



## **Citizens Advice Scotland**

**Response to the Department for Business, Energy & Industrial  
Strategy (BEIS) and the Ministry of Justice (MoJ) consultation:  
Reforming the Employment Tribunal System**

January 2017

## Summary

- The powers over the management, operation, and administration of the Employment Tribunal and Employment Appeal Tribunal should be transferred to Scotland before the implementation of any reforms. This is to ensure that Scotland does not inherit a system that may not be the best system for Scotland. A timeframe should be agreed between the UK and Scottish Governments relating to this.
- Sufficient funding must be provided by the UK Government to allow Scotland to:
  - (i) maintain the levels of service delivery afforded under the current Tribunal model in Scotland;
  - (ii) undertake a complementary but independent review of the system in Scotland; and
  - (iii) implement any identified areas of reforms to the Scottish system.
- Employment Tribunal fees continue to act as a barrier to accessing justice. The UK Government should remove Tribunal fees in England and Wales, as the Scottish Government has undertaken to do in Scotland.
- Improving both access to local specialist employment services and the enforceability of Tribunal awards are priorities for non-legal users of the Employment Tribunal in Scotland. These areas should be reviewed and reformed in conjunction with the reforms to which this consultation directly relates. This will help to improve the fairness and effectiveness of the wider employment landscape.

## Introduction

- 0.0 Citizens Advice Scotland (CAS), our 61 member bureaux, extra help unit, and consumer helpline together form Scotland's largest independent advice network. In 2015/16 the Scottish Citizens Advice Service helped 330,000 clients with one million pieces of advice. In addition, the Scottish zone of CAS's self-help website, which provides information on rights, received 4 million unique page views. The Citizens Advice Bureaux provided 48,530 new pieces of advice on employment issues, including topics such as: discrimination at work; achieving statutory rights such as unpaid wages, maternity pay, and holiday pay; and unfair dismissal.
- 0.1 CAS uses the evidence from the Citizens Advice Bureau network across Scotland, alongside further research, to challenge and shape policy. CAS looks to ensure that the needs of our clients – the people of Scotland – are fully considered in public policy decisions.

- 0.2 CAS held an employment adviser focus group in September 2016 with eight advisers, caseworkers and lay-representatives from across Scotland to discuss their clients' experiences of dealing with employment issues and the Employment Tribunal (ET). CAS also received direct feedback from six Scottish CAB clients who have been through the ET.
- 0.3 CAS's key concern is ensuring that non-legal users have an accessible and effective means of seeking redress against employers when their employment rights have been breached. Typically CAB clients facing the ET are individuals who are not a member of a Trade Union, and who have little-to-no experience of: raising a claim in a Tribunal; presenting legal arguments; speaking to evidence; or enforcing a Tribunal award. Many such individuals will not have access to professional legal representation, for monetary reasons or otherwise, and as such they try to resolve their issue independently or with support from the likes of advice agencies and lay-representatives. For ease of reference, these individuals are referred to as "non-legal users" of the Tribunals.
- 0.4 CAS has chosen to respond substantively to this consultation because it is not yet agreed when the transfer of powers to Scotland over the management, operation, and administration of the Employment Tribunal (ET) and Employment Appeals Tribunal (EAT) are to take place. If reforms were implemented prior to this transfer taking place, Scotland could inherit a system which has been reformed based on responses to this consultation. It should be noted however that CAS's position is that the transfer of powers to Scotland should take place prior to any reforms being implemented in England and Wales.
- 0.5 This is to ensure that Scotland does not inherit a system that may not be the best system for Scotland. If non-agreed reforms were implemented prior to the transfer of powers, it is reasonably foreseeable that Scotland would thereafter look to implement further reforms to the already reformed (inherited) system. Repetition of this type would be costly, and could see the system go through multiple reforms in a short period of time. This could cause confusion to Tribunal users, and CAS believes would be generally undesirable.
- 0.6 The ongoing review and reform of the justice system in England and Wales, including the ET and EAT, will be of interest to the Scottish system. While Scotland should undertake its own review and reforms in line with the Smith Commission Agreement, that is not to say that Scotland will not consider and look to learn from any positive reforms being progressed in England and Wales. Close consideration of the developing position in England and Wales will be an important part of any reviews and reforms in Scotland. It should

nonetheless be for Scotland to ultimately decide how the system can best work within the fair work<sup>1</sup> and justice landscapes within Scotland.

