

Justice Committee

Oral evidence: Employment tribunal fees, HC 576

Tuesday 19 December 2017

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Members present: Robert Neill (Chair); Ruth Cadbury; Bambos Charalambous; David Hanson; John Howell; Gavin Newlands; Laura Pidcock; Victoria Prentis; Ellie Reeves.

Questions 1-97

Witnesses

[I](#): Shantha David, Legal Officer, Unison.

[II](#): Joe Egan, President, Law Society of England and Wales.

[III](#): Dominic Raab MP, Minister of State, Ministry of Justice.

Examination of witness

Witness: Shantha David.

Chair: Good morning, Ms David. Thank you very much for coming to give evidence to us. Before we start the questions, we have to go through the formal procedure of asking Members to declare their interests for the record. I am a non-practising barrister and consultant to a law firm.

Ellie Reeves: I am a non-practising barrister.

Victoria Prentis: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor and a member of Unison.

Q1 **Chair:** Thank you very much for coming in, Ms David. You have probably been more involved than most people in this issue, in particular the case that the union brought in the Supreme Court and the subsequent judgment. We have had various views from the Government as to what they think the main lessons are. From your point of view, what are the main lessons that the Government should be learning from that case?

Shantha David: Thank you for inviting me. I work for the largest union in the UK. We have 1.3 million members, 80% of whom are women, and they earn an average of between £15,000 and £20,000 a year. They cover a range of workers, including care workers, school support staff, ambulance workers, health workers, street cleaners and so on—people who keep us going. As the Chair said, I acted for Unison for four years in our successful claim against the Lord Chancellor's introduction of fees, where the Supreme Court ruled unanimously that they were unlawful.

I recommend an article written by Professor Michael Ford, QC, which will be published in the *Industrial Law Journal* in March next year and, he tells me, will be online soon. His thesis is very interesting. He points to the fact that employment tribunal claims promote labour standards. In the rush to reduce costs, the Government lost sight of the benefits of individual ET claims as a means of promoting labour standards. Lord Justice Reed, as you will recall, identified that as important and said that individual tribunal claims had public benefits, not just for those individuals but for society as a whole.

One of the things the Supreme Court centred on particularly at the hearing was that, during the impact assessment the Government undertook back in 2011-12, they assumed that fees would have benefits for employers and taxpayers in a reduction of the number of claims to the tribunal, but they allocated zero cost to any possible detrimental effect on labour standards. The important thing to understand is that the decline in claims resulted in the removal of the ability to ensure that labour standards were being met. That is one of the most important things that need to be considered for the future.



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Q2 **Chair:** The judgment was very critical of a number of aspects of the Ministry of Justice's approach to all of this, but it did not rule out the principle of fees. It was very critical of the way it had been gone about, as regards proportionality and real-world access to justice for people, but it specifically did not rule out the principle, provided it was proportionate. The logic is that it would be at a reduced level. You accept that is the rationale of the decision.

Shantha David: The union's position is that there should not be a fee.

Q3 **Chair:** I understand that, but the finding of the court does not go quite that far, does it?

Shantha David: No, but it needs to be understood in context. There is a huge problem with enforcement of tribunal claims. Only a third of successful claimants get their awards paid. Forty per cent get them paid straight off, and then they have to pursue further enforcement proceedings. Altogether, up to 65% have to pay extra money to get their awards in tribunal. Another problem currently is resources. I know that because I am a practising employment lawyer.

Q4 **Chair:** To be clear, that is the resourcing of the tribunal itself.

Shantha David: Indeed. For example, I have a case in tribunal involving low-paid workers, and I have been given a hearing date 18 months from now, so there is an issue around listing. Administrative staff numbers have decreased radically; they were reduced following the introduction of fees. Retired judges have not been replaced, and part-time judges have been allocated to other tribunals. If access to justice is to be a real thing, perhaps the Government need to spend some time considering how to allocate resources to the tribunal system to ensure that there is a proper programme of recruitment and of enforcement of claims. Fees are possibly a side issue in a way, because it is important to understand the context in which people are bringing claims and managing to pursue them through the tribunal system.

We talk about fees, but what about the costs, both personal and legal, to an individual in bringing a tribunal claim? Not everyone belongs to a union, and so not everyone has union backing for their claim. Do not forget that unions take claims only where there are reasonable prospects of success. In general, claims to the tribunal are pretty low-value. Legal costs are prohibitive in any event, but if fees are to be put on top of that, it becomes problematic. Then there are things like wage claims, where a limit on back pay of two years was introduced recently. Issues like that will put individuals off, and the whole idea promoted by the Supreme Court was that access to justice should not be restricted in that way.

Q5 **Chair:** I understand. You raise a number of points. We are looking specifically at fees, but I accept that there are other issues that can potentially be an impediment. Can I ask you one specific point about fees? Sir Ernest Ryder, president of tribunals, is very critical of what he describes as the simplistic classification of A and B-type cases. Would you



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and Unison agree with his view on that?

Shantha David: At the time A and B were proposed, there was a lot of feedback from respondents to the consultation. He asked where the figures had come from. Even the Supreme Court criticised the fact that they seemed to have been plucked from the air. It requires a lot more thought. One suggestion was that it was perhaps about the cost of running a case. Of course, the Supreme Court criticised the Government; they considered that the higher the fee, the more claims there would be in the tribunal system, which obviously is not how economics works.

The other point is that only a very small proportion of the working population brings claims. According to the latest figures, there were 31.8 million people working. Based on the last quarterly employment tribunal statistics, there were 7,000-odd claims. In a rough calculation, I make that about one claim per 11,000 workers, so we need to put everything in context.

Q6 **Bambos Charalambous:** Ms David, what do you think are the implications of the judgment for the Government's fee regime for immigration and asylum tribunal cases and for their court and tribunal fees policy in general?

Shantha David: I am not an immigration law specialist but an employment lawyer, so I can only comment on the fact that the Supreme Court judgment will have a bearing on issues of access to justice. I would suggest that any scheme is now vulnerable to further challenge, given that judgment.

Q7 **Bambos Charalambous:** On the policy in general, fee-wise, how much did it cost to bring the claim to the Supreme Court?

Shantha David: This is interesting. Until about a year ago, the costs of bringing a claim to the Supreme Court were about £1,200, and those have increased fourfold. I think it costs about £4,800 to bring a claim to the Supreme Court. One has to consider those costs as well, along with legal costs of course.

Q8 **Bambos Charalambous:** It costs over £4,000 to bring a claim about costs in the Supreme Court.

Shantha David: Indeed.

Q9 **Bambos Charalambous:** Are you aware that the Courts and Tribunals Service made a profit that it gave back to the MOJ? What do you think about that?

