EMPLOYMENT TRIBUNAL FEES

Thank you for your letter of 27 March in which you sought further information on developments with Employment Tribunals (ET) and the refund of ET fees.

ET Refund Scheme

You asked about the number of applications we have received for refunds of ET fees, and whether it was in line with our estimates. I am sure that you will appreciate that making these sorts of estimates is inherently difficult, and for this reason, Ministers did not agree any milestones or targets for the scheme. Instead, as the then Minister of State (Dominic Raab MP) said in his evidence to the committee last December, the immediate focus was to establish the refund scheme as soon as possible, and that we would be keeping its progress under review.

It was, of course, necessary to make some provision for the financial consequences of the ruling to the MoJ's budget. As Mr Driver said, at the time the judgment was handed down, we made an assumption that the scheme would require around £17m for refunds in 2017/18. That assumption was made on a prudent basis but, as the latest statistics confirm, it is unlikely that the scheme will achieve that level of repayments in the current year.

Although the refund scheme has made reasonable progress, we have decided that further action is necessary. We are therefore writing over the next few months to everyone who paid an ET fee, but who has not yet applied for a refund, to raise awareness of the existence of the scheme, and providing details on how to apply. The first batch of 2,000 letters was issued on 9 April.

MoJ's Legal Costs

You also asked for an update to the costs we had incurred in defending the litigation. Currently we have incurred £305,255.85 in legal costs, and we anticipate that there will be further legal costs in settling Unison's costs, which the Supreme Court has ordered us to pay, but we expect these to be small.

I should also point out that the Supreme Court's ruling has wider implications; we have therefore also sought legal advice separately on the implications for MoJ and the way that the courts and tribunals are funded. Those costs are not included in the sums set out above.
Applications for permission to bring claims out of time

As Dominic Raab MP confirmed, following his evidence to the Committee, we have put in place arrangements to collect information on the volumes of applications for permission to bring a claim to the ET out of time with effect from 1 January. The data collected to date, which relate only to pregnancy or maternity discrimination cases, show that a negligible volume of such applications have been made. We are currently working to extend these arrangements so that this information will be collected across other ET jurisdictions, and we are also exploring whether information could be collected on the principal reasons that applications are made.

In line with the orderly release and accessibility principles within the Code of Practice for Statistics, these data will be published in the Tribunals and Gender Recognition Certificate Statistics Quarterly bulletin – data for January to March 2018 will be published on 14 June 2018, and for April to June 2018 on 13 September 2018 as detailed on the statistics release calendar.

Waiting times and Judicial Statistics

You asked for my estimate of the average waiting time for cases to be listed for both single and multiple claims, compared to the ET's current target. We are currently exploring whether statistics demonstrating the change in waiting times can be retrieved from existing data. If this is possible, I will inform the Justice Committee and publish our findings in the Tribunals and Gender Recognition Certificate Statistics Quarterly bulletin.

In the meantime, we do publish statistics on the average time taken for cases to be disposed of in the quarterly statistical bulletin, available at: https://www.gov.uk/government/collections/tribunals-statistics. The ET's performance indicators relate to whether single claims are disposed of within twenty-six weeks of receipt (including cases disposed at non-hearings). I hope this will illustrate the speed at which cases are processed and hearings are scheduled.

Cumulative percentage of clearances that took place in 2015/16 and 2016/17, by age of case at clearance

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<thead>
<tr>
<th></th>
<th>25 per cent point</th>
<th>50 per cent point (median)</th>
<th>75 per cent point</th>
<th>Average (mean)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment single</td>
<td>14 weeks or less</td>
<td>22 weeks or less</td>
<td>34 weeks or less</td>
<td>29 weeks</td>
</tr>
<tr>
<td>2015/16</td>
<td></td>
<td>22 weeks or less</td>
<td>34 weeks or less</td>
<td>28 weeks</td>
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<tr>
<td>2016/17</td>
<td></td>
<td>22 weeks or less</td>
<td>34 weeks or less</td>
<td>28 weeks</td>
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**Difference**

- 1 week decrease

Finally, you asked for details of the number of salaried and fee paid judges, and non-legal panel members. Statistics on the number of judicial sittings for salaried and fee paid judges in the Employment Tribunals are published annually as part of the MoJ’s ‘Tribunals and gender recognition certificate statistics quarterly.’

Figures in the annual Judicial Diversity Statistics published in July 2017 reported that there were 1,113 judges or non-legal panel members with a primary appointment in the Employment Tribunal (England and Wales). Further details can be found here: https://www.judiciary.gov.uk/wp-content/uploads/2017/07/judicial-diversity-statistics-2017-tables.xls

Yours ever,

DAVID GAUKE