The Citizens Advice experience of Employment Tribunal Fees

Lauren Wood and Dr. Emily Rose
Outline

• Who are Citizens Advice in Scotland?
• An overview of Citizens Advice Scotland’s evidence
• Gathering qualitative data – a survey of employment specialists
• Next steps…
Citizens Advice Scotland (CAS)

- CAS is the umbrella body for Citizens Advice Bureaux in Scotland
- Citizens advice bureaux are independent, local charities that are members of Citizens Advice Scotland. Bureaux provide advice and information to people in need
- There are 62 member bureaux who operate in over 250 locations
- CAB in Scotland cover 30 of the 32 Local Authorities
Our Aims

To ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and, equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

CAS and Scottish bureaux work together to achieve these aims.
CAS Policy Work

- Government Policy
- Client problem
- Evidence used to influence policy
- Social Policy issue identified
- Bureau for advice
In 2013, CAS surveyed bureaux to establish what types of representation work were undertaken. 90% of bureaux responded which gives us a clear idea of the representation picture across CAB in Scotland.

Just under 50% of respondents indicated that they offered specialist employment support.
Statistics from across Scotland

- In 2012/2013, bureaux recorded almost 65,000 employment advice codes at level 1.

- At level 2, the top 5 employment advice areas were:

<table>
<thead>
<tr>
<th>Pay and entitlements</th>
<th>13,711</th>
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</thead>
<tbody>
<tr>
<td>Dismissal</td>
<td>10,887</td>
</tr>
<tr>
<td>Terms and conditions of employment</td>
<td>9,882</td>
</tr>
<tr>
<td>Dispute resolution</td>
<td>8,292</td>
</tr>
<tr>
<td>Redundancy</td>
<td>5,190</td>
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</table>
A North of Scotland CAB reports of a client who was planning to go to the Employment Tribunal to claim unpaid wages. He applied for a remission but was told that as his income is above the threshold and he would have to pay a fee.

As a type A claim for unpaid wages the initial fee would be £160 and the hearing fee would be £230, making the combined cost £390. As his unpaid wages would be £601.25 gross and subject to tax and NI, the client decided not to go ahead.
The interpretation of rules...

A Borders CAB reports of a client who called in to discuss completion of ET1 form. She advised that following our meeting yesterday she had contacted the tribunal service to discuss the payment of the fees and been told that a cheque was not possible within the time left as it would need 5 days to clear. Client needed to clarify how to pay as she was planning to travel to the tribunal office in Edinburgh tomorrow (Thursday).

An East of Scotland CAB reports of a client who was dismissed after working in a small hotel bar for 5 years. The bureau helped with all aspects of the process. A tribunal date was set for the 27th January and the TS requested payment of the £950 hearing fee by the 15th. However, on the 13th the employer made an ACAS settlement offer through one of their employees as the employer was in France on a ski holiday. ACAS would not accept the offer without speaking to the employer and eventually tracked them down late in the afternoon of the 14th (on a ski lift) to confirm. If this hadn’t happened, the client would have had to pay £950 despite the offer to settle.
Aims of survey on impact of fees

• To understand what the fees mean for bureaux clients who face problems at work
  – Those eligible for the fee remission system
  – Those required to pay full or partial fees

• To understand what the fees mean for the role of bureaux advisors
What did we find out?

- The fees regime acts as a financial deterrent to making a claim

  **BUT, also**

- It creates new obstacles for bureaux clients wishing to take a claim to the Employment Tribunal

- It heightens the present inadequacies in the system

- It negatively alters the power balance between workers and employers when it comes to resolving employment disputes
Who responded?

- 14 responses from bureaux offering specialised employment advice services (out of a total of 27)

Respondents’ roles:

- specialist employment advisors (7, of whom 4 have some legal training);
- qualified barrister or solicitor (1);
- generalist advisor with either specialist training in employment or experience in this area (3)
- Session supervisor (1)

Respondents dispersed throughout all of Scotland
Fee remission system

- **Two types of remissions**
  - Remission 1: A full remission based on receipt of one of a list of means-tested benefits
  - Remission 2: A full or partial remission based on gross monthly income before tax and other deductions

- **Eligibility for remission determined by two tests:**
  - Disposable capital test
  - Gross monthly income before tax and other deductions

- **Documentary evidence required to prove eligibility**
Determining eligibility for remission

• Ease of determining eligibility
  – Half (50%) reported that determining eligibility using the disposable capital test was very or somewhat difficult; 21% reported it very or somewhat easy
  – Two-thirds (64%) reported that determining eligibility for the gross monthly income test to be very or somewhat difficult; 14% reported it very or somewhat easy

• Key issues
  – Changing circumstances
  – Default position in granting JSA
Providing evidence for remission

• Ease of providing evidence
  – Half (50%) reported it very or somewhat difficult to provide evidence for remission 1; 21% reported it very or somewhat easy
  – Two-thirds (64%) reported it very or somewhat difficult to provide evidence for eligibility for remission 2. No one reported it very or somewhat easy

• Key issues
  – Obtaining benefits documentation
  – Obtaining documents from (ex) employer
  – Obtaining bank statements
Unfair or un-intended outcomes

- Co-habiting couples
- Gross monthly income test relates to previous month and may not reflect current financial situation
- Gross monthly income test doesn’t take into account essential expenditure, which can vary between clients
- The availability for remission for those on JSA may act as a disincentive for clients to work, with many redeployed forgoing their claim
For clients liable to pay fees

<table>
<thead>
<tr>
<th></th>
<th>Strongly/somewhat agree (%)</th>
<th>Neither agree or disagree (%)</th>
<th>Strongly/somewhat disagree (%)</th>
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</thead>
<tbody>
<tr>
<td>The fees act to deter clients from taking a claim to the Employment Tribunal</td>
<td>92</td>
<td>8</td>
<td>0</td>
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<tr>
<td>Clients have become more pragmatic in their decision making about going to the Employment Tribunal, weighing up whether or not it is worth it</td>
<td>85</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Clients are now more interested in pursuing non-tribunal approaches to resolving their dispute</td>
<td>46</td>
<td>23</td>
<td>31</td>
</tr>
<tr>
<td>Clients are more likely to do nothing about the problems they face at work</td>
<td>85</td>
<td>0</td>
<td>15</td>
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No longer about merits of the case

• Value of the claim, with lesser claims not being pursued

• Cost of entry to the system

• Likelihood of recouping award, let alone the Employment Tribunal fees

• Tactics of employer
  – Less likely to negotiate unless ET1 lodged
  – Little incentive to engage with ACAS Early Conciliation service as no clear penalties for not doing so
  – Worker more willing to compromise to avoid hearing fee
Where to from here?

- **Suggestions for improved access to justice**
  - Reducing the amount ££ of the fees
  - Fee remission:
    - the gross monthly income test to factor in essential expenditure
    - re-thinking the tests for potential claimants living with a partner
  - Changing the timing at which the fees are charged
  - Developing a better mechanism for recouping awards and fees
  - Increasing the funding available for employment advice, including representation

- **Further in-depth qualitative research planned**