Shantha David: I am aware of that. Access to justice should not be about making profit; it should be about individuals being able to exercise their rights provided by Parliament and given by way of legislation. Individuals should be able to exercise those rights.

Q10 **Bambos Charalambous:** Generally, what would you change in the



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MOJ's fees policy? What would you do differently?

Shantha David: There are several things. First, the fees should not be set so high. I suggest that is obvious. The remission system introduced in the tribunals was very poor. It was supposed to assist up to 53% of claimants. In the end, it assisted about 22%. If you are going to assist people who cannot afford the fee, it needs to be a far more honest and robust system.

Q11 Laura Pidcock: It was stated that one of the original policy intentions of the scheme was to deter weak and vexatious claims. Do you think that before the introduction of fees they were a problem?

Shantha David: No. For example, just after fees were introduced the tribunal rules were strengthened. Perhaps those rules should have been given a chance, and vexatious claimants left to judges. Judges are more than capable of identifying claims that have no prospect of success and dealing with them accordingly. One of the reasons for the introduction of fees was the issue around vexatious claimants, and you would have expected to see success rates go up. They did not go up; they went down. It was a very large sledgehammer to crack a very tiny nut.

Q12 Laura Pidcock: You do not think that is an ongoing problem; you do not see it as part of the introduction of fees at all.

Shantha David: It proved not to have a bearing, and the Supreme Court judgment said so. It is for the tribunal to resolve, and the tribunal has enough powers to deal with vexatious claims, should they arise.

Q13 Ellie Reeves: On that point, do you think that the cost sanction powers the tribunal has in relation to vexatious and unreasonable claims were sufficient to deal with those sorts of cases without having to introduce a fees regime on top?

Shantha David: Yes. Tribunals have awarded costs against vexatious claimants in the past and are not averse from doing so, so I think the tribunals should be allowed to deal with them. Part of the problem is having sufficient judges who can deal with those sorts of issues as preliminary matters. If you do not have enough administrative staff or judges, you do not get to that point quickly enough.

Q14 Chair: Do you have any figures as to how often costs are awarded in such cases?

Shantha David: I am afraid not, but I can come back to the Committee.

Chair: It might be helpful to know that. Thank you very much.

Q15 Victoria Prentis: How did you feel about the Government's response to the Supreme Court judgment? For example, were you consulted about the refund scheme?

Shantha David: We were not consulted as parties to the claim, but, belonging to a trade union, I along with the TUC met representatives of



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the MOJ. I know Mr Raab accepted the judgment of the Supreme Court but suggested that he would look into reintroducing fees. It is important that the judgment is looked at very closely to understand the impact fees have had, and not to enter any process with haste without considering the impact it might have in future.

As far as the Ministry of Justice is concerned, they have gone about refunding individuals who put in for refunds. I understand they have written to some 7,000 claimants whose claims were kicked out at the stage when they could not pay fees. The concern I have is about claimants who did not even consider bringing claims because fees were prohibitive.

Q16 **Victoria Prentis:** Do you accept the Government's argument that there is no way to identify those people?

Shantha David: I have not heard an argument.

Q17 **Victoria Prentis:** Let's assume that the argument would be that the Government cannot tell who was deterred from bringing a claim by fees. Have you or the union got ideas as to how such people could be identified?

Shantha David: It is very difficult. It might be a matter for judges to consider how they deal with that. I understand they are using their just and equitable powers to consider whether or not claims should be reintroduced into the tribunal system that are now well out of time and could not be brought because of fees. The difficulty for the individuals involved is that they have to identify their employers, find evidence and go back to a period of time that is now four years old.

Q18 **Chair:** There has been a first-instance decision in the tribunal when a judge concluded it was legitimate to take that into account.

Shantha David: Yes.

Q19 **Ellie Reeves:** On the point about people who might have been deterred from bringing a claim, might there be a way of looking at people who went through the ACAS early conciliation process, which you have to go through in order to submit a claim in the first place, and then did not go on to submit a claim, and who say they were deterred from doing so because of fees, and provide some sort of compensation to them? What do you think about that?

Shantha David: That is very interesting, because the ACAS report identified 8,000 people who said they could not afford to bring a claim. I would have thought a starting point would be to try to engage with those people again and see whether they are interested. But who does that? Is it ACAS that contacts those individuals? Are the individuals meant to pursue it? It is very difficult to say how that process would work.

Q20 **Victoria Prentis:** Has the refund process worked? Do you have experience of that?



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Shantha David: Yes, I do have experience of it and it is working. It is a long process. I know the MOJ has been alert to group claims being brought by people like us, and big law firms and so on, and it accepts information not simply on the online form but by way of an Excel spreadsheet and so on.

Q21 **Chair:** I don't know whether you can help us on this one, Ms David. There has been a fairly recent decision in the Employment Appeal Tribunal in the Farmah case, about group claims, in effect—multiple claims—under the operation of rule 9 in the context of the fees regime, which suggests that it makes it harder to bring those claims. Have you any thoughts, given that Unison is very involved in this type of litigation, as to what the practical implications of that are?

Shantha David: I understand it is going to the Court of Appeal late next year, so hopefully there will be a decision on that. That judgment will be after the fees judgment, so we might know a bit more about how rule 9 marries up now that fees have been removed. It is a very difficult thing. Subsequently, rather than group claims, people have had to lodge individual claims, and they have been clogging up the system, only for those individual claims to be grouped into various group claims.

Q22 **Chair:** Do I understand that you have to start the claim individually?

Shantha David: You have to start the claim individually and then it is down to the tribunal to put them in various groups.

Q23 **Chair:** That is an extra step in the process.

Shantha David: There is an extra step in the process, but previously the reason given for that was the issue around how you pay the fee—whether you pay a group fee or an individual fee. That has now gone. Whether the judges in the Court of Appeal take a different view is a matter for them.

Q24 **Chair:** Going back to the Government's response, I understand Unison's position about the principle of having fees at all. Lord Reed said in terms that the objectives of the fees order were not illegitimate but, for a raft of reasons, it was disproportionate and wrongly done. Going forward, can you envisage what steps might be taken? You said that any scheme might be open to challenge. That is probably not what the Supreme Court said. The rationale of the decision seems to be that any scheme that is disproportionate is open to challenge, isn't it?

Shantha David: Yes.

Q25 **Chair:** Have you had any discussions at all with Government, notwithstanding your policy position, as to what might be done?

Shantha David: I don't think they want to talk to me. The important point is that they cannot have a deterrent effect. In part, it is Lord Reed's view that there have to be means of giving practical effect to the laws and there have to be effective sanctions.



