

# How we won the fight against employment tribunal fees

**UNISON has won the most significant judicial intervention in the history of British employment law. Here's how we did it ...**

# employment law

**O**n a grey and rainy morning in July, UNISON members and staff gathered outside the Supreme Court in London to hear the outcome of a four-year legal battle.

UNISON has been fighting the government in court over a vital component of workers' rights and on 26 July the Supreme Court – the UK's highest court – finally unanimously ruled that the government was acting unlawfully. This is the story of how we got there.

Employment tribunals play a vital role in workers' rights. They are a forum where workers (and employers) can seek justice, adjudicated by a legal expert – an employment judge.

Most of our hard-won workers' rights – which have been fought for by trade unionists and others over centuries – are effective only because they can be enforced through employment tribunals and employment appeal tribunals.

In 2013, this access to justice was restricted. The government decided to charge fees to

everyone who wanted to go to an employment tribunal.

The fees were brought in at a time when the Ministry of Justice was facing huge budget cuts and the government said the aim of them was to transfer part of the cost of the tribunals to users of the service, to “deter unmeritorious claims”, and to encourage disputes to be settled earlier.

Anyone who felt they had been illegally treated by their employer suddenly had to include a cheque when they sent off their claim form, or pay with a card online. If they didn't, the application wouldn't even be looked at.

One of the members standing outside the Supreme Court on the day of the result was Clara Mason. She was there because she feels passionately about access to employment tribunals.

Clara is a teaching assistant, and is currently in the process of going through an employment tribunal. UNISON paid the fee for her tribunal. Clara can't say much about her case because it's ongoing, but she does say that if UNISON

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**“It's a major victory for employees everywhere. UNISON took the case on behalf of anyone who's ever been wronged at work, or who might be in future”**

***Dave Prentis***  
***General secretary***  
***UNISON***

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Image: Andrew Alchison

hadn't paid the fee, she simply wouldn't have gone to tribunal.

"The verdict today is important for everyone across the country, because it's going to help a lot of families and people out there who've got issues with their employment," Clara said.

UNISON has been against the fees from the moment they were announced, because we knew they would hinder workers' access to employment tribunals and employment appeal tribunals.

On the very day the fees were introduced (29 July 2013), UNISON went to the High Court to seek permission to bring judicial review proceedings.

So, exactly how much were these fees? It depended on whether a claim was being brought by one person or a group of people and whether the claims were 'type A' or a 'type B'.

Type A claims generally require little or no work before the hearing, and have very short hearings. All other claims are type B: generally complex issues that require more scrutinising of evidence, such as unfair dismissal or discrimination.

For a single claimant, the total fees were £390 for a type A claim and £1,200 for a type B claim. There was a different cost system for groups of people making a joint claim.

Simon Steptoe is a UNISON branch chair who was also waiting outside the Supreme Court to hear the verdict. He has helped members bring tribunal cases, with the fees paid for by UNISON. But he says he's also met people who aren't ▶

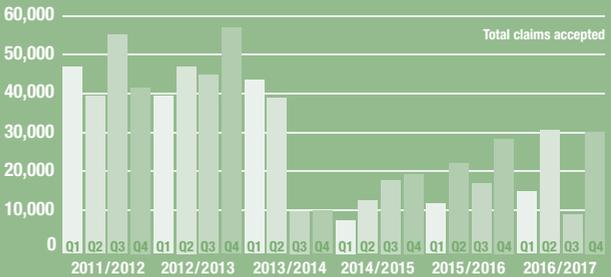
## EMPLOYMENT TRIBUNAL FEES

# THE DATA

**To win the case against employment tribunal fees, UNISON had to show that the number of people who went to an employment tribunal because they felt their employer had acted illegally was declining. That is exactly what the data showed. And a whole a lot more.**

### TOTAL EMPLOYMENT TRIBUNAL CLAIMS ACCEPTED

Employment tribunal fees were brought in on 29 July 2013 (financial year 2013/14, Q2)

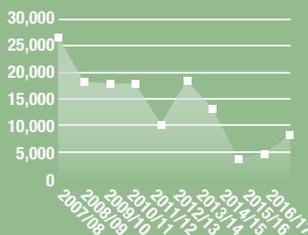


We can see from the chart that as soon as the fees came in, claimants dropped. There are certain times of the year when there tend to be more claims, so it makes sense to compare each quarter to the quarter before.

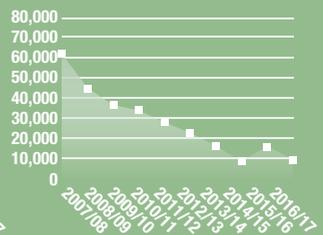
The number of claims from July to September in 2013 was 56% less than in July to September 2012. And from there it just got worse. October 2013 to December 2013 saw a 79% drop on the year before, and April to June 2014 saw an 81% drop from the same period in 2013.

It gets more interesting, though, because the data is also broken down by the nature of the claim. And it shows that there was a huge drop in people making claims related to discrimination.

