

Enforcement of Employment Tribunal Awards

Prepared as part of the project Citizens Advice Bureaux and Employment Disputes
December 2014

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Funded by the European Research Council

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1. Introduction

This report examines the experiences of Employment Tribunal (ET) claimants after an ET award was made in their favour. A workers' success in the ET is by no means the end of the story when it comes to achieving justice for a wrongdoing against them in the workplace. Enforcing an award made by an ET can itself be highly problematic.¹

The data presented in this report were collected as part of a European Research Council funded project entitled *Citizens Advice Bureaux and Employment Disputes*.² The overall aim of this project was to understand workers' experiences as they attempted to resolve problems faced at work, including identifying potential barriers to justice. Our particular focus was on workers who could not easily afford the services of a solicitor. As such, participants were recruited through Citizens Advice Bureaux (CABx) who are a key provider of employment advice to this group. We tracked the experiences of workers as they sought to resolve their workplace disputes – from their initial advice sessions with CABx to the closure (or in some cases abandonment) of the problem. The vast majority of our participants who pursued their claims in the ET did so prior to the introduction of fees on 29 July 2013.

The report focuses on the paths taken and overall outcomes for participants who were successful with their claim in the ET. It begins by providing a brief overview of the system for enforcing ET awards. The key findings from our participant group are then presented in three sections: firstly, a summary of the outcomes of our participants; secondly, experiences of those who took formal action to enforce their ET awards; and, thirdly, experiences of those who did not take formal action to enforce their ET awards. Finally, detailed vignettes elaborating on and contextualising these findings in relation to specific individuals are presented.

2. ET awards and their enforcement

ET awards are due once the tribunal judgement is given. Prior to 29 July 2013, interest became payable on any amount outstanding after a 42 day period. For awards made on or after this date, interest accrues from the date of judgement but is not applied if the award is paid within a 14 day period following judgement.

The systems for enforcement are different in England and Wales compared with Scotland. In England and Wales, workers can pursue enforcement of their awards by applying to their local County Court for an enforcement order. The costs for this is £40. They can also utilise a Fast Track

¹ Department for Business, Innovation & Skills (2013) *Payment of Tribunal Awards: 2013 Study* (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf, accessed on 19 August 2014) and Citizens Advice Bureau (2013) *The Cost of a Hollow Victory: CAB Evidence on Enforcement of Employment Tribunal Awards* (http://www.citizensadvice.org.uk/index/policy/policy_publications/the_cost_of_a_hollow_victory.htm, accessed 19 August 2014)

² For further information on the broader project, refer to our interim report found at <http://www.bristol.ac.uk/law/research/centres-themes/aanslc/cab-project/publications/cabxinterim.pdf> See Appendix 1 for the methodology used.

scheme (introduced in 2010) whereby a one-off payment of £60 is made to the County Court to instruct a High Court enforcement officer to act on the worker's behalf to collect the money outstanding. In Scotland, workers need to make an application to the Employment Tribunal office for an extract registered decree arbitral. This acts like a court order, which can then be used by a Sheriff Court officer to force the employer to pay. The fees charged by these officers vary depending on the type of action taken.

3. Key findings

A. Enforcement outcomes

The most common experience for study participants who won an award in the ET was that they did not receive this money from their employer – at least initially. Seventeen participants were granted an ET award in their favour. The employer in one of these cases appealed the decision and the case was taken to the Employment Appeal Tribunal. The outcome of the appeal is still pending. Of the remaining 16 participants, only one-quarter (4 out of 16) received their award before interest became payable.

As a first response to the non-payment of an ET award, participants tend to seek advice on what they can do about the issue from the advisor or solicitor who they had previously talked with at the bureau. This reflects participants' general willingness to seek out their award.

Subsequent experiences can be categorised into three groups: A – those who took formal action to pursue their award (7 participants); B – those who took informal action to pursue their award (2 participants); and C – those who did not take any action (3 participants).

Seven participants took formal action to pursue their award; 4 were based in England and 3 were based in Scotland. Three of the participants based in England successfully used the Fast Track system to recoup their award. The further participant based in England obtained payment of the redundancy component of his award through the National Insurance fund but forfeited the remainder of the award because he did not want to pay to force the employer into insolvency. The 3 participants based in Scotland instructed Sheriff Court officers to recoup the award: 2 were successful; 1 was not.

Informal action – in the form of a letter written to the former employer seeking payment of the award due – was taken by two participants. In one case the letter was written by the CAB advisor who helped the participant take their claim to the ET. This letter was successful in recouping the award. In the second case, the claimant requested her new employer (who was a solicitor) to write a letter to the former employer on the claimant's behalf. This attempt was unsuccessful. The participant did not pursue the matter further as she did not want to risk the £60 cost of the Fast Track system in attempt to obtain her award for outstanding wages of £400.

