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THE PRICE OF JUSTICE:

THE IMPACT OF
EMPLOYMENT
TRIBUNAL
FEES ON CAB
CLIENTS
IN SCOTLAND.



**The impact of Employment Tribunal fees:
A perspective from Citizens Advice advisers in Scotland**

**A collaborative research project between the University of
Strathclyde and Citizens Advice Scotland**

By Emily Rose, Lauren Wood and Eleanor Kirk

March 2015

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Executive Summary

Background

The Employment Tribunal (ET) evolved from the Industrial Tribunal and provides an individual with the opportunity to have their employment case heard before an independent adjudicator who will apply a legal framework to the dispute to pass a legally binding decision. Previously this system was free for individuals and business to use.

In July 2013, for the first time ever, fees were introduced for people who want to take their claim to an employment tribunal. Claimants must pay first to lodge their claim, and again to have their claim heard. In total, these fees can reach £1,200.

Since this change, applications to the Employment Tribunal have decreased significantly. There was an 81% decline in the number of cases lodged for the period January to March 2014 compared to the same period in 2013. Through this study the University of Strathclyde, in collaboration with Citizens Advice Scotland, sought to understand the ways in which the introduction of fees have impacted on the clients of Citizens Advice Bureaux across Scotland.

Key Findings

Those making a claim to the Employment Tribunal (ET) fall into two broad categories: those who have to pay the fee and those who qualify for remission from the fee and so do not have to pay. Both categories of claimants experienced difficulties although these differed depending on payment status.

For CAB clients liable for paying full or partial fees:

- Fees act as a disincentive for CAB clients to make a claim in the ET
- The merit of a claim is not the key driver in deciding to take a claim to the ET: the decision has become a financial one
- ET fees negatively alter the power balance between workers and employers
- The fees have created additional difficulties for CAB advisers bringing an increased responsibility to the often voluntary role, and increased stress

For CAB clients eligible for fee remission:

- The flux in a client's financial situation makes determining eligibility for remission complex
- Providing the evidence required for remission is often difficult as a result of a client's situation
- Determining eligibility for remission at two points in time can leave clients in an unpredictable situation and penalise clients who manage to find other employment before the case makes it to a hearing
- Group claims are sometimes compromised when some of the group qualify for remission and others do not

Introduction

This report presents findings from a collaborative research project between the University of Strathclyde¹ and Citizens Advice Scotland (CAS) into the views of Citizens Advice Bureaux (CAB) advisers within Scotland on the impact of Employment Tribunal (ET) fees.

Fees payable by workers to take their case to the ET were introduced on 29 July 2013. These are charged at two levels depending on the nature of the claim and are payable at two stages—on lodging the claim and before the hearing itself. The total costs for going to full hearing are: Type A claims (including unpaid wages) £390 and Type B claims (including unfair dismissal and discrimination claims) £1,200. Remission from fees is available in limited circumstances².

One year on from the introduction of fees, data from the Ministry of Justice reveals that there was an 81% decline in the number of cases lodged in the ET for the period January to March 2014 compared with that same quarter in 2013.

We wanted to understand the ways in which the ET fees, and its associated fee remission system, have impacted on clients of CAB. To do this we sought the perspective of CAB advisers within Scotland, particularly those who focus on employment problems. We undertook an online survey of these advisers and two focus groups³. This report details our findings. These relate, firstly, to CAB clients liable to pay full or partial ET fees and, secondly, to CAB clients eligible for fee remission.

Findings: CAB clients liable to pay full or partial ET fees

A. Fees act as a disincentive for CAB clients to make a claim in the ET

Perhaps unsurprisingly the ET fees act as a disincentive for CAB clients to make a claim in the ET. Nearly all (92%) of survey respondents reported that they strongly agreed or somewhat agreed with the statement: “The fees act to deter clients from taking a claim to the Employment Tribunal”. No respondents disagreed with the statement.

Survey respondents observed that despite not being eligible for remission, many clients simply do not have the money available to spend on pursuing a claim at the

¹ Researchers at the University of Strathclyde are involved (together with researchers from the University of Bristol) in a related larger European Research Council funded project entitled *Citizens Advice Bureaux and Employment Disputes*. For further detail see: www.bristol.ac.uk/adviceagencyresearch.

² A brief explanation of the fee remission system is detailed in Appendix 1.

³ Full details of the methods utilised are detailed in Appendix 2.

ET. This is particularly an issue for CAB clients in lower paid jobs. Indeed, most of the survey respondents (85%) strongly agreed or somewhat agreed that “Clients are more likely to do nothing about the problems they face at work”.

B. The merit of a claim is not the key driver in deciding to take a claim to the ET

The merit of a claim does not generally appear to be the key driver in CAB clients’ decisions about whether or not to take a claim to the ET. Rather, the decision has become a financial one. Most (85%) of the survey respondents strongly agreed or somewhat agreed with the statement: “Clients have become more pragmatic in their decision making about going to the Employment Tribunal, weighing up whether or not it is worth it”. Only 8% reported that they strongly disagreed or somewhat disagreed.

