselves (which can be inferred from the "no information provided"). Data refers to the point at which claims were submitted

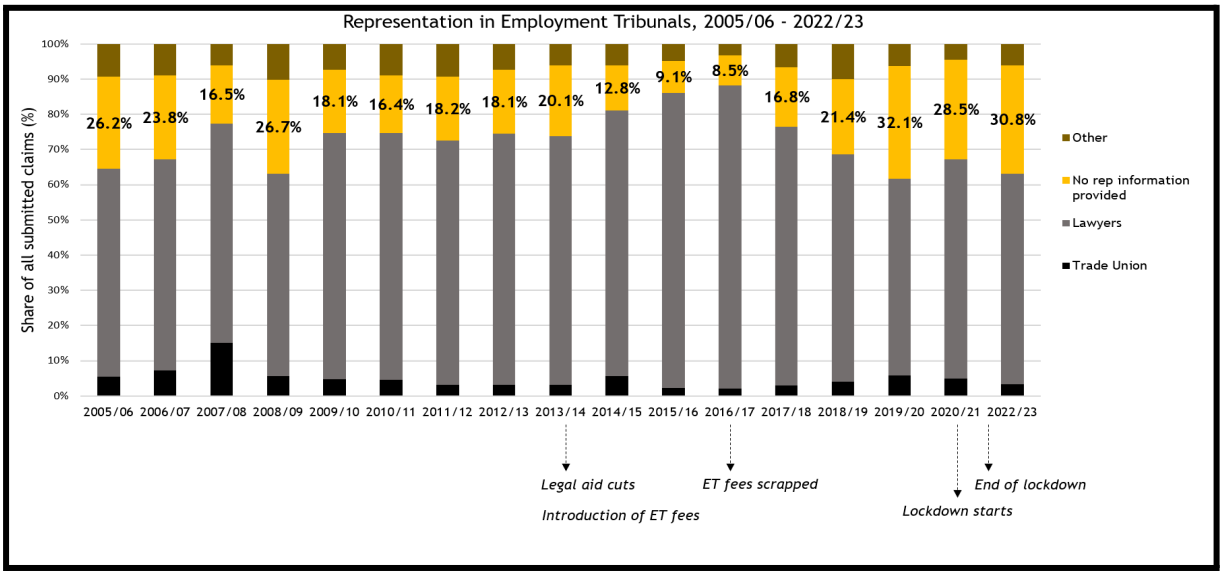

Fig 2: Representation in ET cases, Q1 2005/6 - Q1 2023/23

[3] Cited in 3, para 45.

b. **Absorbing the fees would increase pressures on the third sector**

Charities may seek to mitigate the effects of fees on vulnerable workers' abilities to bring a claim to the Employment Tribunal, by covering the costs from their own budgets. However, this is likely to add pressure to an already stretched sector, and further reduce the availability of legal advice - including by creating tiers of clients based on whether they 'deserve' the investment.

Since the exclusion of employment from legal aid in 2013, the number of organisations that are able to provide high quality, accessible employment legal advice has been drastically reduced.[4] Given their vital role in supporting vulnerable workers, we urge the Ministry of Justice to reconsider proposals that would further stretch their resources.

c. No evidence that fees would remove the pressure the Employment Tribunal system is under

While we do not dispute the fact that Employment Tribunals are under great pressure, we disagree with the view that imposing fees would alleviate it. The previous time the MoJ sought to impose fees in 2013, the Review Report found that the proportion of people who contacted ACAS, but had not proceeded with a Tribunal claim increased greatly, from 22% in 2012/2013, to 78% in 2014/2015 (see UNISON v Lord Chancellor [2017], paragraph 58). We agree with Lord Reed's observation that this does not necessarily indicate that more people achieved conciliation. Indeed, those figures include workers who did not reach a settlement for their case, and those who were unable to move forward due to the unaffordability of fees. A more likely interpretation of the figures is that the introduction of fees contributed to restricting access to justice.

