

## Employment Tribunal fees ruled unlawful - considerations for charities

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The Supreme Court has unanimously held that the introduction of the current fee system in the Employment Tribunal and Employment Appeal Tribunal – via a Fees Order in force from 29 July 2013 – was unlawful under both domestic and EU law, as it prevented access to justice and was indirectly discriminatory.

The Fees Order required a claimant to pay an 'issue fee' when a claim was issued in an Employment Tribunal and a further 'hearing fee' when the case was heard (totalling either £390 or £1,200 depending on the type of claim). The judgment means that the Fees Order is invalid and that no fees will be payable under it going forward. The Government has also undertaken to refund fees paid by people who had brought claims under the regime, at an estimated cost of up to £32 million.

The judgment is likely to have significant short-term and long-term effects. The volume of Employment Tribunal claims fell sharply after 2013 and it is generally accepted that the fees regime has had a significant deterrent effect (although whether it deterred a greater number of meritorious or opportunistic claims remains hotly disputed).

The removal of the fees barrier is likely to see a rise in the volume of lower-value claims (for example, relating to holiday pay or rest breaks) and less well-paid claimants, both of which are likely to affect the third sector.

Charities will need to consider the right policy response. There will of course be cases where the legal merits, costs or reputational risks mean that some form of settlement is in a charity's best interests. But there will often be merit in resisting certain claims (not least to discourage 'copycats') and using existing mechanisms to deal with weak claims. All Tribunal claims remain subject to 'early conciliation' by ACAS and the Tribunal has a broad range of case management powers, including the power to require a 'deposit' from claimants of up to £1,000 per allegation which a tribunal considers has little prospect of success. More generally, organisations may focus more on avoiding disputes altogether, refining their existing policies and procedures (and management training) to minimise the risks.

[This note](#) gives further details of the Supreme Court's judgment and its implications.