About the research

Policy discourses surrounding the employment tribunal system, culminating in recent radical reforms by the Coalition Government, have been based upon a number of interrelated myths, centred on the notion that people are too quick to raise tribunal applications. Claimants have been vilified as ‘nuisance litigants’ who bring ‘weak and vexatious’ claims of dubious merit which must be suppressed. The Government’s reforms include the imposition of fees and the extension of qualification for protection from unfair dismissal from one to two years. These changes have made it progressively more difficult to bring claims. Policy has been led by the assumption that many claims lack merit, based on the fact of a high volume of claims and the observation that many are unsuccessful, rather than any concrete evidence of the motives and experiences of claimants.

Research conducted by the Universities of Bristol and Strathclyde followed more than 150 workers as they attempted to seek justice for work-related grievances between late 2012 and the end of 2014. Participants were recruited via Citizens Advice Bureaux (CABx), access points to those most likely to face the greatest barriers to justice, who cannot afford a lawyer and do not have access to trade union assistance. For such individuals, often subject to precarious working arrangements and low pay, the avenue of tribunal claims is increasingly important given the decline of collective routes to dispute resolution.

This research project is the first to provide longitudinal, qualitative data on experiences of the employment tribunal system, from the early formulation of problems into legal issues, through application to a tribunal, to hearing and beyond.
The reforms to the system were implemented between 2012, when the qualifying period for protection from unfair dismissal was extended from one to two years, and 2013, when fees were imposed for tribunal claims, whilst data was being collected for this project. The research highlights that even before fees were brought in significant barriers to access to justice existed within the tribunal system and argues that the rationale behind their imposition was misplaced.

**Myth 1: People make ‘speculative’ tribunal claims flippantly**

**The reality:** To submit a tribunal claim is a serious decision, underpinned by a firm desire for justice and a strong belief in the rectitude of one’s position, though often weighed against considerable reluctance and anxiety over the anticipated stresses and strains that will be involved. Many applicants put up with ill-treatment by their employer for years before taking action. ‘Brian’, a car valet, was bullied by his employer for eight years. He became so ill from the situation that he went to his doctor, but his employer only shouted at him down the phone to return to work. Brian was driven to give up the job that he loved. It was only through the persuasion of friends and family that he went to a CAB, where he was advised that he could take his claim to an employment tribunal, supported by legal aid, which is now rarely available for employment cases.

**Myth 2: Before fees employers bore all of the costs and none were imposed on claimants**

**The reality:** Embarking on a dispute demands an enormous amount of time, effort and emotional resilience from people who are often already deeply affected by the problems at work that led to legal disputes. Pursuing a claim can become a full-time occupation - lives are put on hold while claimants prepare, which puts considerable pressure on their personal lives:

“It was a lot of hard work... I put in a lot of hours, a lot of upset at home... There was me and my partner, the amount of time I was spending on it, which I guess he could see but I was so wrapped up in my little bubble of making sure everything was completely correct.” ‘Sheila’

As such it is not only the claimant who must pay the cost of making an employment tribunal claim; families are frequently the fall-back for financial as well as emotional support. ‘Peter’ became suicidal after he was dismissed and was at such risk that his family had to be with him at all times. ‘Brian’, like many claimants seeking new employment, worried about how he would attend his hearing. “I’m looking for work now, but I can’t ask to be flexible because I’m taking my ex-boss to court; what are they going to say? I can’t take time off to go to court; it’ll be a full day.” However, he was in no position to delay getting a job. His children – aware of the family’s financial situation – repeatedly offered to sell their toys to contribute to the family finances.
Myth 3: People who submit claims expect huge pay-outs as part of a ‘compensation culture’

The reality: Few people expect large sums and most dissociate themselves from profit motives. Just about every participant in the study stressed ‘it’s not about the money’. However, in a wages claim, money is owed. ‘Cheryl’, a nursery assistant who won a claim for around £400 of unpaid wages explained:

“It was more just wanting the money back in principle... Even if it was a hundred pound or a thousand pound, I still would have [raised a claim]... I worked hard in there – it was long hours, short breaks, really stressful work – I thought, ‘I’m not going to let this lie’, ‘cause it’s money I deserve to get.”