The financial considerations play out in three inter-related ways. Firstly, in the case of low cost claims, the issue becomes one of whether the client is prepared to pay a similar or even higher amount in ET fees than the actual value of the claim. This is often the situation for low paid workers’ claims for outstanding wages and holiday pay.

“I mean we’re dealing with low paid workers, you think about the minimum wage someone maybe earns in a week and a lot of employers will maybe hold a week’s wage, it’s going to cost them more to go to tribunal you know if they’ve got to pay than they would, than they’ve actually lost. So they’ve got to weigh up that balance.” (Focus group participant)

Secondly, CAB clients need to make an assessment of whether, even if they were to win their claim, they would receive any award from the employer. A 2013 study⁴ of the payment of ET awards, commissioned by the Department for Business, Innovation & Skills, revealed that overall about half (49%) of claimants were paid in full and a further 16% were paid in part. In Scotland, the picture was even less favourable with 41% paid in full, 13% paid in part and 46% not paid at all. There are then additional costs for claimants who take action to recoup their award. In Scotland only one-quarter (26%) of claimants who were not paid without enforcement pursued their claim by engaging a Sheriff’s Officer.

Thirdly, clients are not even assured to recoup the cost of the ET fees from their employer, even if awarded.

⁴ Department for Business, Innovation & Skills (2013) *Payment of Tribunal Awards: 2013 Study* (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf)

“So their claim might be for £400 but the total fee is £360 so it’s, they just think ‘what’s the point, it means I’m doubly out of pocket’ [if the employer doesn’t pay the award] ... quite a lot of people are put off because their claims are on the lower end.” (Focus group participant)

In essence, the ET fees highlight present inadequacies that already exist within the employment dispute resolution system.

Survey respondents and focus group participants stressed that a better mechanism for recouping awards or, at the very least, any fees paid, is essential to make the tribunal system a viable and sensible option for workers.

C. ET fees negatively alter the power balance between workers and employers

Both survey respondents and focus group participants expressed the opinion that the power balance between workers and employers has shifted in employers’ favour. Workers are in a weaker position in terms of their ability to achieve justice. Employers, in contrast, have further tactics available to them in denying workers their legal rights. This can be seen in at least three ways.

Firstly, employers have less incentive to negotiate directly with workers or their representatives to reach a resolution. This is largely because employers know that the worker will have to pay fees even to lodge the ET1 form with the ET.

“But I think employer’s attitudes now [have become] ‘if they want to take me to tribunal let them go it’ll cost them’.” (Focus group participant)

“Certainly the employers’ attitude is ‘let them go ahead’ ... it’s not in their interest to get a settlement ... they know that person [the worker] can’t really afford it [to go to the ET].” (Focus group participant)

A survey respondent suggested that the timing at which the fees are charged is inappropriate. Instead of being at the time a claim is lodged, it should be at the time of the pre-hearing. This would overcome the issue of employers counting on workers not being able to afford the money to make a claim in the ET.

Secondly, employers are less likely to negotiate during Acas’ Early Conciliation. Survey respondents observed that there is little incentive for employers to engage during this stage of the dispute resolution process. This was further articulated by focus group participants who again considered that employers were counting on the worker not being prepared to pay the cost of the ET fees.

“[Pre-fees] In a lot of cases when Acas phoned up the employer and said you know ‘we’ve got the information, the client or the person who

contacted us is considering going to an ET', that was often enough for the employer to say 'OK we'll pay up'. Now the employers are fairly aware of the situation with fees and if Acas phone them up and they say they're not interested in negotiation, let them take it to the employment tribunal." (Focus group participant)

"[On Acas Early Conciliation] The employers are not obliged to take part in it. But now because of the fees many employers are saying 'I'm not taking part in the conciliation, I want to see the colour of his money'. So, Acas pre-claim conciliation could be a good thing if it worked properly and both sides took part in it but it's being defeated by the fees because the employers are using that as a reason not to take part." (Focus group participant)

Thirdly, CAB advisers had a sense that workers are more willing to settle—perhaps for less than they may otherwise be awarded by an ET—in the post-fees environment. Workers hoped to avoid having to pay ET fees. But, also, workers were aware that, even if they did win a case in the ET, they may not receive their award or the costs of the ET fees.

"It's amazing the number of people now willing to compromise their claims if they get even a half decent offer you know but from the other side through the Acas process rather than face the risk of actually going to hearings and not getting money." (Focus group participant)

The issue of the power balance between workers and employers needs to be viewed within the broader context of workers' access to justice. The Coalition government's 'austerity' programme has given rise to reduced rights to workers at the same time as reducing funding for advice and assistance for those with employment related problems. This is despite employment issues being the third most frequent problem brought to Scottish bureaux⁵. Further, many low income workers have no other source of advice apart from CAB. They may be non-unionised and not easily able to afford the services of a solicitor. Even the service provision from no-win, no-fee solicitors has diminished since the introduction of ET fees.