Furthermore, the same Review Report analysed the outcomes of single claims lodged with Employment Tribunals. Contrary to the rationale of the MoJ, which was that imposing fees would deter unmeritorious claims, the analysis found that the proportion of successful claims was consistently lower after fees were introduced, while the proportion of unsuccessful claims was consistently higher. Similar findings emerged from a longitudinal analysis of 150 cases, conducted by researchers at the University of Bristol. The study discovered that, despite the myth of poor merit and low value claims, for many workers ETs or the threat of a tribunal hearing were a vital route to get access to justice.[5]

There are already robust powers in the ET to strike out truly unmeritorious claims at an early stage. We envisage that the imposition of fees would actually pose a significant risk to meritorious claims that would not be made, rather than deterring truly unmeritorious claims. Instead of imposing a fees regime, ETs could instead be encouraged to use these powers more robustly to prevent abuse of process by respondent employers, e.g. by refusing to

[4] The Law Society, 'A Decade of Cuts: Legal Aid in Tatters', 2023, https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/a-decade-of-cuts-legal-aid-in-tatters.
[5] Kirk et al, 'Employment Tribunal | PolicyBristol | University of Bristol', 2015, https://www.bristol.ac.uk/policybristol/policy-briefings/employment-tribunal/.

extend time limits when employers fail to respond within prescribed deadlines, and either provide no excuse or excuses that are weak and stretch credulity. This would reduce costs to the ET, while allowing default judgments to be issued for claims that have the merit to be heard.

d. The savings for the HMCTS are negligible

According to the Impact Assessment published with this consultation, the introduction of fees in the ET and EAT is expected to generate a benefit of between £1.3m and £1.7m per annum from 2024/2025, depending on case volumes (the benefit for 2024/25 is expected to be lower, at £0.6m to £0.7m, as the fees are assumed to be introduced in November 2024). Overall, these projected benefits amount to just 2% of the current direct running cost of the ET and EAT, which the same document places at around £80 million. In our view, this is a negligible saving that hardly warrants the social cost it is likely to generate for workers.

Furthermore, the benefit to the HMCTS may be even smaller than the 2% projected in the impact assessment. The projections are based on the assumption that "the introduction of the fee does not impact demand as the fee is of a low monetary amount". In our experience, the introduction of fees is likely to lead to a significant drop in case volumes, which will erode any financial benefit to the HMCTS even further. Indeed, ET statistics show that the previous introduction of fees led to a 71% reduction in cases, from over 14,000 a quarter before fees were first introduced (see 2013, Q1), to 4,000 after fees were introduced (see 2014, Q1) (see Fig 1).

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.**

We disagree with the proposal to impose fees of any kind in the EAT, for the same reasons outlined in response to question 1. It is worth also noting that appeals to the EAT are made on points of law, have to be notified within a short deadline, and must include specified documents. These already impose high barriers to access to the EAT. The £55 fee per order or direction appealed would be in addition to the £55 already charged at the ET stage, so would represent a snowballing in costs for clients.

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 of affordability, proportionality and simplicity? Please give reasons for your answer.**

As per our response to question 1, we disagree with the entire premise of imposing Employment Tribunal fees. Our view is that the proposals can neither be proportionate nor affordable, and that the MoJ should not underestimate the administrative complexity, and associated cost, of charging fees or considering fee remission applications.

Proportionality

Firstly, we are concerned by the MoJ's premise that the cost of justice should be shifted away from the taxpayer, and onto claimants and appellants. The notion that fees could be just, if set at a level that is proportionate to the value of the claim, sits awkwardly with the view that access to justice is in the public interest in and of itself, and should not carry a fee in the first place. As we reiterate throughout this submission, enforcing employment rights is a wider social good, and it is therefore appropriate for taxpayers to fund access to justice in employment claims.

Secondly, as Lord Reed argued in UNISON v Lord Chancellor [2017], para 116, 'Proportionality also requires other factors to be considered, including the stage of the proceedings at which the fees must be paid, and whether non-payment may result in the claims never being examined on its merits". In our experience, imposing fees at the point where claimants lodge a claim would most likely result in claims never being examined on their merits. By that measure, no level of fees that dissuade workers from taking action could be proportionate.