The 3 participants who did not take action to pursue their award (as at the date of last contact with them) were all based in Scotland. Two reported that they were unsure whether they wanted to pay

further money to try to obtain their ET award, particularly given that their efforts may not be successful. The other participant reported that she intended to instruct Sheriffs Court officers to enforce the award.

Further details of the outcomes and paths taken by our study participants are reported in Table 1 and Table 2 contained in Appendix 2.

The outcomes for our participant group for whom an ET award was made in their favour are similar to the findings from research carried out by the Department for Business, Innovation & Skills (BIS) into the payment of ET awards.³ The BIS study revealed that only half (49%) of claimants were paid their award in full and a further 16% were paid in part. The comparative percentages for our participants were 63% and 6% respectively. Overall, a similar percentage received all or some of their award (65% in the BIS study compared with 69% in ours). However, a larger component of our participants received their full award compared with the participants in the BIS study. As will be revealed below, achieving full repayment of ET awards by our participants required perseverance and determination. The BIS study found that 34% of participants who received their ET award did so without taking action to enforce the award. The comparable figure in our study is 36%.

B. Experiences of those who took formal action to enforce ET awards

Of the 7 participants who took formal action to enforce their ET awards, 5 received the full award, 1 received part of the award and 1 was not successful in recouping their award. Despite the apparent positive outcome for most of this group, the difficulties and stresses faced to achieve this result are striking.

- Participants could only utilise formal enforcement mechanisms once the process of appealing an ET decision was finalised. Some participants felt that their (former) employer repeatedly tried to instigate an appeal of the ET decision – even when there was little or no chance of success – simply to delay the period when the participant could enforce an award.
- These delay strategies were interpreted by participants as tactics to put them off engaging in steps to enforce the ET award. One participant was aware that his former employer was intending to sell the business and considered that the employer was attempting to appeal the ET decision so that the sale could go through before having to make the award payment.
- Obtaining sufficient information about how to initiate and engage with formal enforcement procedures was essential to enable participants to make effective use of these. This information tended to come from advisors or solicitors at CAB, from enforcement officers and from ACAS. The knowledge of these individuals and/or agencies was critical to guiding participants through the process. For example, they were able to provide advice on what to do (or, at least, identify the options available to the participant) if the employer paid only part of the amount of the award owing. At times these individuals and/or agencies acted as a means of support that helped participants continue with the process.
- When deciding whether to instigate formal enforcement procedures, participants needed to weigh up the cost of doing so with the likelihood of receiving payment. A factor influencing the

³ Department for Business, Innovation & Skills, above n 2

likelihood of payment was whether the employer had assets that could be seized by the enforcement officer. Participants who worked for an employer in this position and who had knowledge of where these assets were or how they could be accessed were in a stronger position than those who did not.

- Participants experienced a range of stresses once formal enforcement processes were underway. These included financial stress as they paid out money to recoup the award and waited to receive money owing to them (combined with the experience of having lost their job), the experience of intimidation from the employer and fear of their possible actions, and a strong desire for the whole experience to be over.
- Despite these stresses, participants needed strong resolve to continue through the enforcement process. It was not simply a matter of instructing the enforcement officer to carry out their role and wait while they did so. Participants had to deal with what they interpreted to be tactics against payment by the employer (such as attempting to appeal the ET decision, changing the bank account used by the business so that the bank account cannot be seized, and making part-payments of the amount outstanding). Participants were required to make on-going decisions in the process (in Scotland, for example, whether or not to expend further funds for different courses of action by an enforcement officer, or whether to accept part-payment of an award and forgo the remainder). The process was often both onerous and lengthy in duration.

C. Experiences of those who did not take formal action to enforce ET awards

This section includes the experiences of both the groups of participants who took informal action in the form of writing letters to the employer (but no formal action) in an attempt to recoup their ET awards (2 participants) and the participants who did not take any action (as at the date of our last contact with them) to pursue their award (3 participants).