- 0.7 To enable this, a clear and realistic timeframe needs to be set out and agreed by both the UK and Scottish Governments for when the transfer of powers will take place. This timeline must make reference to the review and reforms to take place in England and Wales.
- 0.8 When considering the transition of powers, the first priority for both governments should be ensuring that there is no disruption to the current users and potential users who need access to the Tribunals in Scotland.
- 0.9 The UK Government must also provide sufficient funding to allow Scotland to:
- (i) maintain the levels of service delivery afforded under the current Tribunal model in Scotland
  - (ii) undertake a complementary but independent review of the system in Scotland, and
  - (iii) implement any identified necessary reforms to the Scottish system.

#### Priorities for non-legal users

- 0.10 The biggest concern for non-legal users of the ET and EAT in Scotland is their ability to obtain a timely, fair, and meaningful solution to their employment problem. That is to say, that these users are empowered to seek and obtain redress effectively. Currently, the biggest barriers to them achieving this in Scotland are the Tribunal fees, the accessibility of the language and procedures, access to local specialist employment services, and the enforceability of ET awards.
- 0.11 Removal of Fees - CAS and the University of Strathclyde produced a joint report in March 2015 *The Price of Justice – the impact of Employment Tribunal Fees on CAB Clients in Scotland* to respond to the introduction of Tribunal fees in July 2013.<sup>2</sup> The introduction of fees was found to act as a barrier to Scottish CAB clients pursuing justice in employment disputes, even where claims had good prospects of success. Employees have been left vulnerable to poor treatment as a result. The Justice Committee's Second Report of Session 2016/17 on Courts and Tribunals Fees<sup>3</sup> reached a similar conclusion, further confirming that the introduction of Employment Tribunal

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<sup>1</sup> The Fair Work Convention produced a report in March 2016 which drew upon existing research, alongside wide-ranging consultation with stakeholders. The resulting 2016 Framework which was produced sets out an aspirational vision for the future of Scotland's fair work landscape. The Report is available to download from: <http://www.fairworkconvention.scot/framework/FairWorkConventionFrameworkFull.pdf>

<sup>2</sup> <http://www.cas.org.uk/publications/price-justice>

<sup>3</sup> The report is available to download from: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/courts-and-tribunals-fees-and-charges/>

fees has created a real barrier to justice. The requirement to pay to protect your statutory rights undermines the very purpose of those rights.

- 0.12 A recent Ministry of Justice quarterly report<sup>4</sup> shows that the numbers of ET claims have not recovered since their dramatic decline after the introduction of fees. This is despite attempts that have been made to improve the fee exemption application procedure.
- 0.13 CAS believes the effectiveness of ACAS Early Conciliation (ACAS EC) is currently undermined by the Tribunal fees. Unscrupulous employers are aware that many employees are priced out of raising actions at the ET, so they have little incentive to meaningfully engage in early resolution attempts. One CAB client had an employer who made a settlement offer early on in the dispute, but when it came to paying the agreed settlement the employer withdrew their offer. The employer waited for the client to go through ACAS EC, and pay all of the ET fees, before they reinstated their offer a week before the final ET hearing.
- 0.14 Another former CAB client commented: *“The companies drag it out hoping that you will just give up and I am not surprised that some do.”* Another client agreed: *“Companies [...] know it’s very costly so many people give in.”* Preparation Time Orders<sup>5</sup> could in principle mitigate some of the extra inconvenience and costs incurred by non-legal users who find themselves in a prolonged actions against such employers. In reality however these Orders are not commonly sought by non-legal users, likely in part due to the legalistic nature of the Tribunals procedures and a lack of awareness of this option.
- 0.15 Another factor relating to fees is the draft Order in Council, which set out how the functions relating to the ET are to be transferred to Scotland.<sup>6</sup> The draft Order in Council had the difficulty of trying to ensure the proposed definitions of jurisdictions were restrictive enough to prevent “forum shopping”. There is a concern that if Tribunal fees are only removed in Scotland, employees who would have previously raised their case in England or Wales might try to raise their case in Scotland, with the potential of overloading the Scottish system.
- 0.16 In CAS’s view, the best solution to all of the above issues, would be for the UK Government to recognise the huge access to justice issue that has been caused by the introduction of ET fees in April 2013. The UK Government