Thirdly, not every employment tribunal claim is about money recovery. Claimants may also bring cases where the corresponding remedies are low monetary awards or non-pecuniary, such as the right to a written statement of terms and conditions. We agree with Lord Reed's conclusion that, in such instances, the costs of seeking justice would render its pursuit 'futile or irrational', and that this is unacceptable. Notably, as Prof. Bogg observed, given the historically high rates of non-enforcement of Employment Tribunal awards, even where claimants were seeking to vindicate statutory rights with higher monetary wards, difficulties in predicting a successful outcome, coupled with low enforcement rates, could make action irrational or futile.

Finally, placed contextually the imposition of fees is also not proportionate given the fragmented state of the UK's labour market enforcement apparatus. A justice gap for workers already exists because the state bodies and agencies tasked with regulating the labour market are fractured and underfunded. This analysis has in recent times been

generally accepted by academics and third sector experts, and by the Director of Labour Market Enforcement themselves. For example, a report in 2023 by the Resolution Foundation summarised:

> *'The levels of a wide range of labour market violations are unacceptably high: low-paid, and other vulnerable workers who are the least able to assert their rights themselves, are at the sharp end of unlawful employer practice,* ***our state enforcement system is incoherent and patchy, our ability to detect violations is limited; and our standard approach to non-compliance when it is uncovered is weak****, '*

Given this background, it cannot then be proportionate to place a further barrier in front of workers seeking to access their employment rights in practice, by taking matters into their own hands via the ET.

Affordability

Please refer to our response to question 1 above.

We also disagree with the MoJ's notion that setting fees at a subjectively affordable level of £55 would sufficiently mitigate their negative impact on access to justice. In UNISON v Lord Chancellor [2017], Lord Reed observed that affordability must be decided ''according to the likely impact of fees on behaviour in the real world.' Though in our view the £55 fee would not be affordable to many of our clients, ultimately this is immaterial because we disagree with the premise of fees being charged entirely. As argued by Prof. Alan Bogg, in his eminent commentary on UNISON v Lord Chancellor [2017] UKSC 51, "access to a court is itself a fundamental right contributing to a public good, not merely a private amenity for individuals to pursue their legal grievances".[6] Any measure that makes access to the Employment Tribunal conditional on a financial contribution risks removing this right in practice. In addition, the imposition of fees is not inevitable, it is a value choice.

Finally, the proposals ignore the unseen costs that workers have to shoulder in order to successfully pursue their rights via a claim in the Employment Tribunal. For example, claimants have to make significant time investments in assisting with the preparation of evidence and attending hearings. In the 2018 Survey of Employment Tribunal Applications (SETA), the median number of days spent by claimants on their case was 14 days. This time ultimately has a pecuniary value, not just in the abstract, but practically in the form of lost shifts, lost wages and in some cases childcare arrangements which can have significant cost for the claimant. An assessment of affordability cannot be meaningful if it omits this context.

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[6] Alan Bogg, 'The Common Law Constitution at Work: R (on the Application of UNISON) v Lord Chancellor', *The Modern Law Review* 81, no. 3 (2018): 509–26, https://doi.org/10.1111/1468-2230.12343.

Simplicity

Contrary to what is suggested by the proposed fee regime, the simplest policy option for the government to pursue would be to not charge fees at all. This would avoid incurring the training and administrative costs involved in practically charging fees or considering fee remission applications. It is important for the MoJ to remember that any fee structure would add further pressure to the tribunals' already stretched administrative apparatus. Given that the projected savings derived from the fees proposed are almost negligible (2%), the simplest option to alleviate pressures on the system would be to investigate the pressure points of the current administrative apparatus, and work to alleviate them.

