



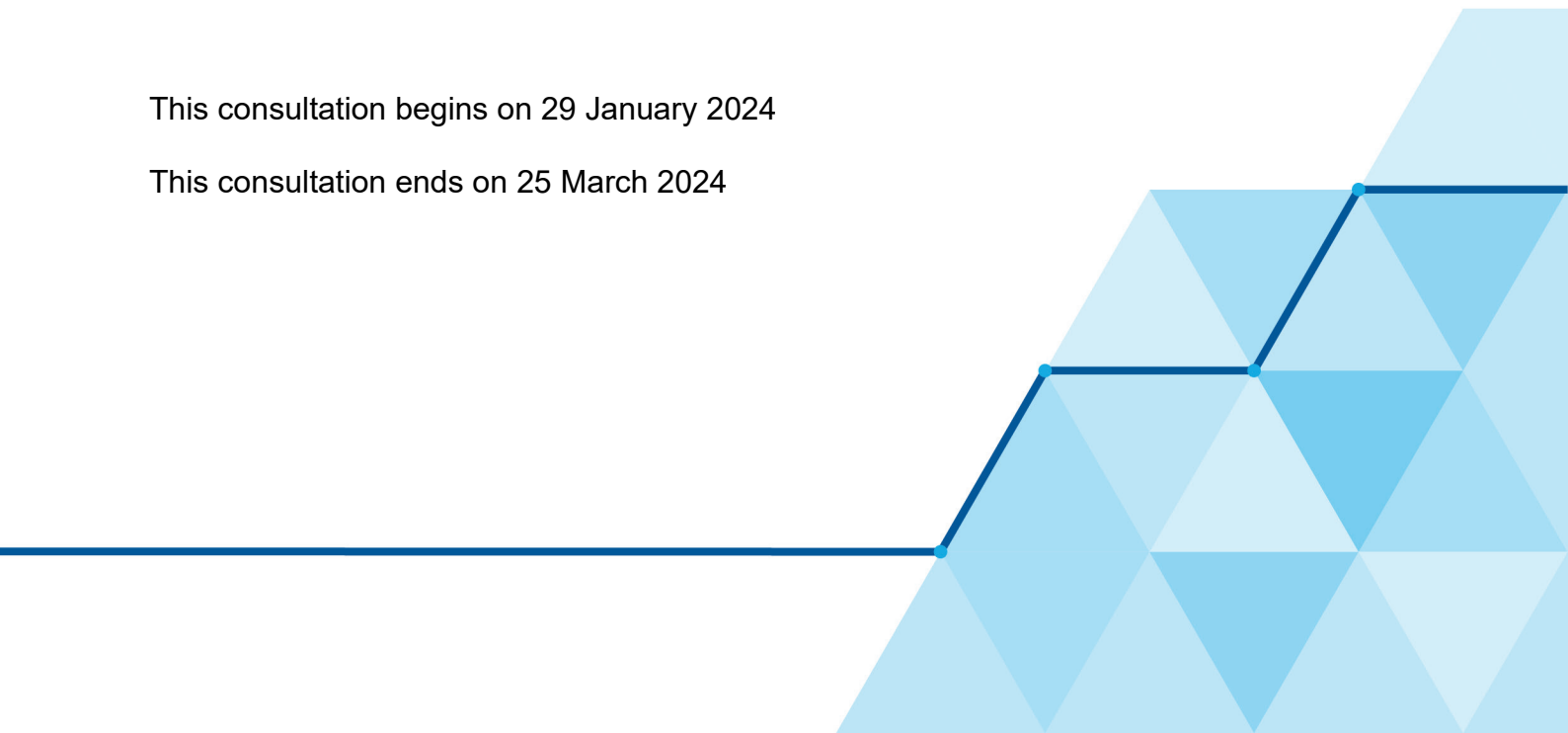
Ministry
of Justice

Proposal for reform:

Introducing Fees in the Employment Tribunals and the Employment Appeal Tribunal

This consultation begins on 29 January 2024

This consultation ends on 25 March 2024





Ministry
of Justice

Proposal for reform

Introducing Fees in the Employment Tribunals and the
Employment Appeal Tribunal

A consultation produced by the Ministry of Justice. It is also available at
<https://consult.justice.gov.uk/>

About this consultation

To: This consultation is aimed at users of the Employment Tribunals and Employment Appeal Tribunal, the legal profession, the judiciary, the advice sector, and all those with an interest in the court and tribunal system and its associated fees.

