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**Employment TRIBUNAL fees: 26 July 2017**

**supreme court decision – fees are unlawful**

The Supreme Court today (26 July) ruled that the Employment Tribunal and Employment Appeal Tribunal Fees Order 2013 (Fees Order) prevents access to justice and is unlawful. They also found it to be indirectly discriminatory as it had a disparate impact upon women and could not be justified.

The immediate consequence is that the Fees Order is quashed, so that as of today fees cease to be payable for claims in the employment tribunal (ET) and appeals to the EAT, and fees paid in the past must be reimbursed. But the judgment is of much wider constitutional significance, underlining the high degree of protection given to access to justice by the common law, as well as EU law and clarifying the principles which will be used to scrutinise impediments to that fundamental constitutional right.

In a statement which will no doubt be cited frequently in the years to come, Lord Reed in the leading judgment confirmed:-

***“Without [access to the courts], laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not provide a public service like any other”***

Unsurprisingly based on this the Supreme Court concluded that the Fees Order did effectively prevent access to justice and, based on the Government’s evidence (or lack thereof), the fees could not justified as a necessary intrusion on access to justice.

This is a judgement that reverses the decisions of the Court of Appeal and lower courts. The Supreme Court has clearly taken into consideration recent reports on the usage of the Tribunals following the fees. In a scathing judgment the Court found the Tory Government had not produced evidence to show why the fees had been set at the level they had, and had falsely assumed that the higher the fee, the higher the revenue (an assumption which contradicted “elementary economics and plain common sense” because the optimal price depends on the elasticity of demand). Nor had the Tories shown that fees met the other objectives for their introduction, such as deterring weak claims. Finally, they had also failed to consider the public benefits flowing from the enforcement of rights conferred by Parliament.

This is of huge significance to the Union, our members and access to justice arguments generally.

It will take the Government and Tribunal service some time to deal with the impact of the decision and further Legal Department updates will following as matters are confirmed regarding this.

**Legal Department, 26 July 2017**