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<sup>4</sup> Ministry of Justice’s *Tribunals and Gender Recognition Certificate Statistics Quarterly April to June 2016*, Figure 10 <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2016>

<sup>5</sup> A non-legally represented party to an action can apply to the Tribunal for an Order which if granted means the Tribunal awards them an amount of money to reimburse them for their preparation costs. This Order would be payable by the other Party.

<sup>6</sup> Scottish Government consulted on the draft Order – available to download from: <https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/employment-tribunals>

should agree to the removal, or at the very least a substantial reduction in the level, of ET fees in England and Wales, as the Scottish Government has undertaken to do in Scotland.<sup>7</sup>

- 0.18 Improving Enforcement - Having a legal right on paper means little to a user of the ET unless their right is actually effective in real life. Users do not go to the ET for an extract registered decree arbitral. They go to a Tribunal so they can get a practical solution to their problem, like getting their unpaid holiday pay or receiving compensation for being discriminated against.
- 0.19 In 2013 the Department for Business Innovation & Skills conducted a study on the Payment of Employment Tribunal Awards.<sup>8</sup> 1,200 claimants were consulted who had been awarded an amount of money by the ET across Scotland, England, and Wales. On average, it was found that only 49% of claimants receive their full ET award, with 16% paid in part, and over a third (35%) of all claimants being paid nothing at all. In Scotland, while a smaller sample size was recorded<sup>9</sup>, it was found that the levels of enforcement were even worse. Only 41% of claimants received their full award, 13% received part payment, and almost half (46%) of all claimants were paid nothing at all.
- 0.20 Significant work needs to be done to improve the enforceability of ET awards. A number of areas of the substantive law which are not devolved to Scotland could be strengthened to improve the fairness of the employment landscape. In addition, a review of the various agencies that play a role within enforcement, such as the HMRC Statutory Payments Team, should be undertaken to consider where and how improvements can best be made.
- 0.21 One area for improvement would be strengthening efforts against phoenix companies, and including an express ground for disqualifying a director from a company for intentional, systematic, or serious-mistreatment of employee rights. Another example would be by reviewing the effectiveness of the current penalty notice provisions under s.37F of the Employment Tribunals Act 1996, which came into force in April 2016. If an employer does not pay an ET award employees can now apply to BEIS' ET penalty team, who write a warning letter to the employer informing them that they could be fined if they do not pay the award due. The threat of an additional penalty is a useful tool for an employee to use when trying to encourage an unscrupulous employer who is ignoring an ET order to pay an award.
- 0.22 If however an unscrupulous employer does not take heed of the warning, the penalty applied to the employer becomes payable to the Secretary of State, without helping the wronged employee receive their award. If anything, this

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<sup>7</sup> A PLAN FOR SCOTLAND The Government's Programme for Scotland 2016 -17 at p.48

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf)