Duration: From 29/01/24 to 25/03/24

Enquiries (including requests for the paper in an alternative format) to: Fees Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: mojfeespolicy@justice.gov.uk

How to respond: Please send your response by 25/03/24 to:
Fees Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: mojfeespolicy@justice.gov.uk

Contents

Ministerial Foreword	2
The case for introducing fees in the Employment Tribunals and the Employment Appeal Tribunal	4
Introduction	4
The Proposal	10
Developing a fee structure	10
Summary of the proposal	11
Rationale for the overall proposed fees	14
Impact of the changes	17
Consultation period	17
Impact Assessment, Equalities and Welsh Language	18
Impact Assessment	18
Equalities	18
Welsh Language	19
Questionnaire	20
About you	22
Contact details/How to respond	23
Complaints or comments	23
Extra copies	23
Publication of response	23
Representative groups	23
Confidentiality	24
Consultation principles	25

Ministerial Foreword

An effective courts and tribunals system underpins the rule of law, upholds and enforces rights and obligations, and benefits the whole of society. I am proud of the world class justice system our courts and tribunals continue to deliver. This is an essential public service, relied upon by millions of people across the country to deliver the justice outcomes that matter to them.

This is especially apparent in the Employment Tribunals, which provide crucial services to individuals going through difficult and unsettling times in their lives. Whether a dispute arises due to alleged discrimination, unpaid wages or unpaid holiday pay, the Employment Tribunals offer employers and employees a crucial forum to resolve their disputes through just and certain outcomes. The Employment Tribunals and Employment Appeal Tribunal will continue to play a vital role in the life of our country as we navigate the after-effects of a global pandemic and the current impacts of the rise in the cost of living, both of which have so greatly affected our lives and livelihoods.

This consultation proposes introducing modest fees in the Employment Tribunals and the Employment Appeal Tribunal. This will ensure users are paying towards the running costs of the tribunals and put its users on broadly the same footing as users of other court and tribunals who already pay fees, thereby ensuring cross-jurisdictional consistency.

The Lord Chancellor has a statutory duty to ensure His Majesty's Courts and Tribunals Service runs effectively and efficiently so that the system can absorb the high demand and protect access to justice for all. Fees have been utilised as a means of paying towards the running costs of courts and tribunals for many years. It remains the Government's position that the cost of running the service should not be solely absorbed by the public purse. But it is appropriate that some of the costs of running the ET and EAT should be recouped from those who use the system, and who can afford to do so.

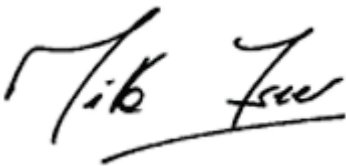
The Ministry of Justice has carefully considered the 2017 Supreme Court ruling on the previous approach to fees in the Employment Tribunals and has endeavoured to ensure that the fees proposed in this consultation are proportionate and affordable, in line with the judgment. As with other court and tribunal jurisdictions, those who cannot afford to pay the proposed fees will be supported by our fee remission scheme, Help with Fees (HwF). The HwF scheme provides individuals on low income and little to no savings with financial support towards the cost of their court or tribunal fees. As long as they meet the eligibility criteria, applicants will either be eligible for partial remission or full fee remission.

Proposal for reform
Introducing Employment Tribunals and Employment Appeal Tribunal Fees

We have also launched a revised, more generous HwF scheme to provide greater financial assistance to those most in need. This significantly raises the income thresholds which determine an applicant's eligibility, including increased financial support for families through higher partner and child allowances. Our reforms also increase the minimum disposable capital threshold that an applicant can have and remain eligible for fee remission. In exceptional circumstances, the Lord Chancellor can exercise his power to remit a fee, which further ensures that access to justice is protected.

I believe these proposals are balanced and in the best interests of all tribunal users, and would encourage anyone with an interest in this area to respond to this consultation.

I am proud of this Government's mission to run an efficient and effective justice system, to protect the rule of law and ensure access to justice for all. A fee regime that is transparent, effective and fair will underpin these critical aims well into the future.

A handwritten signature in black ink, appearing to read 'Mike Freer', with a long horizontal stroke underneath.

Mike Freer

Parliamentary Under Secretary of State

The case for introducing fees in the Employment Tribunals and the Employment Appeal Tribunal

Introduction

Background

The Employment Tribunals and the Employment Appeal Tribunal

1. The Employment Tribunals (ET) and the Employment Appeal Tribunal (EAT) have been established to provide the public with a simple and accessible forum to resolve disputes that emerge in the workplace. They are designed to be more informal than the courts so users can prepare and present their cases simply and effectively, without requiring legal representation. The ET and the EAT have jurisdiction to determine over 70 different types of claims, providing just and certain solutions to disputes arising from employment situations.
2. There are two separate jurisdictions for the ET in Great Britain: one for England & Wales and one for Scotland. The EAT has jurisdiction to hear appeals on points of law from all ET.

History of tribunal fees in employment cases and the UNISON judgment

3. There are currently no tribunal fees in the ET and EAT.
4. However, fees in the ET and EAT were previously in place from July 2013 to July 2017. The Government introduced fees on 29 July 2013, through the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, following the publication of a public consultation titled 'Charging Fees in Employment Tribunals and the Employment Appeal Tribunal' on 14 December 2011¹ and a subsequent consultation response on 13 July 2012.²
5. The 2013 fee regime categorised ET claims into 'Type A' or 'Type B' claims with different fees payable dependent on whether the claim was a Type A or Type B claim. Type A claims (which covered simple disputes such as unpaid holiday pay) attracted an issue fee of £160 and a hearing fee of £230, totalling £390 in fees. Type B claims (which covered more complex disputes such as discrimination) attracted an

¹ https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/supporting_documents/chargingfeesinetandeat1.pdf

² <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/employment-tribunal-fees-consultation-response.pdf>

issue fee of £250 and a hearing fee of £950, totalling £1200 in fees. The EAT attracted a £400 issue fee and a £1200 hearing fee, totalling £1600 in fees.

