

Fees in the Employment Tribunal - Lets face the music and dance

The draft statutory instrument to introduce fees in the Employment Tribunals (ET) and the Employment Appeal Tribunal (EAT) has recently been laid before Parliament.

The fee levels are the same as those in response to the government consultation. Claimants, or appellants, will be required to pay an *"issue fee"* on submitting a claim or appeal and a *"hearing fee"* before the full hearing. The anticipated implementation date is – perhaps optimistically - the end of July 2013.

The official policy aim of the introduction of fees is to transfer some of the cost of running the ET and EAT from taxpayers to users. The policy objective is to require those users to pay fees where they can afford to do so in order to have their workplace dispute resolved through the ET and EAT process. It is worth taking a moment to reflect on the potential teething problems that may arise under the new regime.

Computer says no - A recent 'dear stakeholder' letter from HM Courts & Tribunals Service (HMC&T) to ET and EAT stakeholders (dated 25 April 2013) advised that they are *'currently working with corporate partners and HM Courts & Tribunal Service operational staff to ensure that the necessary IT systems and administrative processes are in place to support the new fee structure'*. Without sounding too cynical there may be (at least initially) glitches in the new IT systems.

Back-up system? - It is not immediately clear what practitioners will do if the new IT system crashes or if on line fee payments are not accepted due to a technical glitch. Is there a contingency plan for manual payments if the system crashes?

How will fees be paid? A recent Q& A document from HMC&T provides that: Fee payments will be made via the online service or will be otherwise collected through centralised processing centres. It also confirms that local ET or EAT offices will not have facilities to take fees, handle cash/cheques or undertake any additional banking functions. Remission applications will also be centralised within the centralised processing centres.

Judicial discretion - Will Employment Judges use their discretion to extend the time limit for bringing a claim if there is a problem with the new IT system? It is likely that a strict approach will be taken as a recent Q&A document states: *"there is no extension to the existing time-limits for making claims because paying a fee or completing a remission form should not cause the parties to fail to meet existing time-limits"*.

Failure to pay fees – the dear stakeholder letter provides that in the EAT fees will be required upon lodging the appeal and in advance of the hearing. Failure to pay these fees (or prove eligibility for remission) will result in the discontinuation of the appeal. As such I predict that we will see more applications for a review of a default judgement (reconsideration). In view of the existing strains on the Tribunal system we will need to consider if there are sufficient resources to deal with any influx of new applications.

More fees at a later date? – Charging fees is certainly going to be a money spinner (or a recoupment on investment depending on your viewpoint), and it is highly likely, in my view, that the Treasury will

see the scope to roll out fees in further areas. I think it likely that we will eventually have to pay fees for applications for a Pre-Hearing Review; and applications for an unless order.

Increase in fee levels in the future –The recent Q&A document from HMC&T explains that they expect to recoup 33% of the Tribunal’s costs at the level they have set the fees. With this in mind practitioners can be certain that the rate of fees will increase in the future. The only question will be how far is the Government prepared to go?

Remissions/ability to pay – When the consultation was first published the Institute of Directors stressed that the framework should analyse an individual’s ability to pay rather than their employment status, as they foresaw the risk that fees might be waived for the vast majority of claimants who are out of work. The dear stakeholder letter explains that the Ministry of Justice (MoJ) is in the process of reviewing the remissions scheme as part of the changes needed to introduce Universal Credit in autumn 2013. However, the Q&A document explains that: *“As a general rule, everyone is deemed to be able to pay unless they demonstrate (by way of application through court remissions scheme), that they are unable to do so”*. Claimants will need to prove that they cannot afford to pay.

Cash back? – If a claimant pays a hearing fee, and the case settles before the hearing, and the Tribunal are notified in advance, will they receive their money back?

Service standards expectation – As with the introduction of tuition fees in higher education clients and practitioners will expect higher levels of service from the Tribunal Service – perhaps an end to floating hearings? It is not clear if HM Courts and Tribunals Service intends to recruit more staff, or build new premises to meet these expectations.

Mediation - There will be a push towards alternative dispute resolution, most notably mediation. However, has enough been done to promote the benefits of mediation to stakeholders?

Insurance companies – Practitioners will wait with bated breath to see if insurance companies swoop down like falcons, as they have in the past for personal injury work.

Practical tips

Solicitors will need to update their client care letters and costs letters to clearly inform clients about the level of issue and appeal fees, and the monies that will be required on account.

All payments will need to be made using the online service or otherwise collected through centralised processing centres. Solicitors will have to ensure that they have procedures in place to do this.

Links

HMC&T Service – “Dear stakeholder” letter (25 April 2013) <http://goo.gl/lp1oV>

HMC&T Service – “Q&A” (25 April 2013) <http://goo.gl/nEjXr>

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