<sup>9</sup> 200 participants out of the 1,200 of the wider study

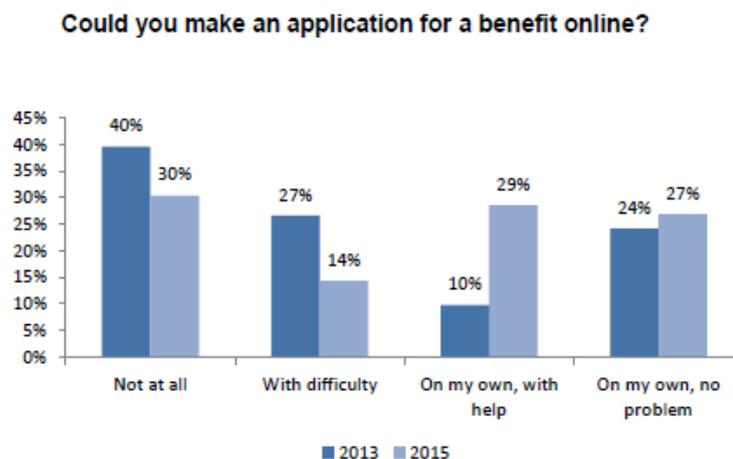
measure has the potential to worsen the employee's chances of enforcement, as a new creditor (with bigger resources to pursue enforcement) has been added into the equation. Enforcing the penalty could also have the potential to put the employer into further financial difficulty. It is important to note that if the employer does pay the penalty to the Secretary of State, no sums from this payment are claimable by the employee who may still be awaiting payment of their ET award. Additionally, the claimant is not entitled to receive any information in relation to the progress of any action the ET Penalty Team take against the employer. The claimant is therefore unable to learn if the Penalty Team were able to successfully take enforcement action, which could help the claimant decide whether or not to incur further costs and proceed with making their own enforcement attempts.

- 0.23 It is appreciated that considerations of the substantive law relating to the enforcement of ET awards are out-with the direct scope of this consultation. Nonetheless, if improvements are not made to the levels of successful enforcement of ET awards then any of the proposed reforms to improve the fairness of the ET will be undermined. If a non-legal user proceeds through a newly reformed ET procedure but does not receive payment of their Tribunal award at the end of it, their employment rights have still been entirely undermined. They will have been left without redress and it will have been inefficient, costly, and stressful process to go through to no avail.
- 0.24 CAS therefore calls on both the Scottish and UK Governments to, as a priority, review and consult with Stakeholders on the best ways to tackle this key issue. The Stakeholders consulted must have a fair representation of non-legal users, and organisations who assist and represent these users.

## Consultation questions

Question 1: Do you agree that with the right system in place the specific needs of users of Employment Tribunals and the Employment Appeal Tribunal can be accommodated in a more digitally based system?

- 1.0 A qualified yes.
- 1.1 In principle CAS is not against modernising the Tribunal, or wider justice landscape. Currently forms submitted online to the ET have to be printed into physical paper copies by the HMCTS staff in order to process them through the system. Modernising the internal systems to allow for electronic forms to be processed electronically internally without requiring this additional administrative step is very likely to improve the efficiency of the system, and reduce delays to users caused by administrative processing.
- 1.2 For many employees across Scotland a modern online-based system would allow them to raise their claim and thereafter monitor and manage their case online in a quicker and more convenient manner than traditional procedures based in paperwork can offer them. Online systems, which are well designed and properly resourced and maintained, also have the potential to improve accessibility for certain disabled users.
- 1.3 For many users however, digitisation would not offer them this improvement – rather, it could become a barrier to their ability to access the Tribunal. For a CAS report, *Bridging the digital divide*<sup>10</sup>, during August 2015, 601 Scottish CAB clients who presented to one of 28 bureaux with a benefits issue were asked to complete a paper-based survey about their digital and online use and ability. These figures were then compared to a similar CAS report, *Offline and left behind*<sup>11</sup>, from May 2013.