6. The introduction of fees in 2013 led to a substantial fall in the number of claims brought to the ET. Case volumes fell by 53% in the 12 months after the fee change - from c. 59,000 cases between July 2012 and June 2013 to c. 28,000 cases between July 2013 and June 2014.³ *In R (Unison) v The Lord Chancellor [2017] UKSC 51*, the Supreme Court quashed the Fees Order⁴ as it held that the fees were unlawful as (a) they were in practice unaffordable, and (b) they rendered pursuing non-monetary and low value claims – which suffered a greater fall in volumes – futile and irrational, which effectively prevented access to justice. Furthermore, the fee structure was found to be indirectly discriminatory against women and individuals with protected characteristics, who were more likely to bring Type B claims and therefore liable to pay the higher fee. Since the fees were quashed, cases have increased, from c. 18,000 in 2016/17 to reaching a total of c. 33,000 in 2022/23.⁵

Lessons learned from the UNISON judgment

7. The Ministry of Justice recognises that the fees introduced in 2013 did not strike the right balance between meeting the policy objective for claimants to meet some of the costs of the ET and EAT and protecting access to justice. Therefore, in developing the fee proposal subject to this public consultation, careful consideration has been given to the lessons learned following the Supreme Court judgment, especially in relation to affordability, proportionality and simplicity as the three key principles underpinning a fair and balanced approach to setting fees in the ET and the EAT.
8. The issue of ensuring affordability is particularly acute in the ET given the limited time available to claimants to bring a claim and pay any fee. Claimants have up to 3 months to submit their claim (or 6 months for claims about redundancy or equal pay). The issue of proportionality is equally important when considering the overall level of fee as the remedies sought through the ET and EAT are varied and include numerous non-monetary remedies. The 2018 Survey of Employment Tribunals Applications (SETA)⁶ found that for claimants who had been successful at employment tribunal and were awarded a sum of money, 4% were awarded less than

³ Note: ahead of the previous ET fees regime coming into force on 29 July 2013, the month of July 2013 saw an uncommonly high volume of new claims being brought. Case volumes taken from [Tribunal Statistics Quarterly, April-June 2023](#), Annex C: Employment Tribunal Receipts Tables, Table C_1.

⁴ [R \(on the application of UNISON\) \(Appellant\) v Lord Chancellor \(Respondent\) \(supremecourt.uk\)](#)

⁵ The published claim case volumes in 2022/23 analysis slightly underestimate of the volume of claims in the ET, due to a further case management transition from 'ECM' to 'Reform ECM' in September 2022, the number of cases excluded from the 2022/23 figures is minimal (less than 2,000 cases) and therefore it is not expected to have a significant impact on the quality of case volume data used for modelling purposes.

⁶ <https://assets.publishing.service.gov.uk/media/5f06c2e3e90e0712d0206e99/survey-employment-tribunal-applications-2018-findings.pdf>

£500, with the overall median value of financial compensation received by claimants successful at a hearing being £5,000. Other claimants however sought non-monetary awards. Therefore, it is critical that fees are not set at a level that could render pursuing low value or non-monetary claims irrational and futile.

Current arrangements in the employment tribunals

9. The ET and EAT are administered by His Majesty's Courts and Tribunals Service (HMCTS). As there are currently no fees for bringing an employment claim or appealing the decision of an ET, the costs of administering the tribunal services incurred by HMCTS are entirely borne by the taxpayer. The direct running cost of the ET and EAT was around £80 million in 2022/23, with c. 33,000 cases comprised of c. 85,000 claims being brought to an ET in the same year. The number of claims accounts for all individuals bringing forward a claim. This means that every claimant involved in a case, whether a single claimant or multiple claimants, are accounted for in this figure. For single claimants, their single claim then becomes one case, while for multiple claimants, their multiple claims are combined into one case.
10. The taxpayer also funds the early conciliation service provided by the Advisory, Conciliation and Arbitration Service (ACAS), which provides free and impartial advice to assist parties in resolving their employment disputes without having to bring a tribunal claim. In 2021/22 ACAS received £56m in funding from the Department for Business and Trade (DBT). This increased to £58m in 2022/23, of which c.£24m is directed towards individual dispute resolution activity.⁷
11. The Legal Problem and Resolution survey 2014 to 2015, which measures people's experiences of everyday problems that may have a legal solution through the civil court or tribunal system, found that 6% of adults had experienced an employment problem. Of these adults that had experienced an employment problem, only 3% reported having made a tribunal claim. Additional resources need to be made available to ensure the Employment Tribunals and Employment Appeal Tribunal can continue to run efficiently and effectively. The fees subject to this public consultation, however modest, will help His Majesty's Courts and Tribunals Service in running the tribunals.