⁵ <http://www.cas.org.uk/about-us/citizens-advice-scotland/one-million-issues>.

D. Additional difficulties for CAB advisers

Focus group participants considered there to be additional pressure on them as advisers due to ET fees. Some felt greater responsibility or stress in their roles due to the fact that their clients would have to pay substantial sums of money to take their cases to the ET.

“I think the fees put a lot of pressure on us, they put a lot of pressure on bureaus because before it was free and somebody would come in and we would be outraged that the way they’d been sacked and put the application in, but now we can’t do that and whether they were right or wrong whether they’d won or lost they still had to pay, so there’s a lot of pressure ... cause now we’ve got £1300 of the client’s money they’ve spent it and we’ve advised them to do this and it’s difficult to do that.”
(Focus group participant)

“It scares me the thought a maybe you know you’ve got a good case and then risking somebody’s money ... we’re maybe slightly more reserved about what we’re saying now about what cases we will do cause you don’t want that burden on you as a representative because there’s always a bit.”
(Focus group participant)

In addition, in the pre-fees environment, advisers were more easily able to obtain fuller details of the case through the process of their client lodging an ET1 form and then receiving back the ET3 from the employer. This exchange of documents facilitated the emergence of many of the details of the case, thus assisting advisers to better assess the merits of their clients’ disputes.

“Ok, if someone came to me and gave me their story unfairly dismissed, you take all their story we usually do, and depending on time limits you put the ET1 in and see what you got back. And then you say to the client can you counter this, no, just withdraw. But now they can’t do that it’s going to cost [£160 or £250] just to get a copy of what they’re [the other side is] saying ...” (Focus group participant)

Findings: CAB clients eligible for fee remission

CAB advisers identified a range of factors that made it difficult to determine clients' eligibility for fee remission and to obtain suitable evidence to support fee remission applications. The advisers also observed a number of adverse outcomes for particular groups in relation to the ET fee remission system.

E. Financial situation in flux

The key issue that emerged in determining eligibility for fee remission was that claimants' financial circumstances were in a state of flux. The very fact of experiencing an employment dispute often gave rise to this situation. For example, the CAB client may have just lost their job, be moving on to a benefit, or be beginning or stopping the receipt of sick pay. These transitions can be in progress and the detail of them not finalised or confirmed by appropriate documentation. So, the client may have applied for but not yet had approved a means-tested benefit or they may have stopped working for their employer but not yet received their P45.

This is particularly an issue in determining eligibility for the gross monthly income test, which relates to the income for the month preceding the fee remission application. Approximately two-thirds of survey respondents reported that determining eligibility for this test is very difficult or somewhat difficult. Only 14% reported it to be very easy or somewhat easy.

F. Providing evidence for remission

On 30 June 2014 the Ministry of Justice brought in changes to the fee remission system. Key amongst these were a loosening of the evidential requirements to support remission applications. The online survey of CAB advisers was conducted prior to these changes. However, some of the comments made are still applicable.

Survey respondents noted that official confirmation that a client is receiving a benefit can take a long time to arrive potentially putting a remission application at risk in terms of the allowable timeframes for submitting these. Employers may withhold or have never supplied crucial information such as payslips. Further, clients who do not have access to a computer and printer may find it difficult to print out copies of bank statements. Some banks charge to provide printed or re-issued bank statements.

Focus group participants observed that some of their clients are paid by their employers in cash, which presents a major hurdle to evidencing eligibility for fee remission. This was noted to be particularly an issue for people working in pubs or restaurants.

“Yeah it’s not [just] keeping the records ... you’d be surprised at the amount of people that’s still don’t have bank accounts. Um so you, if the remission system is looking for proof of income or proof of savings they have nothing they can give them.” (Focus group participant)

G. Partner’s income

A number of the survey respondents thought that those in relationships are penalised in the fee remission system. The threshold levels in the disposable capital test are the same regardless of whether the applicant is single or has a partner, while the threshold levels in the gross monthly income test are only marginally higher for claimants in relationships compared with claimants who are single.

A number of focus group participants felt that it was unfair that a partner’s income is factored into the eligibility criteria for fee remission when the matter concerned a relationship between an employer and worker only.

“Aye, in a real life scenario if one person lost their job the other person is carrying the house and paying the bills you know, maybe we should be saying that that [the partner’s income] should be disregarded cause actually it’s no about the partner. What’s the partner got to do wae it? It’s actually an argument to dae with the employer and the employee and the partner doesnae come in tae this thing you’re no looking at the employers partner so.” (Focus group participant)

“Yea I don’t think it’s fair if a household is taken as an economic unit in some areas of law and not in others. So, for example, in tax you’re not taxed less if you’re partner doesn’t have a job.” (Focus group participant)

“Yea, I mean it is very intrusive into your family finances ... It’s inclusion of all household income as opposed to an individual’s income I think is a problem. Again I can see the point of them doing that when they’re looking up benefits that are going into the household but you know if an employment tribunal case it’s the individual against an employer it’s not the family.” (Focus group participant)

H. The type of Jobseekers Allowance (JSA) granted

Both survey respondents and focus group participants noted the particular difficulty experienced by clients who lost their job and were granted the contribution-based Jobseekers Allowance by the Department for Work and Pensions. These clients were not automatically eligible for remission because they were not receiving the income-based Jobseekers Allowance. However, many in this position had difficulty in paying ET fees because they were living on benefits only.