Finally, while we remain opposed to the imposition of fees, it would not be fair to exempt respondent employers from also having to pay fees for use of the Employment Tribunal system (in a different capacity to appellants). For our clients and other workers in precarious roles, the balance of power is already tilted heavily in favour of their employers, owing to their financial and legal capacity. Omitting respondent employers from the regime would only entrench the asymmetrical relationship of power between the employer and worker in the enforcement of labour rights.

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.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.**

We do not, for the reasons outlined above.

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.**

It appears arbitrary to allow for a fee exemption for a narrow type of proceedings when there are other claims that would be the subject of arguably more egregious employment issues/breaches (e.g. harassment, bullying etc.). Following the MoJ's own logic, the 'simplest' and fairest mechanism would be to not introduce fees at all, recognising the relative importance and gravity of all types of employment claims.

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

In our experience, a significant factor that affects the decision to make an ET claim is the availability of legal advice. Additionally, we are concerned by the exclusion from employment justice of migrant workers, who experience the joint barriers of modest English, a lack of familiarity with the English legal system, and a high level of dependence on employers who also control their immigration status.

a. The lack of employment legal advice

The exclusion of most employment law matters from legal aid (as well as other areas of law) as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has created a significant gap in the provision of legal advice. A reduction in specialist advisers and services across the legal aid sector have led to the irregular provision of free legal advice and representation across the country, meaning some areas are now 'advice deserts'. Without the option of a legal aid contract, third sector organisations rely on donations, or a small pool of grants from private foundations, which is hardly sufficient to meet the demand from clients. This is crucial because it contrasts against the ever-increasing complexity of our clients' cases that often require integrated advice across the field of immigration law, employment law, human rights law, welfare law and more.

Without legal advice, in turn, vulnerable workers are less able to identify the rights that were breached, gather the necessary evidence, formulate their claims, and assess their prospects of success. Notably, they are less able to understand the process of communicating with the Tribunal, and comply with expectations, and ultimately less able to argue their case. All of this has the effect of preventing workers from bringing their claim to the tribunal or, when they do, increase the risk of delays, miscommunication, and ultimately a strain on the system.

b. Migrant workers - barriers inherent in being sponsored by employers

Brexit and the end of free movement prompted a transition to an immigration system where foreign workers can largely only enter and remain in the UK if they are sponsored by an employer licensed by the Home Office. In 2023, the Home Office issued more than 230,000 visas to workers who are tied to their employers in this way. The most common visa category

is the Skilled Worker visa - Health and Care route (146,000 issued in 2023), which enables foreign nationals to take up jobs in the NHS and social care sector. Other popular visa categories include the Seasonal Worker Scheme, a six month route designed to supply workers to the UK's horticultural sector and poultry (32,700visas issued in 2023).

Putting employers in control of migrants' immigration status exacerbates an already lopsided relation of power, and thus makes it extremely difficult for migrants to report labour rights breaches. Last year, our team supported 34 workers with status under the Skilled Worker visa - Health and Care Worker route. In the majority of cases, our clients were reluctant to bring a claim against their employer, for fear of losing their right to be in the UK. Their only option was to find an alternative sponsor, to ensure that their immigration status was secure, before they could bring an Employment Tribunal claim. In the majority of cases, workers had no choice but to abandon their claims. Finding a new sponsor was complex, costly, and all consuming, leaving workers with little energy, time, and financial resources to support a claim. We have covered this in our research report,[7] and in our evidence submission to ICIBI.[8] Separately, Citizens Advice[9] and the Modern Slavery Policy and Evidence Centre[10] echo these findings, as do a series of media articles documenting the exploitation of migrant workers in the care sector.

Migrant workers on very short term visa categories face a distinct set of barriers. In most cases, their visas expire and they are legally obliged to leave the UK, long before their cases can be heard in the Employment Tribunal. Many thus give up, daunted by the prospect of communicating with legal advisers remotely, including across many time zones. For the extremely small minority who would persevere with their case, there is a risk they are unable to provide oral evidence at their own hearing, given that the rules on providing evidence from abroad in cases involving a tribunal like the ET are specific to countries (e.g. some countries do not permit this).