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There were two consultation processes back in 2011 and 2012. A great number of people wrote into those consultations, and it is important that they are reviewed. All the things that were predicted at that time have come to pass. Rather than rushing into something, it is important to consider the deterrent effect fees might have before anything is set.

Q26 **Chair:** When the Lord Chancellor says that he wants to take a step back, you say he should take a decent step back and look at the impact overall.

Shantha David: Yes.

Q27 **Ellie Reeves:** On the point about the deterrent effect of fees, obviously there is a cost of administering the fee system in the first place. Could you imagine a fee level that would not act as a deterrent but, at the same time, would cover the costs of the scheme, or do you think there is no way that a level of fee could be introduced that would do that?

Shantha David: I would be loth to suggest any amount. It needs to be considered properly and the relevant studies need to be undertaken. We have four years of fee schemes, so that experience should be used to consider why it did not work. Only 9% of the costs were recovered from the fees that came into the coffers, so those considerations are very important.

Q28 **David Hanson:** It took a while for the Committee to drag out from the Government the initial impact assessment they had made on the fees. You touched on this. For any future requirement, given that the Minister also said to us that he believed the fees were encouraging the right kind of behavioural change, what should be the format, from your perspective, of any impact assessment for fee changes in the future?

Shantha David: It is important to consider the social impact of fees and the idea of promoting labour standards. Claims should not be considered purely through an economic lens, which is what has been done to date. There is a benefit to society as a whole from these claims being pursued through a tribunal. Anyone who is considering another equality impact assessment should read Lord Reed's judgment very carefully and look at the social and economic impact on individuals as well, before pursuing a scheme as they have.

Chair: Thank you very much for that very clear evidence and for your time. We are very grateful to you.

Examination of witness

Witness: Joe Egan.

Q29 **Chair:** Good morning, Mr Egan. Thank you very much for coming to give evidence to us.

Joe Egan: Thank you for inviting me.

Chair: It is always a pleasure to see you. You are president of the Law



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Society of England and Wales. Can I start off with the same question I asked Ms David? What do you think are the main lessons for the Government from the Supreme Court judgment?

Joe Egan: The main lesson is that you have to regard access to justice as a right, not a commodity. It is important that, as I think was said in the judgment, if you cannot enforce the rights, they do not really exist, so it is important that everybody, rich or poor, has access to the courts.

Q30 **Chair:** That goes beyond just the technical point of right of reasonable redress under European law; but in domestic law, as I read the judgment, Lord Reed was making clear that right.

Joe Egan: It is a constitutional right, even though we do not have a written constitution, that you have access to the courts. It is a fundamental principle of a democratic society.

Q31 **Chair:** As a representative body, have your members fed back to you any particular implications of what would happen?

Joe Egan: You asked the question earlier. There are some members of our profession who regard this as something of a watershed, because there have been considerable cutbacks to access to justice as a result of legal aid cuts and increasing fees. Here we have a very clear judgment from the highest court in the land which says that, if you cannot exercise your rights, they might as well not exist. I think there is a phrase in it about the election of MPs. If laws cannot be enforced, we might as well not bother electing MPs because their role is nugatory. I think that was the word.

Q32 **Chair:** You regard this constitutionally as a very significant judgment.

Joe Egan: It is a very significant judgment.

Q33 **Chair:** In particular, it is moving away from any type of commoditisation of fees.

Joe Egan: That is correct. One of the things that concerns me in private practice is that it used to be the case that, if an individual had a fatal accident and it was worth several hundred thousand pounds to the children of the deceased, it would cost about £650 to issue a case; it now costs £10,000. That is such a significant increase that it is bound to have the same effect. One suspects that, if that was looked at by the Supreme Court, it might well come to the same result about that level of fees.

Q34 **Chair:** Lord Reed talks about the importance of ordinary people being able to maintain a reasonable standard of living, in terms of how much disposable income or capital had to be set aside to commence litigation.

Joe Egan: The vast majority of cases like that would simply not be issued but for the fact that solicitors use inventive ways of funding them. They have to; otherwise, there would be real injustice.

Q35 **John Howell:** Can I stick with your point about access to justice? I am



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trying to get a feel for the impact of the employment tribunal judgment on access to justice in other tribunals and courts. It does not seem to be as pronounced. Do you have a comment on that?

Joe Egan: It is early days yet. Some lawyers I have spoken to certainly regard it as a watershed, and it may well be that there will be other challenges down the line in terms of some of the fees, such as the fee for issuing a high-value personal injury case. Whether or not it spreads to other tribunals I do not know; I would have to take advice on the level of fees in other tribunals.

Q36 **John Howell:** You mentioned a specific example. Can you think of other examples where access to justice would be a major concern?

Joe Egan: Yes. I understand that in social security tribunals the success rate of appeals against initial assessments is between 60% and 70%. That is a clear indication that when decisions taken by tribunals are not challenged, because people are not represented by able lawyers, they are coming to the wrong decisions. Probably lots of people who are refused benefits do not bring an appeal, but the ones who do have such a high success rate that it must be the case that access to justice is being denied at a lower level.

Q37 **John Howell:** What implication do you think that will have for the Government in terms of the overall approach to fees?

Joe Egan: One would hope that, as the Government do their review of LASPO, they will take all these facts into account. One of the initiatives that the Law Society is pressing is the idea of bringing back initial funding. Often if you spend a little bit on initial legal advice, it can prevent a lot more expense down the line. The simple example is housing, where you can get legal aid only once you have been threatened with repossession of your house. It would be quite expensive for the Government at that stage, whereas it may well be that that stage could be avoided if there was some initial legal advice that prevented the problem from developing. A recent IPSOS study commissioned by the Law Society indicated that, if early advice was given, the problem would be solved a lot more quickly than if no initial advice was obtained.

Q38 **Bambos Charalambous:** From what you have told us, and from previous cases, do you not think that the fees regime as it stands is a bit of a racket for the Ministry of Justice, in that it is just making money for them and not really addressing issues of access to justice?

Joe Egan: One can understand the Government wishing to offset the cost of the courts, but it is important, as Ms David said, that the whole thing is proportionate, and that in seeking to pay for parts of the courts system you do not prevent people from accessing it. One example that strikes me is this. We have a very big export of legal services. One statistic I saw recently was that in one year, in 50% of the 20,000 or so cases that were decided in the commercial courts in London, both parties had no connection with our jurisdiction, and in about 80% one party had



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no connection with our jurisdiction. It has to be right that if organisations from abroad are coming to this country and using our judicial system, they should contribute towards it. That seems only fair. On the other hand, you have to get it right, so that the most vulnerable people in our society are not prohibited from exercising their rights.