I. Determining eligibility for remission at two points in time

A small number of survey respondents and focus group participants observed difficulty with the two stage payment of ET fees. Firstly, a client may be eligible for fee remission from the payment required to lodge a claim with the ET. However, he or she may become liable to pay the fee to have the case heard in the ET. Clients did not know the full potential costs of pursuing their dispute in the ET from the outset. This is not an easy position to be on for people on very restricted budgets.

“Thing is regarding remission ... someone could start off on remission and say their circumstances change say they get a job in the meantime and they’ve got good money coming in and they might have to pay something anyway at the end, so how, they’re taking on something that they don’t know what they’re going to have to pay.” (Focus group participant)

Secondly, the two stage payment scheme has the somewhat perverse outcome of penalising claimants who manage to find other employment before their case makes it to the hearing stage. These claimants will likely become liable to pay the hearing fee, while those who remain on benefits are likely to be eligible for remission from this second ET fee. The result being that many who are able to find other work simply forego their claim, regardless of its merits.

J. Equal pay claims

One focus group participant pointed out that receiving fee remission for an equal pay case is almost impossible. You would only take this case if you were in employment. However, by being in employment you are very unlikely to be eligible for fee remission.

“You can’t take the equal pay cause you’re still employed so you’re still earning so wouldn’t get the remission.” (Focus group participant)

K. Group claims

Another focus group participant observed a potential difficulty in group claims when some members of the group are eligible for fee remission and others are not. Disputes may arise within the group regarding who should pay the ET fees that are due to lodge the claim and have it heard. He describes an experience of a group of former care home workers:

“But there was 17 people we had and the intention had been to take it to as a group case to the employment tribunal. ... but of the 17 yes a number of them had found other jobs, so there was probably about, yes 10 of them would’ve qualified for remission and 7 wouldn’t, which they then got into

an argument so were you the ones that would've qualified for remission so why should we share fees." (Focus group participant)

Conclusion

The evidence gathered from the Scottish Citizens Advice Service is clear: fees act as a barrier to clients pursuing justice in employment disputes. Even where clients have claims with merit and good prospects of success, the existence of and high level of fees are a disincentive for CAB clients to make a claim to the ET. This changes the power balance between employers and employees leaving employees vulnerable to poor treatment.

There is also clear evidence that the remissions system – intended to help financially vulnerable clients to pursue a claim – is not well designed. It is not a system which is able to take account of the financial flux in which many clients find themselves at the end of employment, nor is it a system which works well with the complexities of the benefits system.

When employment comes to an end, clients are no longer guaranteed the same level of protection which they once were. For many, justice is no longer affordable or attainable.

Appendix 1: The fee remission system

There are two types of fee remission. Remission 1 is a full remission based on receipt of one of a list of means-tested benefits. These benefits include: income-based Jobseekers Allowance; income-related Employment and Support Allowance; Income Support; Universal Credit with gross annual earnings of less than £6,000; Statement Pension Credit guarantee credit; and Scottish Civil Legal Aid (not Advice and Assistance or Advice by Way of Representation). Remission 2 is a full or partial remission based on gross monthly income before tax and other deductions.

Determining eligibility for either remission involves two tests. Firstly, there is the disposable capital test. Here, if the claimants household disposable capital (e.g. savings and investments) are below a certain threshold, they will pass this test. The household disposable capital includes that of the claimant's partner, if they have one.

If the claimant passes this test they are then required to go through the second test, the gross monthly income test. If the claimant is in receipt of any of the means-tested benefits stated above, he or she will be entitled to a full fee remission. This is called Remission 1.

If the claimant and, if applicable, their partner's, gross monthly income – in the month preceding the fee remission application – is below a certain threshold, varying depending on the number of children the claimant has, they will qualify for a remission. If the gross monthly income exceeds the threshold but is below an income cap, the claimant will qualify for a partial remission. So, by way of example, a claimant in a relationship with no children, can earn up to £1,245 before tax and other deductions and be eligible for a full remission. This remission is remission type 2.

For each of the remission types, certain stated evidence must be supplied.

Appendix 2: Methods

The data presented in this report was collected via two methods: an online survey of CAB advisors and focus groups of CAB advisors.

The online survey was created using Qualtrics software⁶. It was available for completion during April 2014. An email containing a link to the online survey was sent from CAS to the list of 27 Citizens Advice workers in Scotland who have identified themselves as providing more than a generalist advice service for employment matters. This means that the bureaux have specialist employment advisors, generalist advisors with additional training and/or experience with employment matters, and bureaux that offer the services of a qualified barrister or solicitor to assist with employment matters.