<sup>10</sup> <http://www.cas.org.uk/publications/bridging-digital-divide>

<sup>11</sup> <http://www.cas.org.uk/publications/offline-and-left-behind>

- 1.4 The trend amongst Scottish CAB clients appears to show a moderate increase over the 2 years of their online use and ability. It is important to note however that less than a third of CAB clients felt that they would be able to complete an online benefit form without assistance. 30% of clients surveyed in 2015 felt that they would not have been able to do so at all.
- 1.5 Moves that would pose a real threat to access to justice for these kind of potential users of the ET include: if information was only able to be found online; if all claims were required to be submitted electronically; or if hearings in person were not able to be accessed by users due to default online procedures using electronic messaging or videoconferencing software.
- 1.6 Local advice and support organisations can play an important role in supporting potential users of the Tribunal; however these organisations will not be able to entirely mitigate the negative impact on access to justice if the Tribunal moved completely online. Organisations will always have limitations to their capacity and resources, and it is vital that prospective users of the Tribunal are afforded the opportunity to access the Tribunal, and in turn justice, independently and offline if they require this. It must also be remembered that internet provision in more rural areas may not easily support such procedures, for example where internet access is restricted or slow, or indeed not present at all.
- 1.7 The Tribunal must continue to have a contactable telephone number, and a public access point in each location they are based, where users can request a paper copy of the necessary forms. The forms should also be available to download online, so that local organisations are able to print paper copies for clients who require them. For such users, Tribunal staff should be able to either process the paper submitted forms as they are, or alternatively have a procedure where they scan received paper copies onto the online system, if that would allow them to better process them internally.
- 1.8 While this would be more burdensome on Tribunal staff than having all forms processed online, it is anticipated that the majority of Tribunal users would opt to use the online system, and therefore there would still be less administrative work for the Tribunal than the current system in place. The requirement to do an extra level of administrative processing for the anticipated small percentage of claims submitted by paper is a proportionate and necessary measure to protect access to justice.
- 1.9 It can also reasonably be expected that over time the levels of digital access in Scotland, and indeed across England and Wales, will continue to increase. Therefore, this additional administrative element will decrease naturally

without placing a barrier to justice for non-legal users who may be some of the more vulnerable, and most needing, users of the Tribunal.

- 1.10 The online system must also be well designed, fit for purpose, and properly resourced and maintained if it is to genuinely improve the efficiency and access for users, even those with good levels of digital access. One important consideration is that for many consumers their smartphone will be their primary, or potentially sole, means of accessing the internet.<sup>12</sup> Therefore the system or portal designed should be smartphone compatible. Details around the specific workings of the system will also be very important. Users should ideally be able to create an account which they can then save draft and partially completed forms on to return to at a later time. This would be particularly helpful for non-legal users who receive advice from organisations such as their local CAB. These users may only have time to complete the entire claim form in a single interview, or they may not have all of the relevant information needed at an interview. In such circumstances they could then return to the bureau and pick up where they left off, or return home to check paperwork for things like exact dates relating to the claim, before updating and submitting their forms.

Question 2: What issues do you think need to be considered when deciding whether a claim would be suitable for online consideration? Please give reasons.

- 2.0 The individual user(s) of the ET must be a primary consideration when deciding whether a particular claim is suitable for online consideration. On paper a claim may seem relatively straight forward and therefore potentially appropriate for an online determination. If however the Tribunal user of said claim does not have online or digital access, this procedure will clearly not be appropriate for that user.
- 2.1 On this basis, it should be for the claimant, or potentially for both parties to the action, to consent to their case being determined online.

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<sup>12</sup> Ofcom's 2015 Communications Market Report found that a third (33%) of internet users see their smartphone as the most important device for going online. Full report available to download from: <https://www.ofcom.org.uk/research-and-data/cmr/cmr15>.

Question 3: What factors do you think should be taken into consideration when creating the scope to delegate judicial functions in Employment Tribunals and the Employment Appeal Tribunal? Please give reasons.