Background to this consultation

12. The proposal to introduce fees in the ET and EAT is intended to relieve some of the cost to the general taxpayer by requiring tribunal users to pay for the tribunal system, where they can afford to do so.
13. In addition, modest fees may incentivise parties to settle their disputes early through ACAS without the need for claims to be brought to an ET. Better engagement by parties in ACAS early conciliation would not only add value for taxpayer money that

⁷ [Acas annual report and accounts, 2022 to 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/107111/acas-annual-report-and-accounts-2022-to-2023.pdf) (page 88).

is spent on providing this free service, it could also help alleviate some of the pressures the ET are currently facing.

Rationale behind tribunal fees

14. There are clear reasons why fees should be charged in the ET and the EAT.
15. First, charging fees in the ET and the EAT would be consistent with our approach to charging fees in other courts and tribunals. Chapter 6 of the HM Treasury Handbook Managing Public Money outlines the general policy principles on the setting of fees by public sector organisations. It states that the standard approach is to set charges and fees to recover full costs, but gives Ministers discretion to set them at a lower level. This is intended to make sure that the Government “neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise”. While recovering the full cost of the service might not always be possible, it is appropriate that those users who can afford to pay a fee for using the tribunal system should, do so. This helps protect access to justice for everyone by making resources available for the efficient and effective running of our courts and tribunals service.
16. Second, these tribunals are similar to civil courts as they act as independent adjudicators with the power to make legally binding decisions in a dispute between two parties. Indeed, there are certain claims, usually those that relate to payments claimed under the employment contract (i.e., ‘breach of contract’ claims) that can be made in either the civil courts or the ET. Users in the civil courts in England & Wales, and the separate Scottish civil courts, have been charged fees for many years. Introducing fees will therefore place ET users on a similar footing.
17. Third, the Advisory Conciliation and Arbitration Service (ACAS) – which provides a pre-tribunal alternative dispute resolution service for resolving employment disputes – is almost entirely funded by the taxpayer. Therefore, charging modest fees in the ET and the EAT will help generate resources to reinvest into the service, reduce the cost to the taxpayer and bring the tribunal in line with Government policy on fee-charging generally. Based on 2022/23 volumes and taking into account fee remissions, introducing fees as proposed in this consultation is set to generate between £0.6m and £0.7m in 2024/25 and between £1.3m and £1.7m per annum from 2025/26 onwards.⁸ Modest fees might also help encourage parties to consider early conciliation as a means of resolving their dispute before taking their case to the ET.

⁸ The Impact Assessment accompanying this consultation provides a full breakdown of the methodology used in reaching this income estimate.

Access to justice

18. The Lord Chancellor has a statutory and constitutional duty to protect access to justice and to ensure that the courts and tribunals can operate effectively and efficiently. There are currently over 300 fees attached to HMCTS services across all jurisdictions. In 2022/23, court and tribunal fees generated £727 million of the total £2.3 billion it cost to run HMCTS. Such a gap means that taxpayers' money is meeting the gap in funding to ensure an effective and efficient service, and that funding is then not available for other areas.
19. As part of our duty to protect access to justice, we have in place a fee remission scheme, Help with Fees (HwF), which users may apply to if they are unable to afford a fee. As with other court and tribunal jurisdictions, individuals who are unable to pay the fees proposed will be supported by the Help with Fees (HwF) scheme in order to protect access to justice. We have recently published our HwF reform consultation response⁹ and changes have been implemented by the Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023 which came into force on 27 November 2023. These changes have made the HwF scheme more generous, targeting financial assistance at those most in need and provide the greatest value for money for the taxpayer. It is intended that the HwF scheme will be extended so that it is available for individuals who bring proceedings in then ET or EAT. Those eligible for the scheme will be able to apply for fee remission for their ET or EAT fee, if introduced.
20. For individuals who do not qualify for HwF but whose circumstances are such that they cannot realistically afford to pay the fee in question, a remission may also be available under the Lord Chancellor's Exceptional Power to remit fees. This power applies where the payment of fees would cause undue financial or other hardship and could be available in respect of ET and EAT fees. Decisions are based on the merits of each individual application by considering the applicant's income, disposable capital, expenditure or other extenuating circumstances. The Lord Chancellor's Exceptional Power offers an additional safeguard that will protect access to justice for those with no disposable means to pay a fee.

Scope of the consultation

21. This consultation sets out a proposal for introducing modest fees in the Employment Tribunals and the Employment Appeal Tribunal. The consultation is aimed at employers, employees, trade unions, employer organisations, representatives and other interested parties in Great Britain. It is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of

⁹ [Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice Consultation response \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Proposal for reform

Introducing Employment Tribunals and Employment Appeal Tribunal Fees

the Code. The consultation criteria, which are set out on page 4 of the Code, have been followed.