‘Cheryl’

Although there is a symbolic element to making the employer ‘pay for their crimes’, the central motive for claimants is to seek justice: to clear one’s name, to stop the employer from mistreating others, or in acknowledgment of the length of service one has provided. ‘Muriel’, an auxiliary nurse, was dismissed without explanation or the chance to appeal: “I gave my all to that [place]... the way we were getting treated and I just thought, ‘no, enough’s enough’, and that just made me want to fight even more.” Her aunt encouraged her to ignore the employer’s threats of legal costs, “[she] was like, ‘it doesn’t matter about the money, I don’t care about the money, we just want to see justice getting done’.”

Myth 4: A high proportion of claims are ‘weak and vexatious’

The reality: The fact that a good proportion of claims fail does not mean that they are weak or vexatious. Claims that lack merit are likely to be weeded out at application stage, or preliminary hearing stages. Furthermore, because employers deny and oppose claims does not make them spurious - by virtue of being a ‘dispute’, tribunals are adversarial. Rather than a case of too many claims being submitted, the application statistics reflect the narrow section of people who progress their cases - many simply do nothing, or give up on disputes because of the real or imagined difficulties they will face. Some submit an application to tribunal, but do not stay the course to a full hearing. Even legally represented participants with strong cases waiver under the pressure and stress of continuing disputes; some withdraw because of fear of the hearing whilst others’ claims fell away because of misunderstandings and communication breakdowns with their representative.

‘Sarah’ and ‘Amanda’ had submitted a tribunal claim application jointly with the help of Sarah’s husband, a business manager, before seeking help from a CAB. At her first advice appointment, Sarah was unsure about proceeding, “I don’t know if I want to go through with it, to sit in a court and face them.” At her second meeting she remained panicked and said, “I’m not sure that I won’t ‘bottle it’” and doubted she would be able to “go through” with the hearing. In the end Sarah could not face pursuing her claim, or acting as a witness for Amanda, even though this would have helped her friend’s case. Amanda went on to win her case. Whilst not a certainty, the similarity of the claims (relating to the process and criteria for redundancy selection) suggests that Sarah had a high prospect of success.

‘Having your day in court’ tends to be viewed pejoratively, with people intent on pursuing claims being branded as nuisance litigants. But having a hearing is a key part of a sense of justice for some claimants. Many feel forced towards legal action by employer intransigence, and understandably wish to have their claim adjudicated by an external, higher power. Participants who attempted to resolve disputes within workplace procedures frequently found their grievances were ignored, hearings were pointless or managers simply covered one another. Employers frequently offer derisory sums of money to avoid full hearings, but as claims are seldom financially motivated, a financial settlement is rarely a satisfactory ending for claimants.
Policy implications

Our empirical research shows that claims that a high proportion of applications to employment tribunals are weak or financially motivated is without foundation. Rather, many low paid workers have relied on employment tribunals, or the threat of a tribunal hearing, to get access to justice – whether it be for unpaid wages, unfair dismissal or discrimination at work. However, the complexity of employment law, the legalistic nature of employment tribunals, the lack of legal aid and the introduction of fees to take a case to the tribunal all mean that for many, justice is just not accessible. Pursuing a tribunal claim was an enormous struggle before fees were introduced. Now, many people are priced-out, as well as being put off by the real as well as imagined difficulties they will face.

We therefore propose a radical review of the employment tribunal system to include the following:

- An end to fees to take cases to employment tribunals; these are a barrier to justice.
- Maintaining the principle of an independent forum for resolving employment disputes.
- A reconsideration of the recent weakening of fundamental employment rights; protection from unfair dismissal is an important example.
- A return to the Donovan principles of ‘easily accessible, informal, speedy and inexpensive’ justice.
- A simplification of procedures and systems for dealing with less complex claims such as unpaid wages.
- Funding to ensure that claimants to tribunal can receive the legal advice they require in order to resolve disputes that involve complex legal issues.
- Mechanisms to ensure that awards made by tribunals are received by claimants.
- The promotion of better relations in the workplace and strengthening of internal resolution of disputes; this would represent a more effective and fair means of reducing claims to tribunal, and would improve the quality of working life more generally.

Further information

To find out more about this research, including related publications, please visit the project website: bristol.ac.uk/law/research/centres-themes/aanslc/cab-project/

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