The survey link was also made available on the CAS intranet. All Citizens Advice Bureaux workers with some experience in employment matters across the 61 Scottish bureaux were encouraged to apply.

Fourteen surveys were completed. The responses were received from advisers within bureaux that identified themselves with more than generalist advice on employment matters. All but two of the respondents came from different bureaux geographically spread throughout Scotland.

Two focus groups, comprising a total of 13 advisers, were undertaken in the CAS offices in Edinburgh on 15 August 2014. An additional face-to-face interview was conducted at the University of Strathclyde about one week later with an employment advisor who was not able to attend the focus group sessions. The 14 participants represented 13 different bureaux. The geographic spread of bureaux included both urban, semi-urban and rural communities predominantly from the central belt of Scotland. Recruitment was undertaken by email and telephone invitation from CAS to bureaux that provided more than generalist employment advice.

The focus groups (and additional interview) were facilitated by researchers from the University of Strathclyde⁷. They were approximately 1 ½ hours each in duration. They were audio-recorded and fully transcribed.

⁶ Refer to Appendix 3 for the survey schedule.

⁷ Refer to Appendix 4 for the focus group guide.

Appendix 3: Online survey schedule

The Impact of Employment Tribunal Fees

Q1 The aim of this survey is to assess the impact of Employment Tribunal fees. From 29 July 2013, fees are payable to lodge a claim with the Employment Tribunal and to have that claim heard. We want to understand what these fees mean for bureaux clients who face problems at work and for the role of bureaux advisors. The survey is part of a collaborative research project being undertaken by CAS and the University of Strathclyde Law School. The information gathered will be collated and presented in policy and academic forums. Individual comments will not be attributed to any respondent or bureau. If you have any questions or concerns about the use of the data from the survey, or the survey more generally, please do not hesitate to contact Lauren Wood at lauren.wood@cas.org.uk or on 0131 550 1013.

Employment Tribunal Fee Remission System

Q2 How many clients come to your bureau each month with an employment problem?

Q3 The Employment Tribunal fee remission system has two remission types: Remission 1 - A full remission based on receipt of one of a list of means-tested benefits Remission 2 - A full or partial remission based on gross monthly income before tax and other deductions For those clients for whom going to the Employment Tribunal is a possible course of action, what percentage are eligible for each of the remission types?

_____ % Eligible for Remission 1 (1)
_____ % Eligible for Remission 2 (2)
_____ % Not eligible for remission (3)

Q4 Please indicate whether the percentages detailed above is based on statistical records or are estimates:

- Statistical records (1)
- Estimates (2)

Q5 Eligibility for fee remission is determined by two different tests - the disposable capital test and the gross monthly income test. In general, how would you rate the ease or difficulty of determining eligibility (i.e. whether a client qualifies) for fee remission using these tests?

	Very easy (1)	Somewhat Easy (2)	Neither easy or difficult (3)	Somewhat Difficult (4)	Very Difficult (5)	Don't know (6)
Disposable capital test (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Gross monthly income test (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q6 What are the factors that contribute to the ease or difficulty of determining eligibility using these tests?

Q7 Applications for fee remission need to be supported by documentary evidence. In general, how would you rate the ease or difficulty of providing evidence of eligibility (i.e. the documentation required) for each of the remission types?
 Remission 1 - A full remission based on receipt of one of a list of means-tested benefits
 Remission 2 - A full or partial remission based on gross monthly income before tax and other deductions

	Very easy (1)	Somewhat Easy (2)	Neither easy or difficult (3)	Somewhat Difficult (4)	Very Difficult (5)	Don't know (6)
Remission 1 (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Remission 2 (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q8 What are the factors that contribute to the ease or difficulty of providing evidence of eligibility for each of the remission types?

Q9 At your bureau, what role do you or other advisors play with respect to completion of the fee remission form (EX160)? For example, filling in the form, checking documentation and sending off the form.

Q10 Have you experienced any situations where you consider the remission system has brought about particularly unfair outcomes? If so, please describe:

Q11 Please detail any other difficulties that you have experienced or issues that you would like to raise relating to the fee remission system:

Employment Tribunal Fees and Client Decision Making

In this section, we are interested in how the introduction of Employment Tribunal fees has changed the way that clients who are liable to pay full or partial fees make decisions with respect to their employment disputes.