- The main consideration for these participants was financial. They weighed up the outlay involved to instigate formal enforcement mechanisms against the likelihood of recouping their award. Relevant considerations to the likelihood of their recouping the award was whether the employer had any assets that could be seized, whether the employer could be located, and whether the employer was likely to continue trading in the entity under which the ET claim was made. The term ‘throwing good money after bad’, spoken of by at least 1 of this group, aptly describes how some of these participants viewed the situation in which they found themselves.
- The amount required to pay for formal enforcement proceedings (at least £60) was not insignificant to many of the participants. These participants often worked in jobs which paid the minimum wage (or below). At the time of attempting to recoup the award, the participants often found themselves in insecure employment, with irregular hours and/or of short term duration, or no employment. Some simply did not have the funds available – particularly given the risk of losing it – to pay for formal enforcement of their ET award.
- Relatedly, some participants found themselves in a state of flux after the loss of their jobs. Their employment situation may be changing or uncertain, likewise their financial situation. Simply managing the everyday act of living could be a challenge. This base was not a strong position upon which to embark on the – for some – complex and somewhat stressful task of instigating formal enforcement proceedings.

- The participants who did not take formal action to enforce their ET awards also tended (although not always) to have awards that were for relatively small amounts, such as £400. This had the effect of reducing their desire to risk the £60 (or more) in an attempt to recover the amount owing.

4. Vignettes: Taking formal action to enforce ET award

BiC100 – Scotland, use of the Sheriff Court, successful

BiC100 had worked in a convenience and liquor outlet store for eight years. His position was assistant manager. One day BiC100's manager complained about the staff rotas that BiC100 had prepared. The manager said that the rotas were not useful and requested BiC100 fix them. BiC100 sought clarification on the problem but no information was forthcoming. The manager told BiC100 to go home and fix the rotas. BiC100 left his place of work. A few hours later he received a text message from the owner of the business informing him that he needed to attend a disciplinary meeting for his refusal to obey orders and for a cash shortage issue.

BiC100 was very concerned about the situation. He contacted Acas who suggested that he take a colleague with him to the meeting. However, because BiC100 was not yet aware of the basis for the disciplinary meeting, nor had he been dismissed at this point, Acas were not able to offer much further advice.

It emerged from the disciplinary meeting that the rota problem related to the issue of not having an appropriately licensed person on duty in the store at all times. (When selling alcohol, there is a legal requirement that there be at least one person in the shop who has an appropriate sales license). However, the shop had operated for quite some time without having an appropriately licensed person on site at all times that it was open. There was a shortage of staff that held this license. The manager had never raised this as an issue before. Indeed, when BiC100 first learnt from the manager how to prepare the rotas he simply followed what had been done in the past, which included not always having an appropriately licensed person on site.

At the meeting, BiC100 was also blamed for some discrepancy in the cash held in the shop. He defended himself against this, pointing out that the money had gone missing when he was away on holiday.

The outcome of the meeting was that BiC100 was fired from his job. BiC100 appealed this decision. This was rejected in a letter sent to BiC100 by the owner of the business and his wife (who is co-owner of the business). No appeal hearing was offered by the owners of the business. However, the allegation of stealing cash was withdrawn.

BiC100 sought advice from his local CAB. A solicitor at the bureau advised him that there appeared to be procedural flaws in the way the employer conducted the disciplinary hearing and the appeal of the decision made and, as such, BiC100 had a case for unfair dismissal.

The solicitor completed and lodged the ET1 form on BiC100's behalf. BiC100 realised the importance of being able to show that he prepared staff rotas in the same form as the manager. As such, he had taken copies of rotas prepared by the manager before he left his place of work. He also got a friend who continued to work in the shop to obtain copies of rotas prepared by the manager after BiC100's departure.

The case went to the Employment Tribunal. BiC100 was represented by the solicitor who worked at the CAB. BiC100 won his case and was awarded £14,013.

The employer appealed the tribunal decision. The appeal was unsuccessful. The employer sought to make a further appeal. BiC100 found this process very stressful. He was aware that the employer was trying to sell his business and that if he did so before the appeal process was completed, BiC100 would lose his ability to seek his award. BiC100 stated: "It's like they could appeal and appeal and appeal and like the judge said that I won it so that's I think that should be it ... If he sold the business and disappeared, I had a bit of paper saying I won and that's all I would have. I wouldn't have anything else".

At one point, the decision from the Employment Appeal Tribunal was delayed for a few weeks because of a typing error in the judgment. BiC100 telephoned the tribunal offices almost daily in an attempt to hurry up receipt of the judgement. He reflected: "if I just sat there and just waited on the letters I don't think I'd have got anything".

BiC100's solicitor advised him that he should contact the officers of the Sherriff's Court to enforce the order. BiC100 did so and secured a warrant to arrest two bank accounts belonging to the employer. Because BiC100 had worked as the assistant manager for many years he knew the details of these accounts. However, BiC100 waited at least two weeks to hear back from the bank that this had been unsuccessful. The employer had moved their money into another account. BiC100 then instructed the Sheriff Court officers to take the next step of going to the shop to seize the stock. Getting the Sheriff Court to take these steps cost BiC100 approximately £200.