- 3.0 Improving the overall efficiency of the ET would generally be positive; in particular if the overall time a claim takes to progress through the ET was reduced. Delegation of judicial functions to Tribunal Case Workers (TCW) can support this legitimate aim, however it should be approached with a degree of caution.
- 3.1 The Tribunals must be given sufficient funding to ensure that there is no temptation to pass substantive non-procedural decision-making powers to TCWs. It is foreseeable that if the Tribunals were to face a funding crisis, more work could be redirected from Judges and Panels towards the less expensive resource of TCWs. This would pose a real risk to the overall quality of decision-making and fairness in the Tribunal.
- 3.2 It is acknowledged that there would be a safeguard, in that users could apply to challenge a TWC's decision by asking for a Judge to reconsider it. Nonetheless, if this became necessary for a user it would add a further hurdle and complexity to the process, and it would likely cause further delay rather than the intended goal of improving the processing time of a case.

Question 4: Are there any specialist skills that a caseworker dealing with Employment Tribunals and the Employment Appeal Tribunal would need, distinct and different from those required for carrying our casework in other tribunals? Please give details.

- 4.0 No comment.

Question 5: Are there specific issues relating to Employment Tribunals and the Employment Appeal Tribunal that need to be taken into consideration in relation to making changes to the law regarding panel composition? Please give details.

- 5.0 Non-legal users of the ET do not typically view their problems with employers as a legal dispute. One CAB employment adviser explained:  
*“Clients don’t understand their employment rights, the law is too complex. They come in to see us because they haven’t been paid, or they’ve been treated unfairly, or they’ve been dismissed. They don’t come in because their legal right under s.34(a) of such and such an Act has been breached.”*
- 5.1 Given this is how non-legal users typically approach their employment disputes, it is important to ensure, as far as possible, that they are supported

to tell their story to the Tribunal, and for this to then result in an appropriate and fair resolution.

- 5.2 The forms, language, and procedures used by the ET play an important role in improving the accessibility of the Tribunal to the non-legal users. A Scottish CAB client who had initially attempted to raise his claim with the ET independently (before later seeking support from his local CAB) described the process of form-filling and gathering evidence as: *“extremely onerous”*. He went on to comment further: *“the information asked for, and the terms used, [were] confusing despite [having] a considerable amount of experience of official form filling.”*
- 5.3 CAB employment advisers and lay-representatives reported to CAS at a focus group held in September 2016 that in their experience the ET has become increasingly legalistic over the last number of years. One of the factors which they felt had contributed to this shift was the increasing number of cases being decided by a single Employment Judge. The perception of formality was confirmed by a CAB client who described his preliminary hearing as: *“extremely formal and taxing.”*
- 5.4 Non-legal users of the ET should be able to tell their story without undue focus on legal and procedural technicalities. While almost all of these users will be able to tell their story, a number of them will face personal challenges which can make things like presenting coherent and relevant arguments to the Tribunal a challenge. These users must be supported through the process if the ET is to function properly within the wider fair working landscape.
- 5.5 Protecting and maintaining panel composition for cases can support these users. A diverse panel better allows the Tribunal to take a more interventionist approach and to extract the relevant information from such users. Different panel members bring different perspectives and can prompt the user through a broader source of questioning which is not necessarily directly focused on the law, and which the user may feel better able to respond to.
- 5.6 This interventionist approach is one of the biggest strengths of the ET compared to the more traditional non-interventionist approach, as adopted in the civil Courts, which can be very challenging for non-legal users. Having a diverse panel composition, comprising of the essential legal member but also with members bringing industry and employment backgrounds, is better for non-legal users of the Tribunal. It alleviates the tendency towards deciding disputes purely from a legalistic perspective, and it is an essential element of ensuring the Tribunal makes a balanced and fair decision which takes into account the perspective of both employee and employer within the confines of

the law. It also helps to maintain the concept of having a band of reasonable responses when a Tribunal is considering the fairness of a dismissal.<sup>13</sup>

- 5.7 While it will be cheaper and quicker to hear more cases in front of a single Judge, priority should be given to protecting both the access to justice for non-legal users, and the balanced and quality decision-making enabled by maintaining a diverse panel for relevant cases.