Q12 Please indicate the extent to which the following statements apply:

	Strongly disagree (1)	Somewhat disagree (2)	Neither agree nor disagree (3)	Somewhat agree (4)	Strongly agree (5)	Not applicable (6)
The fees act to deter clients from taking a claim to the Employment Tribunal (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clients have become more pragmatic in their decision making about going to the Employment Tribunal, weighing up whether or not it is worth it (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clients are now more interested in pursuing non-tribunal approaches to resolving their dispute (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clients are more likely to do nothing about the problems they face at work (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q13 Please elaborate on your responses above and/or detail any other ways that the introduction of Employment Tribunal fees has changed the way that clients make decisions about their employment disputes:

Q14 Are certain clients, or clients in particular situations, more likely to be discouraged from taking a claim to the Employment Tribunal because of the introduction of fees? If yes, please describe:

Employment Tribunal Fees and CAB Advice

In this section, we are interested in how the introduction of fees may have changed the way you provide employment advice to clients who are liable to pay full or partial Employment Tribunal fees.

Q15 Please indicate the extent to which the following statements apply:

	Strongly disagree (1)	Somewhat disagree (2)	Neither agree nor disagree (3)	Somewhat agree (4)	Strongly agree (5)	Not applicable (6)
I take longer in my advice appointments because I have to explain the fee system (including determining clients' eligibility for fee remission) (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I place greater emphasis on negotiating with employers (either directly or through ACAS) to minimise the chances of the client having to go to the Employment Tribunal (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I place greater emphasis on weighing up the merits of a claim in my discussions with clients about taking a dispute to the Employment Tribunal (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

I spend less time in advice appointment and/or have fewer advice appointments because the fees put clients off pursuing their employment claims (4)	○	○	○	○	○	○
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Q16 Please elaborate on your responses above and/or detail any other ways that the introduction of Employment Tribunal fees has changed the way that you advise clients:

Employment Tribunal Fees and the Actions of Employers

Q17 Since the introduction of fees, have you observed any change in the way that employers react when faced with an employment dispute? If yes, please describe:

ACAS Early Conciliation Service

From 6 April 2014 ACAS will offer an Early Conciliation Service. For most types of employment disputes, a person wishing to lodge a claim with the Employment Tribunal will be required to firstly fill in a form on the ACAS website. ACAS will then get in touch with them and attempt to initiate conciliation with the employer.

Q18 Do you anticipate that you will communicate with ACAS on your clients' behalf?

- Yes (1)
- No (2)
- Unsure (3)

Q19 Do you anticipate that the ACAS Early Conciliation service will have any effect (positive or negative) on the employment dispute resolution process? Please explain:

Final Questions

Q20 Please indicate which best describes you:

- A specialist employment advisor (1)
- A specialist employment advisor with legal training, although not qualified as a barrister or solicitor (2)
- A generalist advisor with either specialist training in employment issues or experience in this area. (3)
- A qualified barrister or solicitor (4)
- Other (please specify) (5) _____

Q21 Which bureau do you work in (if more than one, please state the primary bureau in which you are located):

- Aberdeen CAB (1)
- Airdrie CAB (2)
- Angus - Arbroath CAB (3)
- Angus - Forfar CAB (4)
- Angus - Montrose CAB (5)
- Argyll & Bute CAB (6)
- Banff & Buchan CAB (7)
- Bellshill and District CAB (8)
- Bridgeton CAB (9)
- CAB West Lothian (10)
- CAE - Dundas Street (11)
- CAE - Gorgie (12)
- CAE - Leith (13)
- CAE - Pilton (14)
- CAE - Portobello & District (15)
- Caithness CAB (16)
- CARF - Cowdenbeath (17)
- CARF - Cupar (18)
- CARF - Dunfermline (19)
- CARF - Glenrothes (20)
- CARF - Kirkcaldy (21)
- Castlemilk CAB (22)
- Central Borders CAB (23)
- Citizens Advice Direct (24)
- Clackmannanshire CAB (25)
- Clydesdale CAB (26)
- Coatbridge CAB (27)
- Cumbernauld CAB (28)
- DAGCAS - Annan (29)
- DAGCAS - Castle Douglas (30)
- DAGCAS - Dumfries (31)
- DAGCAS - Stranraer (32)
- Dalkeith CAB (33)
- Denny & Dunipace CAB (34)
- Drumchapel CAB (35)
- Dundee CAB (36)
- East Ayrshire CAB (37)
- East Dunbartonshire CAB (38)
- East Kilbride CAB (39)
- East Renfrewshire CAB (40)
- East Sutherland CAB (41)
- Easterhouse CAB (42)
- Falkirk CAB (43)
- Glasgow Central CAB (44)
- Grangemouth and Bo'ness CAB (45)
- Greater Pollok CAB (46)
- Haddington CAB (47)
- Hamilton CAB (48)
- Inverness Badenoch & Strathspey CAB (49)
- Kincardine & Mearns CAB (50)
- Lochaber CAB (51)
- Maryhill and Possilpark CAB (52)
- Moray CAB (53)
- Motherwell and Wishaw CAB (54)
- Musselburgh CAB (55)
- NACAS - Arran (56)
- NACAS - Irvine (57)
- NACAS - Kilbirnie (58)
- NACAS - Largs (59)
- NACAS - Saltcoats (60)
- Nairn CAB (61)
- North West Sutherland CAB (62)
- Orkney CAB (63)
- Parkhead CAB (64)
- Peebles CAB (65)
- Penicuik CAB (66)
- Perth CAB (67)
- Renfrewshire CAB (68)
- Ross & Cromarty CAB (69)
- Roxburgh & Berwickshire CAB (70)
- Rutherglen & Cambuslang CAB (71)
- Shetland Islands CAB (72)
- Skye & Lochalsh CAB (73)
- Stirling CAB (74)
- Turiff & District CAB (75)
- West Dunbartonshire CAB (76)
- Western Isles - Barra CAB (77)
- Western Isles - Harris CAB (78)
- Western Isles - Lewis CAB (79)
- Western Isles - Uist CAB (80)
- Westhill & District CAB (81)