22. The scope of this consultation is limited to the level and structure of the fees proposed. Separate to these issues, the principle of introducing fees to contribute to the costs of running the ET and EAT services does not fall within the scope of this consultation.
23. At the time of publication, although options continue to be developed and discussed in relation to the timetable to devolve the administration of tribunals in Scotland, no decisions have yet been made. To that end, the fee proposals set out in this consultation cover the whole of the current jurisdiction of ET in England, Wales and Scotland. Northern Ireland has its own separate equivalent tribunal (Office of the Industrial and Fair Employment Tribunal) and does not form part of this consultation.

The Proposal

Developing a fee structure

24. Developing a fee structure for the ET and the EAT presents a number of complex challenges, such as:
 - determining a fair level of fees that enables users of the service (who can afford to do so) to contribute towards the running costs of the tribunal and reduces the financial burden on the taxpayer, but that does not impede access to justice;
 - ensuring the claimant fee is at such a level that it does not materially change the economic balance between parties;
 - clearly establishing the points in the process in which a fee should be charged, to provide parties with sufficient time to factor in the expense of a fee.

25. Good management of public services requires continuous improvement and review of operational costs, and HMCTS is already undertaking digital reforms in the ET to provide users with a better service. However, with each claim that is brought to an ET and the EAT, HMCTS incurs processing costs that are required to be met. The cost of administering the ET arises first from providing the processes needed to deal with the claims. There are then added costs that arise from resources needed to support the processes such as buildings, equipment, IT systems, tribunal staff and the judiciary. At each stage of the claims, the ET incur administrative costs in the receipt and service of claims and responses, in dealing with pre-hearing issues, responding to enquiries, arranging and holding hearings and providing notification of judicial decisions. A fee structure is intended as a method for achieving a greater balance in seeking contribution to these wide-ranging running costs from users of the service who can afford to do so, and thereby alleviating some of the financial burden on taxpayers.

26. The proposed fee structure in this consultation has been designed to be simple for users to understand and easy for HMCTS (who operate the ET and the EAT) to administer. Simplicity is important as it allows users to easily understand the process and the costs involved, thereby ensuring that the decision to bring a claim is made with the full knowledge of what and when a fee is payable. Simplicity is also beneficial for HMCTS as the greater the number and the wider range of fees, the more expensive a fee structure will be to implement and administer. The simplicity underpinning this proposal is therefore also designed to avoid HMCTS incurring unnecessary additional costs as a result of fees as that would ultimately be borne by users through fees and the taxpayer through HM Treasury funding.

27. Above all, it is vital that fees must not prevent claims from being brought by making it unaffordable for those with limited means. Therefore, in developing this proposal, particular attention was paid in ensuring the level of fees would be broadly affordable to the public and proportionate to the remedy being sought. Additionally, as noted in paragraphs 19 and 20 above, our HwF remission scheme and the Lord Chancellor's Exceptional Power to remit fees will be made available to those who qualify.
28. The proposal outlined below seeks to ensure user-contribution towards the tribunals, which are currently fully funded from direct taxation at a cost of around £80m in the year 2022/23, while ensuring that the principles of affordability, proportionality and simplicity underpinning the proposed fees continue to preserve access to justice for all.
29. The Ministry of Justice endeavours to regularly assess the developing costs of the courts and tribunals and review the fees that users pay.

Summary of the proposal

30. In this section, we set out our proposal, which is to introduce a claim issue fee in the Employment Tribunals and introduce an appeal fee in the Employment Appeal Tribunal. We also set out a few exemptions from these fees applying, and our policy view on how cost rules should apply for fees.
31. The fees would apply to claimants and appellants respectively, regardless of the type of claim or the track under which a case is categorised. The fees proposed have been designed to meet the tests of affordability, proportionality and simplicity.

Claim issue fee – Employment Tribunals (ET)

32. We propose introducing a £55 issue fee that is payable by the claimant on bringing a claim to the ET.
33. Where a claim is brought by multiple claimants, the fee would remain at £55 and 'the claimant' would be treated as a single entity. The cost of the fee could therefore be divided among all the claimants involved, as agreed between them.
34. As we are not proposing to charge a hearing fee, the £55 issue fee will cover the entire journey of a claim in an ET.
35. As noted above, the HwF remission scheme and the Lord Chancellor's Exceptional Power to remit fees would be available to all eligible claimants.

Appeal fee – the Employment Appeal Tribunal (EAT)

36. We propose introducing a £55 fee payable by the appellant upon lodging an appeal in the EAT, through the EAT Form 1 (Notice of Appeal).
37. A fee of £55 would be payable per judgment, decision, direction or order of an ET being appealed. For instance, if a notice of appeal includes appeals against two ET decisions, the total fee payable would be £110. This method of charging an appeal fee reflects the process in which the EAT handles appeals. Whilst a Notice of Appeal can contain appeals against multiple ET decisions, once the Notice reaches the EAT, each decision being appealed is registered and processed individually as separate files by HMCTS staff. This is in contrast to the ET where an ET1 claim form containing multiple claims is registered as one case on receipt by HMCTS. Therefore, an EAT fee that is payable against each ET decision being appealed accurately reflects the distinct HMCTS administrative and judiciary resources that are required.