- Q39 **Bambos Charalambous:** We heard from Ms David that she has to wait about 18 months to get a hearing before an employment tribunal, so clearly money is not being invested in the system, and access is still being denied with fees being so high.

Joe Egan: I do not think there is any argument about that. If you speak to any of the judges, they will say they are under increasing pressure. I suspect that the top judiciary will be speaking to the Government about the fact that more resources are needed. It is welcome that quite a large amount of money is being put into, hopefully, modernising the courts, and bringing in electronic courts. It is important that the right level of resources is put into the courts system, because, if you do not have the judges, you cannot have cases decided.

- Q40 **Bambos Charalambous:** Would it surprise you to learn that HMCTS is giving back money to the MOJ?

Joe Egan: I did not know that, but it does not surprise me.

- Q41 **Ruth Cadbury:** This is the same question that we asked Ms David. One of the policy intentions of the original scheme was to reduce weak and vexatious claims. Do you think that was a problem before fees were introduced and, if so, to what extent?

Joe Egan: I agree with Ms David, in that I do not think there is any evidence that it was the problem that has been suggested. If it was a problem, the rules have been tightened up, as she said. It is open to judges to strike out a case at an early stage if it is obvious that it is a vexatious claim. I agree with her; if it was the case that the imposition of tribunal fees deterred frivolous or vexatious cases, you would expect the number of unsuccessful cases to drop and successful ones to rise, but the statistics I have seen show a very small fall in the number of successful cases. The evidence points against the fact that it succeeded in that.

- Q42 **Ruth Cadbury:** Would your members agree with Ms David that, by reducing the amount of admin and judicial support, there is less capacity in the system to look out for weak and vexatious claims?

Joe Egan: Possibly. One or two employment lawyers I have spoken to have indicated that there are now very real problems, because claims have started to rise again significantly and lots of court staff have been laid off, so it would not be a huge leap to imagine that their ability to look for vexatious claims was reduced on that basis. I suppose the argument would be that, if a claim against an employer is vexatious and the employer has good lawyers, they will very quickly take it to the tribunal and ask the judge to strike it out because it has no merit.



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- Q43 **Gavin Newlands:** Just over a month ago, the Government rolled out their refund scheme. Do you have any comment to make on the criteria, processes, practicalities and so on of the scheme?

Joe Egan: The evidence the Law Society has is purely anecdotal at the moment, but it supports the fact that it seems to be working quite well.

- Q44 **Gavin Newlands:** As we have already heard this morning, the Government have argued that it may not be possible to identify people who were deterred from bringing cases because of the fees. David Lidington said in front of the Committee that "it is almost impossible to come to an objective assessment of whether somebody was deterred because of a fee level, rather than perhaps deterred because they were persuaded that their case was not likely to succeed. I do not think it would have been easy to draw up criteria that really apportioned justice correctly in that way." Ms David accepted a similar point earlier. Do such people have any recourse, legal or otherwise, if they have suffered detriment because they were unable to afford the fees?

Joe Egan: I am not sure I would agree with the Lord Chancellor. I think it would be possible to present an objective argument to the court to say, "This is how much I earn; this is a copy of my bank statement; this is what it would have cost me to bring this claim; and this is what I would have won." It would be quite easy to show a judge that the reason you were deterred was simply the fact that you did not have sufficient funds, and you could not afford to do it. One statistic I saw was that it would have taken someone on average earnings about six months to save enough to pay the fee to issue proceedings, but you have to issue the proceedings within three months. I would have thought it would not be that difficult to persuade a judge.

One of the things that happens quite a bit in private practice is that people come into the office with a judgment against them and say, "I know nothing about this." You have to make an application to the court for the judgment to be set aside. One of the criteria in persuading the court to set aside a judgment is whether there is an arguable case. Judges have no difficulty in deciding whether there is an arguable case, whether you have a possible defence or whether you have no defence and you would have lost. I do not think it would be difficult for a judge to decide, first, that the case has some merit, and, secondly, that the reason you did not bring it was that you could not afford to.

- Q45 **Gavin Newlands:** If we accept your point, given that oftentimes there is a delay of up to 18 months in getting cases in front of a judge, how much impact do you think it would have on the current backlog if a lot of those old cases were to come forward?

Joe Egan: I suspect it would have a dramatic effect. It is clearly the case that Government will have to put increased resources into the tribunals to deal with it.

- Q46 **Ellie Reeves:** There has been some indication that claimants may be



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able to bring claims that would otherwise be out of time, if they can say it was not reasonable for them to pursue a claim because of fees. Have you seen much evidence of that happening in practice? Have you heard much about that?

Joe Egan: We have some anecdotal evidence that judges have been very understanding and reasonable about it. But it is only anecdotal at this stage.

Q47 **Ellie Reeves:** Do you have any anecdotal evidence about how out of date those claims are? Are people able to pursue claims going back a couple of years, or are claims less out of time than that?

Joe Egan: I am sorry; I do not have any evidence on that.

Q48 **Chair:** Mr Egan, perhaps you can help on whether or not there has been any feedback from Law Society members about the implication of the Farmah case, which I raised with Ms David. What started as individual claims became multiple ones.

Joe Egan: I have no evidence on that, but I can certainly inquire whether any information is being gathered and get it sent to you.

Q49 **Chair:** That would be very helpful. When Sir Ernest Ryder gave evidence to our previous inquiry, he was very critical of the split between A and B-class cases; he said it was simplistic and did not reflect the way the tribunals did it. Does the Law Society have a view about that distinction?

Joe Egan: A former chair of the employment tribunal—I think his name was David Latham—suggested in about 2014 that it might be a good idea to have an employment and equality court as opposed to a tribunal. The Law Society has done a study and suggested that there could be a court or tribunal dealing with employment matters that was divided into four. At level one, for example, decisions could be taken on straightforward cases, such as unpaid wages claims, where the judge could just make a decision on the papers. For other cases that were still straightforward, such as redundancy payments or failure to consult, but needed a bit of further investigation, there could be a judicial inquisitorial approach. Then there would be a third and fourth stage. You would have a gatekeeper at the start to decide which area it went into, with exits at every stage for matters to go to alternative dispute resolution. The Law Society, in its paper, suggested that that would lead to significant efficiencies in the system. The paper is available and we would be happy to provide it.

Q50 **Chair:** If you could send it, that would be useful. It sounds a bit like the move towards a planning court, and other things we have seen. We have seen the single family court in some jurisdictions. In terms of the level of fees and the classification of cases between A and B, does that seem logical from the point of view of practitioners in the Law Society, or does it not reflect reality?