By this stage BiC100 had heard from former colleagues who still worked in the shop that a new prospective owner was looking closely at the business and had started to spend time there in preparation for purchase. This heightened BiC100's frustration with the enforcement process, which he felt to be "a race against the clock".

BiC100 considered that the various appeals put in by the employer were a delay tactic on their behalf. He also thought that the employer's switching of the business bank account was a deliberate move to avoid his getting payment.

The Sheriff Court officers visited the store and proceeded to seize the stock. At this point, the owner agreed to pay the award. But, because he was away on holiday, he said that he was unable to come up with the full amount owing and would pay £6,000 now and £10,000 in a week's time. The Sheriff Court officers informed BiC100 of this via the telephone. BiC100 did not believe the employer and told the officers that there was a safe in the shop. Moments later the officers telephoned BiC100 again and informed him that the employer would pay the full amount. Even at this point BiC100 was

concerned that the bank transfer would take days and that he was at risk of losing out on the money. In the end the payment went through instantly. BiC100 received the money on a Friday and by the following Wednesday the shop was sold.

DC016 – England, use of the Fast Track scheme, successful

DC016 had worked as a valet in a car sales yard for 8 years. During this time, he experienced bullying and harassment from his immediate manager, the son of the owner. DC016 had talked with the owner about the abuse on a number of occasions. This would improve the situation temporarily, but the bullying would resume shortly thereafter. When DC016 attended a hospital appointment his manager phoned him, swearing at him and demanding he return to work. DC016 collapsed shortly afterwards and was advised by a nurse not to go back to work. DC016 resigned from his job.

Initially DC016 did not intend to seek legal redress for the way he had been treated at work. However, after some reflection, he felt that his boss should not be able to get away with forcing him to leave a job that he loved. DC016 made contact with Acas and then attended a free initial appointment with a solicitor who told him to submit a grievance letter to his employer and that further free legal information could be obtained from an employment solicitor at the CAB.

DC016 met with the CAB employment solicitor. She determined that he was eligible for legal aid and began to act on his behalf. She submitted an ET1 form and helped DC016 to prepare for his ET hearing, although she did not represent him.

DC016 was extremely nervous at the hearing. He did not know which documents to hand over to the clerk or how to arrange for the judge to read out his witness statement (as he was dyslexic). DC016 did not always understand the questions asked by the judge, nor was he able to provide a detailed account of the verbal abuse he experienced. The employer also represented himself. He did not always know how to follow the protocols required of the tribunal and took an aggressive approach throughout.

DC016 won his case. He subsequently attended a remedy hearing and was awarded a sum of approximately £8,000.

His initial elation at the win was soon dampened because the employer did not pay the award. DC016 contacted the CAB solicitor to find out what he should do next. She informed him that the employer had appealed the decision but that the appeal was lodged outside the allowable timeframe of 14 days. The solicitor advised DC016 to wait for two weeks to check that the employer's appeal was dismissed by the tribunal. After this he could pay £60 to have a High Court enforcement officer seize the assets of the employer to recoup the award (using the Fast Track scheme). In the meantime, DC016 should prepare a list of the property owned by the employer.

DC016 was under great stress during this period. His car had been damaged twice and he was certain that the employer was responsible. DC016 noted: "And that's before he's paid me. What's it going to be like after I get me money?" By this stage his family was increasingly reluctant to go out

into the community in case they saw the former employer. DC016 even feared that the employer might go as far as throwing a brick through the front window of his house. DC016's household was suffering additional stress due to his partner receiving treatment for cancer. DC016's overwhelming desire was for the situation with his former employer to end.

As expected, the employer's appeal of the Employment Tribunal's decision was rejected. But despite this the employer submitted a number of further appeals. DC016 felt that "he's just playing a waiting game, know what I mean. Thing is, he's making me wait, ... I'm struggling for money ...".

This financial strain was a key motivator for DC016 at this point. Since resigning from his job he had started up a market stall but was not yet drawing a wage for his efforts. He observed: "The thing is ... we're struggling, we're proper struggling at the minute, seriously. If it wasn't for me mum, I don't know what I'd do. ... I didn't do this for the money, I did it for me job. But now it's for the money". DC016 found the transition from being in long term employment and receiving a regular wage to being in financial difficulty very stressful: "It does me head in. From having a job with loads to having no money, know what I mean. Honest to god, mate, I couldn't do it again, I wouldn't never do this again." DC016 was proactive at contacting the CAB solicitor during this period and engaging the services of a High Court enforcement officer.