Exemptions

38. We have identified three types of proceedings in the ET where we do not consider it appropriate to charge a fee, and as such we propose that an exemption from fees should apply. These are proceedings where individuals are required to bring proceedings before an ET to establish their right to a payment from the National Insurance Fund (NIF).
39. The Redundancy Payments Service administers the statutory scheme by which certain employment related debts are met by the NIF in circumstances where the employer is unable to. In most cases, this is because the employer is insolvent. These payments are governed by sections 166 to 170 and 182 to 190 of the Employment Rights Act 1996 (the “ERA”) and sections 123 to 127 of the Pension Schemes Act 1993 (the “PSA”).
40. In some cases, the Secretary of State for the Department for Business and Trade (DBT) cannot accept an application for a payment from the fund, for example because the existence of the debt, or its amount, has not been sufficiently proved. In those cases, the claimant may make an application to an ET to satisfy the Secretary of State for DBT that a payment is due. These applications are:
 - a) a reference to the ET under section 170 of the ERA, which relates to payments under section 166 of the ERA and covers redundancy payments;
 - b) a complaint to the ET under section 188 of the ERA which relates to payments under section 182 of the ERA; and
 - c) a complaint to the ET under section 126 of the PSA in respect of payments under section 124 of the PSA, covering certain unpaid pension contributions.

41. We consider that there are valid reasons for applying a different fees treatment to these applications given that the nature of these proceedings are different from most ET claims:
- These are generally not matters that can be conciliated;
 - The payments are subject to the statutory scheme and in the circumstances set out above, the Secretary of State for Business and Trade can only make a payment where an ET has made an order to that effect; and
 - Most applications are made where the employer is insolvent.
42. It is the case that some applications, particularly those made under section 188 of the ERA, are brought against the Secretary of State for DBT who would be able to satisfy an order to reimburse claimant fees. However, there are benefits in applying a consistent approach to the fees charged for the two sets of applications because it provides clarity and certainty to claimants, and it is also simpler for HMCTS to administer.
43. In line with the Department's approach to such cases, and as outlined previously in the 2017 "Review of the introduction of Fees in the Employment Tribunal" report, we propose that all references to the ET under section 170 of the ERA and all complaints to the ET under section 188 of the ERA or section 126 of the PSA should be exempt from fees.

Cost orders

44. Unlike in civil courts where the losing party is required to pay the winner's legal costs, the general rule in the ET is that each party has to pay their own legal costs (including any tribunal fees) irrespective of who wins the case. This is because ET are designed to operate as a more informal and accessible forum for individuals, particularly those without legal representation, to resolve their disputes.
45. The Employment Tribunals Rules of Procedure 2013 provides very limited circumstances under which an ET can order one party (employee or employer) to pay the other party's legal costs, including expenses such as tribunal fees. Under Rule 76, these are cases where the judge considers that:
- a) a party, or their representative, has acted vexatiously, disruptively, abusively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings have been conducted (or part); or
 - b) any claim or response had no reasonable prospect of success; or
 - c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.
46. Under the proposal subject to this consultation, the rules on cost orders contained in the Employment Tribunals Rules of Procedure 2013 will continue to apply unaltered.

Rationale for the overall proposed fees

47. The three key principles that underpin our overall proposal, as set out above, are: affordability, proportionality and simplicity.

Affordability

48. Affordability is the principle whereby a fee is set at a level that individuals can be reasonably expected to be able to meet, and a key issue highlighted by the 2017 Supreme Court in its UNISON judgment. Specifically, the Supreme Court stated that where households on low to middle incomes can only afford fees by sacrificing the ordinary and reasonable expenditure required to maintain what would generally be regarded as an acceptable standard of living, fees cannot be regarded as 'affordable'.
49. In developing this proposal, affordability was explored in relation to the thresholds of the newly revised Help with Fees remission scheme, as well as the time individuals would have to raise a fee.
50. We assess that a fee of £55 is generally affordable for claimants and appellants. As noted in paragraph 19 above, we have recently revised the Help with Fees remission scheme, making it more generous and targeting financial assistance at those who need it most. To put that into context with regard to affordability of the proposed £55 claimant and appellant fees, any person who is single, with no children and has less than £4,250 in disposable capital and a gross monthly income of £1,420 or less would be eligible for full remission of their ET or EAT fee.
51. For those not eligible for full fee remission because they fail the disposable capital test and have £4,250 or more in disposable capital, we deem a £55 fee as affordable as this accounts for 1.3% or less of the disposable capital they have available to them. However, should claimants and appellants have less than £4,250 in disposable capital, and also fail the test for full remission because they have a gross monthly income just above the minimum gross monthly income threshold, a £55 fee would account for, at most, 3.6% of their gross monthly income. However, of those claimants and appellants who are single with no children, with less than £4,250 in disposable capital and gross monthly income of £1,420 or more up to and including £1,520, they would be eligible for a partial fee remission and so would not be expected to pay the full fee. Only those receiving more than £1,520 in gross monthly income or with £4,250 or more in disposable capital would be expected to pay the full fee. Given the above, we believe £55 is affordable for claimants and appellants.
52. The Lord Chancellor's Exceptional Power to remit fees may be available to those claimants who are ineligible for HwF but are nonetheless unable to afford a fee due to financial or other hardship.