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Joe Egan: What is important is that fees have to be reasonable and proportionate. It has to be the case that people can realistically afford them and are not deterred by them.

Q51 **Chair:** The final thing I want to ask you about, referring to Sir Ernest's evidence to us, is that one of the things the Government said—you have just referred to it—was about the desire to have early alternative dispute resolution, with mediation and so on. Great play was made about ACAS and so on. Sir Ernest's evidence was that he thought there was less incentive for employers to go to mediation or settle, because the claimant might struggle to raise the fee and it was counterproductive. Do you have any feedback from members?

Joe Egan: To raise the fee for mediation?

Chair: To bring a claim. Why go to mediation? In essence, the employer thinks, "If they can't afford the fee, they won't be able to come against me at all."

Joe Egan: That is probably right, isn't it? As Ms David said, the important thing about having employment tribunals is that they raise labour standards. If you have a system where the vast majority of people cannot afford to bring a claim, it means that bad employers can get away with all sorts of things and good employers are penalised because they are doing things properly and, therefore, their costs will probably be higher. Bad employers have a competitive advantage, so it is important that people are not deterred.

Personally, I am a great fan of alternative dispute resolution. In private practice, I would much rather mediate and settle 200 cases a year than take five to trial, and the vast majority of lawyers probably take the same view, but it is important to get the incentives right. As to whether you could impose mediation, I think it was tried in matrimonial cases but it was not very successful. You can say, "Before you can issue proceedings you have to try mediation," but if one party is not willing to mediate, you move on to the next stage anyway. Obviously, in matrimonial you probably get more emotion than perhaps in employment.

Q52 **Chair:** It has been represented to us quite often that early legal advice is a gateway to alternative dispute resolution.

Joe Egan: Exactly. Using the example of matrimonial, it is very easy as a lawyer to point out to someone that, if they go to mediation, there is a good chance they can sort out the problems with the kids and finances, and that will make the future much simpler than if they have a court battle.

Q53 **Chair:** You see that as applicable to some types of employment cases as well.

Joe Egan: Yes.



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Q54 **Bambos Charalambous:** Referring to the Unison case, do you have any views about immigration and asylum tribunals and whether it would make a big difference there?

Joe Egan: Not specifically. Immigration and asylum is not an area I practise in. The important thing is the principle the Unison case has laid down. It will be an opportunity. If someone can say that people are being denied access to tribunals because the fees are too high, the Unison case presents a very important precedent in arguing that before the courts.

Chair: Mr Egan, thank you, as ever, for your time and your evidence. It is very good to see you again.

Examination of witness

Witness: Dominic Raab MP.

Q55 **Chair:** Minister, thank you very much for coming to give evidence to us.

Dominic Raab: It is a pleasure.

Chair: It is a different topic from our more recent exchanges.

Dominic Raab: Equally rambunctious, I am sure.

Q56 **Chair:** I am sure it will be equally constructive. We have all read the judgment of the Supreme Court in detail. There were some pretty blunt criticisms, which you accepted at the Dispatch Box. You were very clear that you would go away and withdraw the scheme, and I appreciate that. What are the lessons in terms of future ways of formulating policy that the Government take from the decision in the Supreme Court?

Dominic Raab: Thank you, Mr Chairman; it is a pleasure to be here. You are right. We immediately stopped charging employment tribunal fees on receipt of the judgment on 26 July and put in place a refund scheme in two phases.

At the headline strategic level, there are two fundamental lessons. The Supreme Court was very careful not to rule out the principle of charging fees within the employment tribunal sector and more generally, which is important, but clearly it felt we got the balance wrong in relation to access to justice. That is one clearly important lesson on which we are reflecting, and we can talk about that in more detail.

The second issue that I urge people not to lose sight of is the principle and aim of encouraging more alternative dispute resolution, both in the context of employment tribunals—we had significant success with conciliation—and more broadly. Going to a tribunal court is often great for lawyers. I say that as a recovering lawyer myself. I think that you, Mr Chairman, and one or two other members are too.

Chair: There are a number of recovering lawyers here.



Dominic Raab: But it is not always the best thing for the citizen. Equally, we do not shrink or shy away from the stark findings on access to justice, and we will make sure they are taken fully on board both for employment tribunal policy and more broadly.

Q57 **Chair:** You used the phrase “more broadly.” The Lord Chancellor said he was going to take a step back and that he wanted to have a look at the approach to fees overall. Can you help me as to when that is going to happen? What is the timescale for taking that step back and coming back with alternatives?

Dominic Raab: The Secretary of State is obviously correct. We want to make sure that we ground our policy in relation to employment tribunals specifically, and more generally on fees policy, in what the Supreme Court said. It was a rich judgment; there was quite a lot of detail in it. I cannot give you a rigid timeframe, but obviously we are going to take on board all the aspects; for example, it is quite important to look at some of the comments about our evidence base. There were comments about help with fees and the implications. We are going to look at it in the round, while trying to make sure that we have the right balance between access to justice for the citizen, not allowing spurious claims to come to court that should not, and trying to make sure we encourage alternative dispute resolution where we can, whether it is through conciliation or other means.

Q58 **Chair:** You mention alternative dispute resolution. One thing that struck me was the evidence to our Select Committee inquiry by the president of the tribunals, Sir Ernest Ryder. His concern was that, although the intention had been that people might be moved in employment cases to mediation—after all, he is one of the most experienced judges in his field—in fact, it had the perverse consequence that employers would not go to mediation or seek to settle because, frankly, more often than not they would think the potential claimant would not be able to raise the fee. Why should they commit themselves to mediation when they might be able to starve them out, for want of a better expression?

Dominic Raab: There are probably some cases that fall into that category, and I am happy to talk about that later. In the January report we put out, it is worth looking at some of the figures for ACAS conciliation. In 2015-16, there were 92,000 notifications to ACAS for conciliation and it helped, I think, 48% of those who used it. You are right. A further 34% went on to use the employment tribunal, so we need to build on the success of alternative dispute resolution, but make sure that affordable access to justice is there for those who really need it. We certainly do not want scurrilous employers trying to starve out people with genuine claims; that is not the objective, and we will look very carefully to make sure that does not happen in the future.

Q59 **Chair:** Is it a policy area where, subject of course to the proper independence of the judiciary, the Government seek to gain some insight from the practical experience of the judiciary in these matters? Sir Ernest



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talked about it as having precisely the opposite effect. It was quite a specific form of words for a president of tribunals to use.

Dominic Raab: We listen to all the things the judiciary say, particularly when they are in a leadership role like that. Equally, I want to examine not just their view and their practical hands-on experience but the granular data on the volume of claims. Ultimately, I want to encourage good practice not just by employers, although that is important, but by potential litigants. I want to encourage the dynamic of alternative dispute resolution, and rule out and curb bad practice.