Q22 Would you be happy for a researcher to contact you should they wish to follow up on any of your responses?

- Yes (1)
- No (2)

Q23 If yes, what is an appropriate telephone number to contact you on?

Appendix 4: Focus group guide

Exploring the impact of the Employment Tribunal fees

Introduction to whole group (Emily / Lauren)

- Thank you for coming
- Introductions
 - Lauren
 - Emily and Eleanor
 - University of Strathclyde's relationship with CAS (large project and smaller sub-projects)
- Purpose of the focus group
 - Background to ET fees (when introduced, reasons given, broader economic / political context)
 - Response to the fees (legal challenges, current government review)
 - Why voices of CAB advisors important
 - Information gathered to date (the online survey, very brief overview of this)
 - Want to build on this (more detailed information about your experiences and understanding them within the context of the client group you serve and the local employer group your clients interact with)
- Format of the day
 - First hour / hour and a half spent on the focus groups
 - We are going to split you all into two groups for this (i.e. 2 groups of 6 people)
 - One group led by myself (Emily) and the other Eleanor
 - Lunch will then be provided at ??
 - This will be followed by a training / information session led by Lauren
- Questions / comments?

Focus groups

- Introductions (Warm up)
 - Facilitator to introduce themselves again
 - Say what we are interested in (general trends of experiences, details of individual clients, to get a sense of who is affected and in what way, note that we are interested in fee remission scheme as well)
 - Get each participant to introduce themselves (their name, the bureau they are from, some information about the service they provide with respect to employment, the type of clients they have and the types of employers in the community, e.g. large or small, rural based, commute to nearby city ...)

[NOTE TO FACILITATOR: TRY AND GET DATA AT THE LEVEL OF GENERAL TRENDS IN PARTICIPANTS' CLIENT GROUPS AND ALSO DETAILS OF INDIVIDUAL CASES]

- The split between clients who go to your bureau that are liable to pay ET fees or eligible for remission
 - I would like to get a sense from each of you as to the split in your bureaux between clients seeking employment advice who are liable to pay ET fees and those who are eligible for remission from the fees
(Prompt: Do you keep statistics on this? Try and determine the accuracy of the responses given. If there is a participant that does keep statistics, we may wish to follow up on this later)
 - At what point, when meeting with a client who has an employment problem, do you bring in the issue of the fees regime?
(Prompt: Is this in the first meeting? Is it before or after you consider the legal situation with respect to their employment problem?)
 - Do your clients tend to be aware that fees are now payable to take a case to the Employment Tribunal?
 - At what point, when meeting with a client who has an employment problem, do you attempt to determine whether they are eligible for fee remission?
 - Apart from their financial situation, how would you describe your clients who are eligible for fee remission?
(Prompt: Are they a diverse group? Are there particular characteristics that may describe this group? Any other thoughts here?)

- The fee remission system
 - How are you finding the workability of the fee remissions system?
 - What issues, if any, are you experiencing as you attempt to determine whether your client is eligible for the remission scheme?
(Prompt: For both the disposable capital test and the gross monthly income test specify—Is the test itself difficult / ambiguous? Do difficulties stem from getting appropriate information from your client? What sort of difficulties here and why?)
 - What is the extent of the service you offer with respect to applying for fee remission? (Prompt: Do you get clients to fill in the application form themselves, including gathering the appropriate evidence? Do you check the evidence gathered? Do you complete the form and ensure appropriate evidence gathered yourself? Does this differ between clients? On what basis do you offer more assistance to some clients than others? If you consider that some clients need help: what sort of help do they need; how do you think they would fare without your help?)
 - What issues, if any, are you and your clients experiencing in relation to gathering appropriate evidence for the fee remission?
(Prompt: Is this to do with the availability of the evidence required, e.g. government agencies not actually producing required documentation within timeframes? Is it particularly difficult for the clients who need to provide this? Why and in what ways? E.g. can't afford the cost of reprinting bank statements? E.g. lives chaotic and therefore not diligent in keeping records?)
 - Is there anything that you would change about the fee remission scheme?
(Prompt: With respect to the process involved in applying for it? With respect to the level at which fees are set? With respect to the timeframes)

for applying for remission? Are some clients particularly penalised in terms of the system—in what way? In any other respect?)