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[7] Adis Sehic and Dora-Olivia Vicol, 'The Systemic Drivers of Migrant Worker Exploitation in the UK', Work Rights Centre, 2023, https://www.workrightscentre.org/news/report-the-systemic-drivers-of-migrant-worker-exploitation-in-the-uk.

[8] Work Rights Centre, 'Written Evidence to the ICIBI's Inquiry into the Immigration System as It Relates to the Social Care Sector', Work Rights Centre, 2023, https://www.workrightscentre.org/news/work-rights-centre-submits-written-evidence-to-the-icibis-inquiry-into-the-immigration-system-as-it-relates-to-the-social-care-sector.

[9] Citizens Advice, 'I Feel like We're Being Treated as Slaves', Citizens Advice, 2024, https://www.citizensadvice.org.uk/policy/publications/spotlight-report-no-1-how-work-visa-design-is-driving-exploitation/.

[10] Inga Thiemann, 'UK Agriculture and Care Visas: Worker Exploitation and Obstacles To…' (The Modern Slavery Policy and Evidence Centre, 2024), https://modernslaverypec.org/resources/uk-agriculture-care-visas-vulnerability-exploitation.

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

There are some points of concern raised in both the Impact Assessment and Equality Statement accompanying the fee proposals.

Firstly, the Impact Assessment suggests that there are limited alternatives available to the MoJ aside from the specific proposals at the heart of this consultation. As mentioned earlier in this submission, this is patently incorrect as the proposals do not consider the extent to which respondent employers could in theory be the primary financial contributor under a fees regime. In paragraph 3.3 of the Equalities Statement, it is suggested that 'charging modest fees in the ETs and the EAT will help generate resources that can be reinvested into the system, thereby reducing the cost borne by the taxpayer'. If the focus is indeed to reduce cost to the taxpayer, it makes little sense to shift the cost burden to individual claimants who will in a great number of cases likely be less financially capable than respondent employers. The government also has the option to consider raising funds in other ways that primarily focus on the employer rather than workers e.g. reforming the penalty enforcement scheme to enhance greater financial recovery.

In addition, the Impact Assessment problematically assumes that the introduction of a £55 fee will not impact demand in accessing the ET because it 'lies within the range of costs already incurred' and is therefore a proportionate figure for claimants. This relies on the findings of the 2018 SETA report that found that 33% of claimants incurred communication costs with a median value of £50 and 36% incurred travel costs with a median value of £60. It is worth initially noting the impact of inflation and the current cost of living crisis when reading across from these figures in 2024. It is also worth highlighting, as in our response to question 1, that a fee of £55 will be insurmountable to a significant group of workers facing in-work poverty. In our experience, this particularly includes the same individuals that the Equality Statement identifies as being disproportionately adversely affected by the introduction of any fee, namely workers with a black, Asian or ethnic minority background and those with a limiting disability.

Finally, the Equality Statement suggests that one of the mitigations for the fee proposal is the help that some claimants get in paying their fees via the Help with Fees scheme, which has recently been revised to 'provide greater financial assistance to those most in need'. Though we in principle welcome financial assistance to low-income claimants, we are sceptical about how the scheme might be accessed by litigants-in-person given the gaps in legal advice that we have previously outlined. In other contexts, we have seen first-hand how clients are usually unaware of similar schemes designed to provide waivers, exemptions or refunds, or do not have the capacity to engage with the relevant procedure effectively, unless they are prompted or assisted by an adviser. For example, some destitute clients who are in the UK

on visas have previously been unaware of their ability to apply to the Home Office to remove the No Recourse to Public Funds condition that would allow them to access certain benefits, while other migrant seasonal workers have been unaware of how to claim a tax rebate with HMRC. Given that the latest ET statistics indicate that 31% of claimants had no legal representation at the point they submitted their claim, our experience suggests that it would be more preferable for ET claims to be fee-free, rather than forcing low-income claimants to engage with an additional administrative process to obtain help in this context.