The High Court enforcement officer did, in due course, obtain the amount of the money outstanding from the employer, including interests and the costs of recoupment. However, this was not without its difficulties. On her first visit to the employer, the employer said that he would pay the award but not the interest owing. The officer seized three of the cars that the employer had in his car yard and said she would return in a few days for the payment. The employer sent a cheque for the amount of the award but did not include interest owing. By this stage DC016 simply wanted the matter to end. He recalled telling the High Court enforcement officer to "Forget about the interest ... all I wanted was a full stop, you know what I mean? I just wanted an end of it, and she [the officer] says, no, ... you're entitled to some money, you shouldn't let him intimidate you like it coz he'll try and pull us out of it like the money and that ...".

The employer's cheque was returned to him. On her second visit, the High Court enforcement officer found that the employer had sold at least two of the cars that she had seized. When the officer stated that she would get a truck in to remove three other vehicles, the employer attempted to hit her. The employer then telephoned the police complaining that his cars were being taken. The police arrived at the scene and explained to the employer that the officer was within her rights to take away the vehicles. Eventually the employer did pay the full amount outstanding.

Despite his apparent success, the process was extremely taxing for DC016. He reflected: "All I want now is try me best with me [market stall] and just get on with me life ... I'll never do this again. I'd never do it again. I'd never go through the court again. It's caused so much stress ... It's horrible". DC016 spoke of suffering depression during the process and even contemplating taking his own life. He had not received medical assistance because he felt embarrassed. DC016 lived in fear of future violence against him at the hands of the employer. He reasoned that if the employer was prepared to hit the High Court enforcement officer he would certainly want to harm him: "But he won't do it,

he's gonna get other people to do it for him, do you know what I mean? He'll get two or three lads on me or whatever – that's what he's going to do."

DC016 felt very grateful to the High Court enforcement officer for her efforts and wanted to thank her for it in person. Of the CAB solicitor, he noted that she was "absolutely brilliant and that I really appreciate [the work she did for him] from the bottom of me heart".

FiC102 – Scotland, use of the Sheriff Court, successful

FiC102—47 years—had worked as an operative in a micro-electronics company since she left school. Following the economic downturn her employer sought to make redundancies. Some people volunteered but were turned down. Instead, FiC102 and nine others were picked through a selection process that FiC102 perceived to be opaque and somewhat suspicious. Of particular concern were the 'objective' criteria which the employer claimed to have used to rate and select people. FiC102 sought more information on the process from her managers but they were not forthcoming. FiC102 had an appeal meeting but felt she was treated very aggressively and that this was not a genuine opportunity to voice her complaint.

She was informed that she would be redundant in January 2013. However, the relationship between her and her employer broke down and they said she should leave early.

FiC102 and a colleague who had also been made redundant contemplated putting in a claim to the Employment Tribunal. FiC102 was clear she wanted to raise the dispute. But, she was concerned that her son, who continued to work for the employer, might be victimised. FiC102's colleague's concerns centred on being nervous at the hearing and having to face the employer again. In the end both FiC102 and her colleague decided to complete and lodge ET1 forms.

At this point, FiC102 and the colleague visited the CAB to receive some guidance about preparing for the Employment Tribunal hearing and to seek representation for the hearing itself.

On the day before the hearing, FiC102's colleague dropped her claim because she was too nervous to attend the tribunal.

FiC102 continued with her case. She was represented by a specialist employment advisor from the CAB. FiC102 won her case and was awarded approximately £3,000. FiC102 found the hearing quite nerve racking, but was glad that she went through with it.

A few months passed. FiC102 did not receive her award from the employer. She had recently moved home and was concerned that the employer may have sent the award to her old address. FiC102 telephoned the CAB for guidance. They were reluctant to contact the employer on her behalf, so FiC102 telephoned them herself. The employer informed her that they had sent out the award to the old address. FiC102 was doubtful that they had actually sent the cheque at all. The employer requested FiC102 provide her new address to them in writing, which she did.

After a further two weeks no award was forthcoming. FiC102 went to the Sheriff's Office on a Monday morning. She paid them £97 and on that same afternoon they were at her former place of work. The employer sent a cheque to the Sheriff's Office by the Wednesday. However, the amount of the cheque was only the base award, without the interest outstanding of £32 and the £97 cost of recoupment. The Sheriff Court officer asked FiC102 what she wanted to do with the cheque. Initially FiC102 said to deposit the cheque and send the amount on to her. However, after thinking about it for an hour she decided against this course of action and telephoned the Sheriff Court officer to have the cheque sent back to the employer. The Sheriff Court officer requested a cheque for the correct amount to be sent to FiC102 directly. The cheque came through shortly thereafter.