53. Separately, we also note that claimants may have their fee(s) paid by a third party. 96% of claimants interviewed in the 2018 SETA report either paid fees or received a remission from the same.¹⁰ Of the 2018 claimants, 17% reported that a third-party (e.g., a trade union) had paid their claim issue fee. Furthermore, the 2013 SETA report found the median pay of claimants (£23,600) in full-time permanent jobs to be close to, although slightly below the national average at that time (£25,000). Claimants were though more likely to have been a manager, director or senior official (14% compared to 9% of all employees).
54. Consideration has also been given to the amount of time claimants will have to pay the fee. In most cases, a claimant has 3 months less a day from date of the event that gives rise to a claim to bring the claim to an ET, and therefore up to 3 months to make arrangements to pay the issue fee. For claims about redundancy pay or equal pay, claimants have 6 months to bring a claim to the ET. Additionally, where a dispute reaches ACAS within the time limit, claimants have a maximum of 6 weeks to engage in early conciliation, during which time the 3- or 6-month time limit for bringing the claim is paused.¹¹ Under the Employment Tribunals Procedure Rules 2013, claimants can also seek an extension of time by making an application to the tribunal. Where a claimant is unsuccessful at the ET and seeks to bring an appeal against a decision, they have 42 days from the date that the decision was sent to them; or (where the tribunal did not provide reasons at the hearing and the claimant requested reasons within the 14-day time limit) 42 days from the date that the reasons for the decision were sent to them. Where there is a good reason for lodging an appeal after the deadline, claimants can ask the EAT for their appeal to be considered. It is therefore reasonable to infer that the amount of time afforded to claimants to bring their case to an ET, or an appeal to the EAT, should in most cases be sufficient to enable them to pay a fee.

Proportionality

55. Proportionality is the principle whereby the cost of the fee should be proportionate to the remedy being sought, to avoid making the pursuit of a claim irrational and futile. Along with the issue of affordability, proportionality also formed part of the Supreme Court's 2017 judgment where they noted that the previous fees were set at such a level that it could vastly exceed the value of the remedy sought by claimants in many cases.

¹⁰ The remaining 4% of cases commenced outside the period during which fees were required.

¹¹ After engaging in early conciliation, claimants receive an early conciliation certificate and they have a minimum of 1 month from the date of receipt to make a claim to the ET. As the minimum of 1 month runs alongside the amount of time a claimant has remaining on their 3- or 6-month time limit, it provides additional time to claimants who had less than 1 month remaining on their claim when they started early conciliation.

56. In developing this proposal, proportionality was explored in relation to the costs incurred by individuals bringing a claim to the ET. 2013 and 2018 Surveys of Employment Tribunal Applications (SETA) reports were relied on to analyse affordability of fees.¹²
57. The issue of proportionality is particularly acute in the ET due to the vast range of remedies that are available to and sought by claimants. The 2018 SETA report found that 90% of claimants that settled or were successful at a tribunal hearing received financial compensation with a median value of £5,000, an increase from £2,500 in 2013.¹³ This indicates that claimants whose claims have merit would generally expect any pay-out to more than cover their fees. However, the modest fees proposed in this consultation were developed factoring in claimants who may also come to an ET seeking low value or non-monetary awards. In terms of low value awards, the 2013 SETA report showed that of those claimants who were successful in receiving a monetary settlement, 5% of claims settled for £200 or less and 2% of claims settled for £100 or less. The proposed level of fee has therefore been set at a low level so as not to render making such low value or non-monetary claims futile.
58. The 2018 SETA report found that where personal costs were incurred in bringing an ET claim, they were of a similar value to the proposed fees. 33% incurred communication costs with a median value of £50 and 36% incurred travel costs with a median value of £60.

Simplicity

59. We consider that ET and EAT fees should help contribute towards the tribunals' running costs while ensuring that users can make informed decisions based on a clear and transparent fee system. In designing this proposal, much consideration was given to striking the right balance between these two elements. Therefore, on the one hand, we have developed fees based on the principles of affordability and proportionality explained above, alongside considering the funding for the ET and EAT of approx. £80m p.a. By doing this, we ensure that fees can recoup part of the running costs of the service without over-recovering. On the other hand, we have limited our proposal to one type of fee at the ET stage and one type of fee at an EAT stage. Both the proposed fees have very clear and specific trigger points associated with distinctive stages of a claim or appeal. This is so that users can have the confidence and peace of mind of knowing exactly how much a claim will cost, and at what point they will be expected to pay the fee. Alongside benefitting the user,

¹² Both surveys have been used as the most recent 2018 survey was carried out when the previous fee regime was in place, potentially skewing the characteristics of those applying to the ET.