### SEX DISCRIMINATION CLAIMS



### EQUAL PAY CLAIMS



**L-R: Blair Wassman, UNISON legal assistant, Shantha David, UNISON legal officer, Stephen Francis, member, Clara Mason, UNISON branch officer and Simon Steptoe, branch secretary, both of greenwich Branch, Adam Creme, head of legal, Bronwyn Mckenna, assistant general secretary, Mathew Purchase, junior barrister for UNISON**





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# employment law

members, who feel they have been treated unlawfully by their employer but don't go to tribunal because they simply can't afford it.

"Not everybody's in a union, but everybody should have access to justice," he says.

UNISON's argument in court was that the introduction of employment tribunal fees was unlawful because the fees interfered unjustifiably with the right of access to justice under both common law and EU law.

We also argued that the fees frustrated the operation of parliamentary legislation granting employment rights, and discriminated unlawfully against women and other groups.

The first time we went to court we were unsuccessful. The judge said that the claim brought was premature and new proceedings should be lodged, if and when further evidence was available.

As we knew we needed evidence, we had to get the data on how many people were accessing employment tribunals, to see if the numbers were going down.

At first, the government didn't

want to make that data public, so we submitted a Freedom of Information request. The figures we got back showed us what we had expected – that there had been an immediate drop.

In May 2014, UNISON tried again and we were granted permission to appeal to the Court of Appeal. Meanwhile, the government had decided to publish the stats on employment tribunals on the Ministry of Justice website, and they revealed the number of claims was dropping rapidly (for a close look at the data see the green panels). We had several more attempts in court, and several setbacks, but UNISON didn't give up. UNISON legal officer Shantha David, who worked on the case from the very beginning, said: "This was too important a fight to give up. We knew our best chance was in front of the Supreme Court, so we just had to keep going."

One of our key arguments was that the fees were discriminatory, because they had a bigger impact on women and

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**"The verdict today is important for everyone across the country, because it's going to help a lot of families and people out there who've got issues with their employment"**

*Clara Mason*  
*Teaching assistant*

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Image: Andrew Alchison

other marginalised groups.

UNISON argued that discrimination cases cost more for claimants because of the complexity and time hearings took, and a higher proportion of women would bring discrimination cases.

In March this year, UNISON's appeal was heard in front of the UK Supreme Court, and the result in July was a unanimous ruling that the government was acting unlawfully and unconstitutionally when it introduced the fees four years ago.

As UNISON general secretary Dave Prentis said: "It's a major victory for employees everywhere. UNISON took the case on behalf of anyone who's ever been wronged at work, or who might be in future."

The Supreme Court decided that employment tribunal fees conflicted with the right to access to justice, and therefore undermined the rule of law.

It said the rule of law was undermined because, if people couldn't reasonably afford to bring employment tribunal claims, this damaged the ability of the courts to enforce the law.

And if the laws Parliament makes can't be enforced, then the electoral process could become "a meaningless charade".

Not only does the result mean that anyone who needs to take their employer to court can do so for free from now on, it also means that anyone who has had to pay for that access to justice over the last four years will be reimbursed. Now that's what we call a success.

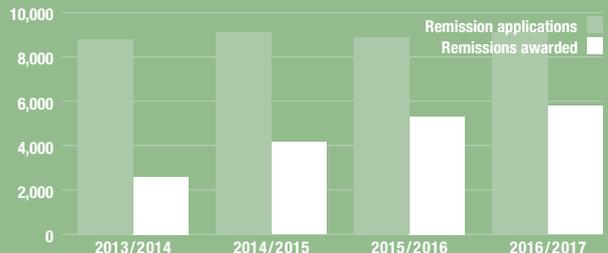
It wasn't just sex discrimination claims that took a plunge, disability and race discrimination also decreased.

#### DISABILITY AND RACE DISCRIMINATION CLAIMS



Though the government did introduce a remissions scheme, which meant people on low-incomes who met certain criteria could have their fee waived, the data shows that actually a high percentage of people who applied for that didn't qualify.

#### EMPLOYMENT TRIBUNAL FEE REMISSIONS APPLIED FOR AND AWARDED



Though we'll never know how many people had a valid claim against their employer but were put off tribunals because of the fees, the Citizens Advice Bureau carried out research and found that there are cases where people were not eligible for remissions, but the fee level put the claim beyond their financial reach. They said in their submission to the government on the impact of fees: "We found that fees are high in relation to how much potential claimants are likely to earn, with 43% of respondents to our survey with income of less than £46 per week after essential outgoings. This includes almost half (47%) of all type B claimants, who would have to put aside all of their discretionary income for 6 months to save the £1,200 fees."

Research by arbitration and conciliation service Acas also found that at least 8,000 people said they couldn't afford to pay employment tribunal fees and the figures also show that claims dropped off when the second lot of fees were due to be paid for the hearing. The data clearly shows that charging fees for access to employment tribunals was a bad policy, and thankfully the Supreme Court recognised that and ruled them unlawful.

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