EC008 and EC020 – England, use of the Fast Track scheme, successful

EC008 (76 years) and EC020 (75 years) both worked in the same shop, as part of the local Post Office, and had done so for three and twelve years respectively. One day they were called into the owner/manager's office. He informed them that the shop wasn't making any money and told the women that they are both past retirement age. EC008 asked the manager whether he was sacking them. He denied this. EC008 then suggested that he was making them redundant. He denied this also, informing them that he didn't pay redundancy money and nor did the Post Office. The manager again reminded them that they were both past retirement age. At the end of EC020's shift, she spoke with the manager and asked for her wages on the basis that she was leaving. The manager said they would be paid in due course. EC020, whose shift was due to end a few hours later, informed the manager that if he wasn't even going to pay their wages that day then she was going to leave then too.

EC008's daughter consulted the Acas website and concluded that the employer could not act in this way. She wrote letters to the employer on both EC008 and EC020's behalf informing him that he would either need to give the women redundancy payments or offer them another form of work. EC008 and EC020 took the letters to the Post Office the following Saturday and there they saw three newly recruited young women working behind the counters.

The employer did not respond to the letters so EC008 and EC020 went to their local CAB for assistance. An advisor informed them that they were entitled to redundancy pay and that they had a potential claim for age discrimination. Neither women wanted to pursue the discrimination claim, but were keen to obtain redundancy pay. The amount due was £733 for EC008 and £1,500 for EC020. The CAB advisor assisted them to complete their ET1 forms.

The employer did not respond to correspondence from the Employment Tribunal and both women were awarded default judgements. The awards were not paid and so both women spent £60 to utilise the Fast Track scheme to recoup their money. EC008 received the amount owed to her. However, the employer sent EC020 a cheque for £800 only. EC020 telephone Acas for advice and returned the cheque. She was sent the correct amount in due course.

DC003 – England, use of National Insurance fund, partly successful

DC003 had worked as a site manager for 10 years in a company that bought properties, renovated them and then rented them out. He was informed by one of the owners of the company that there was no money to continue trading. DC003 was owed 2 ½ months of wages.

DC003 contacted Acas and received what he considered to be conflicting advice about pursuing the claim in the Employment Tribunal. Nevertheless, he decided to pursue the dispute. He went to his local CAB and was deemed eligible for legal aid. The bureau solicitor began work on his case. She informed him that he should complete an ET1 form for the outstanding wages and redundancy. The total being claimed was approximately £12,000.

The employer did not respond to correspondence from the Employment Tribunal and so DC003 was granted a default judgement. The CAB solicitor advised DC003 to seek payment of his redundancy money from the government's National Insurance Fund. DC003 completed the appropriate form by recorded delivery on a Monday and was paid £3,600 within four days. However, because the employer had not gone insolvent, DC003 was not entitled to receive the other monies owing to him.

The CAB solicitor advised DC003 that it would cost him £1,170 to undertake proceedings to force the employer into liquidation. This money would not be refundable even if he were successful. The solicitor also told DC003 that she would not be able to advise him throughout this process and, as such, DC003 may also have the additional cost of a private solicitor.

DC003 initially decided to seek to force his employer into liquidation. He did not have the funds to pay for a solicitor so was going to attempt to do so on his own. He admitted: "knowing I've got to tackle this alone frightens me to death". However, after a number of months, DC003 decided against taking this action. He had discussed the matter further with the CAB solicitor and she had informed him that the chance of him receiving his unpaid wages was very slim. DC003 reflected on the process by saying: "Letting go of any hope of getting back the 8.5k has put a big hole in my life, not just for me but my children".

FiC110 – Scotland, use of the Sheriff Court, unsuccessful

FiC110 is Lithuanian and, whilst having taken language classes, she has severe difficulties with English. She came to Scotland in 2000 largely because the job situation in her home country was very bad. She had worked part-time as a kitchen porter in a restaurant for 16 hours a week at the minimum wage. Her employment began in 2004. In 2012 the business was taken over by a different company. In the previous 4 – 5 months FiC110 had stopped getting payslips and had to chase her pay on a week by week basis. She was not always confident that the pay she was getting was as much as it should have been. The owner had disappeared and she had not been able to track him down to ask about her money.

A friend suggested to FiC110 that she go to the CAB. FiC110 had four or five appointments with a specialist employment adviser. A translator was used in at least one of these appointments. The advisor wanted to ensure that FiC110 understood the implications of submitting an ET1 and knew of the documentation she would have to supply in order to claim an exemption from ET fees. Despite the presence of a translator there were communication problems between FiC110 and the advisor.

The advisor had difficulties in establishing if a TUPE transfer had taken place when the company was taken over. FiC110 was also unsure of what the ET hearing itself would involve. She could not understand why she had to go to a court to demand her wages and felt that the employer should just be made to pay her, possibly by the police.