¹³ 2013 Survey of the Employment Tribunal Applications

a simple fee structure that is easy to administer also benefits HMCTS and consequently the taxpayer.

Impact of the changes

60. Based on 2022/23 volumes and taking into account fee remissions, we estimate that the proposed fees could generate £1.3m–£1.7m a year from 2025/26 onwards, with an estimated income of £0.6m–£0.7m from implementation in November 2024 to March 2025. Although our intention is not to impact demand through these proposals, income estimates are sensitive to volumes and it is difficult to know how the introduction of a fee, along with other factors, could affect the volume of applications to the ET. Therefore, a reduction of 20% to the volumes has been applied to calculate the lower income estimate. There is also uncertainty as to exactly how many claimants would receive a fee remission. We have assumed that 12% of single claimant fee income and 4% of multiple-claimant fee income will be remitted under the HwF scheme. The Lord Chancellor’s exceptional power to remit fees will also be available where their payment of a fee would cause undue financial or other hardship. Decisions are based on the merits of each individual application by considering the applicant’s income, disposable capital, expenditure or other extenuating circumstances. It offers an additional safeguard that will protect access to justice for those with no disposable means to issue or respond to proceedings.
61. Along with this consultation, we have published an impact assessment which outlines the impact of the proposed change.

Consultation period

62. This consultation seeks views on the proposal of introducing modest fees in the Employment Tribunals and the Employment Appeal Tribunal. This includes a £55 issue fee payable by the claimant on making a claim to the ET and a £55 appeal fee payable by the appellant upon making an application to appeal a decision of the ET. The consultation will run from 29 January 2024 for a period of 8 weeks, and will close on 25 March 2024.
63. The consultation paper is being published online at GOV.UK. Copies of the consultation paper are also being sent directly to the Judiciary.
64. Responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

65. A formal Impact Assessment has been prepared for this proposal and has been published alongside this consultation. It can be found at:
<https://www.gov.uk/government/consultations/introducing-fees-in-the-employment-tribunals-and-the-employment-appeal-tribunal>
66. The impact assessment indicates that the introduction of ET and EAT fees will primarily affect the users of the ET and EAT. A list of the main groups affected is shown below:
- ET claimants;
 - EAT appellants;
 - His Majesty's Courts and Tribunals Service (HMCTS) – who operate the ET and EAT service;
 - Taxpayers – who subsidise HMCTS (as overall HMCTS income falls below its overall costs) and ACAS (as most of their funding is provided by the Department for Business, Energy and Industrial Strategy);
 - Legal services providers and the advice sector – who provide services to HMCTS users; and
 - The Ministry of Justice – who sponsor HMCTS.
67. The proposal is likely to lead to additional costs for HMCTS due to amendments to IT systems, guidance for staff and public guidance.

Equalities

68. Under the Public Sector Equality Duty within the Equality Act 2010, the Government is required, as part of policy development, to consider the equalities impact of our proposal. In summary, public authorities subject to the equality duty must have regard to the following when exercising their functions:
- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not; and

- foster good relations between people who share a protected characteristic and those who do not.
69. For the purposes of the equality assessment the relevant protected characteristics under the Equality Act are: race; sex; disability; sexual orientation; religion and belief; age; marriage and civil partnership; gender reassignment; pregnancy and maternity.
70. An Equality Statement has been prepared for this proposal and has been published alongside this consultation, which can be found at:
<https://www.gov.uk/government/consultations/introducing-fees-in-the-employment-tribunals-and-the-employment-appeal-tribunal>

Welsh Language

71. This proposal, if implemented, would also impact those who speak the Welsh Language. This proposal includes changes to fees which also impacts users of the courts who speak the Welsh Language, although should not impair their understanding of fees disproportionately.
72. A Welsh version of this document can be found at:
<https://www.gov.uk/government/consultations/introducing-fees-in-the-employment-tribunals-and-the-employment-appeal-tribunal>. A Welsh language copy of the Impact Assessment and the Equality Statement will be provided on request.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

As set out above, we propose a £55 issue fee for claimants, including having the same issue fee where there are multiple claimants.

Question 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 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.

Question 2: Do you agree with the modest level of the proposed EAT appeal fee? Please give reasons for your answer.

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.

Question 3: Do you believe this proposal meets the three principles set out above? Please give reasons for your answer.

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.

Question 4: 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.

As explained above, we propose a fee exemption for certain types of proceedings in relation to National Insurance Fund payments.

Question 5: 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.

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.

Question 6: 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.

Question 7: 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.

About you

Please use this section to tell us about yourself.

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g., member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 25 March 2024 to:

Fees Policy

Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: MOJ Fees Policy mojfeespolicy@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address, and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested by emailing MOJ Fees Policy at mojfeespolicy@Justice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available online at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public').

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

For more information see the Ministry of Justice [Personal Information Charter](#).

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf



© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from Fees Policy, Ministry of Justice at: mojfeespolicy@justice.gov.uk