Q60 **Chair:** You fairly accepted some of the criticism—you took it on the chin—around the methodology that had been advanced. If you'll forgive me for saying so, a number of the criticisms in the Supreme Court judgment were put rather more elegantly than perhaps we could do, but they mirrored some of the points raised in the Select Committee report in the previous Parliament. In retrospect, is it perhaps worth taking a bit more care about the recommendations of Select Committee reports sometimes? Perhaps it might save a bit of time and cost.

Dominic Raab: So much so that I have brought along the old copy, which was even before I was a Minister. Of course, we get lots of pressure and feedback on the issue. We want to get the right balance between avoiding spurious claims going to tribunal and affordable access to justice. Going to court is not always the best deal either for the employer or for the citizen.

Q61 **Chair:** There was a very clear statement by Lord Reed. He did not say that the principle of an element of contribution by way of fees was illegitimate, as you and the Secretary of State rightly said, but he stressed very strongly that it is not purely a commoditised transaction, and there is a broader public good in access to justice and the ability to litigate and enforce remedies. I assume the Government would not quarrel with the Supreme Court on that point.

Dominic Raab: Not at all, but employment tribunals are a very specific sector. You have people on very low incomes; you have type A claims where people perhaps have unpaid wages. We want to be very sensitive to that, but pointing to the big picture, in the last year of fees, something like 13% of the costs of employment tribunals were funded through fees. That compares with something like 39% of general courts and tribunals funding through fees. I am not detracting at all from the specifics of the Supreme Court judgment, but the balance between a taxpayer-funded system and user pays is quite a delicate one. It is a difficult one to strike. Bear in mind that the Government won in the High Court and in the Court of Appeal, but lost in the Supreme Court. I do not say that to suggest that we flinch at all from taking into account what the Supreme Court said; I just make the point that it is quite a delicate balance to strike.

Q62 **Chair:** As you say, it is not exactly like winning on away goals or anything like that, but at the end of the day we have a definitive



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judgment.

Dominic Raab: You got your footballing analogy in, Mr Chairman.

Q63 **Chair:** I always do my best. Any West Ham supporter needs to make the most of it at the moment.

The case was litigated right the way up to the Supreme Court. What was the cost to the public purse of the Government's legal costs in defending and pursuing that case in the Supreme Court?

Dominic Raab: I am sure that somewhere in the notes we have the exact amount. I have some other costs here, but let me write to you with the specific details.

Chair: Thank you very much.

Q64 **Bambos Charalambous:** On the issue of striking the right balance, Minister, we heard today in evidence from Mr Egan that to bring a personal injury claim for £200,000 you need to pay a fee of £10,000. That strikes me as very high. The fee for bringing a case to the Supreme Court was over £4,000. It was for a case on fees, which is ironic. Do you not think that the whole fees regime needs to be reviewed, because at the moment it does not give fairness to litigants in person who may want to bring a claim? Without the help of a trade union, it is hard to perceive how anybody would be able to find the money to challenge the Government over fees.

Dominic Raab: There is a litigant in person strategy in place, and a significant amount of resource is going into that and into online support. Pro bono representation can be made available. I certainly accept the premise of your question; when we look at the Supreme Court judgment, we need to consider the implications not just strictly in the employment tribunal realm but across the board, including some of the areas that you referred to. That work and analysis is ongoing.

Q65 **Laura Pidcock:** To take us back slightly, the statement about trying to reduce spurious claims as a main policy intention has been repeated. What do you think was the correlation between the introduction of fees and the reduction in spurious claims? Are there not people who can afford to pursue a claim that might also be a spurious one?

Dominic Raab: You are quite right. I do not think there is a crude correlation or hydraulic relationship between the two. What we want to do is make sure that we have affordable access to justice for those who obviously have meritorious claims—by the way, fees are not the only way you can do this—and that there are checks and balances and disincentives in place for those who might just be bringing spurious or vexatious claims. We have had a lot of feedback from legal groups. I know you have heard from some today. I speak to them regularly. Employer groups also talk to us about the burdens they face, so we have taken all that evidence into account.



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Equally, I do not want to detract from the key point made by the Supreme Court. Mr Chairman, I think you raised one of the illustrations earlier. We have looked at the data and I cited it; I also tried to look at the point of view of a meritorious claimant. I looked at this before I became a Minister. A type A claim for unpaid wages costs nearly 400 quid to get to the tribunal, if you include the issue fee and the hearing fee. The remissions for earnings, when we had the fees scheme in place, were up to £1,085 per month. If you look at that balance—just over £1,000 in earnings and almost £400 for the tribunal fee—you can see that for a case of unpaid wages that is not a finely-tuned legal issue; it is ultimately an evidential, factual question. I have heard from citizens advice bureaux both as a local MP and subsequently as a Minister about clear, open-and-shut cases. Work has been done, wages have not been paid and yet the disincentive to go to a tribunal is clearly on the balance of cost. In that sort of area, not only would we accept what you have described but we will make very sure that it does not happen again.

Q66 **David Hanson:** Was it a mistake not to publish an impact assessment when we asked for it and, if it was a mistake, have you learned from that?

Dominic Raab: I do not think I was Minister in charge at the time, so I am not going to take the temptation of hindsight, but with all these things, you learn the lessons as you go.

Q67 **David Hanson:** You were the Minister in July 2016 when I asked you in the House of Commons Chamber whether you would publish it and you said no.

Dominic Raab: But I was not in charge of fees policy at that point.

Q68 **David Hanson:** You were the Minister responding in the House of Commons Chamber at the time.

Dominic Raab: I was Human Rights Minister; now I am in charge of this, so clearly I have gone up in the world.

Q69 **David Hanson:** For the record, on 4 July 2016 in the debate I asked you, "Will the Minister publish the impact assessment the Committee has asked for?" and your response as Minister was, "I will come to that." Later on, we had to drag it out of the Department.

Dominic Raab: We always learn lessons along the way, Mr Hanson. As a former Minister, you know that.

Chair: Perhaps it is a lesson learned. I take silence as assent on that one.

Q70 **Ellie Reeves:** Turning to refunds for fees that have been paid, how many refunds have been made in relation to both single and multiple claims under the first phase of the scheme, and what has been the cost?



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Dominic Raab: I can always write if there is any detail I miss out, but let me give you the basics. We launched the first phase on 20 October and that was in relation to those who, after the Supreme Court ruling in July, had contacted the Ministry of Justice. Then we had the full roll-out on 15 November, so that anyone who had paid a fee could apply. We received 4,689 applications, of which 2,660 have been processed and approved. Our aim, and one of the reasons we took time to get the system right, was to have a target of turning those applications round within 15 working days. As of 15 December, we had paid 2,151 refunds, worth over £1.8 million.