- Clients liable to pay full or partial fees
 - How do your clients tend to react when they find out that they are liable to pay fees / or find out the detail of the system, such as the amount of the fees and that there are fees payable on two occasions?
 - Of those who are liable to pay fees, what is the approximate split of those who do pursue their claim, at least by lodging at ET1 form, and those who do not?
 - If you think back to before ET fees were introduced, what would you say were the main factors that prompted some clients to pursue their employment problems in the ET or not?
(Prompt: merits of the case; clients' desire for justice; mental strength of client; chances of recouping the award; value of the claim; other?)
 - Now, that full or partial fees are due for many clients, how would you rate the relevance of these factors in client decisions to pursue their claims or not?
(Prompt: Do some of these factors become more or less relevant? Why? What is the relationship between these factors and the prospect of having to pay fees? Are these factors eclipsed by the prospect of having to pay fees?)
 - As you will know, the level of fees payable depends on the type of claim being made. Can you see differences in the effects of the fees payable for Type A claims compared with Type B claims?
(Prompt: It is simply to do with the amount of fees payable? Is the type of dispute relevant at all? What about the characteristics of the clients who are bringing the different types of claims—are there any trends here?)
 - Do you have many clients who are liable to pay partial fees (i.e. not full fees?) Are you finding any similarities or differences in the impact of fees on this group compared with those liable to pay full fees?
(Prompt: What sort of differences? Why do these exist?)
 - Is there anything that you would change about the fee scheme?
(Prompt: With respect to the amount of the fees? With respect to the structuring of the fees in two separate payments? With respect to the timing at which the fees are payable? Are some clients particularly penalised in terms of the system—in what way? In any other respect?)

- Courses of action for clients liable to pay full or partial fees
 - Have you observed any shift in the willingness of clients to pursue other courses of action—that does not involve going to the ET—to pursue their claim?
(Prompt: Are clients increasingly keen to try and talk/negotiate with their employer? Are clients increasingly keen to take advantage of services provided by ACAS? What about other legal options available, such as taking the claim to the Sheriffs Court?)
 - Have you changed to way you give advice about possible courses of action in terms of what the client can do about their employment problem?
(Prompt: In what way? Why did you change?)

- What do you think of the workability of these other options, compared with taking a claim to the ET?
(Prompt: How do you rate the chances of success? Have these changed at all since the introduction of fees?)
 - Are there any trends that you've observed in the clients who choose or are keen to take alternative courses of action?
(Prompt: personal characteristics of this group; type of claims attempting to be pursued; amount of award attempting to be pursued; whether client has gotten another job or not; anything else?)
- Actions of employers
 - Have you observed any changes in the way that employers are responding to disputes since the introduction of fees?
(Prompt: What sort of changes? Why? Does this differ between different types of employers? What about whether the employee is eligible for fee remission or not, does this make a difference to employer action?)
 - Do you have any suggestions for what can be done about this?
- Looking ahead ...
 - What would you like to see happen in the future in terms of the legal system relating to the resolution of employment disputes?
(Prompt: Why? What do you think this would achieve?)
- Finally, do you have any other thoughts or comments that you wish to add?

THANK YOU!

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer service, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Adviceguide provides information on rights and helps people solve their problems.

We are champions for both citizens and consumers and in 2013/14 the Citizens Advice Service in Scotland helped over **330,000 clients** in Scotland and dealt with **over one million issues** overall. In addition, the Scottish zone of our self-help website Adviceguide received approximately **4.2 million** unique page views. In 2013/14, our citizens advice bureaux recorded a financial gain for clients of over **£125 million**. If we paid our volunteers it would cost the service **£10 million**. Research by the Fraser of Allander Institute into the economic benefits of advice shows that the Scottish CAB Service contributes an annual total benefit to the common good in Scotland of nearly **£170 million**.

Our Citizens Advice Bureaux network, which includes telephone helpline Citizens Advice Direct, deliver frontline advice services through more than 200 service points across the country, from city centres to rural communities. This network of bureaux is staffed by a team of paid staff and nearly 2500 volunteers.

In addition the Citizens Advice consumer service provides a helpline service for those needing advice and information on consumer rights and helps to solve problems with consumer goods and services. Citizens Advice Scotland delivers part of this Great Britain wide service from a call centre in Stornoway, helping people in Scotland and across other parts of Great Britain.

The Extra Help Unit, through a team of telephone caseworkers based in Glasgow, helps people throughout Great Britain who have complex energy or postal complaints or are at risk of having their gas or electricity cut off who are referred through our consumer helpline, Ofgem, the Energy Ombudsman, or their local elected representative.

Citizen Advice Scotland's simple but robust vision is paramount to all our goals:

"A fairer Scotland where people as citizens and consumers are empowered and their rights respected."

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Want advice online? www.adviceguide.org.uk/scotland

Problem with goods or services? Call **03454 04 05 06** for the Citizens Advice consumer service

The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland (Scottish charity SC016637)