Question 6: What criteria should be used to determine the appointment of the new employment practitioner member of the Tribunal Procedure Committee? Please give reasons.

- 6.1 CAS recommends the criteria should include provision for two consumer experts to be represented on the Committee. This measure would help ensure that the perspective of non-legal users is kept at the forefront of any of the Committee's considerations. Rules and procedures may seem accessible from the perspective of those already within the employment and legal professions; however a consumer representative would bring an entirely different outlook. In CAS's view, this would strengthen the Committee's ability to make rules accessible to non-legal users of the Tribunals.
- 6.2 The Scottish Civil Justice Council (SCJC) is a good example of what strong consumer representation can bring when determining procedural rules which have the potential to significantly impact non-legal users of a Court or Tribunal. The SCJC prepares draft rules of procedure for the civil courts in Scotland, and its membership includes two permanent consumer representatives. The SCJC played a key role in replacing the Small Claims civil procedure in Scotland with a new Simple Procedure where the rules, procedures, and forms are focused, as a priority, on being accessible to non-legal users.
- 6.3 Additionally, the criteria should include provision for Trade Unions to be represented. Members from a Trade Union background will understand the barriers to justice in the employment context, and can represent the views of a large collection of employees who would be affected by the work of the Committee.

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<sup>13</sup> See s.98(4) of the Employment Rights Act 1996

Question 7: Do you agree that the proposed legislative changes will provide sufficient flexibility to make sure that the specific features of Employment Tribunals and the Employment Appeal Tribunal can be appropriately recognised in the reformed justice system? Please give reasons.

7.0 No comment.

Question 8: Do you anticipate the impacts of the proposed reform to be disproportionately large for small or micro sized businesses? Please explain your answer supported by evidence

8.0 No. CABs experience of advising and supporting small and micro-businesses is far less than their experience of assisting individual workers and employees. Nonetheless, these smaller businesses can share many similar traits with individual consumers who CABs meet with more regularly. They are less likely to have significant disposable cash for legal representation. They may also experience similar challenges under the current system to those faced by individual employees. For example, difficulties understanding legalistic language and procedures. Also the time to prepare for and attend a hearing might be significant for these businesses, particularly if they need to close for a period of time. This is comparable to an employee who needs to take time off their new work to receive advice, and to prepare for and attend hearings. For these reasons it is anticipated that the proposed reforms are unlikely to have a disproportionately large impact on small and micro-businesses. Rather the reforms, in CAS's view, are likely to be comparable to the impacts felt by claimants.

Question 9: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessment, resulting from these proposals? Please give reasons.

9.0 An observation on section 11 *Direct Discrimination* is that the equal application of a change to all does not necessarily equate to an equal outcome for all. Equality of outcome should be a measure used, following on from any reforms. It will be important to proactively monitor and assess the impact of any reforms on those with protected characteristics, and where necessary to then adapt and implement necessary changes.

9.1 In relation to the section on *Advancing equality of opportunities - Employment Tribunal judiciary*, we recognise the concern for the potential reforms to lead to a reduction in the need for future recruitment of Judges and lay-members. CAS feels that this could have an impact on more protected characteristics than the identified characteristic of Age. The Law Society of Scotland's

Equality and Diversity Committee have reported that proactive work is necessary to promote equality in the Scottish legal profession.<sup>14</sup> Therefore without proactively recruiting, it may be difficult to improve equality and diversity.

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<sup>14</sup> <http://www.lawscot.org.uk/about-us/equality-and-diversity/equality-and-diversity-guides/equality-standards/>