We have been up and running for a month; we have a proper system in place and we have paid out almost £2 million in refunds so far. If you want the breakdown on multiple claims, I can write to the Committee afterwards. The multiple claims are covered in the second phase. I will see whether we can get you that breakdown.

Q71 **Ellie Reeves:** How many more refunds are outstanding? How much is left to pay?

Dominic Raab: The expected cost is estimated to run up to £33 million, including interest. Let's see how we go with it, but we imagine we will have the scheme in place for something like two years.

Q72 **Ellie Reeves:** Not much progress has been made, has it, if £33 million in refunds is due to people and only £1.8 million has been paid out? Clearly, there is still a lot to do.

Dominic Raab: There is a lot to do, but I think we have made good progress in setting up a rigorous scheme that has paid out almost £2 million. Now we can build on that and make sure that we spread the word, and a big effort is going on particularly in relation to that.

Q73 **Ellie Reeves:** Can you say a little bit more about that, and what is being done to make sure that people who are due refunds know about it and can easily apply and get them?

Dominic Raab: What was the last point?

Ellie Reeves: Can you say a bit more? You referred to spreading the word. Can you say more about what is actually being done to contact people?

Dominic Raab: We set up the administrative system. As I said, we want to make sure that we can turn round the applications in about 15 working days. Obviously you want proper checks to make sure the system is not abused, because that is in no one's interest.

As to making people aware of it, some contacted us directly, so the first phase was trying to address that. We set out details on the usual Government channels, for example on the gov.uk website. We wrote to MPs, peers and the devolved Administrations; we have worked with the



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TUC and citizens advice bureaux. The employment tribunals themselves had a programme of disseminating information to stakeholders, including the Law Society, the Bar Council and the CBI, so there are business groups as well as legal groups.

Q74 Ellie Reeves: What is the cost of administering the refund scheme, as opposed to the cost of the refunds themselves? How much has it cost so far, and how much do you think it will cost overall?

Dominic Raab: If we do it for two years, we estimate that the headline cost will be between £1.8 million and £2 million. That is the current assumption.

Q75 Ellie Reeves: We know there was a huge decline in claims to the employment tribunal after the introduction of fees. Clearly, vast numbers of people were deterred from bringing claims in the tribunal after fees were introduced. What about compensation for people who did not pursue a claim in the first place?

Dominic Raab: That is a good point. When anyone believes they were prevented from bringing a claim because they could not afford to pay the fee, they can bring a claim out of time. That would obviously be decided by the employment tribunal. We have set up a process with it so that those applications can be made, and it is ready to receive them.

Q76 Ellie Reeves: The rules around bringing claims out of time in tribunals are quite strict. Depending on the type of claim, someone has to show they have done all that is reasonably practicable to pursue the claim, and that it is just and equitable for them to pursue their claim out of time. Are you saying there will be different rules for people who did not bring claims because of fees, when they present their claims out of time, or will it be the usual rules of the tribunal?

Dominic Raab: The employment tribunal has discretion over that; if they could have brought a claim but for the fee, that would be available to them, so that process is in place. That is done in other contexts. We are confident that we have a system that will allow those who solely because of the fee did not bring a claim to bring it out of time.

Q77 Ellie Reeves: How many people have so far been granted permission by the tribunal to bring a claim out of time in those circumstances?

Dominic Raab: I am not sure we collect that data, but I can check and see if something is available.

Q78 Ellie Reeves: That would be really useful, because we need to understand what the tribunal is doing on this. Is there a plan to set up some sort of scheme to compensate people who contacted ACAS as part of the early conciliation scheme but then did not go on to pursue a claim because of fees? We know there are lots of people who did that. Might there be some mechanism to compensate those people?



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Dominic Raab: You are using “compensation” in quite a loose way. What we have set up is a refund scheme for the payment of the fee.

Q79 **Ellie Reeves:** But that does not cover all the people who were deterred from bringing claims because of fees. I appreciate what you say about the tribunal using its discretion, but we have no figures on the extent to which it is using its discretion and the number of people who are losing out as a result.

Dominic Raab: I understand your point.

Q80 **Ellie Reeves:** Could there be some sort of compensation scheme?

Dominic Raab: I am not quite clear. You would not know the loss, because the claim was not brought. How would you be able to compensate it?

Q81 **Ellie Reeves:** It is a lost chance claim.

Dominic Raab: I would be concerned about how rigorous that could be, and the scope for abuse, but what we have done—it is right to do it—is to make sure that those claims can be brought out of time in the way I described. The employment tribunal is comfortable with that; it has said that there are systems in place to deal with that.

Q82 **Laura Pidcock:** Referring to the compensation scheme, I am quite worried that you talked about two years and there are still millions of pounds potentially to pay out to those people. We have seen with the 1950s state pension for women that lack of notification has huge consequences. I am worried because quite a lot of the people you have talked about so far are self-selecting; they have come forward to you. I have not heard much about what is going to be done. Writing to an MP is fine, but how do I get to people who might have paid tribunal fees, unless they come to a surgery or something like that? What else are you going to do to reach those people? Is there no way of directly writing to them to say that the scheme is available?

Dominic Raab: We will keep it under review. The problem about writing to people is that quite a lot of them move home. Aside from the administrative challenge, I am not sure that it would exhaustively deal with everyone in the way you suggest.

Q83 **Laura Pidcock:** It would be better than nothing though, wouldn't it?

Dominic Raab: We are not doing nothing, and it is not quite true to say that it is just a self-selecting group. The first phase of the roll-out was those who contacted us in response to the Supreme Court ruling, but a major exercise of dissemination of information has taken place since. I appreciate that we have been going for only a month, but we have compensated up to almost £2 million and we have had nearly 5,000 applications. We are starting to get up and running, and hopefully that will build up some steam, but if we feel we do not have the reach, we will keep it under review.



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- Q84 Victoria Prentis:** I heard what you said earlier about reluctance to commit to a timeline for the new strategy, but there is some evidence of behavioural change in the employment tribunal sector that perhaps needs early thought in the MOJ's strategy. For example, the latest quarterly statistics show a very sharp rise in single claims rather than multiple claims, which, as we know, used to be quite normal in the employment sector. It is up by 64% this quarter. Is there going to be a new strategy fairly soon on whether we want to encourage single or multiple claims?