FiC110 was struggling financially at this point. She was receiving job-seekers allowance and was trying to find alternative employment, which was difficult given her limited English. FiC110 was also wary of getting another job that would present similar problems regarding her pay. FiC110 is a single parent and had found it difficult to have enough money for food and other costs when the pay from her previous job was coming in late.

FiC110 was not keen to attend the hearing. She had childcare responsibilities, was studying English, as well as hunting for a job. She had limited time available and inadequate resources to cover the cost of childcare. In the end, though, her former employer did not respond to the ET and so a default judgement of approximately £1,500 was made in her favour.

The CAB advisor informed FiC110 in writing of the ET decision. The advisor stated that FiC110 may need to instruct Sheriff Court officers to enforce the award and noted that she could not do this on FiC110's behalf. FiC110 had severe difficulties understanding the letter and the process she had to go through to instigate formal enforcement procedures. However, FiC110 did manage to instruct the officers and paid approximately £100 for bailiffs to visit the restaurant premises. The Sheriff Court officers could not locate the employer. They wrote to FiC110 informing her of this and reported that they suspected the owner was on holiday out of the country. They included a mobile number in the letter, which they suggested she could use to contact the employer. The letter contained a statement of thanks for the payment FiC110 had made to them but did not suggest anything else that FiC110 might try. As at the date of our last meeting with FiC110, FiC110 stated that she planned to go to speak to the Sheriff Court officers again and, failing that, return to the CAB for further advice.

5. Vignettes: Not taking formal action to enforce ET award

AiiC003 – England

AiiC003 is a young woman from Southern Europe. She is educated to master's level and moved to Britain in search of work. She obtained a job as a cleaner. However, AiiC003 did not receive the amount of pay she expected or on the dates she expected and eventually resigned. AiiC003 was not confident in her English ability, so sought help from a friend to communicate with her former employer to seek out her outstanding pay. The employer responded that AiiC003 owed tax and had been overpaid.

Another friend directed AiiC003 to the CAB. AiiC003 had not heard of the organisation before. After a gateway interview, an appointment was made for AiiC003 to see a pro bono solicitor who holds a monthly surgery at the bureau. The solicitor summarised the legal issues involved in the dispute and told AiiC003 she would need to fill in an ET1 form, directing her to the Employment Tribunal website.

AiiC003 had some difficulty understanding what the solicitor was saying. After the meeting AiiC003 attempted to complete the ET1 form. She found this challenging, but did eventually submit it on her own.

Prior to her hearing, AiiC003 received a communication from the Employment Tribunal Service stating that the employer she named in the ET1 refuted that they were her employer. The party claimed that they subcontracted cleaning work to another company who were AiiC003's employer. By this stage, AiiC003 was living elsewhere and working as an au pair. She sought assistance from her au pair employer, who was a solicitor, to write a letter to the Employment Tribunal Service stating that she named the company whose logo was on her employment contract and payslip.

AiiC003 was very apprehensive about attending the hearing. In particular, she was concerned that her English was not good enough to effectively communicate in the formal setting. However, she decided against seeking out translation services.

At the hearing itself the judge made efforts to ensure that AiiC003 could participate effectively. The party AiiC003 had named as the employer represented themselves at the hearing. The company the respondent claimed to be AiiC003's real employer failed to attend. The judge determined that the party who had failed to appear was AiiC003's employer and in their absence a default judgement was made in favour of AiiC003.

AiiC003 did not receive the award from the employer. Her new employer (for whom AiiC003 worked as an au pair) said that she would help AiiC003 to recoup her money. They discussed the Fast Track scheme. However, by this stage AiiC003 had decided to leave this position and try and obtain work more in line with her qualifications. Her immediate concerns focused on finding other employment and saving enough money for a rental deposit on a flat.

In time AiiC003 did find work as a carer on a zero hours contract. She enjoyed the role despite the hours changing regularly. AiiC003 had also moved into a flat with others.

AiiC003 decided not to take any action to enforce her award. She did not want to risk the £60 it would cost her to utilise the Fast Track scheme, particularly given that her award was only approximately £400. Further, she did not feel comfortable about seeking assistance about how to initiate the process from her former employer.

BiC106 – Scotland

BiC106 had worked as a charge-hand in a bar for 13 years. Towards the end of 2012 he took one week's holiday. BiC106 had asked permission to take the leave he required. However, there was a dispute about the exact day he was expected to return to work. He had returned from his holiday on what he thought was the correct date but was confronted and shouted at by his manager. The manager swore at him and said "you're finished here." She was angry and BiC106 was afraid she was going to hit him.