Dominic Raab: That is a very good point. Individual claims between July and September 2017 rose 66% on the previous quarter; multiple claims doubled. I would be a bit careful about drawing firm conclusions. The multiple claims are always quite volatile; they doubled compared with the previous quarter, but they are down 15% on the same period last year. In terms of the spike in cases, we will make sure that the employment tribunal has the resources it needs to cater for that, but it is a little early to draw firm conclusions about the long-term trends.

In relation to the employment tribunal fees strategy more broadly, digesting the lessons learned and turning them into policy going forward, obviously we have the Matthew Taylor review as well. Particularly in relation to some of the questions about the balance between access to justice and stopping spurious claims, I think it is right to feed that into the review.

- Q85 Victoria Prentis:** Obviously, the fees were in place for some of that quarter as well, so it is important that we are particularly careful with those statistics, but can you reassure us that this is something you are keeping under close review on a week-by-week basis, rather than pushing it into the long grass when we may have a long-term strategy going forward?

Dominic Raab: On the question of what will go in place of the employment tribunal fees, I could not have been quicker off the mark in saying we got it wrong; we stopped charging fees and set up the refund process. I think that was the right stage to do it. We want to get this right, not quick, which I think is the leitmotif of this Committee. I want to look at this very carefully. We have the Matthew Taylor review, so it seems a good synergy between the two, and we want to make sure that we get the balance right going forward. It is not a question of kicking it into the long grass; it is a question of getting it right.

- Q86 Chair:** In that spirit, does that include perhaps looking at Sir Ernest Ryder's point about the classification of type A and type B, which does not fit into the three-tier classification that tribunals look at?

Dominic Raab: I will certainly look at that. I gave you, hopefully, a sense of being genuine about that in relation to the example I gave of the type A claim for unpaid wages.

- Q87 Chair:** I am very grateful for your answer on that. Looking at it in a broad, in-the-round sense, a lot of people have suggested that very often



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some investment in early legal advice can be a gateway to exactly the form of alternative dispute resolution that I think all of us, yourself included, have been very keen to see developed more in this and other fields. Is that something of which you and your governmental colleagues are cognisant?

Dominic Raab: Absolutely. I will certainly look at that. I want to look at the evidence about it. It is easily asserted, but I want to see that it actually works out. We will not be afraid, notwithstanding the pressures on the public finances, to make the investments that will deliver a more effective system, that can yield savings in the long term, where it is borne out. We will look at things like that. Obviously the family law sector is particularly germane. I am not sure whether that is what you were getting at.

Q88 **Chair:** It is certainly often quoted in the family law sector context, is it not? There is sometimes a read-across to some of the smaller claims.

Dominic Raab: Absolutely right.

Q89 **Ellie Reeves:** On the idea about disincentivising weak and vexatious claims, doesn't the tribunal already have power, for example through its case management powers, to award costs against a claimant bringing a claim that has little or no merit? Fees do not need to be reintroduced in that context, because those case management powers are already there.

Dominic Raab: Obviously, costs are treated differently in the employment tribunal. I know you are conscious of that. You are right. The question is whether we look at those powers in the same way as we look at fees, to make sure that we are having the right behavioural impact; it is a difficult balance to strike. We keep them constantly under review in the employment tribunal sector, but you were talking more broadly.

Q90 **Ellie Reeves:** The point is that, because the tribunal already has powers to make cost awards if someone is behaving unreasonably or vexatiously, you do not need fees at all in employment tribunals, because they already have powers to disincentivise weak claims.

Dominic Raab: But there has been a much broader debate about whether spurious, vexatious and trivial claims were ending up in tribunals and whether they had the powers they needed. You will hear from business groups and legal groups, and they will take a slightly different approach. What we want to do is keep the thing under proper review and make sure that we get the balance right.

Q91 **Ellie Reeves:** Thinking about what the Supreme Court said about access to justice and fees deterring people, obviously there is a cost in administering a fees regime in the first place. Is there a fee level that could be introduced that would not deter people from pursuing a claim but, at the same time, would cover the cost of running the scheme in the first place?



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Dominic Raab: Yes, you could probably get the balance right. The Supreme Court recognised in principle the contribution that fees can make, principally in relation to funding the tribunals service rather than the deterrent effect, but I think we can get the balance right. Obviously we have not, and that is why we are looking at it again.

Q92 **David Hanson:** It may be in the pile of information I have, but is there a final deadline for claims on refunds to be made?

Dominic Raab: I do not think we have put a final deadline on it, but we anticipate that the scheme will run for about two years, so perhaps it will expire after that. Let me come back to you, Mr Chairman, on the detail of that and whether it is a hard deadline.

Chair: I am grateful to you, Minister.

Q93 **Bambos Charalambous:** I have a general question about legal advice. The Ministry has an unenviable track record in losing high-profile cases: for example, legal aid for an inquest case; the evidence of domestic abuse required for legal aid in family law cases; the imposition of residence requirements for civil legal aid; legal aid for prisoners; and now the comprehensive defeat on employment tribunal fees. Do you think we need to look at the legal advice the Ministry is getting, or are Ministers just discarding the legal advice?

Dominic Raab: No, we look very carefully at it. As a former lawyer, I have a specific view on mitigating legal risk. I do not want to turn this into a politicised thing, but I could reel off a long list of other successful legal challenges against the previous Government. The reality is that in a fluid, fast-changing environment, where policy initiatives are coming forward, legal advice needs to be very carefully considered. It is often very difficult to know with precision, because the law changes quite rapidly. Look at the case about employment tribunal fees. That is not to suggest that the Supreme Court did not come to the right judgment, but it was obviously quite a difficult one, because we won in the High Court and the Court of Appeal but lost in the Supreme Court. I take the legal advice very seriously, and look at it very carefully in relation to all aspects of fees and legal aid across the board.

Q94 **Chair:** That is very helpful, Minister. Perhaps you would clarify one final point. You very helpfully told Ms Reeves that there is a process for dealing with claims being brought out of time. I take it you are talking about the process within the tribunals system.

Dominic Raab: Yes, exactly.

Q95 **Chair:** You are satisfied that they have the means and they are managing that.

Dominic Raab: Absolutely, but we will keep that under review as well.

Q96 **Ellie Reeves:** And the statistics around the number of claims that are being heard out of time.



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Dominic Raab: We will see whether they are collected, in which case we will be happy to provide them.

Q97 **Chair:** You are happy to come back to us on that.

Dominic Raab: Yes.

Chair: We are very grateful to you for coming back to us on a number of those issues.

Dominic Raab: I look forward to it.

Chair: Thank you very much for your evidence today, Minister. It is always good to see you. As this is the last session, it is appropriate for me to thank everybody for their support this year and to wish everybody a merry Christmas and an enjoyable and prosperous new 2018 when we get to it.