Despite his shock and anger at his manager's outburst, BiC106 worked the remainder of his shift. Later that evening he reflected that he did not like being spoken to in that manner and returned to the bar the next day to hand in his keys and say he would not be back. BiC106 felt his treatment had been unfair. He wanted to receive his outstanding holiday pay, but he also wanted to stand up to the manager who he thought was a bully.

BiC106 went to his local CAB for advice. The solicitor at the CAB advised that it was not clear whether BiC106 had resigned or was fired, confirming that BiC106 did not raise a grievance about his treatment. Due to the inappropriateness of the manager's words, which appeared to dismiss BiC106, the solicitor suggested BiC106 lodge a claim for unfair dismissal. However, the solicitor raised his concern that there was nothing in writing and no witnesses to support BiC106's claims. The solicitor observed that the manager was likely to deny BiC106's version of events. As such, it would be a matter of the ET judge to determine which side was more believable.

After a few weeks deliberation, BiC106 decided he did want to pursue an ET application. The CAB solicitor guided BiC106 through the process of filling in the ET1. The solicitor also represented BiC106 in the ET itself. The employer, too, was represented by a solicitor. As anticipated, the manager denied BiC106's version of what happened. The judge delivered an oral judgement stating that BiC106 was owed £404 of outstanding holiday pay. The judge observed that it was very difficult to assess the issue of the dismissal, but concluded that no dismissal was involved. This aspect of the claimant's case was dismissed. Despite this partial win, BiC106 was very pleased with the outcome. He was also very relieved the hearing was over.

After the hearing, the employer phoned BiC106 stating that he would not pay the award and threatened to take BiC106 to court to pay for his legal fees. BiC106 was very distressed by this. He tried to contact the CAB solicitor, but the solicitor was away. Instead BiC106 contacted Acas who informed him that the employer would have to take him back to the tribunal to pay his costs and that he doesn't have anything to worry about.

At this point, BiC106 thought that he would enforce the award by instructing Sheriff Court officers. However, he observed that he wasn't in a hurry to do this. This was due in part to the fact that interest was accruing on the amount owing.

Despite this attitude, BiC106 had some difficulty putting the matter behind him. He lives in a small town and had difficulty escaping people associated with his former employer. BiC106 was confronted by the manager's granddaughter in his local supermarket when he found himself at her till. He was also barred from the bar in which he used to work.

After a number of months, BiC106 still had not initiated formal proceedings to enforce his ET award. At the time of our last contact, BiC106 informed us that he had lost the job he took on after his employment dispute and, as such, had no money to instigate formal enforcement proceedings to recoup his ET award. He also observed that the pub owned by the employer with which he had his dispute had been sold. He was not sure how to go about enforcing the award, in particular the new address of his former employer. BiC106 was considering returning to the CAB for further advice.

Appendix 1: Methodology

Data collection for the project *Citizens Advice Bureaux and Employment Disputes* ran from July 2011 to December 2014. The methodology involved ‘tracking’ CAB clients from their initial contact with bureaux through the process of their working their way through their employment dispute. Information has been collected from 133 CAB clients from 6 bureaux throughout England and Scotland. Data sources included observation of CAB advisor and client interviews, engaging in ongoing interaction with CAB clients as they work through their disputes, observation of Employment Tribunal hearings, and interviewing CAB advisors and managers.

Out of this broader sample, 17 participants had an award made in their favour following an ET hearing. The decision of one of the participant’s cases was appealed in the EAT. This participant is still awaiting the outcome of the case.

All, but 1, of these participants lodged claims in the Employment Tribunal prior to 29 July 2013, i.e. before the introduction of Employment Tribunal fees. However, the date of the judgements received in their favour included both before and after 29 July 2013. This had different implications for the date upon which interest accrued and became payable on the awards.

Appendix 2: Summary tables of participant outcomes and paths taken

Table 1: Enforcement outcomes for CAB clients awarded money from the Employment Tribunal

Outcome	N	Participant code
Employer appealed, awaiting EAT decision	1	CiC200
Period prior to interest becoming payable		
Received full award	4	AiiC001; AiiC016; AiiC013; BiC119
Period after interest becomes payable		
Received full award with formal enforcement procedures	5	BiC100; DC016; EC008; EC020; FiC102
Received partial award (via NI fund)	1	DC003
Did not receive award with formal enforcement procedures	1	FiC110
Received full award with informal action	1	BiC109
Did not receive award with informal action	1	AiiC003
No action taken (at date of last contact with participant)	3	BiC106; BiiC102; FiC117

Table 2: Paths taken by CAB clients awarded money from the Employment Tribunal (next page)